Table of Contents

As confidentially submitted to the Securities and Exchange Commission on May 24, 2021

Registration No. 333-

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

FORM S-1
REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

SIGHT SCIENCES, INC.
(Exact name of registrant as specified in its charter)

Delaware	3841	80-0625749
(State or other jurisdiction of incorporation or organization)	(Primary Standard Industrial Classification Code Number)	(I.R.S. Employer Identification No.)

4040 Campbell Ave, Suite 100
Menlo Park CA 94025
877-266-1144
(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

Paul Badawi
President and Chief Executive Officer
4040 Campbell Ave, Suite 100
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Approximate date of commencement of proposed sale to the public: As soon as practicable after the effective date of this Registration Statement.

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, check the following box. ☐

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ☐

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ☐

If this Form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ☐

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 7(a)(2)(B) of the Securities Act. ☐

CALCULATION OF REGISTRATION FEE

Title of Each Class of Securities To Be Registered	Proposed Maximum Aggregate Offering Price (1)	Amount of Registration Fee (2)
Common Stock, $0.001 par value per share	$	$

(1) Estimated solely for the purpose of calculating the registration fee pursuant to Rule 457(o) under the Securities Act of 1933, as amended. Includes the aggregate offering price of additional shares that the underwriters have the option to purchase.
(2) Calculated pursuant to Rule 457(o) based on an estimate of the proposed maximum aggregate offering price.

The Registrant hereby amends this Registration Statement on such date or dates as may be necessary to delay its effective date until the Registrant shall file a further amendment which specifically states that this Registration Statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933 or until the Registration Statement shall become effective on such date as the Commission, acting pursuant to said Section 8(a), may determine.

Table of Contents

The information in this prospectus is not complete and may be changed. We may not sell these securities until the registration statement filed with the Securities and Exchange Commission is effective. This prospectus is not an offer to sell these securities and it is not soliciting an offer to buy these securities in any state where the offer or sale is not permitted.

Subject to Completion, dated , 2021

PRELIMINARY PROSPECTUS

Shares

Common Stock

This is Sight Sciences, Inc.'s initial public offering. We are offering shares of our common stock. Prior to this offering, there has been no public market for our common stock. We estimate that the initial public offering price of our common stock will be between $ and $ per share. We have applied to list our common stock on The Nasdaq Global Market under the symbol "SGHT."

We are an "emerging growth company" and "smaller reporting company" under the federal securities laws and, as such, are subject to reduced public company disclosure standards. See "Prospectus Summary—Implications of Being an Emerging Growth Company and a Smaller Reporting Company."

Investing in our common stock involves risks. See "Risk Factors" beginning on page 17 of this prospectus.

	Per Share	Total
Initial public offering price	$	$
Underwriting discounts and commissions paid by us(1)	$	$
Proceeds to us (before expenses)	$	$

(1) We refer you to "Underwriters" beginning on page 207 for additional information regarding underwriting compensation.

We have granted the underwriters an option to purchase up to additional shares of common stock for a period of 30 days after the date of this prospectus.

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.

The underwriters expect to deliver the shares against payment to purchasers on or about , 2021 through the book-entry facilities of the Depository Trust Company.

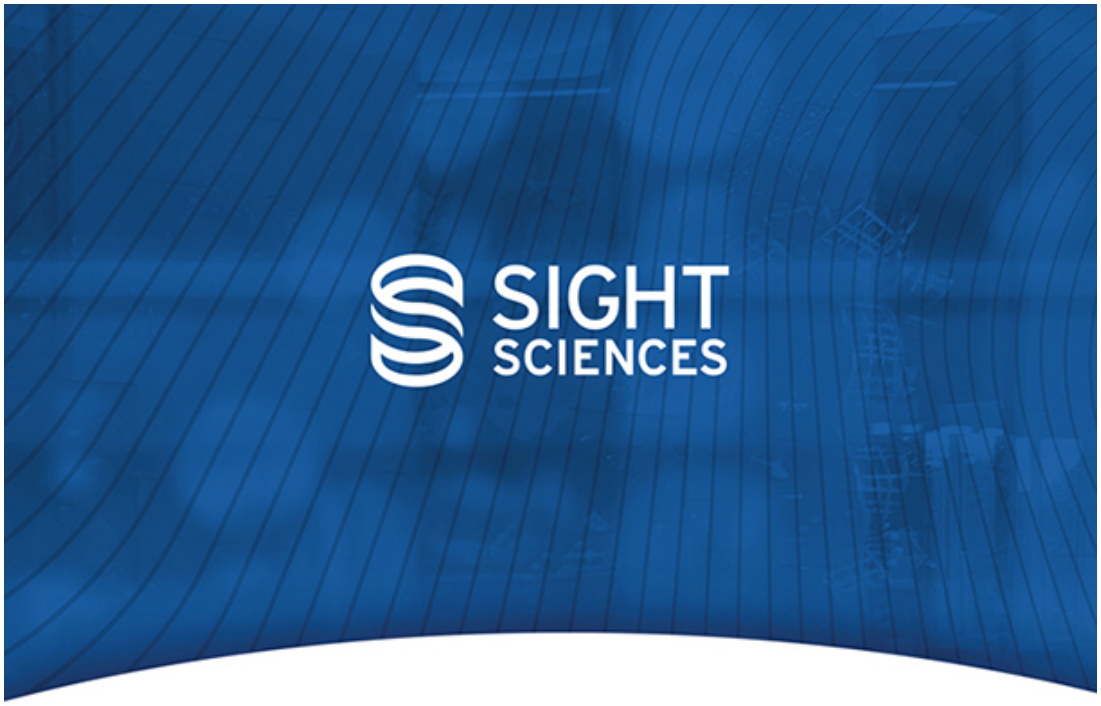
Morgan Stanley **BofA Securities**

Citigroup **Piper Sandler**

The date of this prospectus is , 2021.

Table of Contents

Table of Contents



OMNI® Surgical System

TearCare® System

TABLE OF CONTENTS

Neither we nor the underwriters have authorized anyone to provide any information or to make any representations other than those contained in this prospectus or in any free writing prospectuses prepared by or on behalf of us or to which we have referred you. We take no responsibility for, and can provide no assurance as to the reliability of, any other information that others may give you. This prospectus is an offer to sell only the shares of common stock offered hereby, but only under circumstances and in jurisdictions where it is lawful to do so. The information contained in this prospectus or in any applicable free writing prospectus related thereto is current only as of its date, regardless of its time of delivery or any sale of shares of our common stock. Our business, financial condition, results of operations and prospects may have changed since that date.

We have proprietary rights to trademarks, trade names and service marks appearing in this prospectus that are important to our business. Solely for convenience, the trademarks, trade names and service marks may appear in this prospectus without the ® and TM symbols, but any such references are not intended to indicate, in any way, that we forgo or will not assert, to the fullest extent under applicable law, our rights or the rights of the applicable licensors to these trademarks, trade names and service marks. All trademarks, trade names and service marks appearing in this prospectus are the property of their respective owners. We do not intend our use or display of other parties' trademarks, trade names or service marks to imply, and such use or display should not be construed to imply, a relationship with, or endorsement or sponsorship of us by, these other parties.

Neither we nor the underwriters have done anything that would permit this offering or possession or distribution of this prospectus in any jurisdiction where action for that purpose is required, other than in the United States. Persons outside the United States who come into possession of this prospectus must inform themselves about, and observe any restrictions relating to, the offering of the shares of common stock and the distribution of this prospectus outside the United States.

Until , 2021, (the 25th day after the date of this prospectus), all dealers that buy, sell or trade shares of our common stock, whether or not participating in this offering, may be required to deliver a prospectus. This is in addition to the dealers' obligation to deliver a prospectus when acting as underwriters and with respect to their unsold allotments or subscriptions.

PROSPECTUS SUMMARY

This summary highlights selected information contained elsewhere in this prospectus and is qualified in its entirety by the more detailed information included elsewhere in this prospectus. This summary does not contain all of the information you should consider before investing in our common stock.

You should carefully read this entire prospectus, including the information under the sections titled "Risk Factors," "Special Note Regarding Forward-Looking Statements" and "Management's Discussion and Analysis of Financial Condition and Results of Operations" and our financial statements and related notes thereto included elsewhere in this prospectus, before making an investment decision. Unless the context requires otherwise, references in this prospectus to "Sight Sciences," the "Company," "we," "us" and "our" refer to Sight Sciences, Inc.

Overview

Our mission is to transform ophthalmology and optometry through the development and commercialization of proprietary devices that target the underlying causes of the world's most prevalent eye diseases. We are passionate about improving patients' lives. Our business philosophy is grounded in the following principles: comprehensively understanding disease physiology; developing products that are intended to restore natural physiological functionality to diseased eyes; developing and marketing products that achieve superior effectiveness versus current treatment paradigms while minimizing complications or side effects; providing intuitive, patient friendly solutions to ophthalmologists and optometrists (together, eyecare professionals or ECPs); and delivering compelling economic value to all stakeholders, including patients, providers and third-party payors such as Medicare and commercial insurers. Our objective is to develop and market products for use in new treatment paradigms and to create an interventional mindset in eyecare whereby our products may be used in procedures which supplant conventional outdated approaches. We believe current eyecare treatment models rely heavily on prescription medications, symptom relief, or either flawed or highly invasive, later-stage procedural interventions and fail to adequately address the true underlying cause of disease.

Our currently marketed products, the OMNI Surgical System, or OMNI, and the TearCare System, or TearCare, target two of the world's most prevalent and underserved eye diseases, glaucoma and dry eye disease, or DED, respectively. Glaucoma, a group of chronic, often asymptomatic, diseases that damage the optic nerve, is the world's leading cause of irreversible blindness. Primary open-angle glaucoma, or POAG, is the most prevalent form of glaucoma. Dry eye complaints are the most common reason for a patient visit to an eye doctor and DED symptoms have a significant impact on the quality of life and productivity of patients. If left untreated, DED can be extremely painful, leading to permanent cornea damage and vision impairment. We estimate the annual addressable U.S. market opportunities for OMNI and TearCare are approximately $6 billion and approximately $10 billion, respectively, while 2020 U.S. manufacturer revenues in the surgical glaucoma and DED markets were approximately $350 million and $2.4 billion, respectively, demonstrating that currently available solutions have not addressed a large part of the market need.

OMNI is a handheld, single use, therapeutic device that allows ophthalmic surgeons to reduce intraocular pressure, or IOP, in adult glaucoma patients with a safe, *ab interno*, minimally invasive glaucoma surgery, or MIGS. We believe OMNI delivers the highest level of effectiveness of any available MIGS product, as it is the only device which provides access to 360 degrees and all three primary points of resistance of an eye's diseased conventional outflow pathway through a single clear corneal microincision. We believe our recently expanded indication for use of OMNI is among the most comprehensive in MIGS. The FDA has authorized the use of OMNI for reducing IOP in all adult POAG patients both by itself on a standalone basis, which we refer to as Standalone procedures, or in combination with cataract procedures, which we refer to as Combination Cataract procedures. We believe OMNI is the first custom-designed *ab interno* MIGS device that was cleared by the FDA to be used in *ab*

interno MIGS procedures for lowering IOP in both Combination Cataract and Standalone cases for all adults with POAG based upon the review of *ab interno* Combination Cataract and Standalone clinical data. Several competing MIGS devices, including the current market leaders, have only been authorized by the FDA for use in Combination Cataract procedures for adult patients with Mild-to-Moderate severity. We sell OMNI to facilities where ophthalmic surgeons perform outpatient procedures, mainly ambulatory surgery centers, or ASCs, and hospital outpatient departments, or HOPDs. Our Surgical Glaucoma segment, which includes OMNI, represented 94% of our total revenues for the year ended December 31, 2020 and for the three months ended March 31, 2021.

In March 2021, OMNI was cleared by the FDA for an expanded indication for use based upon the review of clinical data from ROMEO, our recently completed U.S. multi-center clinical study of OMNI in Combination Cataract and Standalone procedures. In ROMEO, we observed that Standalone OMNI patients with preoperative IOP greater than 18 mmHg experienced a mean IOP reduction of 28% (from 21.8 mmHg to 15.6 mmHg) and a mean reduction in hypotensive medication usage of 35% (from 1.71 medications to 1.17 medications) 12 months after treatment. In Combination Cataract patients with preoperative IOP greater than 18 mmHg, we observed a mean IOP reduction of 31% (from 21.9 mmHg to 15.1 mmHg) and a mean reduction in hypotensive medication usage of 45% (from 2.04 medications to 1.13 medications) 12 months after treatment. The Standalone procedure market, which we estimate represents greater than 85% of the addressable U.S. POAG market, is significantly underpenetrated relative to the Combination Cataract market. The development and penetration of the Standalone market is a key element of our growth strategy and we believe that OMNI has the degree of effectiveness and consistency of clinical outcomes to establish a more proactive, interventional treatment paradigm. We believe our recently expanded indication for use of OMNI will help us effectively develop the Standalone market and capitalize on the potential of the Combination Cataract market.

TearCare is a technologically sophisticated system which utilizes a wearable, open-eye design to apply localized heat to eyelids in an anatomically customized way. We believe TearCare has a compelling physiological profile to address obstructions from meibomian gland dysfunction, or MGD, which is the primary cause of evaporative DED, a disease characterized by low quality tears that evaporate prematurely. In OLYMPIA, our large randomized control trial, or RCT, TearCare was associated with statistically significant clinical improvements in all assessed signs and symptoms of DED. This included tear break up time, or TBUT, and meibomian gland secretion score, or MGSS, objective measurements of DED that were the trial's primary endpoints, as well as patient-reported symptoms surveys including Eye Dryness Score, or EDS, Ocular Surface Disease Index, or OSDI, and Symptom Assessment in Dry Eye, or SANDE, at all time periods measured (both two weeks and four weeks post-treatment). Further, TearCare had a statistically significantly higher proportion of subjects improving by at least one OSDI category than did the group receiving a single treatment using a version of the first device FDA-cleared for the application of localized heat and pressure therapy in adult patients with chronic cystic conditions of the eyelids, including MGD. We sell TearCare to optometry and ophthalmology practices through a targeted commercial approach. Our initial strategic focus for TearCare is on improving patient access, as we believe that MGD is one of the most prevalent diseases in all of medicine that lacks any meaningful reimbursement coverage by Medicare and private payors. Our long-term plan is to maximize patient access to TearCare and further develop the MGD procedures market. This plan leverages a rigorous trial program designed to demonstrate the clinical benefits of TearCare treatments and a comprehensive effort to educate patients, providers and third-party payors regarding the benefits of TearCare treatments. Our Dry Eye segment, which includes TearCare, represented 6% of our total revenues for the year ended December 31, 2020 and for the three months ended March 31, 2021.

We are deeply committed to continuing to conduct clinical studies to evaluate the safety and effectiveness of our products, and we believe the results of our clinical studies will be critical to our continued growth. We are currently conducting robust clinical trial programs in both glaucoma and DED, with 11 ongoing or planned studies, including several head-to-head RCTs against market leading products. We also support investigator-initiated trial, or IIT, programs, of which eight are completed and two are currently in progress. We are focused

on continuous innovation and seek regular input from our network of expert employees (including several ophthalmologists on staff), advisors and customers to rapidly iterate our pre- and post-commercial product designs with the aim of better satisfying the needs of our customers and their patients, and increasing adoption and utilization of our solutions. Their input has helped guide the intuitive design of our products and our hands-on instructional programs that allow ECPs to use OMNI and TearCare with confidence. Between January 2019 and April 2021, we shipped over 50,000 units of OMNI and over 10,000 single-use SmartLid units to customers. During this period, we are aware of nine events that were reported to the FDA in accordance with 21 CFR §803 as 30-day Medical Device Reports (MDRs), representing less than 0.015% of units shipped.

We have experienced significant growth and market adoption since commercially launching OMNI in February 2018 and initiating controlled commercial sales of TearCare in April 2019. We generated revenue of $7.5 million, $23.3 million, and $27.6 million for the years ended December 31, 2018, 2019, and 2020, respectively, and $6.5 million and $8.6 million for the three months ended March 31, 2020 and 2021, respectively. Gross margin was 68.9%, 72.0%, and 66.7% for the years ended December 31, 2018, 2019, and 2020, respectively, and 67.3% and 73.4% for the three months ended March 31, 2020 and 2021, respectively. We also incurred net losses of $14.3 million, $25.9 million, and $34.7 million for the years ended December 31, 2018, 2019, and 2020, respectively, and $9.2 million and $12.2 million for the three months ended March 31, 2020 and 2021, respectively.

Market Opportunity

Advancements in treatment effectiveness across a number of prominent eye diseases has been limited in recent years due to a lack of significant innovation. We believe that we are favorably positioned with each of our products to transform treatment paradigms and, over time, to broadly improve the quality of patient care throughout ophthalmology and optometry.

Primary Open-Angle Glaucoma

Glaucoma, a group of chronic, often asymptomatic, diseases that damage the optic nerve, is the world's leading cause of irreversible blindness. Glaucoma does not have a cure and is a progressive disease; if left untreated or insufficiently treated, glaucoma can lead to irreversible disability and blindness. In patients with POAG, aqueous humor builds up in the anterior chamber of the eye and the resultant tension can interfere with the blood supply to the optic nerve in the back of the eye, resulting in optic nerve cell death and irreversible vision loss. Decades of research have demonstrated that the fluid buildup primarily results from malfunctions in the eye's drainage system, which is known as the conventional aqueous outflow pathway.

In 2020, 102 million people worldwide were estimated to suffer from glaucoma. POAG is the most prevalent form of glaucoma and in 2020 affected over 60 million people worldwide and 4.1 million people in the United States, of whom 3.4 million were diagnosed. We estimate the current annual addressable U.S. market opportunity for OMNI is approximately $6 billion, while 2020 U.S. manufacturer revenues in the surgical glaucoma market were approximately $350 million, demonstrating that currently available surgical solutions have not addressed a large part of the market need. In the U.S., currently marketed trabecular bypass stents are effectively precluded from participating in over 85% of this addressable market because they are only authorized for use in Combination Cataract procedures in patients with Mild-to-Moderate severity and we estimate that less than 15% of the diagnosed POAG population in the U.S. will require cataract surgery in a given year.

Dry Eye Disease

DED refers to a group of disorders caused by either poor quality tears, known as evaporative DED, or inadequate tear production, known as aqueous deficient DED. There are an estimated 739 million people globally and 38 million people in the U.S. who suffer from DED. DED is the most common reason for a patient visit to an eye doctor, yet of the 38 million people with DED in the U.S., only 17 million have been diagnosed with DED. If left untreated, DED can be extremely painful and lead to permanent cornea damage and vision impairment. Studies have shown that evaporative DED resulting from MGD is associated with approximately 86% of all DED cases. Meibum is an oily secretion that forms the protective outer layer of healthy tears and prevents premature tear evaporation. For patients with MGD, meibum hardens within the meibomian glands, which are located in the eyelids, causing obstructions that prevent it from flowing freely onto the tear film. We estimate that the addressable U.S. market for MGD treatment is approximately $10 billion per year, as compared to MGD procedures representing less than $100 million of U.S. manufacturer revenues in 2020, demonstrating that currently available MGD procedures have not addressed a large part of the market need.

Current Alternatives and Limitations

A variety of pharmaceutical and procedure-based treatment alternatives exist for POAG and DED but there is no cure for either disease. Because many of the current alternatives focus on treating symptoms rather than the underlying causes of the disease, they offer suboptimal effectiveness and durability.

Primary Open-Angle Glaucoma

The current treatment paradigm for POAG includes less invasive options, such as prescription eyedrops and laser treatments for Mild and Moderate cases, and more invasive conventional surgical procedures for more severe cases. Each of these treatment modalities addresses just a single aspect of the disease at a specific point in the progression of the disease state. As a complex and progressive disease, there is no “one size fits all” treatment for POAG. Physicians have historically used a combination of treatments because no single treatment could adequately slow disease progression to a manageable level over the long term. Further, due to the progressive nature of the disease, any intervention can become ineffective as the disease state matures.

- **Prescription eyedrops** seek to increase aqueous outflow or reduce aqueous production. Prescription eyedrops are the most common first line therapy used to treat ocular hypertension, or OHT, and Mild glaucoma and often continue to be utilized as part of the treatment for Moderate and Advanced/Severe patients. The effectiveness of prescription eyedrops can be limited by patient behavior and compliance, providing inconsistent protection from glaucoma progression for many who face adherence challenges. If a single prescription medication fails to control IOP, additional medications may be prescribed. Although this step may contribute incremental effectiveness, adding medications can further complicate the treatment regimen, potentially hindering patient compliance, and exacerbate side effects. Studies have demonstrated that chronic use of glaucoma medication contributes to ocular surface disease, an inflammation of the ocular surface that is not only irritating and painful, further contributing to poor adherence, but can also contribute to greater risk of surgical failure should traditional glaucoma surgery, such as trabeculectomy, be required.
- **Sustained pharmaceutical delivery** through an intraocular implant is a newer method of drug administration. While intracameral sustained delivery mitigates issues relating to patient medication adherence, it could introduce new challenges associated with the risks of leaving an intracameral implant in the eye over several months or years, or the procedural complexity and risks associated with implanting objects in the eye and potentially removing them. Only one intraocular drug delivery implant to treat glaucoma has been authorized for use by the FDA, and it is currently limited to a single six month treatment per eye without retreatment.

- **Selective laser trabeculoplasty, or SLT,** offers a non-invasive, energy-based solution and short recovery times, with effectiveness similar to certain eyedrops, but with a waning treatment effect at less than one year for up to half of patients. The effectiveness of continued laser therapy after a second treatment is not known at this time.
- **MIGS stents**, particularly trabecular bypass stents, have steadily grown in usage among surgeons performing Combination Cataract procedures because the devices are efficient to implant, involve minimal complications and provide incremental effectiveness over cataract surgery itself. From 2012 to 2020, the estimated number of trabecular bypass stent procedures in the U.S. grew at a compounded annual growth rate, or CAGR, of 55%, including over 20% from 2018 to 2019. However, the FDA has only authorized trabecular bypass stents for use in Combination Cataract procedures for Mild-to-Moderate cases, limiting their authorized use to less than 15% of all U.S. POAG patients.
- **Conventional invasive surgeries** include trabeculectomy (also called filtering surgery) and tube shunt implantation, which are bleb-forming procedures, and have each been in use for several decades. Blebs are blister-like reservoirs surgically created on the outside of the eye intended to serve as permanent, artificial drainage channels. Conventional surgery techniques are multi-step invasive procedures and are most typically utilized for maximal reductions in IOP to prevent visual field loss in Advanced/Severe disease when medications, lasers or MIGS treatment of the conventional outflow pathway have failed. Despite their success at reducing IOP, serious complications or even surgical failure are not uncommon. These conventional surgeries are considered a last line of defense for Advanced/Severe stage patients because they create a physiologically artificial pathway that can be difficult to control, carry a life-long risk of complications (e.g., hypotony, blebitis, bleb failure), and typically require longer recovery periods.

Dry Eye Disease

Although MGD is the primary root cause of DED, we believe it is relatively new to eyecare research and product development. In contrast, we believe aqueous deficiency, which is a less prominent root cause of DED, has historically dominated the medical community's mindset regarding DED and has been synonymous with the disease. This has contributed to the current DED treatment market being characterized by an abundance of over-the-counter, or OTC, artificial tears and lubricating eyedrops, and prescription DED eyedrops. Given the relatively recent focus on and understanding of MGD, MGD procedures for DED have had limited commercial traction and represent a significant but underdeveloped market opportunity.

- **Eyedrops** for DED include OTC artificial tears and lubricating eyedrops, which are palliative, as well as prescription eyedrops, which aim to alleviate inflammation and/or increase aqueous layer tear production. Although several DED prescription eyedrops have achieved commercial and clinical success, we believe they are limited in their ability to treat the substantial majority of DED sufferers. None of the prescription DED eyedrops are indicated to treat MGD, the primary underlying cause of evaporative DED, which is associated with 86% of DED cases. Furthermore, patient non-compliance, the high rate of side effects, and high out-of-pocket costs further limit the ability of prescription eyedrops to treat DED effectively and with maximal patient access.
- **MGD procedures** represented less than $100 million of U.S. manufacturer revenues in 2020. In general, available devices for the treatment of MGD can be difficult for providers to administer, which places significant oversight demands on the physician, may be uncomfortable for patients and/or have limited effectiveness. These devices may also require high upfront capital equipment purchases for providers, which lowers the overall economic value proposition to eyecare stakeholders.

Our Solutions

The OMNI Surgical System and the TearCare System are interventional ophthalmology devices. The past, current and ongoing development of OMNI and TearCare follows our internal product development approach, which is governed by four fundamental requirements that we believe are critical to delivering the most effective, safe and consistent clinical outcomes for patients with eye disease:

- **Comprehensive Understanding of Disease Physiology.** We review and analyze all available clinical data, science and literature that is relevant to a disease to achieve a sound understanding of its underlying cause(s), which guides the development of any of our products.

- **Treatment of Underlying Causes.** Healthy eyes are self-regulating marvels of evolution, biomechanics, chemistry and physiology. We believe that restoring the natural functionality of diseased eyes by comprehensively treating underlying cause(s) of disease provides the optimal combination of effectiveness and safety.

- **Intuitive Design.** Our products are designed to transform complex, impractical or invasive treatment approaches into intuitive, minimally invasive, user-friendly procedures. Our product development goals are focused on delivering a preferred “go to” treatment of choice to ophthalmologists and optometrists.

- **Patient Access.** We seek to maximize the availability and accessibility of our products for as many patients as possible. We believe that our devices have the potential to offer differentiated clinical, experiential and economic value to all eyecare stakeholders. For conditions where patients lack optimal treatment access due to insurance coverage limitations or difficult patient pay economics, we plan to demonstrate the value proposition of our solutions through rigorous clinical trial data and real-world results to improve access.

OMNI Surgical System

Commercially launched in February 2018, OMNI is a handheld, single-use, therapeutic device used by ophthalmic surgeons to reduce IOP in adult glaucoma patients. Each OMNI Surgical System consists of 29 separate precision-engineered parts that have been optimized for intuitive use, performance and effectiveness. OMNI facilitates the sequential completion of two well-established, historically invasive glaucoma procedures, canaloplasty and trabeculotomy, with an efficient, minimally invasive approach using just a single, bloodless and sutureless clear corneal microincision. Conventional canaloplasty and trabeculotomy procedures have been used to effectively treat glaucoma for decades but involve invasive approaches that are difficult to perform, traumatize the eye, have higher risk of intraoperative and post-operative complications and require longer patient recovery times. OMNI transforms these two distinct, historically invasive *ab externo* glaucoma procedures into a single, sequential, *ab interno* MIGS procedure. MIGS procedures leverage a one to two millimeter clear corneal incision for intraocular access similar to cataract surgery and have a strong demonstrated safety profile, characterized by minimal trauma to the eye and quick patient recovery times. OMNI is the only MIGS device currently on the market that provides access to 360 degrees of the diseased conventional outflow pathway and can address all three primary points of resistance in the conventional outflow pathway (trabecular meshwork, Schlemm’s canal, and the distal collector channels) through a single clear corneal incision.

We have received 510(k) clearance from the FDA and a CE Mark to market OMNI in the U.S. and the EU, respectively. OMNI is indicated for canaloplasty followed by trabeculotomy to reduce IOP in adult patients with POAG in the U.S. and with open-angle glaucoma, or OAG, in the EU. We believe that OMNI is the only device that is authorized by the FDA as an *ab interno* procedure to: reduce IOP in adult patients with POAG across the spectrum of disease severity; be used in Mild-to-Moderate Combination Cataract or Standalone procedures; access 360 degrees of the diseased conventional outflow pathway through a single clear corneal incision; and

facilitate two consecutive procedures, canaloplasty and trabeculotomy, to comprehensively treat all three primary points of resistance in the conventional outflow pathway in a single operating room visit. The procedure enabled by OMNI, canaloplasty followed by trabeculotomy, is covered and reimbursed by all Medicare Administrative Contractors, or MACs, and numerous private insurers, covering an estimated 67% of U.S. POAG sufferers.

Published data from ROMEO and several single surgeon datasets show a remarkable consistency in IOP reduction following treatment with OMNI. Almost all patients across these groups (98 of 103, 95%) had an IOP decrease following treatment with OMNI, and three out of four (77 of 103, 75%) had at least a 20% decrease. Patients in these studies also experienced reductions in the use of glaucoma medication following their OMNI procedures, a benefit not observed in the "medication washout" trabecular bypass stent trials designed to isolate and thereby maximize IOP reduction in a non-real world manner. We believe OMNI also has a compelling safety profile. Between January 2019 and April 2021, we shipped over 50,000 OMNI devices to customers and we are aware of only eight MDRs submitted to the FDA that were "possibly" related to the device. None of these events were unexpected as possibilities for this type of glaucoma surgery.

We believe the consistent therapeutic outcomes OMNI delivers are important for patients and surgeons alike. For patients, we believe the anxiety that may accompany the need for ocular surgery can be tempered with the knowledge that there is a high likelihood of success. For surgeons, consistent outcomes simplify the treatment choice and the decision to perform a procedure. We believe this is especially important for Standalone MIGS procedures which must deliver a very high consistency of efficacy and a very high degree of effectiveness to not only justify the procedure, but also provide surgeons with enough confidence to recommend Standalone surgery to their patients and take them to the operating room for a singular reason. We believe delivering consistently effective results will be crucial to unlocking the Standalone market, as well as capitalizing on the full potential of the Combination Cataract market, which we believe is currently capturing less than one-third of its potential procedure volume in the U.S.

TearCare System

TearCare is our newest marketed product, comprised of a re-usable hardware controller, the SmartHub, and a breakthrough wearable, software-controlled eyelid technology, the SmartLids. TearCare serves as an elegant, compact, portable, intuitive solution that enables the application of localized heat to the eyelids in an anatomically customized way. We believe TearCare presents a compelling physiological profile to potentially address DED due to MGD. Applied adhesively and non-invasively to the outside of the eyelids, single-use SmartLids deliver a precise therapeutic level of heat into the meibomian glands. Engineering SmartLids to remain comfortably adhered to virtually all shapes and sizes of eyelids while allowing freedom to blink and delivering precise therapeutic heat is one of our most significant design accomplishments. This heating process is intended to melt obstructions in the glands and restore the production and release of healthy, clear liquid meibum, which forms the outer protective layer of tears and helps prevent premature tear evaporation. Additionally, the proprietary, highly conformant, open-eye design of TearCare allows patients to blink naturally throughout the thermal portion of the procedure, which facilitates movement of melted meibum and also provides a comfortable treatment experience. TearCare can be utilized by an ECP in a straightforward in-office procedure and accommodated during the course of a routine patient visit. In our OLYMPIA RCT, we observed that a single use of TearCare was associated with statistically significant clinical improvements in all signs and symptoms of DED assessed, including TBUT and MGSS, objective measurements of DED that were the trial's primary endpoints, as well as patient-reported symptoms surveys, including EDS, OSDI and SANDE, at both two and four weeks following treatment in subjects with MGD.

We believe TearCare's design, with the SmartLids applied externally to the eyelids allowing the precise heat delivery to be managed by our software-controlled SmartHub, reduces the risk of adverse events arising from using TearCare. We have shipped over 10,000 single-use SmartLid units to customers through April 2021 and

are aware of only a single MDR reported to the FDA for which the root cause has not been determined and may possibly be related to the device.

We began selling TearCare in a controlled product launch in April 2019. The initial phase of launch was successful in garnering valuable feedback from our customers and the broader DED community as well as demonstrating the existing market demand for an effective MGD solution. Our goals with the development of TearCare are to fully transform the current, outdated treatment paradigm, which relies primarily on OTC and prescription eyedrops, and establish our clinically proven eyelid procedure as the standard of care for the millions of patients suffering from evaporative DED caused by MGD. We are executing our long-term plan to maximize patient access to TearCare and further develop the MGD procedures market by leveraging a rigorous clinical trial program designed to demonstrate the safety, effectiveness and durability of TearCare treatments, and a comprehensive effort to educate patients, providers and third-party payors regarding the benefits of TearCare treatments.

We currently market TearCare as a Class II, 510(k)-exempt powered heating pad. In November 2020, we submitted a 510(k) premarket notification seeking an expanded indication for use for TearCare. The FDA requested several safety tests and modifications which we believe would have required additional time to complete beyond the designated review process. We voluntarily withdrew the submission in May 2021 to allow us to comply with the FDA requests in a comprehensive manner. We are currently conducting these follow-up safety tests and modifications, and we intend to resubmit the 510(k) premarket notification for an expanded indication for use in .

Our Success Factors

We believe the following factors will drive the future success and growth of our company:

- Large market opportunities in eyecare with flawed treatment paradigms;
- Continual development of innovative technologies;
- Consistent delivery of exceptional customer experience;
- Prioritization of clinical excellence and market education;
- Focus on strong economics and value creation for all eyecare stakeholders; and
- Scale culture built on community, passion, courage and perseverance.

Our Growth Strategy

Our mission is to transform ophthalmology and optometry with proprietary solutions that target the underlying causes of the world’s most prevalent eye diseases. We believe the following elements of our growth strategy will advance our mission and contribute to our future growth:

- Establish OMNI as the standard of care for interventional glaucoma treatment;
- Develop the MGD treatment market through a clinically-driven, patient access-led strategy for TearCare;
- Drive adoption and utilization of our products by leveraging additional clinical studies and market education;
- Deepen and broaden our commercial organization;
- Expand into international markets; and
- Continuously innovate premium product offerings throughout eyecare.

Summary of Risk Factors

Our business is subject to a number of risks and uncertainties of which you should be aware before making an investment decision. You should consider all of the information set forth in this prospectus and, in particular, the specific factors set forth under "Risk Factors" in deciding whether to invest in our common stock. These risks include, without limitation, the following:

- We have incurred significant losses since inception and expect to incur significant additional losses for the foreseeable future which may make it difficult to evaluate the success of our business to date and to assess the prospects for our future viability;
- Our business is highly dependent on the success of two current commercial products, and in particular OMNI. The development of TearCare for expanded indications depends upon positive clinical data, and the safety and efficacy of our products are not yet supported by long-term clinical data, which could delay or prevent clearance by regulatory authorities or limit sales if cleared, certified or approved;
- Even if this offering is successful, we may need additional funding in order to finance our planned operations. The inability to raise funds on acceptable terms, if at all, when needed, may force us to delay, reduce or eliminate our product development programs and commercialization efforts;
- The COVID-19 pandemic has impacted, and likely will continue to impact, our operations and financial results and may materially and adversely affect our business and financial results in the future;
- We are subject to extensive and costly government regulation on federal, state and foreign levels and we may not receive, or may be delayed in receiving, the necessary regulatory clearances, certifications or approvals for our future products or modifications to our current products;
- We may incur significant liability if it is determined that we are not complying with federal, state or foreign regulatory requirements, such as if it is determined that we are promoting off-label uses of our products;
- Changes in public health insurance coverage and reimbursement rates may affect the adoption of our products and our future revenue;
- Developments by competitors may render our products or technologies obsolete or noncompetitive and the development of new products, technologies, procedures, medications or other therapies could replace or reduce the importance of our products;
- We rely on third parties for the manufacture and supply of OMNI and TearCare;
- We depend on a limited number of single source suppliers for some of the components, accessories and materials used in OMNI and TearCare and any shortfall in the supply chain may cause our business to materially suffer;
- If we are unable to obtain, protect, maintain, enforce and adequately protect our intellectual property rights with respect to our technology and current and future products, or if the scope of the patent protection obtained is not sufficiently broad, our competitors could develop and commercialize technology and products similar or identical to ours, and our ability to successfully develop and commercialize our technology and current and future products may be adversely affected; and
- If we lose key management or scientific personnel, cannot recruit qualified employees, directors, officers or other significant personnel or experience increases in our compensation costs, our business may materially suffer.

Implications of Being an Emerging Growth Company and a Smaller Reporting Company

We are an "emerging growth company" as defined in the Jumpstart Our Business Startups Act of 2012, as amended, or the JOBS Act. As such, we may take advantage of certain exemptions from various reporting requirements that are otherwise applicable to public companies. These exemptions include, but are not limited to:

- The option to present only two years of audited financial statements and only two years of related management's discussion and analysis of financial condition and results of operations in this prospectus;
- Not being required to comply with the auditor attestation requirements of Section 404 of the Sarbanes-Oxley Act of 2002, as amended;
- Not being required to submit certain executive compensation matters to stockholder advisory votes, such as "say-on-pay," "say-on-frequency," and "say-on-golden parachutes;"
- Not being required to disclose certain executive compensation-related items such as the correlation between executive compensation and performance and comparisons of the chief executive officer's compensation to median employee compensation; and
- An exemption from compliance with the requirements of the Public Company Accounting Oversight Board regarding the communication of critical audit matters in the auditor's report on the financial statements.

We may take advantage of these provisions until the last day of our fiscal year following the fifth anniversary of the completion of this offering. However, if prior to the end of such five-year period, (i) our annual gross revenue exceeds $1.07 billion, (ii) we issue more than $1.0 billion of non-convertible debt in the previous three-year period or (iii) we become a "large accelerated filer" (as defined in Rule 12b-2 under the Securities Exchange Act of 1934, as amended, or the Exchange Act), we will cease to be an emerging growth company prior to the end of such five-year period. We will be deemed to be a "large accelerated filer" at such time that we (a) have an aggregate worldwide market value of common equity securities held by non-affiliates of $700.0 million or more as of the last business day of our most recently completed second fiscal quarter, (b) have been required to file annual and quarterly reports under the Exchange Act, for a period of at least 12 months and (c) have filed at least one annual report pursuant to the Exchange Act.

We have elected to take advantage of certain of the reduced disclosure obligations in the registration statement of which this prospectus is a part and may elect to take advantage of other reduced reporting requirements in future filings. As a result, the information that we provide to our stockholders may be different than you might receive from other public reporting companies in which you hold equity interests.

In addition, the JOBS Act provides that an emerging growth company can take advantage of an extended transition period for complying with new or revised accounting standards. We have elected not to "opt out" of the exemption for the delayed adoption of certain accounting standards, and, therefore, we will adopt new or revised accounting standards at the time private companies adopt the new or revised accounting standard and will do so until such time that we either (i) irrevocably elect to "opt out" of such extended transition period or (ii) no longer qualify as an emerging growth company. We may choose to early adopt any new or revised accounting standards whenever such early adoption is permitted for private companies.

We are also a "smaller reporting company" as defined under the Securities Act and Exchange Act. We may continue to be a smaller reporting company so long as either (i) the market value of shares of our common stock held by non-affiliates is less than $250 million or (ii) our annual revenue was less than $100 million during the most recently completed fiscal year and the market value of shares of our common stock held by non-affiliates is less than $700 million. If we are a smaller reporting company at the time we cease to be an emerging growth

company, we may continue to rely on exemptions from certain disclosure requirements that are available to smaller reporting companies. Specifically, as a smaller reporting company, we may choose to present only the two most recent fiscal years of audited financial statements in our Annual Report on Form 10-K and have reduced disclosure obligations regarding executive compensation, and, similar to emerging growth companies, if we are a smaller reporting company under the requirements of (ii) above, we would not be required to obtain an attestation report on internal control over financial reporting issued by our independent registered public accounting firm.

Corporate Information

We were incorporated under the laws of the state of Delaware in February 2010 under the name Sight Sciences, Inc. Our principal executive offices are located at 4040 Campbell Ave, Suite 100, Menlo Park, CA 94025 and our telephone number is (877) 266-1144. Our website address is *www.sightsciences.com*. The information contained in, or accessible through, our website is not incorporated by reference into this prospectus, and you should not consider information on our website to be part of this prospectus. We have included our website address in this prospectus solely as an inactive textual reference.

The Offering

Common stock offered by us	shares.
Underwriters' option to purchase additional shares	We have granted the underwriters a 30-day option to purchase up to additional shares of our common stock at the public offering price, less estimated underwriting discounts and commissions.
Common stock to be outstanding after this offering	shares (or shares if the underwriters exercise their option to purchase additional shares in full).
Use of proceeds	We estimate that the net proceeds from this offering will be approximately $ million (or approximately $ million if the underwriters exercise in full their option to purchase additional shares of common stock), at an assumed public offering price of $ per share, which is the midpoint of the price range set forth on the cover page of this prospectus, after deducting estimated underwriting discounts and commissions and the estimated offering expenses payable by us. We anticipate that we will use the net proceeds of this offering to fund ongoing and future clinical trials for OMNI and TearCare, to support the marketing and sales efforts for our products, for research and development and for working capital and general corporate purposes. See "Use of Proceeds" beginning on page 86 for additional information.
Risk factors	You should carefully read the "Risk Factors" beginning on page 15 and the other information included in this prospectus for a discussion of factors you should consider carefully before deciding to invest in our common stock.
Proposed Nasdaq Global Market symbol	"SGHT"

The number of shares of our common stock to be outstanding after this offering is based on shares of our common stock outstanding as of , 2021 and excludes:

- shares of our common stock issuable upon the exercise of stock options outstanding under our 2011 Stock Incentive Plan, or our Existing Plan, as of , 2021, at a weighted-average exercise price of $ per share;
- additional shares of our common stock reserved for future issuance under our 2021 Incentive Award Plan, referred to as our 2021 Plan, which will become effective in connection with this offering, as well as any automatic increases in the number of shares of our common stock reserved for future issuance under our 2021 Plan;
- shares of our common stock that will become available for future issuance under our 2021 Employee Stock Purchase Plan, or the 2021 ESPP, which will become effective in connection with this offering, as well as any automatic increases in the number of shares of our common stock reserved for future issuance under our 2021 ESPP; and

- shares of common stock issuable upon the exercise of warrants outstanding as of , 2021, at a weighted average exercise price of $ per share, which warrants shall not expire upon the closing of this offering if not exercised.

Unless otherwise indicated, this prospectus reflects and assumes the following:

- A -for- stock split of our common stock, which will become effective prior to the effectiveness of the registration statement of which this prospectus forms a part;
- The automatic conversion of all outstanding shares of our Series A, Series B, Series C, Series D, Series E and Series F redeemable convertible preferred stock into an aggregate of shares of our common stock upon the closing of this offering;
- The automatic conversion of outstanding warrants to purchase shares of our redeemable convertible preferred stock into warrants to purchase shares of our common stock;
- No exercise of outstanding options or warrants after , 2021;
- No exercise by the underwriters of their option to purchase additional shares of our common stock; and
- The filing and effectiveness of our restated certificate of incorporation and the adoption of our amended and restated bylaws, each of which will occur upon the closing of this offering.

Summary Financial and Other Data

The following tables set forth our summary consolidated financial data as of, and for the periods ended on, the dates indicated. We have derived the consolidated statements of operations and comprehensive loss data for the years ended December 31, 2018, 2019 and 2020 from our audited consolidated financial statements included elsewhere in this prospectus. We have derived the consolidated statements of operations and comprehensive loss data for the three months ended March 31, 2020 and 2021 and the consolidated balance sheet data as of March 31, 2021 from our unaudited condensed consolidated financial statements included elsewhere in this prospectus. We have prepared the unaudited condensed consolidated financial information set forth below on the same basis as our audited consolidated financial statements and have included all adjustments, consisting only of normal recurring adjustments, that we consider necessary for a fair presentation of our financial position and results of operations as of the applicable dates and for the applicable periods. Our historical results are not necessarily indicative of the results that should be expected for any future period. You should read the following summary financial and other data set forth below together with the more detailed information contained in "Selected Financial Data," "Management's Discussion and Analysis of Financial Condition and Results of Operations" and our financial statements and the related notes included elsewhere in this prospectus.

	Year Ended December 31,			Three Months Ended March 31,	
	2018	2019	2020	2020	2021
	(*in thousands, except share data*)				
Consolidated Statement of Operations and Comprehensive Loss Data					
Revenue	$ 7,530	$ 23,348	$ 27,640	$ 6,496	$ 8,635
Cost of goods sold(1)	2,338	6,544	9,209	2,128	2,301
Gross profit	5,192	16,804	18,431	4,368	6,334
Operating expenses:					
Research and development(1)	5,426	8,124	8,874	2,400	3,440
Selling, general and administrative(1)	14,063	32,719	41,745	10,678	14,550
Total operating expenses	19,489	40,843	50,619	13,078	17,990
Loss from operations	(14,297)	(24,039)	(32,188)	(8,710)	(11,656)
Interest income	1	174	30	27	—
Interest expense	—	(1,961)	(2,403)	(552)	(1,084)
Other income (expense), net	—	(35)	(71)	91	552
Loss before income tax	(14,296)	(25,861)	(34,632)	(9,144)	(12,188)
Provision (benefit) for income tax	(6)	8	61	31	52
Net loss and comprehensive loss	$ (14,290)	$ (25,869)	$ (34,693)	$ (9,175)	$ (12,240)
Net loss per share outstanding attributable to common stockholders, basic and diluted(2)	$ (3.10)	$ (5.51)	$ (7.41)	$ (1.94)	$ (2.57)
Weighted-average common shares outstanding used in computing net loss per share attributable to common stockholders, basic and diluted(2)	4,611,325	4,693,534	4,678,109	4,724,693	4,758,635
Pro forma net loss per share outstanding, basic and diluted (unaudited) (2)					
Pro forma weighted-average common shares outstanding used in computing net loss per share attributable to common stockholders, basic and diluted (unaudited) (2)					

(1) Includes stock-based compensation as follows:

	Year Ended December 31,			Three Months Ended March 31,	
	2018	2019	2020	2020	2021
		(in thousands)			
Cost of goods sold	$ 2	$ 3	$ 20	$ 1	$ 7
Research and development	22	42	84	9	37
Selling, general and administrative	28	73	393	51	233
Total stock-based compensation expense	$52	$118	$497	$ 61	277

(2) See the statements of operations and Note 13 to our consolidated financial statements and Note 12 to our unaudited condensed consolidated financial statements included elsewhere in this prospectus for an explanation of the method used to compute the historical net loss per share and pro forma net loss per share and the number of shares used in the computation of the per share amounts for the years ended December 31, 2018, 2019 and 2020 and three months ended March 31, 2021.

	As of March 31, 2021		
Consolidated Balance Sheet Data	Actual	Pro Forma(2)	Pro Forma As Adjusted(3)
		(in thousands)	
Cash and cash equivalents	$ 48,327	$	$
Working capital(1)	48,239		
Total assets	60,533		
Long-term debt	32,124		
Redeemable convertible preferred stock	117,331		
Additional paid-in capital	1,475		
Accumulated deficit	(102,281)		
Total stockholders' deficit	(100,801)		

(1) Working capital is defined as total current assets less total current liabilities.

(2) The pro forma consolidated balance sheet data gives effect to (i) the automatic conversion of all of our outstanding shares of redeemable convertible preferred stock into shares of our common stock, which will occur upon the closing of this offering, (ii) the automatic conversion of outstanding warrants to purchase shares of our redeemable convertible preferred stock into warrants to purchase shares of our common stock, and the related reclassification of redeemable convertible preferred stock warrant liability to additional paid in capital and (iii) the filing and effectiveness of our amended and restated certificate of incorporation upon the closing of this offering.

(3) The pro forma as consolidated adjusted balance sheet data gives further effect to the issuance and sale by us of shares of our common stock in this offering at the assumed initial public offering price of $ per share, the midpoint of the price range set forth on the cover page of this prospectus, after deducting the estimated underwriting discounts and commissions and estimated offering expenses payable by us.

The pro forma as adjusted consolidated balance sheet data is illustrative only and will change based on the actual initial public offering price and other terms of this offering determined at pricing. Each $1.00 increase (decrease) in the assumed initial public offering price of $ per share, the midpoint of the price range set forth on the cover page of this prospectus, would increase (decrease) each of our pro forma as adjusted cash and cash equivalents, working capital, total assets, additional paid-in capital and total stockholders' (deficit) equity by $ million, assuming the number of shares of common stock offered by us, as set forth on the cover page of this prospectus, remains the same, and after deducting the estimated underwriting discounts and commissions and estimated offering expenses payable by us. Similarly, each increase (decrease) of 1.0 million shares in the number of shares of common stock offered

by us would increase (decrease) each of our pro forma as adjusted cash and cash equivalents, working capital, total assets, additional paid-in capital, and total stockholders' (deficit) equity by approximately $ million, assuming the assumed initial public offering price of $ per share, the midpoint of the price range set forth on the cover page of this prospectus, remains the same, and after deducting the estimated underwriting discounts and commissions and estimated offering expenses payable by us.

RISK FACTORS

Investing in our common stock involves a high degree of risk. You should carefully consider the risks and uncertainties described below, together with all of the other information in this prospectus, including the section titled "Management's Discussion and Analysis of Financial Condition and Results of Operations" and our financial statements and the accompanying notes thereto included elsewhere in this prospectus, before investing in our common stock. Many of the risks and uncertainties are, and will be, exacerbated by the COVID-19 pandemic and any worsening of the global business and economic environment as a result. The risks and uncertainties described below are not the only ones we face. Additional risk and uncertainties that we are unaware of or that we deem immaterial may also become important factors that adversely affect our business. The realization of any of these risks and uncertainties could have a material adverse effect on our reputation, business, financial condition, results of operations, growth and future prospects, as well as our ability to accomplish our strategic objectives. In that event, the market price of our common stock could decline and you could lose part or all of your investment.

Risks Related to Our Business

We are an early-stage company with a history of significant losses, we expect to incur losses in the future and we may not be able to achieve or sustain profitability.

We have incurred annual net losses since our formation in 2010. For the years ended December 31, 2018, 2019 and 2020, we had net losses of $14.3 million, $25.9 million and $34.7 million, respectively, and for the three months ended March 31, 2020 and 2021 we had net losses of $9.2 million and $12.2 million, respectively. As of March 31, 2021, we had an accumulated deficit of $102.3 million. To date, we have financed our operations primarily through equity and debt financings and from sales of our products, the OMNI Surgical System, or OMNI, a device that enables canaloplasty followed by trabeculotomy for the reduction of intraocular pressure in adult patients with primary open-angle glaucoma, or POAG, and our TearCare System, or TearCare, to apply localized heat where the medical community recommends the application of warm compress to the eyelids, as well as predicates to OMNI. The losses and accumulated deficit have primarily been due to the substantial investments we have made to develop our products, costs related to our sales and marketing efforts, general research and development expenses, including costs related to clinical trials and regulatory initiatives to obtain marketing clearance, and infrastructure improvements.

In addition, as a public company, we will incur significant legal, accounting and other expenses that we did not incur as a private company. Accordingly, we expect to continue to incur losses for the foreseeable future and we cannot assure you that we will ever achieve profitability or that, if we do become profitable, we will sustain profitability. Our failure to achieve and sustain profitability in the future would make it more difficult to finance our business and accomplish our strategic objectives, which would have a material adverse effect on our business, financial condition and results of operations. In addition, failure of our products to significantly penetrate our target markets would negatively affect our business, financial condition and results of operations.

Our revenue has been primarily generated from the sales of our products and is expected to continue to be so generated for the near future, and we are therefore highly dependent on the success of those products, and particularly on OMNI. We have limited commercial sales experience regarding our products, which makes it difficult to evaluate our current business, predict our future prospects and forecast our financial performance and growth.

We began selling VISCO360 and TRAB360, commercial predicate devices to OMNI, in 2015 and TearCare in 2019 and therefore do not have a long history operating as a commercial company. Currently, we are highly dependent on the success of OMNI and TearCare. To date, our revenue has primarily been derived, and we expect it to continue to be substantially derived in the near future, from sales of our Surgical Glaucoma and Dry Eye products. We are particularly dependent on the success of OMNI, which accounted for 94% of our total

revenues for the year ended December 31, 2020. Because we devote substantially all of our resources to these products and rely on them as our sole source of revenue, any factors that negatively impact our products, and particularly OMNI, or result in a decrease in sales, could have a material adverse effect on our business, financial condition and results of operations.

Over the next several years, we expect to continue to devote a substantial amount of resources to expand our commercialization efforts, drive increased adoption of our products and continue to develop new and improved products. Our limited commercialization experience and limited number of FDA-cleared products make it difficult to evaluate our current business and predict our future prospects. These factors also make it difficult for us to forecast our future financial performance and growth, and such forecasts are subject to a number of uncertainties, including our ability to successfully complete preclinical studies and clinical trials and obtain FDA pre-market clearance for our current products and for future planned products or changes to existing products.

Ophthalmologist and optometrist (together, eyecare professionals or ECPs) awareness of, and experience with, our products is currently limited. As a result, our products have limited product and brand recognition within the ophthalmic industry. The novelty of our products, together with our limited commercialization experience, makes it difficult to evaluate our current business and predict our future prospects. A number of factors, including some outside of our control, may contribute to fluctuations in our financial results, including:

- ECP and patient demand for our products;
- Our ability to obtain and maintain reimbursement coverage for procedures in which our products are used;
- Changes in reimbursement rates by government or commercial payors;
- The results of our clinical trials or investigations;
- Positive or negative media coverage, or public, patient and/or physician perception, of our products or competing products and treatments;
- Any safety or effectiveness concerns that arise regarding our products for either their currently authorized uses or the uses for which we are developing our products;
- The effectiveness of our marketing and sales efforts, including our ability to have a sufficient number of qualified sales representatives to sell our products;
- Unanticipated delays in product development or product launches;
- Our ability to raise additional capital on acceptable terms, or at all, if needed to support the commercialization of our products;
- Our ability to achieve and maintain compliance with all regulatory requirements applicable to our products;
- Our ability to obtain, maintain, protect and enforce our intellectual property rights;
- The ability of patients to access elective procedures at facilities that utilize our products because of the novel strain of coronavirus disease, COVID-19, and related government restrictions;
- Our third-party manufacturers' ability to supply our products in a timely manner, in accordance with our specifications, and in compliance with applicable regulatory requirements; and
- Introduction of new products or alternative treatments that compete with our products.

It is therefore difficult to predict our future financial performance and growth, and such forecasts are inherently limited and subject to a number of uncertainties. If our assumptions regarding the risks and uncertainties we face, which we use to plan our business, are incorrect or change due to circumstances in our business or our markets, or if we do not address these risks successfully, our operating and financial results could differ materially from our expectations and our business could suffer.

Our business is dependent upon the broad adoption of our products by ECPs and patients.

Our future growth and profitability largely depend on our ability to increase ECP and patient awareness of our products and on the willingness of ECPs and patients to adopt our products. ECPs may not adopt our products unless they are able to determine, based on experience, clinical data, medical society recommendations and other analyses, that our products are clinically differentiated from, or otherwise preferable to, available alternatives. Even if we are able to raise awareness among ECPs, they may be slow to change their medical treatment practices and may be hesitant to select our products for a variety of reasons, including:

- Lack of experience with our products and concerns that we are relatively new to market;
- Perceived liability risk generally associated with the use of new products and treatment options;
- Lack, or perceived lack, of sufficient clinical evidence, including long-term data, supporting clinical benefits or the cost-effectiveness of our products over existing treatments;
- The failure of key opinion leaders to provide recommendations regarding our products, or to assure physicians, patients and healthcare payors of the benefits of our products as an attractive alternative to other treatment options;
- Perceptions that our products are unproven;
- Long-standing relationships with companies, distributors and salespeople that sell competing products;
- Our inability to strengthen and maintain relationships with ECPs and other industry professionals and organizations;
- Lack of availability of adequate third-party payor coverage or reimbursement;
- Competitive response and negative selling efforts from providers of alternative treatments;
- Challenges of integrating TearCare into established ophthalmologic and optometric practices; and
- Perceptions regarding the time commitment and skill development that may be required to gain familiarity and proficiency with our products.

To effectively market and sell our products, we will need to continue to educate the medical community about the safety, efficacy, necessity and efficiency of our products and about the patient populations that would potentially benefit from the use of our products. We focus our sales, marketing and education efforts primarily on our target ECP providers, ambulatory surgery centers, hospital outpatient departments and potential patient populations. However, we cannot assure you that we will achieve broad education or market acceptance. For example, if first-line ECPs or primary care physicians that serve as the early point of contact for patients are not made aware of our OMNI products, they may not refer patients to ECPs who utilize our products, and those patients may be treated with alternative procedures or treatments. In addition, some physicians may choose to utilize our products on only a subset of their total patient population or may not adopt our products at all. If we are not able to effectively demonstrate that our products are beneficial for a broad range of patients, adoption of our products will be limited and may not occur as rapidly as we anticipate or at all, which would have a material adverse effect on our business, financial condition and results of operations. Further, if we are unable to obtain or maintain favorable third-party reimbursement coverage of procedures in which our OMNI product is used, or if we are unable to obtain favorable reimbursement for procedures in which TearCare is used, adoption of our products by ECPs and patients will suffer. We cannot assure you that our products will achieve broad market acceptance among payors, physicians and patients. Any failure of our products to satisfy demand or to achieve meaningful market acceptance and penetration will harm our future prospects and have a material adverse effect on our business, financial condition and results of operations.

Adoption of OMNI and TearCare depends upon appropriate physician training, practice and patient selection.

The success of our products depends in part on the skill of the ECPs utilizing and administering products to treat patients and on their adherence to our stated patient selection criteria and the proper techniques that we

provide in training sessions. We train ECPs on the correct use of OMNI. However, ECPs rely on their previous medical training and experience when performing ophthalmic surgical procedures and may deviate from the techniques we provide in training sessions. Furthermore, we cannot guarantee that all such ECPs who use OMNI will have the necessary skills or experience to safely and effectively perform these procedures. Similarly, though we train ECPs to ensure correct use of TearCare, including placement of TearCare SmartLids on patients' eyelids, we cannot guarantee that all such ECPs will have the necessary skills or experience to safely and effectively use these devices.

We do not control which physicians utilize these medical devices in their treatments or how much training they receive, and physicians who have not completed our training sessions may nonetheless attempt to use OMNI as part of an ophthalmic surgical procedure or use TearCare to apply localized heat. In addition, a perception by physicians that OMNI or TearCare are difficult to use may negatively impact adoption by ECPs. If ECPs utilize these devices in a manner that is inconsistent with our labeled indications or with components that are not part of our products, such as viscoelastic fluid that is incompatible with OMNI or without adhering to or completing our training sessions, the patient outcomes may be negative. This could negatively impact the perception of patient benefits and safety associated with OMNI and TearCare and limit adoption of our devices, which would have a material adverse effect on our business, financial condition and results of operations.

Development of TearCare for expanded indications depends upon positive clinical data, and the safety and efficacy of our products for the intended uses for which we intend to seek clearance, certification or approval are not yet supported by long-term clinical data, which could delay or prevent clearance by the FDA (or other foreign authorities) or limit sales if cleared, certified or approved and our products might therefore prove to be less safe or effective than initially thought.

We are developing TearCare for expanded indications for which we intend to seek clearance by the FDA in the future.

We are conducting and intend to continue conducting additional clinical trials or investigations to develop our devices for expanded indications. Historical clinical results, including interim results, are not necessarily predictive of future clinical results, and we cannot assure you that the results reported in these studies will be consistent with, or better than, currently available clinical data. Moreover, the outcomes and updates resulting from these studies, including interim results, may be compared to the results of other products and treatments for POAG or MGD, and if the comparisons are not favorable, it may limit the ability to obtain clearance, certification or approval of the devices for the expanded indications for which we intend to seek clearance, certification or approval, as well as adoption of our products for their current authorized uses. In addition, our competitors and other third parties may also conduct clinical trials or investigations of our products without our participation. Unfavorable or inconsistent clinical data from existing or future clinical trials or investigations conducted by us, our competitors or other third parties, the interpretation of our clinical data or findings of new or more frequent adverse events, could subject us to mandatory or voluntary product recalls, suspension or withdrawal of FDA or other clearance, certification or approval, significant legal liability or harm to our business reputation and could have a material adverse effect on our business, financial condition and results of operations.

Our products will be adopted and compete, in part, based on long-term data regarding patient outcomes and the risk of our products relative to other treatment options. The long-term clinical outcomes of the use of OMNI for its cleared uses are not known and, due to the novelty of our products, there is no long-term data regarding patient outcomes beyond our clinical trials or investigations. The results of short-term clinical experience of our products do not necessarily predict long-term clinical outcomes. We believe that ECPs will compare the rates of long-term clinical outcomes for procedures using our products for their authorized uses against alternative procedures and treatment options. If the long-term data does not meet ECPs' expectations, or if the long-term data indicates that our products are not as safe or effective as other treatment options or as current short-term data would suggest, physicians may recommend alternative treatments for their patients and our products may not become widely adopted, which will negatively affect our business, financial condition and results of operations.

The safety and efficacy of some of our products is not yet supported by long-term clinical data, which could limit sales, and our products might therefore prove to be less safe or effective than initially thought.

The products that we market in the United States are regulated as medical devices by the FDA. OMNI has received premarket clearance under Section 510(k) of the Federal Food, Drug, and Cosmetic Act, or the FDCA. In the 510(k) clearance process, before a device may be marketed the FDA must determine that a proposed device is "substantially equivalent" to a legally-marketed "predicate" device, which includes a device that has been previously cleared through the 510(k) process, a device that was legally marketed prior to May 28, 1976 (preamendments device), a device that was originally on the U.S. market pursuant to an approved PMA application and later down-classified, or a 510(k)-exempt device. This process is typically shorter and generally requires the submission of less supporting documentation than the FDA's PMA process and does not always require long-term clinical studies. TearCare is currently marketed as a 510(k)-exempt device, and did not undergo premarket clearance prior to marketing. In November 2020, we submitted a 510(k) premarket notification seeking an expanded indication for use for TearCare. The FDA requested several safety tests and modifications which we believe would have required additional time to complete beyond the designated review process. We voluntarily withdrew this submission in May 2021 to allow us to comply with the FDA requests in a comprehensive manner. We intend to resubmit the application for an expanded indication for use in .

In the European Economic Area, or EEA, manufacturers of medical devices are required by the Medical Devices Directive to collect post-marketing clinical data in relation to their CE marked medical devices. Post-market surveillance includes the conduct of post-market clinical follow-up studies permitting manufacturers to gather information concerning quality, safety or performance of medical devices after they have been placed on the market in the EU. All information collected as part of the post-market surveillance process must be reviewed, investigated and analyzed on a regular basis in order to determine whether trending conclusions can be made concerning the safety or performance of the medical device and decisions must be taken in relation to the continued marketing of medical devices currently on the market. We expect to incur ongoing costs to comply with these post-market clinical obligations in EEA markets for so long as we continue to market and sell products in those markets.

We are conducting and intend to continue conducting additional clinical trials, including clinical trials to develop TearCare for an expanded indication. In addition, our competitors and other third parties may also conduct clinical trials of our products without our participation. If future patient studies or clinical testing do not support our belief that our products are advantageous for their intended uses, market acceptance of our products could fail to increase or could decrease and our business could be harmed. Moreover, if future results and experience by us, our competitors or other third parties, indicate that our products cause unexpected or serious complications or other unforeseen negative effects, we could be subject to mandatory or voluntary product recalls, suspension or withdrawal of FDA or other governmental clearance or approval or CE Certificates of Conformity, significant legal liability or harm to our business reputation, which could have a material adverse effect on our business, financial condition and results of operations.

We believe that ECPs will compare the rates of long-term clinical outcomes for procedures using our products for their authorized uses against alternative procedures and treatment options. If we choose to, or are required to, conduct additional studies, such studies or experience could reduce the rate of coverage and reimbursement by both public and private third-party payors for procedures that are performed with our products, slow market adoption of our products by ECPs, significantly reduce our ability to achieve expected revenues and prevent us from being profitable.

We have limited experience in training on, and marketing and selling, our products and we may provide inadequate training, fail to increase our sales and marketing capabilities or fail to develop broad brand awareness in a cost-effective manner.

We have limited experience marketing and selling our products. In the United States, we currently rely on our direct sales force and, in certain targeted geographic regions or customer verticals, independent sales

representatives and distributors, and any failure to maintain and grow our sales force could harm our business. In Europe, we currently rely on a combination of direct sales personnel and independent distributors to sell our products, and we intend to grow our international sales through a combination of direct and distributor sales. If we are unable to identify and retain productive direct sales representatives and distributors in the international territories and jurisdictions that we have targeted for commercial expansion, we may not be able to achieve projected revenue goals and our business could suffer. Our sales representatives are trained and possess product specific sales expertise, which we believe is critical in driving the awareness and adoption of our products. The members of our U.S. sales force are at-will employees. The loss of these personnel to competitors, or otherwise, could materially harm our business. If we are unable to retain our direct sales force personnel or replace them with individuals of equivalent expertise and qualifications, or if we are unable to successfully instill such expertise in replacement personnel, our business, financial condition and results of operations could be materially harmed.

In order to generate future growth, we plan to continue to significantly expand and leverage our commercial infrastructure to increase our customer base and increase adoption by existing customers to drive our growth. Identifying and recruiting qualified sales and marketing professionals and training them on our products, on applicable federal and state laws and regulations and on our internal policies and procedures requires significant time, expense and attention. It can take several months or more before a sales representative or distributor representative is fully trained and productive. Our direct sales force may subject us to higher fixed costs than those of companies with competing products or treatments that rely more heavily on independent third parties, placing us at a competitive disadvantage. Our business may be harmed if our efforts to expand and train our sales force and distribution chain do not generate a corresponding increase in product sales and revenue, and our higher fixed costs may slow our ability to reduce costs in the face of a sudden decline in demand for our products. Any failure to hire, develop and retain effective sales personnel, to identify and train distributors and independent sales representatives in targeted international territories, to achieve desired productivity levels in a reasonable period of time or timely reduce fixed costs, could have a material adverse effect on our business, financial condition and results of operations.

Our ability to increase our customer base and achieve broader market acceptance of our products will depend, to a significant extent, on our ability to expand our sales and marketing and educational efforts. We plan to dedicate significant resources to our sales and marketing initiatives, and educational programs through leading medical publications and at large industry and scientific meetings, both directly and through key opinion leaders. Our business may be harmed if these efforts and expenditures do not generate a corresponding increase in revenue. In addition, we believe that developing and maintaining broad awareness of our brand in a cost-effective manner is critical to achieving broad acceptance of our products and reaching new ECPs and patients. Brand promotion activities may not impact ECP or patient awareness or increase revenue, and even if they do, any increase in revenue may not offset the costs and expenses we incur in building our brand. If we fail to successfully promote, maintain and protect our brand, we may fail to attract or retain the market acceptance necessary to realize a sufficient return on our brand building efforts, or to achieve the level of brand awareness that is an important factor for the broad adoption of our products.

Our products are designed to be used in a limited number of procedures, and there is a limited total addressable market for our products. The sizes of the potential and actual markets for our current products have not been established with precision and may be smaller than we estimate.

We currently market our OMNI device for use in the U.S. and select European geographies for canaloplasty followed by trabeculotomy to reduce intraocular pressure in adult patients with POAG. POAG is the most prevalent form of glaucoma and affects 4.1 million people in the United States and over 60 million people worldwide. We currently market TearCare as a Class II, 510(k)-exempt powered heating pad for the delivery of localized heat where the current medical community recommends application of a warm compress. We intend to seek FDA clearance of TearCare for an expanded indication for use in . There are an estimated 739 million people globally and 38 million people in the U.S. who suffer from DED. DED is the most common

reason for a patient visit to an eye doctor, yet of the 38 million people with DED in the U.S., only 17 million have been diagnosed with DED. Studies have shown that evaporative DED resulting from MGD is associated with approximately 86% of all DED cases.

The total addressable markets for our products are subject to change and, even assuming TearCare is cleared for an expanded indication, its use may be further limited by FDA restrictions or more narrowly defined indications, any of which could have a material adverse effect on our business, financial condition and results of operations.

Further, our estimates of the total addressable markets for our products are based on a number of internal and third-party estimates, including, without limitation, the number of patients with POAG and, if TearCare is cleared for such use, MGD, and the assumed prices at which we can sell our products in markets that have not yet been fully established. While we believe our assumptions and the data underlying our estimates are reasonable, these assumptions and estimates may not be correct and the conditions supporting our assumptions or estimates may change at any time, thereby reducing the predictive accuracy of these underlying factors. As a result, our estimates of the annual total addressable market for our current products may prove to be incorrect. If the actual number of patients who would benefit from our products or the price at which we can sell our products is smaller than we have estimated, it may impair our sales growth and negatively affect our business, financial condition and results of operations.

Our operations and financial results have been, and will continue to be, adversely impacted by the COVID-19 pandemic in the United States and the rest of the world.

In December 2019, a novel strain of coronavirus, SARS-CoV-2, was identified in Wuhan, China. Since then, SARS-CoV-2, and the resulting disease, COVID-19, has spread worldwide. In response to the COVID-19 pandemic, numerous state and local jurisdictions have imposed, and others in the future may impose, “shelter-in-place” orders, quarantines, executive orders and similar government orders and restrictions for their residents. Such orders or restrictions have resulted in work stoppages, slowdowns and delays, travel restrictions and cancellation of events. Disruptions or potential disruptions to our business from COVID-19 or a future pandemic could include the inability of our component suppliers and manufacturers to produce our products, components, or accessories on a timely basis, or at all; disruptions in our logistics and distribution providers to deliver our products to customers on a timely basis, or at all; inventory shortages or obsolescence; diversion of or limitations on employee resources that would otherwise be focused on the operations of our business; delays in growing or reductions in our sales organization, including through delays in hiring, lay-offs, furloughs or other losses of sales representatives; limitations on the ability of our sales representatives and distributors to reach potential customers and reduced opportunities for market education; business adjustments or disruptions of certain third parties, including suppliers and customers; and additional government requirements or other incremental mitigation efforts that may further impact our or our suppliers’ capacity to manufacture our products. For example, as a result of restrictions related to the COVID-19 pandemic our sales representatives have been curtailed in their ability to conduct in-person meetings and demonstrations, and our market education and training efforts have been limited. We may also experience delays in initiating or completing any clinical trials or investigations that we intend to conduct or are conducting, and we do not know whether our clinical trials or investigations will begin on time, need to be redesigned, enroll patients on time, or be completed on schedule, or at all.

We experienced a significant decrease in our revenues for both of our products in the second quarter of 2020 as compared to the first quarter of 2020. As elective eye care procedures in many facilities that utilize OMNI and TearCare were temporarily suspended by governmental authorities, many patients avoided visiting ECPs, and, even in areas that allowed elective procedures, ECPs and healthcare facilities in general severely cut back on the scheduling and performance of such procedures. We felt the decrease in demand due to COVID-19 most significantly in the latter part of the quarter ended March 31, 2020 and the first half of the quarter ended June 30, 2020. Beginning in June 2020, we began to see an increase in the number of procedures using our products. In

the first quarter of 2021, our customers experienced a significant number of procedure cancellations which we believe was largely driven by patients postponing procedures until their COVID-19 vaccinations were completed as opposed to any restrictions imposed on elective procedures.

The extent to which the COVID-19 pandemic impacts our business will depend on future developments, which are highly uncertain and cannot be predicted, including new information which may emerge concerning the severity and spread of COVID-19, any new variants of the virus, the nature, extent and effectiveness of containment and treatment measures, the extent and duration of the effect on the economy and how quickly and to what extent normal economic and operating conditions can resume.

While the potential economic impact brought by and the duration of any pandemic, epidemic or outbreak of an infectious disease, including COVID-19, may be difficult to assess or predict, the COVID-19 pandemic has resulted in, and may continue to result in, significant disruption of global financial markets, reducing our ability to access capital, which could in the future negatively affect our liquidity. In addition, a recession or market correction resulting from the spread of an infectious disease, including COVID-19, could materially affect our business. Such economic recession could have a material adverse effect on our long-term business as hospitals and surgical centers curtail and reduce capital and overall spending. In addition, the current economic downturn is resulting in significant job losses and reductions in disposable income and if patients are unable to obtain or maintain health insurance policies, this may significantly impact their ability to pay for the procedures utilizing our products, further negatively impacting our business, financial condition and results of operations. To the extent the COVID-19 pandemic adversely affects our business and financial results, it may also have the effect of heightening many of the other risks described in this “Risk Factors” section.

We may not be able to maintain adequate levels of third-party coverage and reimbursement for procedures in which OMNI is used, and third parties may rescind or modify their coverage or delay payments related to OMNI. We may not be able to secure any, or adequate levels of, third-party coverage and reimbursement for procedures in which TearCare is used, and even if third parties provide coverage they may rescind or modify their coverage or delay payments related to TearCare.

We derive revenue from sales of OMNI to physicians, ambulatory surgery centers and hospital outpatient departments, which typically bill all or a portion of the costs and fees associated with our products to various third-party payors, including Medicare, Medicaid, private commercial insurance companies, health maintenance organizations and other healthcare-related organizations, and then bill patients for any applicable deductibles or co-payments. As a result, access to adequate coverage and reimbursement for procedures in which OMNI is used by third-party payors is essential to its acceptance and adoption by patients and ECPs.

We also derive revenue from sales of TearCare to ECPs and eye care clinics, which also bill all or a portion of the costs and fees associated with treatments and products to patients or, on a limited basis, to third-party payors. We believe that access to adequate coverage and reimbursement for procedures in which TearCare is used by third-party payors is important to the broad acceptance and adoption of TearCare. Currently, however, no payors have formal policies establishing coverage for the procedures in which TearCare is used. We are pursuing a comprehensive long-term market development and patient access plan for TearCare and focusing our efforts on partnering with key strategic accounts to pursue prior authorization approvals and reimbursement claims for procedures in which TearCare is used, but there is no guarantee that we will be successful. If patients are not willing to pay for procedures in which TearCare is used, or if third-party payors continue to refuse to provide coverage and reimbursement or provide insufficient levels of coverage and reimbursement, it could have a negative impact on ECPs’ adoption of TearCare and sales of TearCare.

Coverage and reimbursement by governmental and third-party payors may depend upon a number of factors, including the determination that the product or service and its use or administration for a particular patient is:

- A covered benefit;

- Safe, effective and medically necessary;
- Appropriate for the specific patient;
- Supported by clinical data;
- Supported by guidelines established by the relevant professional societies;
- Cost-effective; and
- Neither experimental nor investigational.

Third-party payors, whether foreign or domestic, or governmental or commercial, are developing increasingly sophisticated methods of controlling healthcare costs. In addition, no uniform policy of coverage and reimbursement for procedures using our products exists among third-party payors. Therefore, coverage and reimbursement for procedures using our products can differ significantly from payor to payor. Obtaining and maintaining coverage and reimbursement can be a time-consuming process that could require us to provide supporting scientific, clinical and cost-effectiveness data for the use of our products. We may not be able to provide data sufficient to satisfy governmental and third-party payors that procedures using our products should be covered and reimbursed.

In the United States, the American Medical Association, or AMA, generally assigns specific billing codes for procedures under a coding system known as Current Procedure Terminology, or CPT, which surgeons use to bill third-party payors and receive reimbursement. Once a permanent (Category I) CPT code is established for a service, the Centers for Medicare & Medicaid Services, or CMS, establishes payment levels under Medicare, while other payors may establish rates and coverage rules independently. Canaloplasty followed by trabeculotomy procedures using OMNI are typically billed using the Category I CPT code 66174, which describes canaloplasty. Coding for ophthalmic surgical procedures is complex, and changes to the codes used to report services performed with our products may result in significant changes in reimbursement, which could negatively impact our revenue.

The AMA maintains a subset of temporary (Category III) CPT codes used for new and emerging technologies. For example, TearCare was assigned a Category III CPT code effective beginning January 1, 2020. Coverage for Category III CPT codes is often limited. Medicare does not generally establish national payment rates for Category III CPT codes on the Medicare Physician Fee Schedule, or MPFS. As a result, individual Medicare contractors and private payors may establish their own payment rates for services described by Category III CPT codes, which payment rates may be materially below the final reimbursement rates that we are currently targeting, or may determine not to reimburse services described by Category III CPT codes.

Payors also continually review new and existing technologies for possible coverage and can deny or reverse coverage for new or existing products and procedures. There can be no assurance that third-party payor policies provide coverage, or will continue to provide coverage, for procedures in which OMNI is used. If coverage policies change such that Medicare no longer covers procedures in which our products are used, there would be a material adverse effect on our business, financial condition and results of operations. For example, Medicare Administrative Contractors could issue local coverage determinations that could restrict the patients eligible for treatment with our products or that are otherwise unfavorable to our business. If we are not successful in reversing any proposed non-coverage policies, or if third-party payors that currently cover or reimburse procedures in which our products are used reverse or limit their coverage in the future, or if other third-party payors issue similar policies, this could have a material adverse effect on our business.

Further, we believe that future coverage and reimbursement may be subject to increased restrictions, such as additional prior authorization requirements, both in the United States and in international markets. Third-party coverage and reimbursement for procedures using our products or any of our products in development for which we may receive regulatory clearance, certification or approval may not be available or adequate in either the

United States or international markets. Further, other devices or treatments that compete with our products may be more widely covered or subject to different co-pay policies and requirements, which could impact demand for our products. If hospital, surgical center, ECP and/or patient demand for our products is adversely affected by third-party reimbursement policies and decisions, it could have a material adverse effect on our business, financial condition and results of operations.

The market for our products is highly competitive. Our competitors may have longer operating histories, more established products and greater resources than we do, and may be able to develop or market treatments that are safer, more effective or gain greater acceptance in the marketplace than our products.

The medical device industry is highly competitive, subject to rapid change and significantly affected by the introduction of new products and technologies and the other activities of industry participants. We compete, or plan to compete, with medical device and pharmaceutical companies that develop and commercialize products for eye conditions, including Glaukos, Ivantis, AbbVie/Allergan, Novartis, Alcon, and Johnson & Johnson. These companies, or other entrants into the market, may have or develop competing technologies, other products that are in or that enter clinical trials, new devices or additional indications for existing devices that could demonstrate better safety, effectiveness, clinical results, lower costs or greater ECP and market acceptance than our products.

We compete, or may compete in the future, against other companies which have longer, more established operating histories and significantly greater financial, technical, marketing, sales, distribution and other resources, which may prevent us from achieving significant market penetration or improved operating results. These companies may enjoy several competitive advantages, including:

- Established treatment patterns pursuant to which prescription medications, traditional glaucoma surgery or more conventional MIGS devices are generally first-line therapies for the treatment of POAG and eye drops or warm-compresses are first-line therapies for the treatment of MGD;
- Established relationships with ECPs who are familiar with their products and procedures for the treatment of POAG or MGD;
- Established relationships with key stakeholders, including hospital outpatient departments, ambulatory surgery centers, optometrists and ophthalmologists, general practitioners and administrators;
- Greater financial and human capital resources;
- Significantly greater name recognition;
- Additional lines of products, and the ability to offer rebates or bundle products to offer greater discounts or incentives to gain a competitive advantage; and
- Established sales, marketing and worldwide distribution networks.

One of the major hurdles to adoption of our products will be overcoming established treatment patterns, which will require educating ECPs and supportive clinical data. However, because of the size of the market opportunity for devices used in procedures to address POAG and MGD, we believe current and potential future competitors will dedicate significant resources to aggressively promote their products or develop new products or treatments, such as Glaukos' iStent infinite. Further, new treatment options may be developed that could compete more effectively with our products due to the prevalence of POAG and MGD, and the research and technological progress that exist within the market.

We rely on third parties to manufacture and supply OMNI and TearCare, and we may encounter delays or incur additional costs when we add new manufacturers and suppliers for our products.

Our business strategy depends on our ability to manufacture our current and future products in sufficient quantities and on a timely basis to meet customer demand, while adhering to product quality standards,

complying with regulatory quality system requirements and managing manufacturing costs. We do not have any internal manufacturing capabilities or infrastructure. OMNI is currently being produced and assembled by Second Source Medical LLC and Peter's Technology (Suzhou) CO LTD., or Peter's, a subsidiary of Peter's Co., Ltd., a Taiwan-based manufacturer. We intend to fully transition OMNI production to Peter's and an additional high-volume contract manufacturer with domestic U.S. production facilities by the end of the third quarter of 2021. The Peter's Supply Agreement governs the assembly and supply of OMNI, pursuant to which Peter's purchases components from our approved suppliers for assembly and we make purchases on a purchase order basis. We may encounter delays or incur additional costs in connection with the transition to a new contract manufacturer with domestic U.S. production facilities for OMNI production. For the production of TearCare, we currently have supply arrangements with separate U.S. medical device manufacturers for the production of each of TearCare's SmartLids and TearCare's SmartHubs. These companies manufacture, assemble, inspect, test, package and ship OMNI and TearCare and related accessories.

While our existing manufacturers have generally met our demand requirements on a timely basis in the past, their ability and willingness to continue to do so going forward may be limited for several reasons, including if any of our manufacturers' facilities suffer damage or a force majeure event, our relative importance as a customer to each manufacturer or their inability to provide assembly services to manufacture our products, which may be affected by the COVID-19 pandemic. An interruption in our commercial operations could occur if we encounter delays or difficulties in securing these manufactured products if we cannot obtain an acceptable substitute.

The process of identifying alternative manufacturing facilities for any other reason could be time-consuming and expensive, may result in interruptions in our operations and product delivery, and could affect the performance specifications of our products. If we are required to change any of our contract manufacturers, we will be required to verify that the new manufacturer maintains facilities, procedures and operations that comply with our quality and applicable regulatory requirements, which could further impede our ability to manufacture our products in a timely manner. We cannot assure you that we will be able to identify and engage alternative contract manufacturers on similar terms or without delay. Furthermore, our contract manufacturers could require us to move to a different production facility. The occurrence of any of these events could harm our ability to meet the demand for our products in a timely and cost-effective manner, which could have a material adverse effect on our business, financial condition and results of operations.

We are also subject to numerous other risks relating to our reliance on third parties, including:

- Inability to renew or extend contracts and arrangements with such third parties or renew any such contracts or arrangements on terms that are favorable to us;
- Interruption of supply resulting from modifications to, or discontinuation of, a third-party's operations;
- Delays in shipments resulting from uncorrected defects, reliability issues or a third-party's failure to manufacture and supply components, accessories and materials that consistently meet our agreed specifications and quality requirements;
- Inability to obtain adequate supply or services in a timely manner or on commercially reasonable terms;
- Difficulty identifying and qualifying, and obtaining new regulatory approvals, for alternative suppliers for our products and product components in a timely manner;
- Inability to design or modify production processes to enable us to produce future products efficiently or implement changes in current products in response to design or regulatory requirements;
- Inability to comply with applicable provisions of the FDA's Quality System Regulation, or QSR, or other applicable laws or regulations enforced by the FDA, state and foreign regulatory authorities;
- Inability to ensure the quality of products and components manufactured by third parties;

- Failure to timely increase production capacity or volumes to meet demand;
- Production delays related to the evaluation and testing of products and components from alternative third parties and corresponding regulatory qualifications;
- An outbreak of disease or similar public health threat, such as the COVID-19 pandemic, particularly as it may impact our supply chain;
- Long lead time for the production of certain components of our products;
- Price fluctuations due to a lack of long-term supply arrangements with certain of our suppliers;
- Risk of delays or interruption stemming from trade wars; and
- General delays in delivery by our suppliers.

These risks are likely to be exacerbated by our limited experience with our current products and manufacturing processes. As demand for our products increases, we will have to invest additional resources to manage the manufacturing process. If we fail to secure increased production capacity efficiently, we may not be able to fill customer orders on a timely basis, our sales may not increase in line with our expectations and our operating margins could fluctuate or decline. In addition, although some future products may share product features, components, sub-assemblies and materials with our existing products, the manufacture of these products may require modification of the current production processes or unique production processes, the identification of new suppliers for specific components, sub-assemblies and materials or the development of new manufacturing technologies. It may not be possible for our current third-party manufacturers to produce these products at a cost or in quantities sufficient to make these products commercially viable or to maintain current operating margins, all of which could have a material adverse effect on our business, financial condition and results of operations.

We depend on a limited number of single source suppliers.

We rely on a limited number of third-party manufacturers, many of which are single source suppliers, for a portion of the components, accessories and materials that we utilize in our products. These items are critical and, for certain items, there are relatively few or no readily available alternative sources of supply. These single source suppliers may be unwilling or unable to supply these items reliably and at the levels we anticipate or that are required by the market. Additionally, although we require our suppliers and providers to supply us with components and services that meet our specifications and other applicable legal and regulatory requirements in our agreements and contracts, and appropriate inspections, testing or other acceptance activities are performed to ensure the components meet our requirements, there is a risk that these third parties will not always act consistent with our best interests, and may not always supply components or provide services that meet our requirements or in a timely manner.

While our suppliers have generally met our demand requirements on a timely basis in the past, we cannot guarantee that suppliers will in the future be able to meet our demand, either because of acts of nature, global pandemics, such as the COVID-19 pandemic, the nature of our agreements with those suppliers or our relative importance to them as a customer, and our suppliers may decide in the future to discontinue or reduce the level of business they conduct with us. We may also fail to obtain additional suppliers for any of the components used in our products. If we are unable to meet our demand requirements on a timely basis, we may not have a sufficient number of our products available for delivery to support ECPs that utilize our products as part of their treatment. Any shortfall in the supply of products may result in lower adoption and usage rates of our products and have a material adverse effect on our business, financial condition and results of operations.

The failure of third parties to meet their contractual, regulatory, and other obligations could adversely affect our business.

We rely on suppliers, vendors, outsourcing partners, consultants, alliance partners and other third parties to help research, develop, manufacture, commercialize and distribute our products and manage certain parts of our

business. Using these third parties poses a number of risks, such as: (i) they may not perform to our standards or legal requirements; (ii) they may not produce reliable results; (iii) they may not perform in a timely manner; (iv) they may not maintain confidentiality of our proprietary information; (v) disputes may arise with respect to ownership of rights to technology developed with our partners; and (vi) disagreements could cause delays in, or termination of, the research, development or commercialization of our products or result in litigation or arbitration. Moreover, some third parties are located in markets subject to political and social risk, corruption, infrastructure problems and natural disasters, in addition to country-specific privacy and data security risk given current legal and regulatory environments. Failure of third parties to meet their contractual, regulatory, and other obligations may materially adversely affect our business.

The failure of OMNI or TearCare to meet patient expectations or the occurrence of adverse events from use of OMNI or TearCare could limit their adoption and impair our financial performance.

Our future success depends in part upon patients having an experience with our products that meets their expectations in order to increase ECPs' demand for our products as a result of positive feedback, social media and word-of-mouth. Patients may be dissatisfied if their expectations of the procedures performed by ECPs using our products, among other things, are not met. Despite what we believe to be the strong safety profile of our products for their intended uses, patients may experience adverse events following canaloplasty or trabeculotomy with OMNI, including, but not limited to, hyphema, mild anterior chamber inflammation and spikes in intraocular pressure. Similarly, patients may experience adverse events following application of localized heat with TearCare, including discomfort, pain or erythema of the eyelids.

If experiences with OMNI or TearCare do not meet the expectations of patients, or if patients experience adverse events, it could discourage the patient and treating physician from referring our products to others. Dissatisfied patients may express negative opinions through social media or other public forums. Any failure to meet patient expectations and any resulting negative publicity could harm our reputation and future sales and therefore adversely affect our business, financial condition and results of operations.

Our results of operations could be materially harmed if we are unable to accurately forecast customer demand for our products and manage our inventory.

We seek to maintain sufficient levels of inventory in order to protect ourselves from supply interruptions, but keep limited components, sub-assemblies, materials and finished products on hand. To ensure adequate inventory supply and manage our operations with our third-party suppliers, we forecast anticipated materials requirements and demand for our products in order to predict inventory needs and then place orders with our suppliers based on these predictions. Our ability to accurately forecast demand for our products could be negatively affected by many factors, including our limited historical commercial experience, rapid growth, failure to accurately manage our expansion strategy, product introductions by competitors, an increase or decrease in customer demand for our products, our failure to accurately forecast customer acceptance and adoption of new products, unanticipated changes in general market conditions or regulatory matters and weakening of economic conditions or consumer confidence in future economic conditions.

Inventory levels in excess of customer demand may result in a portion of our inventory becoming obsolete or expiring, as well as inventory write-downs or write-offs, which would negatively impact our gross margins and impair the strength of our brand. Conversely, if we underestimate customer demand for our products or our own requirements for components, sub-assemblies and materials, our third-party suppliers may not be able to deliver components, sub-assemblies and materials to meet our requirements, which could result in inadequate inventory levels or interruptions, delays or cancellations of deliveries to our customers, any of which would damage our reputation, customer relationships and business. In addition, several components, sub-assemblies and materials incorporated into our products require lengthy order lead times, and additional supplies or materials or additional manufacturing capacity may not be available when required on terms that are acceptable to us, or at all, and our third-party suppliers may not be able to allocate sufficient capacity in order to meet our increased

requirements, any of which could have an adverse effect on our ability to meet customer demand for our products and our business, financial condition and results of operations.

Our quarterly and annual results may fluctuate significantly and may not fully reflect the underlying performance of our business.

Our quarterly and annual results of operations, including our revenue, may vary significantly in the future, and period-to-period comparisons of our operating results may not be meaningful. Accordingly, the results of any one quarter or period should not be relied upon as an indication of future performance or of the results for the year in which such quarter or period occurs. Our quarterly and annual financial results may fluctuate as a result of a variety of factors, many of which are outside our control and, as a result, may not fully reflect the underlying performance of our business. Fluctuations in quarterly and annual results may decrease the value of our common stock or result in volatility of our common stock after this offering. Because our quarterly results may fluctuate, period-to-period comparisons may not be the best indication of the underlying results of our business and should only be relied upon as one factor in determining how our business is performing. These fluctuations may occur due to a variety of factors, many of which are outside of our control, including, but not limited to:

- The level of demand for our products which may vary significantly;
- Results of clinical trials or investigations involving the use of our products;
- Regulatory decisions or announcements, including product recalls;
- Data and results relating to our products that are presented in journal publications;
- Expenditures that we may incur to acquire, develop or commercialize additional products and technologies;
- Sales and marketing efforts and expenses;
- Pricing pressures;
- The rate at which we grow our sales force and the speed at which newly hired salespeople become effective;
- Changes in the productivity of our sales force;
- Our ability to expand the geographic reach of our sales force;
- The degree of competition in our industry and any change in the competitive landscape of our industry, including consolidation among our competitors or future partners;
- Changes in coverage and reimbursement policies with respect to our procedures in which our products are used, and potential future products that compete with our products;
- Positive or negative coverage in the media or clinical publications of our products or products of our competitors or our industry;
- The timing of customer orders or medical procedures using our products and the number of available selling days in any quarterly period, which can be impacted by holidays, the mix of products sold and the geographic mix of where products are sold;
- The timing and cost of, and level of investment in, research, development, licenses, regulatory approval, commercialization activities, acquisitions and other strategic transactions, or other significant events relating to our products, which may change from time to time;
- The cost of manufacturing our products, which may vary depending on the quantity of production and the terms of our agreements with third-party suppliers; and
- Future accounting pronouncements or changes in our accounting policies.

Our long-term growth depends on our ability to enhance our products, expand our indications and develop and commercialize additional products in a timely manner. If we fail to identify, acquire and develop other products, we may be unable to grow our business.

The markets for our products are highly competitive, dynamic, and marked by rapid and substantial technological development and product innovation. New entrants or existing competitors could attempt to develop products that compete directly with ours. Demand for our products and future related products could be diminished by equivalent or superior products and technologies offered by competitors. If we are unable to innovate successfully, our products could become obsolete and our revenue would decline as our customers purchase our competitors' products. Developing and improving products is expensive and time-consuming and could divert management's attention away from our existing products. The success of any new product offering or product enhancements to our solutions will depend on several factors, including our ability to:

- Maintaining strong relationships with ECPs;
- Assemble sufficient resources to acquire or discover additional products;
- Properly identify and anticipate physician and patient needs;
- Develop and introduce new products and product enhancements in a timely manner;
- Avoid infringing upon, misappropriating or otherwise violating the intellectual property rights of third parties;
- Demonstrate, if required, the safety and efficacy of new products with data from preclinical studies and clinical trials or investigations;
- Obtain the necessary regulatory clearances, certifications or approvals for expanded indications, new products or product modifications;
- Comply with the requirements of FDA and similar foreign regulatory authorities regarding the marketing of new devices or modified products;
- Produce new products in commercial quantities at an acceptable cost;
- Provide adequate training to potential users of our products;
- Receive adequate coding, coverage and reimbursement for procedures performed with our products; and
- Develop an effective and dedicated sales and marketing team.

If we are unable to develop or improve products, applications or features due to constraints, such as insufficient cash resources, high employee turnover, inability to hire personnel with sufficient technical skills or a lack of other research and development resources, we may not be able to maintain our competitive position compared to other companies. Furthermore, many of our competitors devote a considerably greater amount of funds to their research and development programs than we do, and those that do not may be acquired by larger companies that could allocate greater resources to research and development programs. Our failure or inability to devote adequate research and development resources or compete effectively with the research and development programs of our competitors could harm our business.

In addition, we may choose to focus our efforts and resources on potential products or indications that ultimately prove to be unsuccessful, or to license or purchase a marketed product that does not meet our financial expectations. As a result, we may fail to capitalize on viable commercial products or profitable market opportunities, be required to forego or delay pursuit of opportunities with other potential products or other diseases that may later prove to have greater commercial potential, or relinquish valuable rights to such potential products through collaboration, licensing or other royalty arrangements in cases in which it would have been advantageous for us to retain sole development and commercialization rights, which could adversely impact our business, financial condition and results of operations.

Changes in public health insurance coverage and government reimbursement rates for our products could affect the adoption of our products and our future revenue.

The federal government is considering ways to change, and has changed, the manner in which healthcare services are paid for in the U.S. Individual states may also enact legislation that impacts Medicaid payments to hospitals, surgical centers and physicians. In addition, CMS establishes Medicare payment levels for hospitals, surgical centers and physicians on an annual basis, which can increase or decrease payment to such entities, including for procedures involving our products. Internationally, medical reimbursement systems vary significantly from country to country, with some countries limiting medical centers' spending through fixed budgets, regardless of levels of patient treatment, and other countries requiring application for, and approval of, government or third-party reimbursement. Even if we succeed in bringing our products to market in additional foreign countries, uncertainties regarding future healthcare policy, legislation and regulation, as well as private market practices, could affect our ability to sell our products in commercially acceptable quantities at acceptable prices.

Cost-containment efforts of our customers, purchasing groups and governmental organizations could have a material adverse effect on our sales and results of operations. Consolidation in the healthcare industry or group purchasing organizations could lead to demands for price concessions, which may affect our ability to sell our products at prices necessary to support our current business strategies.

In an effort to reduce costs, many clinics and hospitals in the United States, including some of our customers, are members of Group Purchasing Organizations, or GPOs, and Integrated Delivery Networks, or IDNs. GPOs and IDNs negotiate pricing arrangements with medical device companies and distributors and then offer these negotiated prices to affiliated hospitals and other members. GPOs and IDNs typically award contracts on a category-by-category basis through a competitive bidding process. Bids are generally solicited from multiple providers with the intention of driving down pricing or reducing the number of vendors. Due to the highly competitive nature of the GPO and IDN contracting processes, we may not be able to obtain new, or maintain existing, contract positions with major GPOs and IDNs. Furthermore, the increasing leverage of organized buying groups may reduce market prices for our products, thereby reducing our revenue and margins.

While having a contract with a GPO or IDN for a given product category can facilitate sales to members of that GPO or IDN, such contract positions can offer no assurance that any level of sales will be achieved, as sales are typically made pursuant to individual purchase orders. Even when a provider is the sole contracted supplier of a GPO or IDN for a certain product category, members of the GPO or IDN are generally free to purchase from other suppliers. Furthermore, GPO and IDN contracts typically are terminable without cause by the GPO or IDN upon 60 to 90 days' notice. Accordingly, the members of such groups may choose to purchase alternative products due to the price or quality offered by other companies, which could result in a decline in our sales volumes and revenue.

Healthcare costs have risen significantly over the past decade, which has resulted in or led to numerous cost reform initiatives by legislators, regulators and third-party payors. Cost reform has triggered a consolidation trend in the healthcare industry to aggregate purchasing power, which may create more requests for pricing concessions in the future. Additionally, GPOs, IDNs and large single accounts may continue to use their market power to consolidate purchasing decisions for hospitals. We expect that market demand, government regulation, third-party coverage and reimbursement policies and societal pressures will continue to change the healthcare industry worldwide, resulting in further business consolidations and alliances among our customers, which may exert further downward pressure on the prices of our products. Such downward pressure on the prices of our products may affect our results of operations and our ability to support our current business strategies.

We may not be able to achieve or maintain satisfactory pricing and margins for our products.

Medical device companies have a history of price competition, and we can give no assurance that we will be able to achieve satisfactory prices for our products or maintain prices at the levels we have historically achieved.

Any decline in the amount that payors reimburse our customers for procedures that use OMNI or in the amount that customers are willing to pay or that payors reimburse for procedures that use TearCare in the future, could make it difficult for customers to continue using, or to adopt, our products and could create additional pricing pressure for us. If we are forced to lower the price we charge for our products or add more components to our products, our gross margins will decrease, which will adversely affect our ability to invest in and grow our business. If we are unable to maintain our prices, or if our costs increase and we are unable to offset such increase with an increase in our prices, our margins could erode. We are, and will continue to be, subject to significant pricing pressure, which could negatively affect our business, financial condition and results of operations.

We may be unable to manage the anticipated growth of our business.

In order to grow, we need to expand our commercial team, and general and administrative infrastructure. In addition to the need to scale our organization, future growth will impose significant added responsibilities on management, including the need to identify, recruit, train and integrate additional employees. Rapid expansion in personnel could mean that less experienced people market and sell our products, which could result in inefficiencies and unanticipated costs, reduced quality and disruptions to our operations. In addition, rapid and significant growth may strain our administrative and operational infrastructure. Our ability to manage our business and growth will require us to continue to improve our operational, financial and management controls, reporting systems and procedures. For example, we currently rely on a combination of direct sales personnel and independent distributors to sell our products in Europe, and we intend to grow our international sales through a combination of direct and distributor sales. If we are unable to manage our growth effectively, it may be difficult for us to execute our business strategy and our business could be harmed.

As demand for our current products or any of our future products increases, we will need to continue to expand customer service, billing and systems processes and enhance our internal quality assurance program. We cannot assure you that any increases in scale, related improvements and quality assurance will be successfully implemented or that appropriate personnel will be available to facilitate the growth of our business. Failure to implement necessary procedures, transition to new processes or hire the necessary personnel could result in higher costs of processing data or inability to meet increased demand.

Performance issues, service interruptions or price increases by our shipping carriers and distributors could negatively affect our business, financial condition and results of operations and harm our reputation and the relationship between us and the ECPs we work with.

Expedited, reliable shipping is essential to our operations. We rely heavily on providers of transport services for reliable and secure point-to-point transport of our products to our customers and for tracking of these shipments. Should a carrier encounter delivery performance issues such as loss, damage or destruction of any systems, it would be costly to replace such systems in a timely manner and such occurrences may damage our reputation and lead to decreased demand for our solutions and increased cost and expense to our business. In addition, any significant increase in shipping rates could adversely affect our operating margins and results of operations. Similarly, strikes, severe weather, natural disasters or other service interruptions affecting delivery services we use would adversely affect our ability to process orders for our products on a timely basis. These factors could negatively affect our business, financial condition and results of operations and harm our reputation and the relationship between us and the ECPs we work with.

Our products may become obsolete in the future.

The medical device industry is characterized by rapid and significant change. There can be no assurance that other companies will not succeed in developing or marketing devices or products that are more effective than our products or that would render our products obsolete or noncompetitive. Additionally, new surgical procedures, medications and other therapies could be developed that replace or reduce the importance of our products.

Accordingly, our success will depend in part on our ability to respond quickly to medical and other changes through the development and introduction of new products. Product development involves a high degree of risk, and there can be no assurance that our new product development efforts will result in any commercially successful products.

We bear the risk of potential warranty claims on our products.

We provide limited warranties regarding our products, including warranties pertaining to freedom from defects and conformance to specifications. We are generally obligated under our sales contracts to repair, replace or credit or refund the purchase price of defective products. As a result, we bear the risk of potential warranty claims on our products. In the event that we attempt to recover some or all of the expenses associated with a warranty claim against us from our suppliers or vendors, we may not be successful in claiming recovery under any warranty or indemnity provided to us by such suppliers or vendors and any recovery from such vendor or supplier may not be adequate. In addition, warranty claims brought by our customers related to third-party components may arise after our ability to bring corresponding warranty claims against such suppliers expires, which could result in costs to us.

We may enter into collaborations, in-licensing arrangements, joint ventures, strategic alliances or partnerships with third parties that may not result in the development of commercially viable products or product improvements or the generation of significant future revenues.

We may enter into collaborations, in-licensing arrangements, joint ventures, strategic alliances, partnerships or other arrangements to develop new products or product improvements and to pursue new markets. Proposing, negotiating and implementing collaborations, in-licensing arrangements, joint ventures, strategic alliances or partnerships may be a lengthy and complex process. Other companies, including those with substantially greater financial, marketing, sales, technology or other business resources, may compete with us for these opportunities or arrangements. We may not identify, secure, or complete any such transactions or arrangements in a timely manner, on a cost-effective basis, on acceptable terms or at all. We have limited institutional knowledge and experience with respect to these business development activities, and we may also not realize the anticipated benefits of any such transaction or arrangement. In particular, these collaborations may not result in the development of products that achieve commercial success or viable product improvements or result in significant revenues and could be terminated prior to developing any products.

Additionally, we may not be in a position to exercise sole decision-making authority regarding the transaction or arrangement, which could create the potential risk of creating impasses on decisions, and our future collaborators may have economic or business interests or goals that are, or that may become, inconsistent with our business interests or goals. It is possible that conflicts may arise with our collaborators, such as conflicts concerning the achievement of performance milestones, or the interpretation of significant terms under any agreement, such as those related to financial obligations or the ownership or control of intellectual property developed during the collaboration. If any conflicts arise with any future collaborators, they may act in their self-interest, which may be adverse to our best interest, and they may breach their obligations to us. In addition, we may have limited control over the amount and timing of resources that any future collaborators devote to our or their future products.

Disputes between us and any collaborators we may have in the future may result in litigation or arbitration which would increase our expenses and divert the attention of our management. These arrangements may consume management time and resources to establish and maintain. Further, these transactions and arrangements will be contractual in nature and will generally be terminable under the terms of the applicable agreements and, in such event, we may not continue to have rights to the products relating to such transaction or arrangement or may need to purchase such rights at a premium. Any termination of collaborations we enter into in the future, or any delay in entering into collaborations related to our products, could delay the development and commercialization of our products and reduce their competitiveness if they reach the market, which could have a material adverse effect on our business, financial condition and results of operations.

If we enter into in-bound intellectual property license agreements, we may not be able to fully protect the licensed intellectual property rights or maintain those licenses. Future licensors could retain the right to prosecute and defend the intellectual property rights licensed to us, in which case we would depend on the ability of our licensors to obtain, maintain and enforce intellectual property protection for the licensed intellectual property. These licensors may determine not to pursue litigation against other companies or may pursue such litigation less aggressively than we would. Further, entering into such license agreements could impose various diligence, commercialization, royalty or other obligations on us. Future licensors may allege that we have breached our license agreement with them, and accordingly seek to terminate our license and/or seek damages arising out of the alleged breach, which could adversely affect our competitive business position and harm our business prospects.

Our insurance policies are expensive and protect us only from some business risks, which leaves us exposed to significant uninsured liabilities.

We do not carry insurance for all categories of risk that our business may encounter. Although we carry product liability insurance in the United States, we can give no assurance that such coverage will be available or adequate to satisfy any claims. Product liability insurance is expensive, subject to significant deductibles and exclusions, and may not be available on acceptable terms, if at all. If we are unable to obtain or maintain insurance at an acceptable cost or on acceptable terms with adequate coverage or otherwise protect against potential product liability claims, we could be exposed to significant liabilities. A product liability claim, recall or other claim with respect to uninsured liabilities or for amounts in excess of insured liabilities could have a material adverse effect on our business, financial condition and results of operations. Defending a suit, regardless of its merit or eventual outcome, could be costly, could divert management's attention from our business and might result in adverse publicity, which could result in reduced acceptance of our products in the market, product recalls or market withdrawals.

We also expect that operating as a public company will make it more difficult and more expensive for us to obtain director and officer liability insurance, and we may be required to accept reduced policy limits and coverage or incur substantially higher costs to obtain the same or similar coverage. As a result, it may be more difficult for us to attract and retain qualified people to serve on our board of directors, our board committees or as executive officers. We do not know, however, if we will be able to maintain existing insurance with adequate levels of coverage. Any significant uninsured liability may require us to pay substantial amounts, which would negatively affect our business, financial condition and results of operations.

We depend on our senior management team and the loss of one or more key employees or an inability to attract and retain highly skilled employees will negatively affect our business, financial condition and results of operations.

Our success depends largely on the continued services of key members of our executive management team and others in key management positions. For example, the services of Paul Badawi, our Chief Executive Officer, Jesse Selnick, our Chief Financial Officer, Shawn O'Neil, our Chief Commercial Officer, and Sam Park, our Chief Operating Officer, are essential to driving adoption of our products, executing on our corporate strategy and ensuring the continued operations and integrity of financial reporting within our company. In addition, the services of our sales professionals are critical to driving the growth in sales of our products. Any of our employees may terminate their employment with us at any time. We currently maintain a key person life insurance policy on Mr. Badawi. If we lose one or more key employees, we may experience difficulties in competing effectively, developing our technologies and implementing our business strategy, which in turn would negatively affect our business.

In addition, our research and development programs, clinical and quality operations and sales efforts depend on our ability to attract and retain highly skilled engineers and sales professionals, as well as experienced regulatory, quality and clinical professionals. We may not be able to attract or retain qualified professionals in

the future due to the competition for qualified personnel. We have from time to time experienced, and we expect to continue to experience, difficulty in hiring and retaining employees with appropriate qualifications. Many of the companies with which we compete for experienced personnel have greater resources than we do. If we hire employees from competitors or other companies, their former employers may attempt to assert that these employees or we have breached legal obligations, resulting in a diversion of our time and resources and, potentially, damages.

In addition, job candidates and existing employees often consider the value of the stock awards they receive in connection with their employment. If the perceived benefits of our stock awards decline, either because of unfavorable fluctuations or declines in our stock price or for other reasons, it may harm our ability to recruit and retain highly skilled employees. Many of our employees have become or will soon become vested in a substantial amount of our common stock or a number of common stock options. Our employees may be more likely to leave us if the shares they own have significantly appreciated in value relative to the original purchase prices of the shares, or if the exercise prices of the options that they hold are significantly below the market price of our common stock, particularly after the expiration of the lock-up agreements described herein. Our future success also depends on our ability to continue to attract and retain additional executive officers and other key employees. If we fail to attract new personnel or fail to retain and motivate our current personnel, it will negatively affect our business, financial condition and results of operations.

The use, misuse or off-label use of our products may result in injuries that lead to product liability suits, which could be expensive, divert management's attention and harm our reputation and business. We may not be able to maintain adequate product liability insurance.

Our products are cleared or authorized by the FDA to be marketed for certain specific intended uses. If physicians elect to use our products in manners outside of the intended uses that have been cleared or authorized by the FDA, then such off-label use of our products may result in outcomes and adverse events that are sight threatening, necessitate medical or surgical intervention to preclude permanent impairment of vision, or result in a permanent impairment of vision, potentially leading to product liability claims. However, we cannot prevent a physician from using our products for off-label applications or using components or products that are not our products when performing procedures with our products. There may be increased risk of injury to patients if physicians attempt to use our devices off-label. In addition, we cannot guarantee that physicians are trained by us or their peers prior to utilizing our products. Complications resulting from the use of our products off-label or use by physicians who have not been trained appropriately, or at all, may not effectively treat the applicable conditions and may expose us to product liability claims or litigation by our customers or their patients and may harm our reputation.

In addition, if our products are defectively designed, manufactured or labeled, contain defective components or are misused, we may become subject to costly litigation initiated by hospitals, surgical centers, ECPs or patients. Product liability claims are especially prevalent in the medical device industry and could harm our reputation, divert management's attention from our core business, attract negative publicity, be expensive to defend and may result in sizable damage awards against us. Although we maintain product liability insurance, we may not have sufficient insurance coverage for future product liability claims. We are not able to obtain insurance in amounts or scope sufficient to provide us with adequate coverage against all potential liabilities. Any product liability claims brought against us, with or without merit, could increase our product liability insurance rates or prevent us from securing continuing coverage, harm our reputation, significantly increase our expenses, and reduce product sales. Product liability claims could cause us to incur significant legal fees and deductibles and claims in excess of our insurance coverage would be paid out of cash reserves, harming our financial condition and operating results.

We may need additional funding beyond the net proceeds of this offering to finance our planned operations, and may not be able to raise capital on acceptable terms, if at all, which could force us to delay, reduce or eliminate our product development programs and commercialization efforts.

Since inception, we have incurred significant net losses and expect to continue to incur net losses for the foreseeable future. Since our inception, our operations have been financed primarily by net proceeds from the sale of our convertible preferred stock in private placements, indebtedness and, to a lesser extent, product revenue from sales of our products. As of March 31, 2021, we had $48.3 million in cash and cash equivalents, and an accumulated deficit of $102.3 million. Based on our current planned operations, we expect that our cash and cash equivalents and additional borrowings available under our credit facility will enable us to fund our operations for at least the next twelve months. We have based these estimates on assumptions that may prove to be wrong, and we could utilize our available capital resources sooner than we expect.

We expect to continue to invest in clinical trials or investigations that are designed to provide clinical evidence of the safety and efficacy of our products, the growth of our sales and marketing organization, and research and development of product improvements and future products. Moreover, we expect to incur additional expenses associated with operating as a public company, including legal, accounting, insurance, exchange listing and SEC compliance, investor relations and other expenses. Because of these and other factors, we expect to continue to incur net losses and negative cash flows from operations for the foreseeable future. Our future funding requirements will depend on many factors, including:

- The degree and rate of market acceptance of our products and procedures;
- Whether we acquire third-party companies, products or technologies;
- Repayment of debt;
- The scope and timing of investment in our sales force and expansion of our commercial organization;
- The impact on our business from the ongoing COVID-19 pandemic, or any other pandemic, epidemic or outbreak of an infectious disease;
- The scope, rate of progress and cost of our current or future clinical trials or investigations and registries;
- The cost of our research and development activities;
- The cost and timing of additional regulatory clearances, certifications or approvals;
- The costs associated with any product recall that may occur;
- The costs of attaining, defending, protecting and enforcing our intellectual property rights;
- The terms and timing of any other collaborative, licensing and other arrangements that we may establish;
- The emergence of competing technologies or other adverse market developments; and
- The rate at which we expand internationally.

We may seek to raise additional capital through equity offerings or debt financings and such additional financing may not be available to us on acceptable terms, or at all. In addition, any additional equity or debt financing that we raise may contain terms that are not favorable to us or our stockholders. For example, if we raise funds by issuing equity or equity-linked securities, the issuance of such securities could result in dilution to our stockholders. Any equity securities issued may also provide for rights, preferences or privileges senior to those of holders of our common stock. In addition, the issuance of additional equity securities by us, or the possibility of such issuance, may cause the market price of our common stock to decline, and the price per share at which we sell additional shares of our common stock, or securities convertible into or exercisable or exchangeable for shares of our common stock, in future transactions may be higher or lower than the price per share paid by investors in this offering.

In addition, the terms of debt securities issued or borrowings could impose significant restrictions on our operations including restrictive covenants, such as limitations on our ability to incur additional debt or issue additional equity, limitations on our ability to pay dividends, limitations on our ability to acquire or license intellectual property rights, and other operating restrictions that could adversely affect our ability to conduct our business. In the event that we enter into collaborations or licensing arrangements to raise capital, we may be required to accept unfavorable terms, such as relinquishment or licensing of certain technologies or products that we otherwise would seek to develop or commercialize ourselves, or reserve for future potential arrangements when we might otherwise be able to achieve more favorable terms. In addition, we may be forced to work with a partner on one or more of our products or market development programs, which could lower the economic value of those programs to us.

If we are unable to obtain adequate financing on terms satisfactory to us when we require it, we may terminate or delay the development of one or more of our products, delay clinical trials or investigations necessary to market our products, or delay establishment of sales and marketing capabilities or other activities necessary to commercialize our products. If this were to occur, our ability to grow and support our business and to respond to market challenges could be significantly limited, which could have a material adverse effect on our business, financial condition and results of operations.

We have a significant amount of debt, which may affect our ability to operate our business and secure additional financing in the future.

In November 2020, we entered into a new loan and security agreement with MidCap Financial Services, which provides for a term loan facility and revolving line of credit, or the 2020 MidCap Credit Facility. The 2020 MidCap Credit Facility consists of a term loan of up to $35.0 million, or the 2020 Term Loan, which has a stated floating interest rate equal to reserve-adjusted LIBOR plus 7.00%, and a revolving line of credit of $5 million, or the 2020 Revolver, with a stated floating interest rate equal to reserve-adjusted LIBOR plus 4.50%, a 0.5% unused line fee and a 0.5% collateral management fee. As of December 31, 2020 and March 31, 2021, we had an aggregate of approximately $35.0 million in principal borrowings outstanding under the 2020 MidCap Credit Facility, excluding debt discounts. We must make interest payments under the 2020 MidCap Credit Facility, which has diverted and will continue to divert resources from other activities. We incurred an aggregate interest expense of $1.9 million and $2.4 million in the years ended December 31, 2019 and December 31, 2020, respectively, and $1.1 million and $0.6 million in the three months ended March 31, 2020 and March 31, 2021.

Our obligations under the 2020 MidCap Credit Facility are collateralized by a security interest in substantially all of our assets, and we are subject to customary financial and operating covenants limiting our ability to, among other things, relocate or dispose of assets, undergo a change in control, merge or consolidate, enter into certain transactions with affiliates, make acquisitions, incur debt, pay dividends, grant liens, store certain amounts of inventory or equipment with third parties and make investments, in each case subject to certain exceptions. We are also subject to minimum trailing revenue targets that are evaluated on a monthly basis. The covenants related to the 2020 MidCap Credit Facility, as well as any future financing agreements into which we may enter, may restrict our ability to finance our operations and engage in, expand or otherwise pursue our business activities and strategies.

While we have not previously breached and are not currently in breach of these or any other covenants contained in the 2020 MidCap Credit Facility, there can be no guarantee that we will not breach these covenants in the future. Our ability to comply with these covenants may be affected by events beyond our control, and future breaches of any of these covenants could result in a default under the 2020 MidCap Credit Facility. If not waived, future defaults could cause all of the outstanding indebtedness under the 2020 MidCap Credit Facility to become immediately due and payable and terminate commitments to extend further credit and foreclose on the collateral granted to it to collateralize such indebtedness. If we do not have or are unable to generate sufficient cash available to repay our debt obligations when they become due and payable, either upon maturity or in the event of a default, our assets could be foreclosed upon and we may not be able to obtain additional debt or equity

financing on favorable terms, if at all, which may negatively impact our ability to operate and continue our business as a going concern.

In order to service this indebtedness and any additional indebtedness we may incur in the future, we need to generate cash from our operating activities. Our ability to generate cash is subject, in part, to our ability to successfully execute our business strategy, as well as general economic, financial, competitive, regulatory and other factors beyond our control. We cannot assure you that our business will be able to generate sufficient cash flow from operations or that future borrowings or other financings will be available to us in an amount sufficient to enable us to service our indebtedness and fund our other liquidity needs. To the extent we are required to use cash from operations or the proceeds of any future financing to service our indebtedness instead of funding working capital, capital expenditures or other general corporate purposes, we will be less able to plan for, or react to, changes in our business, industry and in the economy generally. This may place us at a competitive disadvantage compared to our competitors that have less indebtedness or greater financial resources to service their debt.

Uncertainty relating to the LIBOR calculation process and potential phasing out of LIBOR after 2021 may adversely affect the market value of our current or future debt obligations.

The London Inter-bank Offered Rate, or LIBOR, and certain other interest "benchmarks" may be subject to regulatory guidance and/or reform that could cause interest rates under our current or future debt agreements to perform differently than in the past or cause other unanticipated consequences. The United Kingdom's Financial Conduct Authority, which regulates LIBOR, has announced that it intends to stop encouraging or requiring banks to submit LIBOR rates after 2021, and it is unclear if LIBOR will cease to exist or if new methods of calculating LIBOR will evolve. If LIBOR ceases to exist or if the methods of calculating LIBOR change from their current form, there may be adverse impacts on the financial markets generally and interest rates on borrowings under our 2020 Term Loan and 2020 Revolver may be adversely affected.

We may acquire other companies or technologies, which could fail to result in a commercial product or net sales, divert our management's attention, result in additional dilution to our stockholders and otherwise disrupt our business and adversely affect our results of operations.

Although we currently have no agreements or commitments to complete any such transactions and are not involved in negotiations to do so, we may in the future seek to acquire or invest in businesses, applications or technologies that we believe could complement or expand our portfolio, enhance our technical capabilities or otherwise offer growth opportunities. However, we cannot assure you that we would be able to successfully complete any acquisition we choose to pursue, or that we would be able to successfully integrate any acquired business, product or technology in a cost-effective and non-disruptive manner. The pursuit of potential
acquisitions may divert the attention of management and cause us to incur various costs and expenses in identifying, investigating and pursuing suitable acquisitions, whether or not they are consummated. We may not be able to identify desirable acquisition targets or be successful in entering into an agreement with any particular target or obtain the expected benefits of any acquisition or investment.

To date, the growth of our operations has been largely organic, and we have limited experience in acquiring other businesses or technologies. Furthermore, the anticipated benefit of any strategic alliance, joint venture or acquisition may not materialize, or such strategic alliance, joint venture or acquisition may be prohibited. In November 2020, we amended our credit facilities and entered into the 2020 Term Loan and 2020 Revolver. The 2020 Term Loan and the 2020 Revolver restrict our ability to pursue certain mergers, acquisitions, amalgamations or consolidations that we may believe to be in our best interest.

We may not be able to successfully integrate any acquired personnel, operations and technologies, or effectively manage the combined business following an acquisition. Acquisitions could also result in dilutive issuances of equity securities, the use of our available cash, or the incurrence of debt, which could harm our

operating results. In addition, if an acquired business fails to meet our expectations, our business, financial condition and results of operations may be negatively affected. Additional risks we may face in connection with acquisitions include:

- Diversion of management time and focus from operating our business to addressing acquisition integration challenges;
- Coordination of research and development and sales and marketing functions;
- Integration of product and service offerings;
- Retention of key employees from the acquired company;
- Changes in relationships with strategic partners as a result of product acquisitions or strategic positioning resulting from the acquisition;
- Cultural challenges associated with integrating employees from the acquired company into our organization;
- Integration of the acquired company's accounting, management information, human resources and other administrative systems;
- The need to implement or improve controls, procedures, and policies at a business that prior to the acquisition may have lacked sufficiently effective controls, procedures and policies;
- Financial reporting, revenue recognition or other financial or control deficiencies of the acquired company that we don't adequately address and that cause our reported results to be incorrect;
- Liability for activities of the acquired company before the acquisition, including intellectual property infringement claims, misappropriation or other violation, violations of laws, commercial disputes, tax liabilities and other known and unknown liabilities;
- Unanticipated write-offs or charges; and
- Litigation or other claims in connection with the acquired company, including claims from terminated employees, customers, former stockholders or other third parties.

Our failure to address these risks or other problems encountered in connection with acquisitions and investments could cause us to fail to realize the anticipated benefits of these acquisitions or investments, cause us to incur unanticipated liabilities, and harm our business generally.

Taxing authorities may successfully assert that we should have collected or in the future should collect sales and use, gross receipts, value added or similar taxes and may successfully impose additional obligations on us.

One or more jurisdictions may seek to impose additional tax collection obligations on us, including for past sales. A successful assertion by a state, country, or other jurisdiction that we should have been or should be collecting additional sales, use, or other taxes on our services could, among other things, result in substantial tax liabilities for past sales, create significant administrative burdens for us, discourage users from purchasing our products, or otherwise harm our business, results of operations and financial condition.

Our ability to utilize our net operating loss carryforwards, disallowed interest expense carryforwards and research and development carryforwards may be limited.

As of December 31, 2020, we had U.S. federal and state net operating loss carryforwards, or NOLs, of $85.3 million and $83.5 million, respectively, and U.S. federal and state research and development credit carryforwards of $0.8 million and $0.9 million, respectively. In general, under Sections 382 and 383 of the Internal Revenue Code of 1986, as amended, or the Code, a corporation that undergoes an "ownership change," generally defined as a greater than 50 percentage point change by value in its equity ownership over a rolling

three-year period, is subject to limitations on its ability to utilize its pre-change net operating losses, or NOLs, and its research and development credit carryforwards to offset future taxable income. Our existing NOLs and research and development credit carryforwards could be subject to limitation under Sections 382 and 383 of the Code if we have undergone, or undergo in the future, any ownership changes for purposes of these provisions. If our NOLs and research and development credit carryforwards are subject to these limitations, we may not be able to utilize a material portion of the NOLs and research and development credit carryforwards, even if we attain profitability. In addition, our ability to deduct net interest expense may be limited if we have insufficient taxable income for the year during which the interest is incurred, and any carryovers of such disallowed interest would be subject to the limitation rules similar to those applicable to NOLs and other attributes.

In addition, the tax benefit of NOLs, temporary differences and credit carryforwards are required to be recorded as an asset to the extent that we assess that realization is more likely than not. We believe that recognition of the deferred tax asset arising from these future tax benefits is not likely to be realized and, accordingly, have provided a valuation allowance of $14.4 million and $24.5 million for the years ended December 31, 2019 and 2020, respectively.

The impact of the Tax Cuts and Jobs Act and the CARES Act on our financial results is not entirely clear and could differ materially from the financial statements provided herein.

On December 22, 2017, the United States enacted the Tax Cuts and Jobs Act, or the TCJA, that significantly reformed the Code. The TCJA, among other things, contained significant changes to corporate taxation, including reduction of the corporate tax rate from a top marginal rate of 35% to a flat rate of 21%; limitation of the tax deduction for interest expense; limitation (as modified by the CARES Act as discussed below) of the deduction for NOLs and elimination of NOL carrybacks, in each case, for losses arising in taxable years beginning after December 31, 2017 (though any such tax losses may be carried forward indefinitely); and modifying or repealing many business deductions and credits.

On March 27, 2020, President Trump signed the Coronavirus Aid, Relief, and Economic Security Act (the CARES Act), aimed at helping American workers and businesses impacted by the COVID-19 pandemic. The CARES Act, among other things, temporarily removes the current-law taxable income limitation established under the Tax Cuts and Jobs Act of 2017, and permits NOL carryovers and carrybacks to offset 100% of taxable income for taxable years beginning before 2021. In addition, the CARES Act allows NOLs incurred in 2018, 2019 and 2020 to be carried back to each of the five preceding taxable years. The NOL provisions of the CARES Act are not expected to result in a cash benefit to the Company nor did they impact our NOL balance upon enactment.

The financial statements contained herein reflect the effects of the TCJA and the CARES Act based on current guidance. However, there remain uncertainties and ambiguities in the application of certain provisions of the TCJA and the CARES Act, and, as a result, we made certain judgments and assumptions in the interpretation thereof. The U.S. Treasury Department and the Internal Revenue Service may issue further guidance on how the provisions of the TCJA and the CARES Act will be applied or otherwise administered that differs from our current interpretation. In addition, the TCJA and the CARES Act could be subject to potential amendments and technical corrections, any of which could materially lessen or increase certain adverse impacts of the legislation on us.

The planned international expansion of our business will expose us to market, regulatory, political, operational, financial and economic risks associated with doing business outside of the United States.

We intend to increase our international presence, including securing additional regulatory approvals in targeted countries outside the United States. This strategy may include establishing and maintaining physician outreach and education capabilities outside of the United States and expanding our relationships with international payors. Doing business internationally involves a number of risks, including:

- Difficulties in staffing and managing our international operations;
- Multiple, conflicting and changing laws and regulations such as tax laws, privacy laws, export and import restrictions, employment laws, regulatory requirements and other governmental approvals, permits and licenses;
- Reduced or varied protection for intellectual property rights in some countries;
- Obtaining regulatory clearance, certification or approval where required for our products in various countries;
- Requirements to maintain data and the processing of that data on servers located within such countries;
- Complexities associated with managing multiple payor reimbursement regimes, government payors or patient self-pay systems;
- Limits on our ability to penetrate international markets if we are required to manufacture our products locally;
- Financial risks, such as longer payment cycles, difficulty collecting accounts receivable, foreign tax laws and complexities of foreign value-added tax systems, the effect of local and regional financial pressures on demand and payment for our products and exposure to foreign currency exchange rate fluctuations;
- Restrictions on the site-of-service for use of our products and the economics related thereto for physicians, providers and payors;
- Changes in foreign currency exchange rates and costs associated with hedging against such changes;
- Natural disasters, political and economic instability, including wars, terrorism, political unrest, outbreak of disease, boycotts, curtailment of trade and other market restrictions; and
- Regulatory and compliance risks that relate to maintaining accurate information and control over activities subject to regulation under the United States Foreign Corrupt Practices Act of 1977, or FCPA, U.K. Bribery Act of 2010 and comparable laws and regulations in other countries.

Any of these factors could significantly harm our future international expansion and operations and, consequently, have a material adverse effect on our business, financial condition and results of operations.

We could be adversely affected by violations of the FCPA and similar worldwide anti-bribery laws and any investigation, and the outcome of any investigation, by government agencies of possible violations by us of the FCPA could have a material adverse effect on our business.

The FCPA and similar worldwide anti-bribery laws prohibit companies and their intermediaries from corruptly providing any benefits to government officials for the purpose of obtaining or retaining business. The U.S. Departments of Justice, Commerce, State and Treasury and other federal agencies and authorities have a broad range of civil and criminal penalties they may seek to impose against corporations and individuals for violations of economic sanctions laws, export control laws, the FCPA, and other federal statutes and regulations, including those established by the Office of Foreign Assets Control, or OFAC. In addition, the U.K. Bribery Act of 2010, or the Bribery Act, prohibits both domestic and international bribery, as well as bribery across both

private and public sectors. An organization that fails to prevent bribery by anyone associated with the organization can be charged under the Bribery Act unless the organization can establish the defense of having implemented adequate procedures to prevent bribery. Under these laws and regulations, as well as other anti-corruption laws, anti-money laundering laws, export control laws, customs laws, sanctions laws and other laws governing our operations, various government agencies may require export licenses, may seek to impose modifications to business practices, including cessation of business activities in sanctioned countries or with sanctioned persons or entities and modifications to compliance programs, which may increase compliance costs, and may subject us to fines, penalties and other sanctions.

We have commenced commercial sales of OMNI in certain European countries through a combination of direct sales personnel and independent distributors, and we are also in the process of conducting an EU-based clinical investigation. Further, a portion of our business with respect to our manufacturing is conducted outside of the United States. We expect our international activities to increase in the future. Though we maintain policies, internal controls and other measures reasonably designed to promote compliance with applicable anticorruption and anti-bribery laws and regulations, and certain safeguards designed to ensure compliance with U.S. trade control laws, our employees or agents may nevertheless engage in improper conduct for which we might be held responsible. Any violations of these anti-corruption or trade controls laws, or even allegations of such violations, can lead to an investigation and/or enforcement action, which could disrupt our operations, involve significant management distraction, and lead to significant costs and expenses, including legal fees. If we, or our employees or agents acting on our behalf, are found to have engaged in practices that violate these laws and regulations, we could suffer severe fines and penalties, profit disgorgement, injunctions on future conduct, securities litigation, bans on transacting government business, delisting from securities exchanges and other consequences that may have a material adverse effect on our business, financial condition and results of operations. In addition, our reputation, our net sales or our stock price could be adversely affected if we become the subject of any negative publicity related to actual or potential violations of anti-corruption, anti-bribery or trade control laws and regulations.

Changes in government trade policies, including the imposition of tariffs and export restrictions, could have a negative impact on our manufacturing process, which may materially and adversely affect our sales and results of operations.

Certain public officials, including members of the current U.S. Congress, have made public statements indicating the possibility of significant changes in U.S. trade policy and have taken certain actions that may impact U.S. trade policy, including imposing new or increased tariffs on certain goods imported into the United States during the Trump administration. For example, the United States and China have imposed a number of tariffs and other restrictions on items imported or exported between the United States and China, and have proposed to impose a number of additional tariffs. We cannot predict what actions may ultimately be taken with respect to tariffs or trade relations between the United States and China or other countries, what products may be subject to such actions, or what actions may be taken by the other countries in retaliation.

Since certain of our critical product and product component manufacturers are located outside the United States, such changes, if adopted, could have a negative impact on our business and make our products more expensive and less competitive in domestic markets. Furthermore, changes in U.S. trade policy could trigger retaliatory actions by affected countries, which could impose restrictions on our ability to do business in or with affected countries or prohibit, reduce or discourage purchases of our products by foreign customers. Changes in, and responses to, U.S. trade policy could reduce the competitiveness of our products and cause our sales to decline, which could materially and adversely impact our business, financial condition and results of operations.

The United Kingdom's withdrawal from the European Union may have a negative effect on global economic conditions, financial markets and our business.

Following a national referendum and enactment of legislation by the government of the United Kingdom, the United Kingdom formally withdrew from the European Union and ratified a trade and cooperation agreement

governing its future relationship with the European Union. The agreement, which is being applied provisionally from January 1, 2021 until it is ratified by the European Parliament and the Council of the European Union, addresses trade, economic arrangements, law enforcement, judicial cooperation and a governance framework including procedures for dispute resolution, among other things. Because the agreement merely sets forth a framework in many respects and will require complex additional bilateral negotiations between the United Kingdom and the European Union as both parties continue to work on the rules for implementation, significant political and economic uncertainty remains about how the precise terms of the relationship between the parties will differ from the terms before withdrawal.

Following the end of the "Brexit" Transition Period, from January 1, 2021 onwards, the Medicines and Healthcare Products Regulatory Agency, or the MHRA, will be responsible for the UK medical device market. The new regulations will require medical devices to be registered with the MHRA (but manufacturers will be given a grace period of four to 12 months to comply with the new registration process). Manufacturers based outside the UK will need to appoint a UK Responsible Person to register devices with the MHRA in line with the grace periods. By July 1, 2023, in the UK (England, Scotland, and Wales), all medical devices will require a UKCA (UK Conformity Assessed) mark but CE marks issued by EU Notified Bodies will remain valid until this period. However, UKCA marking alone will not be recognized in the EU. The rules for placing medical devices on the Northern Ireland market will differ from those in the UK. These modifications may have an effect on the way we conduct our business.

These developments, or the perception that any related developments could occur, have had and may continue to have a material adverse effect on global economic conditions and financial markets, and could significantly reduce global market liquidity and restrict the ability of key market participants to operate in certain financial markets. Asset valuations, currency exchange rates and credit ratings have been and may continue to be subject to increased market volatility. Lack of clarity about future United Kingdom laws and regulations as the United Kingdom determines which European Union laws to replace or replicate could depress economic activity and investment in healthcare technology products.

The withdrawal has also given rise to calls for the governments of other EU member states to consider withdrawal. These developments, or the perception that any of them could occur, have had and may continue to have a material adverse effect on global economic conditions and the stability of global financial markets, and may significantly reduce global market liquidity and restrict the ability of key market participants to operate in certain financial markets. Any of these factors could depress economic activity and restrict our access to capital, which could have a material adverse effect on our business, financial condition and results of operations and reduce the price of our common stock. Any of these factors could have a material adverse effect on our business, financial condition and results of operations.

Security breaches, loss of data and other disruptions could compromise sensitive information related to our business or our customer's patients, or prevent us from accessing critical information and expose us to liability, which could adversely affect our business and our reputation.

In the ordinary course of our business, we may become exposed to, or collect and store, sensitive data, including procedure-based information and legally-protected health information, credit card, and other financial information, insurance information, and other potentially personally identifiable information. We also store sensitive intellectual property and other proprietary business information. We are taking measures to implement policies and procedures designed to ensure compliance with applicable data security and privacy-related laws and regulations and protect sensitive information from unauthorized access or disclosure. However, our information technology, or IT, and infrastructure, and that of our third-party billing and collections provider and other technology partners and providers, may be vulnerable to cyber-attacks by hackers or viruses or breaches due to employee error, malfeasance or other disruptions. We rely extensively on IT systems, networks and services, including internet sites, data hosting and processing facilities and tools, physical security systems and other hardware, software and technical applications and platforms, some of which are managed, hosted, provided

and/or used by third parties or their vendors, to assist in conducting our business. A significant breakdown, invasion, corruption, destruction or interruption of critical information technology systems or infrastructure, by our workforce, others with authorized access to our systems or unauthorized persons could negatively impact operations. The ever-increasing use and evolution of technology, including cloud-based computing, creates opportunities for the unintentional dissemination or intentional destruction of confidential information stored in our or our third-party providers' systems, portable media or storage devices. For example, companies have experienced an increase in phishing and social engineering attacks from third parties in connection with the COVID-19 pandemic. We could also experience a business interruption, theft of confidential information or reputational damage from industrial espionage attacks, malware or other cyber-attacks, which may compromise our system infrastructure or lead to data leakage, either internally or at our third-party providers. Although the aggregate impact on our operations and financial condition has not been material to date, we have been the target of events of this nature and expect them to continue as cybersecurity threats have been rapidly evolving in sophistication and becoming more prevalent in the industry. We are investing in protections and monitoring practices of our data and IT to reduce these risks and continue to monitor our systems on an ongoing basis for any current or potential threats. There can be no assurance, however, that our efforts will prevent breakdowns or breaches to our or our third-party providers' databases or systems, and such breakdowns or breaches could adversely affect our business, financial condition and reputation. We also intend to mitigate the risks related to these risks by purchasing cybersecurity insurance. However, such insurance, if purchased, will not necessarily cover all costs and impacts related to these risks.

Risks Related to Our Intellectual Property

Our success will depend on our, and any of our future licensors', ability to obtain, maintain and protect our intellectual property rights.

Our commercial success will depend in part on our, and any of our future licensors', success in obtaining and maintaining issued patents, trademarks and other intellectual property rights in the United States and elsewhere and protecting our proprietary technology. If we, or any of our future licensors, do not adequately protect our intellectual property and proprietary technology, competitors may be able to use our technologies or the goodwill we have acquired in the marketplace and erode or negate any competitive advantage we may have, which could harm our business and ability to achieve profitability.

We rely on a combination of contractual provisions, confidentiality procedures and patent, copyright, trademark, trade secret and other intellectual property laws to protect the proprietary aspects of our products, brands, technologies and data. These legal measures afford only limited protection, and competitors or others may gain access to or use our intellectual property and proprietary information. Our success will depend, in part, on preserving our trade secrets, maintaining the security of our data and know-how and obtaining and maintaining other intellectual property rights. We may not be able to obtain or maintain intellectual property or other proprietary rights necessary to our business or in a form that provides us with a competitive advantage.

In addition, despite our efforts to enter into confidentiality agreements with our employees, consultants, suppliers, clients and other vendors who have access to information that we regard as proprietary, our trade secrets, data, know-how and other proprietary information and technology could be subject to unauthorized access, use, misappropriation, or disclosure to unauthorized parties, and could otherwise become known or be independently discovered by third parties. Our intellectual property, including trademarks, could be challenged, invalidated, infringed, misappropriated, violated and circumvented by third parties, and our trademarks could also be diluted, declared generic or found to be infringing on other marks. If any of the foregoing occurs, we could be forced to re-brand our products, resulting in loss of brand recognition and requiring us to devote resources to advertising and marketing new brands and causing us to suffer other competitive harm. Third parties may also adopt trademarks similar to ours, which could harm our brand identity and lead to market confusion.

Failure to obtain and maintain intellectual property rights necessary to our business and failure to protect, monitor and control the use of our intellectual property rights could negatively impact our ability to compete and

cause us to incur significant expenses. The intellectual property laws and other statutory and contractual arrangements in the United States and other jurisdictions we depend upon may not provide sufficient protection in the future to prevent the infringement, use, violation or misappropriation of our patents, trademarks, data, technology and other intellectual property and services, and may not provide an adequate remedy if our intellectual property rights are infringed, misappropriated or otherwise violated.

Our business relies, in part, on our ability to obtain, maintain, expand, enforce, and defend the scope of our intellectual property portfolio or other proprietary rights, including making any payments required in connection with the licensing, filing, defense and enforcement of any patents or other intellectual property rights. The process of applying for and obtaining a patent is expensive, time consuming and complex, and we may not be able to prepare, file, prosecute, maintain, enforce or license all necessary or desirable patent applications and patents at a reasonable cost, in a timely manner, or in all jurisdictions where protection may be commercially advantageous, or we may not be able to protect our proprietary rights at all. It is also possible that we may fail to identify patentable aspects of inventions made in the course of development and commercialization activities before it is too late to obtain patent protection on them. Although we enter into non-disclosure and confidentiality agreements with parties who have access to patentable aspects of our research and development output, such as our employees, corporate collaborators, outside scientific collaborators, suppliers, consultants, advisors and other third parties, any of these parties may breach the agreements and disclose such output before a patent application is filed, thereby jeopardizing our ability to seek patent protection. Furthermore, publications of discoveries in the scientific literature often lag behind the actual discoveries, and patent applications in the United States and other jurisdictions are typically not published until 18 months after filing, or in some cases not at all. Therefore, we cannot be certain that we were the first to make the inventions claimed in any of our patents or pending patent applications, or that we were the first to file for patent protection of such inventions. Moreover, depending on the terms of any future in-licenses to which we may become a party, we may not have the right to control the preparation, filing and prosecution of patent applications, or to maintain the patents, covering technology in-licensed from third parties. Therefore, these patents and patent applications may not be prosecuted, maintained, and/or enforced in a manner consistent with the best interests of our business. Despite our efforts to protect our proprietary rights, unauthorized parties may be able to obtain and use information that we regard as proprietary. Additionally, if there are material defects in the form, preparation or prosecution of our patents or patent applications, such patents or applications may be invalid and unenforceable. Any of these outcomes could impair our ability to prevent competition from third parties, which may have an adverse impact on our business.

The patent positions of medical device companies may involve complex legal and factual questions and have been the subject of much litigation in recent years, and therefore, the scope, validity and enforceability of any patent claims that we have or may obtain cannot be predicted with certainty. We cannot offer any assurances about which of our patent applications will issue, the breadth of any resulting patent or whether any of the issued patents will be found to be infringed, invalid or unenforceable or will be threatened or challenged by third parties. The coverage claimed in a patent application can be significantly reduced before the patent is issued, and its scope can be reinterpreted after issuance. We cannot offer any assurances that the breadth of our granted patents will be sufficient to stop a competitor from developing and commercializing a product in a non-infringing manner that would be competitive with one or more of our products, or otherwise provide us with any competitive advantage. Furthermore, any successful challenge to these patents or any other patents owned by or licensed to us after patent issuance could deprive us of rights necessary for our commercial success.

Patents have a limited lifespan. In the United States, the natural expiration of a utility patent is generally 20 years. Further, if we encounter delays in any future regulatory approvals, the period of time during which we could market a product under patent protection could be reduced, and, given the amount of time required for the development, testing and regulatory review of planned or future products, patents protecting such products might expire before or shortly after such products are commercialized. As a result, our intellectual property may not provide us with sufficient rights to exclude others from commercializing products similar or identical to ours.

Though an issued patent is presumed valid and enforceable, its issuance is not conclusive as to its validity or its enforceability and it may not provide us with adequate proprietary protection or competitive advantages

against competitors with similar products. Patents, if issued, may be challenged, deemed unenforceable, invalidated, narrowed or circumvented. Proceedings challenging our patents or patent applications could result in either loss of the patent, or denial of the patent application or loss or reduction in the scope of one or more of the claims of the patent or patent application. Any successful challenge to our patents and patent applications could deprive us of exclusive rights necessary for our commercial success. In addition, defending such challenges in such proceedings may be costly. Thus, any patents that we may own may not provide the anticipated level of, or any, protection against competitors. Furthermore, an adverse decision may result in a third party receiving a patent right sought by us, which in turn could affect our ability to commercialize our products. Competitors could purchase our products and attempt to replicate or reverse engineer some or all of the competitive advantages we derive from our development efforts, willfully infringe, misappropriate or otherwise violate our intellectual property rights, design around our patents, or develop and obtain patent protection for more effective technologies, designs or methods. We may be unable to prevent the unauthorized disclosure or use of our technical knowledge or trade secrets by consultants, suppliers, vendors, former employees and current employees. Further, the laws of some foreign countries do not protect our proprietary rights to the same extent as the laws of the United States, and we may encounter significant problems in protecting our proprietary rights in these countries.

In addition, proceedings to enforce or defend our patents could put our patents at risk of being invalidated, held unenforceable or interpreted narrowly. Such proceedings could also provoke third parties to assert claims against us, including that some or all of the claims in one or more of our patents are invalid or otherwise unenforceable. If any of our patents covering our products are invalidated, found unenforceable or interpreted narrowly, or if a court found that valid, enforceable patents held by third parties covered one or more of our products, our competitive position could be harmed or we could be required to incur significant expenses to enforce or defend our rights.

Some of our patents and patent applications may in the future be co-owned with third parties. If we are unable to obtain an exclusive license to any such third-party co-owners' interest in such patents or patent applications, such co-owners may be able to license their rights to other third parties, including our competitors, and our competitors could market competing products and technology. In addition, we may need the cooperation of any such co-owners of our patents in order to enforce such patents against third parties, and such cooperation may not be provided to us.

The degree of future protection for our proprietary rights is uncertain, and we cannot ensure that:

- Any of our patents, or any of our pending patent applications, if issued, will include claims having a scope sufficient to protect our products;
- Any of our pending patent applications will issue as patents;
- We will be able to successfully commercialize our products on a substantial scale, if approved, before our relevant patents we may have expire;
- We were the first to make the inventions covered by each of our patents and pending patent applications;
- We were the first to file patent applications for these inventions;
- Others will not develop similar or alternative technologies that do not infringe our patents;
- Any of our challenged patents will be found to ultimately be valid and enforceable;
- Any patents issued to us will provide a basis for an exclusive market for our commercially viable products, will provide us with any competitive advantages or will not be challenged by third parties;
- We will develop additional proprietary technologies or products that are separately patentable; or
- Our commercial activities or products will not infringe upon the patents of others.

Even if we are able to obtain patent protection, such patent protection may be of insufficient scope to achieve our business objectives. Issued patents may be challenged, narrowed, invalidated or circumvented. Decisions by courts and governmental patent agencies may introduce uncertainty in the enforceability or scope of patents owned by or that are in the future licensed to us. Furthermore, the issuance of a patent does not give us the right to practice the patented invention. Third parties may have blocking patents that could prevent us from marketing our own products and practicing our own technology. Alternatively, third parties may seek approval to market their own products similar to or otherwise competitive with our products. In these circumstances, we may need to defend and/or assert our patents, including by filing lawsuits alleging patent infringement. In any of these types of proceedings, a court or agency with jurisdiction may find our patents invalid, unenforceable or not infringed; competitors may then be able to market products and use manufacturing and analytical processes that are substantially similar to ours. Even if we have valid and enforceable patents, these patents still may not provide protection against competing products or processes sufficient to achieve our business objectives.

In addition, the U.S. federal government retains certain rights in inventions produced with its financial assistance under the Bayh-Dole Act. The federal government retains a "nonexclusive, nontransferable, irrevocable, paid-up license" for its own benefit. The Bayh-Dole Act also provides federal agencies with "march-in rights." March-in rights allow the government, in specified circumstances, to require the patent owner or successors in title to the patent to grant a "nonexclusive, partially exclusive, or exclusive license" to a "responsible applicant or applicants." If the patent owner refuses to do so, the government may grant the license to itself. We cannot be sure that if we acquired intellectual property in the future it will be free from government rights or regulations pursuant to the Bayh-Dole Act. If, in the future, we own, co-own or license in technology which is critical to our business that is developed in whole or in part with federal funds subject to the Bayh-Dole Act, our ability to enforce or otherwise exploit patents covering such technology may be adversely affected. Any of the foregoing could have a material adverse effect on our business, financial condition and results of operations.

Obtaining and maintaining patent protection depends on compliance with various procedural, document submission, fee payment and other requirements imposed by governmental patent agencies, and our patent protection could be reduced or eliminated for non-compliance with these requirements.

The U.S. Patent and Trademark Office, or USPTO, and various foreign governmental patent agencies require compliance with a number of procedural, documentary, fee payment and other similar provisions during the patent application process. In addition, periodic maintenance fees, renewal fees, annuity fees and various other government fees on issued patents often must be paid to the USPTO and foreign patent agencies over the lifetime of the patent and/or applications and any patent rights we may obtain in the future. While an unintentional lapse of a patent or patent application can in many cases be cured by payment of a late fee or by other means in accordance with the applicable rules, there are situations in which noncompliance can result in abandonment or lapse of the patent or patent application, resulting in partial or complete loss of patent rights in the relevant jurisdiction. Non-compliance events that could result in abandonment or lapse of a patent or patent application include, but are not limited to, failure to respond to official actions within prescribed time limits, non-payment of fees and failure to properly legalize and submit formal documents. If we fail to maintain the patents and patent applications covering our products, we may not be able to stop a competitor from marketing products that are the same as or similar to our products, which would have a material adverse effect on our business, financial condition and results of operations.

We may be unsuccessful in licensing or acquiring intellectual property from third parties that may be required to develop and commercialize our current and/or future products.

A third party may hold intellectual property rights, including patent rights that are important or necessary to the development and commercialization of our current and/or future products. It may be necessary for us to use the patented or proprietary technology of third parties to commercialize our current and/or future products, in which case we would be required to acquire or obtain a license to such intellectual property from these third

parties, and we may be unable to do so on commercially reasonable terms or at all. The licensing or acquisition of third-party intellectual property rights is a competitive area, and several more established companies may pursue strategies to license or acquire third-party intellectual property rights that we may consider attractive or necessary. These established companies may have a competitive advantage over us due to their size, capital resources and greater clinical development and commercialization capabilities. In addition, companies that perceive us to be a competitor may be unwilling to assign or license rights to us. We also may be unable to license or acquire third-party intellectual property rights on terms that would allow us to make an appropriate return on our investment or at all. If we are unable to successfully obtain rights to required third-party intellectual property rights, we may not be able to develop, manufacture or market a product or future product, which could have a material adverse effect on our business, financial condition and results of operations.

Changes in patent law could diminish the value of patents in general, thereby impairing our ability to protect our existing and future products, and could increase the uncertainties and costs surrounding the prosecution of our patent applications and the enforcement or defense of our patents or our future patents.

Our ability to obtain patents and the breadth of any patents obtained is uncertain in part because, to date, some legal principles remain unresolved, and there has not been a consistent policy regarding the breadth or interpretation of claims allowed in patents in the United States and other countries. Furthermore, changes in either patent laws or interpretations of patent laws in the United States and other countries may diminish the value of our intellectual property or narrow the scope of our patent protection.

Patent reform legislation may pass in the future that could lead to additional uncertainties and increased costs surrounding the prosecution, enforcement and defense of our patents and applications. Furthermore, the U.S. Supreme Court and the U.S. Court of Appeals for the Federal Circuit have made, and will likely continue to make, changes in how the patent laws of the United States are interpreted. The United States Supreme Court has ruled on several patent cases in recent years, either narrowing the scope of patent protection available in certain circumstances or weakening the rights of patent owners in certain situations. In addition to increasing uncertainty with regard to our ability to obtain patents in the future, this combination of events has created uncertainty with respect to the value of patents, once obtained. Depending on actions by the United States Congress, the federal courts and the USPTO, the laws and regulations governing patents could change in unpredictable ways that would weaken our ability to obtain new patents or to enforce patents that we own or that we might obtain or license in the future. An inability to obtain, enforce, and defend patents covering our proprietary technologies would materially and adversely affect our business prospects and financial condition.

Similarly, foreign courts have made, and will likely continue to make, changes in how the patent laws in their respective jurisdictions are interpreted. Changes in patent laws and regulations in other countries or jurisdictions, changes in the governmental bodies that enforce them, or changes in how the relevant governmental authority enforces patent laws or regulations may weaken our ability to obtain new patents or to enforce patents that we own or may obtain in the future. Further, the laws of some foreign countries do not protect proprietary rights to the same extent or in the same manner as the laws of the United States. As a result, we may encounter significant problems in protecting and defending our intellectual property both in the United States and abroad. For example, if the issuance in a given country of a patent covering an invention is not followed by the issuance in other countries of patents covering the same invention, or if any judicial interpretation of the validity, enforceability or scope of the claims or the written description or enablement in a patent issued in one country is not similar to the interpretation given to the corresponding patent issued in other countries, our ability to protect our intellectual property in those countries may be limited. Changes in either patent laws or in interpretations of patent laws in the United States and other countries may materially diminish the value of our intellectual property or narrow the scope of our patent protection. We cannot predict future changes in the interpretation of patent laws or changes to patent laws that might be enacted into law by U.S. and foreign legislative bodies. Those changes may materially affect our patents or patent applications and our ability to obtain additional patent protection in the future. Any of the foregoing could have a material adverse effect on our business, financial condition and results of operations.

We may become a party to intellectual property litigation or administrative proceedings that could be costly, time-consuming, unsuccessful, and could interfere with our ability to sell and market our products.

Our commercial success depends, in part, upon our ability and the ability of future collaborators, if any, to develop, manufacture, market and sell our products and use our proprietary technologies without infringing, misappropriating or otherwise violating the proprietary rights and intellectual property of third parties. The medical device industry has been characterized by extensive litigation regarding patents, trademarks, trade secrets, and other intellectual property rights, and companies in the industry have used intellectual property litigation to gain a competitive advantage.

Third parties may initiate legal proceedings alleging that we are infringing, misappropriating or otherwise violating their intellectual property rights, the outcome of which would be uncertain and could have a negative impact on the success of our business. It is possible that U.S. and foreign patents and pending patent applications controlled by third parties may be alleged to cover our products, or that we may be accused of misappropriating third parties' trade secrets or infringing third parties' trademarks. We may in the future become party to, or be threatened with, adversarial proceedings or litigation regarding intellectual property rights with respect to our products and technology, including interference proceedings, post grant review and *inter partes* review before the USPTO or equivalent foreign regulatory authority. Third parties may assert infringement claims against us based on existing patents or patents that may be granted in the future, regardless of their merit. Because patent applications can take many years to issue and because publication schedules for pending applications vary by jurisdiction, there may be applications now pending of which we are unaware and which may result in issued patents, which our current or future products infringe. Also, because the claims of published patent applications can change between publication and patent grant, there may be published patent applications that may ultimately issue with claims that we infringe. There is a risk that third parties may choose to engage in litigation with us to enforce or to otherwise assert their patent rights against us. Even if we believe such claims are without merit, a court of competent jurisdiction could hold that these third-party patents are valid, enforceable and infringed, which could have a negative impact on the commercial success of our current and any future products. In order to successfully challenge the validity of any such U.S. patent in federal court, we would need to overcome a presumption of validity. As this burden is a high one requiring us to present clear and convincing evidence as to the invalidity of any such U.S. patent claim, there is no assurance that a court of competent jurisdiction would invalidate the claims of any such U.S. patent. We will have similar burdens to overcome in foreign courts in order to successfully challenge a third-party claim of patent infringement.

If we are found to infringe, misappropriate or otherwise violate a third party's valid and enforceable intellectual property rights, we could be required to obtain a license from such third party to continue developing, manufacturing and marketing our products and technology. However, we may not be able to obtain any required license on commercially reasonable terms or at all. Even if we were able to obtain a license, it could be non-exclusive, thereby giving our competitors and other third parties access to the same technologies licensed to us, and it could require us to make substantial licensing and royalty payments. We could be forced, including by court order, to cease developing, manufacturing and commercializing the infringing technology or product. In addition, we could be found liable for monetary damages, including treble damages and attorneys' fees, if we are found to have willfully infringed a patent or other intellectual property right. A finding of infringement could prevent us from manufacturing and commercializing our products or force us to cease some or all of our business operations, which could materially harm our business. Claims that we have misappropriated the confidential information or trade secrets of third parties could have a similar negative impact on our business, financial condition, results of operations and prospects.

Additionally, our products include components that we purchase from vendors, and may include design components that are outside of our direct control. Our competitors, many of which have substantially greater resources and have made substantial investments in patent portfolios, trade secrets, trademarks, and competing technologies, may have applied for or obtained, or may in the future apply for or obtain, patents or trademarks that will prevent, limit or otherwise interfere with our ability to make, use, sell and/or export our products or to

use our technologies or product names. As the number of competitors in our market grows and the number of patents issued in this area increases, the possibility of patent infringement claims against us may increase. Moreover, individuals and groups that are non-practicing entities, commonly referred to as "patent trolls," purchase patents and other intellectual property assets for the purpose of making claims of infringement in order to extract settlements. From time to time, we may receive threatening letters, notices or "invitations to license," or may be the subject of claims that our products and business operations infringe, misappropriate or otherwise violate the intellectual property rights of others. The defense of these matters can be time consuming, costly to defend in litigation, divert management's attention and resources, damage our reputation and brand and cause us to incur significant expenses or make substantial payments. In addition, vendors from whom we purchase hardware or software may not indemnify us in the event that such hardware or software is accused of infringing a third-party's patent or trademark or of misappropriating a third-party's trade secret.

We cannot be certain that we were the first to file any patent application related to our products, in part because patent applications are confidential for a period of time after filing. Competitors may also contest our patents, if issued, by demonstrating that the claimed invention was not original, was not novel or was obvious. In litigation, a competitor could claim that our patents are not valid for a number of reasons. If a court agrees, we would lose our rights to those challenged patents.

In addition, we may in the future be subject to claims by our former employees or consultants asserting an ownership right in our patents, patent applications or other intellectual property, as a result of the work they performed on our behalf. Although we generally require all of our employees and consultants and any other partners or collaborators who have access to our proprietary know-how, information or technology to assign or grant similar rights to their inventions to us, we cannot be certain that we have executed such agreements with all parties who may have contributed to our intellectual property, nor can we be certain that our agreements with such parties will be upheld in the face of a potential challenge, or that they will not be breached, for which we may not have an adequate remedy.

Any lawsuits relating to intellectual property rights could subject us to significant liability for damages and invalidate our intellectual property or proprietary rights. Any potential intellectual property litigation also could force us to do one or more of the following:

- Stop making, selling or using products or technologies that allegedly infringe, misappropriate or otherwise violate the asserted intellectual property;
- Lose the opportunity to license our intellectual property to others or to collect royalty payments based upon successful protection and assertion of our intellectual property rights against others;
- Incur significant legal expenses;
- Pay substantial damages or royalties to the party whose intellectual property rights we may be found to be infringing, misappropriating or otherwise violating;
- Pay the attorney's fees and costs of litigation to the party whose intellectual property rights we may be found to be infringing, misappropriating or otherwise violating;
- Redesign those products or technologies that contain the allegedly infringing intellectual property, which could be costly, disruptive and infeasible; and
- Attempt to obtain a license to the relevant intellectual property from third parties, which may not be available on reasonable terms or at all, or from third parties who may attempt to license rights that they do not have.

In addition, if we are found to willfully infringe third-party patents or trademarks or to have misappropriated trade secrets, we could be required to pay treble damages in addition to other penalties. Although patent, trademark, trade secret, and other intellectual property disputes in the medical device area have often been settled through licensing or similar arrangements, costs associated with such arrangements may be substantial and could include ongoing royalties.

Any litigation or claim against us, even those without merit and even those where we prevail, may cause us to incur substantial costs, and could place a significant strain on our financial resources, divert the attention of management from our core business and harm our reputation. Such litigation or proceedings could substantially increase our operating losses and reduce the resources available for development activities or any future sales, marketing or distribution activities. We may not have sufficient financial or other resources to conduct such litigation or proceedings adequately. Some of our competitors may be able to sustain the costs of litigation or administrative proceedings more effectively than we can because of greater financial resources and more mature and developed intellectual property portfolios. We could encounter delays in product introductions while we attempt to develop alternative methods or products. If we fail to obtain any required licenses or make any necessary changes to our products or technologies, we may have to withdraw existing products from the market or may be unable to commercialize one or more of our products.

If third parties assert infringement, misappropriation or other claims against our customers, these claims may require us to initiate or defend protracted and costly litigation on behalf of our customers, regardless of the merits of these claims. If any of these claims succeed or settle, we may be forced to pay damages or settlement payments on behalf of our customers or may be required to obtain licenses for the products they use. If we cannot obtain all necessary licenses on commercially reasonable terms, our customers may be forced to stop using our products.

Similarly, interference or derivation proceedings provoked by third parties or brought by the USPTO may be necessary to determine priority with respect to our patents or patent applications. An unfavorable outcome could require us to cease using the related technology or force us to take a license under the patent rights of the prevailing party, if available. Furthermore, our business could be harmed if the prevailing party does not offer us a license on commercially reasonable terms. We may also become involved in other proceedings, such as reexamination, *inter partes* review, derivation or opposition proceedings before the USPTO or other jurisdictional body relating to our intellectual property rights or the intellectual property rights of others. Our defense of any litigation or interference proceedings may fail and, even if successful, may result in substantial costs and distract our management and other employees. Adverse determinations in a judicial or administrative proceeding or failure to obtain necessary licenses could prevent us from manufacturing our products or using product names, which would have a significant adverse impact on our business, financial condition and results of operations.

Additionally, competitors or other third parties may currently, or in the future, infringe, misappropriate or otherwise violate our issued patents or other intellectual property, and we may file lawsuits or initiate other proceedings to protect or enforce our patents or other intellectual property rights, which could be expensive, time consuming and unsuccessful. In certain circumstances it may not be practicable or cost-effective for us to enforce our intellectual property rights fully, particularly in certain developing countries or where the initiation of a claim might harm our business relationships. We may also be hindered or prevented from enforcing our rights with respect to a government entity or instrumentality because of the doctrine of sovereign immunity. Our ability to enforce our patent or other intellectual property rights depends on our ability to detect infringement. It may be difficult to detect infringers who do not advertise the components or methods that are used in connection with their products and services. Moreover, it may be difficult or impossible to obtain evidence of infringement in a competitor's or potential competitor's product or service.

If we initiate legal proceedings against a third party to enforce a patent covering one of our products, the defendant could counterclaim that the patent covering our product is invalid and/or unenforceable. In patent litigation in the United States, counterclaims alleging invalidity and/or unenforceability are common, and there are numerous grounds upon which a third party can assert invalidity or unenforceability of a patent. Any claims we assert against perceived infringers could also provoke these parties to assert counterclaims against us alleging that we infringe, misappropriate or otherwise violate their intellectual property. In a patent or other intellectual property infringement proceeding, a court may decide that a patent or other intellectual property of ours is invalid or unenforceable, in whole or in part, construe the patent's claims or other intellectual property narrowly or

refuse to stop the other party from using the technology at issue on the grounds that our patents or other intellectual property do not cover the technology in question. Furthermore, even if our patents or other intellectual property are found to be valid and infringed, a court may refuse to grant injunctive relief against the infringer and instead grant us monetary damages and/or ongoing royalties. Such monetary compensation may be insufficient to adequately offset the damage to our business caused by the infringer's competition in the market. An adverse result in any litigation or administrative proceeding could put one or more of our patents or other intellectual property at risk of being invalidated or interpreted narrowly, which could adversely affect our competitive business position, financial condition and results of operations. Moreover, even if we are successful in any litigation, we may incur significant expense in connection with such proceedings, and the amount of any monetary damages may be inadequate to compensate us for damage as a result of the infringement and the proceedings.

Third parties may also raise similar claims before administrative bodies in the United States or abroad, even outside the context of litigation. Such mechanisms include re-examination, post grant review, *inter partes* review and equivalent proceedings in foreign jurisdictions (for example, opposition proceedings). Such proceedings could result in revocation of or amendment to our patents in such a way that they no longer cover our products. The outcome following legal assertions of invalidity and unenforceability is unpredictable. With respect to the validity question, for example, we cannot be certain that there is no invalidating prior art, of which we, our patent counsel, and the patent examiner were unaware during prosecution. If a defendant were to prevail on a legal assertion of invalidity and/or unenforceability, we may lose some, and perhaps all, of the patent protection on our products.

Furthermore, because of the substantial amount of discovery required in connection with intellectual property litigation, there is a risk that some of our confidential information could be compromised by disclosure during this type of litigation. There could also be public announcements of the results of hearings, motions, or other interim proceedings or developments. If securities analysts or investors perceive these results to be negative, it could have a material adverse effect on the price of our common stock. Any of the foregoing may cause us to incur substantial costs, and could place a significant strain on our financial resources, divert the attention of management from our core business and harm our reputation.

If we are unable to protect the confidentiality of our other proprietary information, our business and competitive position may be harmed.

In addition to patent protection, we also rely on other proprietary rights, including protection of trade secrets, know-how, and/or other proprietary information that is not patentable or that we elect not to patent. However, trade secrets can be difficult to protect and some courts are less willing or unwilling to protect trade secrets. To maintain the confidentiality of our trade secrets and proprietary information, we rely heavily on confidentiality provisions that we have in contracts with our employees, consultants, collaborators and others upon the commencement of their relationship with us. We cannot guarantee that we have entered into such agreements with each party that may have or have had access to our trade secrets or proprietary technology and processes. Although we generally require all of our employees, consultants, advisors and any third parties who have access to our proprietary know-how, information, or technology to enter into confidentiality agreements, we cannot provide any assurances that all such agreements have been duly executed. We may not be able to prevent the unauthorized disclosure or use of our technical knowledge or other trade secrets by such third parties, despite the existence generally of these confidentiality restrictions. These contracts may not provide meaningful protection for our trade secrets, know-how, or other proprietary information in the event the unwanted use is outside the scope of the provisions of the contracts or in the event of any unauthorized use, misappropriation, or disclosure of such trade secrets, know-how, or other proprietary information. There can be no assurance that such third parties will not breach their agreements with us, that we will have adequate remedies for any breach, or that our trade secrets will not otherwise become known or independently developed by competitors. If any of our trade secrets were to be lawfully obtained or independently developed by a competitor, we would have no right to prevent them, or those to whom they communicate it, from using that technology or information to compete with

us. If any of our trade secrets were to be disclosed to or independently developed by a competitor, our competitive position would be harmed.

Despite the protections we do place on our intellectual property or other proprietary rights, monitoring unauthorized use and disclosure of our intellectual property is difficult, and we do not know whether the steps we have taken to protect our intellectual property or other proprietary rights will be adequate. In addition, the laws of many foreign countries will not protect our intellectual property or other proprietary rights to the same extent as the laws of the United States. Consequently, we may be unable to prevent our proprietary technology from being exploited abroad, which could affect our ability to expand to international markets or require costly efforts to protect our technology. To the extent our intellectual property or other proprietary information protection is incomplete, we are exposed to a greater risk of direct competition. A third party could, without authorization, copy or otherwise obtain and use our products or technology, or develop similar technology. Our competitors may independently develop knowledge, methods and know-how equivalent to our trade secrets. Our competitors could also purchase our products and attempt to replicate some or all of the competitive advantages we derive from our development efforts or design around our protected technology. Our failure to secure, protect and enforce our intellectual property rights could substantially harm the value of our products, brand and business. The theft or unauthorized use or publication of our trade secrets and other confidential business information could reduce the differentiation of our products and harm our business, the value of our investment in development or business acquisitions could be reduced and third parties might make claims against us related to losses of their confidential or proprietary information. Any of the foregoing could materially and adversely affect our business, financial condition and results of operations.

Costly and time consuming litigation could be necessary to enforce and determine the scope of our trade secret rights and related confidentiality and nondisclosure provisions. Further, it is possible that others will independently develop the same or similar technology or products or otherwise obtain access to our unpatented technology, and in such cases we could not assert any trade secret rights against such parties. If we fail to obtain or maintain trade secret protection, or if our competitors obtain our trade secrets or independently develop technology or products similar to ours or competing technologies or products, our competitive market position could be materially and adversely affected. In addition, some courts are less willing or unwilling to protect trade secrets and agreement terms that address non-competition are difficult to enforce in many jurisdictions and might not be enforceable in certain cases.

We also seek to preserve the integrity and confidentiality of our data and other confidential information by maintaining physical security of our premises and physical and electronic security of our information technology systems. While we have confidence in these security measures and systems, agreements or security measures may be breached and detecting the disclosure or misappropriation of confidential information and enforcing a claim that a party illegally disclosed or misappropriated confidential information is difficult, expensive and time-consuming, and the outcome is unpredictable. Further, we may not be able to obtain adequate remedies for any breach. Also, if the steps taken to maintain our trade secrets we may have are deemed inadequate, we may have insufficient recourse against third parties for misappropriating the trade secret. In addition, others may independently develop our trade secrets and proprietary information.

We may enjoy only limited geographical protection with respect to certain patents and we may not be able to protect our intellectual property rights throughout the world.

A company may attempt to commercialize competing products utilizing our proprietary technology, design, trademarks or tradenames in foreign countries where we do not have any patents or patent applications, trademarks, and/or other forms of intellectual property and where legal recourse may be limited. This may have a significant commercial impact on our foreign business operations.

Filing, prosecuting and defending patents or trademarks on our current and future products in all countries throughout the world would be prohibitively expensive. The requirements for patentability and trademark

protection may differ in certain countries, particularly developing countries. The laws of some foreign countries do not protect intellectual property rights to the same extent as laws in the United States. Consequently, we may not be able to prevent third parties from utilizing our inventions and trademarks in all countries outside the United States. Competitors may use our technologies or trademarks in jurisdictions where we have not obtained patent or trademark protection to develop or market their own products and further, may export otherwise infringing products to territories where we have patent and trademark protection, but enforcement on infringing activities is inadequate. These products or trademarks may compete with our products or trademarks, and our patents, trademarks or other intellectual property rights may not be effective or sufficient to prevent them from competing.

In addition, we may decide to abandon national and regional patent applications before they are granted. The examination of each national or regional patent application is an independent proceeding. As a result, patent applications in the same family may issue as patents in some jurisdictions, such as in the United States, but may issue as patents with claims of different scope or may even be refused in other jurisdictions. It is also quite common that depending on the country, the scope of patent protection may vary for the same product or technology. For example, certain jurisdictions do not allow for patent protection with respect to method of treatment.

While we seek to protect our intellectual property rights in our expected significant markets, we cannot ensure that we will be able to initiate or maintain similar efforts in all jurisdictions in which we may wish to market our products. Accordingly, our efforts to protect our intellectual property rights in such countries may be inadequate, which may have an adverse effect on our ability to successfully commercialize our products in all of our expected significant foreign markets. If we encounter difficulties in protecting, or are otherwise precluded from effectively protecting, the intellectual property rights important for our business in such jurisdictions, the value of these rights may be diminished, and we may face additional competition from others in those jurisdictions.

The laws of some jurisdictions do not protect intellectual property rights to the same extent as the laws or rules and regulations in the United States and many companies have encountered significant problems in protecting and defending intellectual property rights in foreign jurisdictions. The legal systems of certain countries, particularly certain developing countries, do not favor the enforcement of patents, trademarks and other intellectual property protection, which could make it difficult for us to stop the infringement of our patents and trademarks or marketing of competing products in violation of our proprietary rights generally. Proceedings to enforce our patent and trademarks rights in foreign jurisdictions, whether or not successful, could result in substantial costs and divert our efforts and attention from other aspects of our business, could put our patents and trademarks in those jurisdictions, as well as elsewhere at risk of being invalidated or interpreted narrowly and our patent applications at risk of not issuing as patents, and could provoke third parties to assert claims against us. We may not prevail in any lawsuits that we initiate and the damages or other remedies awarded, if any, may not be commercially meaningful. Certain countries in Europe and certain developing countries, including India and China, have compulsory licensing laws under which a patent owner may be compelled to grant licenses to third parties. In those countries, we may have limited remedies if our patents are infringed or if we are compelled to grant a license to our patents to a third party, which could materially diminish the value of those patents. This could limit our potential revenue opportunities and our competitive position may be impaired. In addition, some countries limit the enforceability of patents against government agencies or government contractors. In those countries, the patent owner may have limited remedies, which could materially diminish the value of such patents. Accordingly, our efforts to enforce our intellectual property rights around the world may be inadequate to obtain a significant commercial advantage from the intellectual property that we own or license. Finally, our ability to protect and enforce our intellectual property rights may be adversely affected by unforeseen changes in foreign intellectual property laws.

We may be subject to claims that we or our employees have misappropriated the intellectual property of a third party, including trade secrets or know-how, or are in breach of non-competition or non-solicitation agreements with our competitors.

We may be subject to claims that our employees, consultants, or independent contractors have wrongfully used or disclosed confidential information of third parties. Many of our employees and consultants were previously employed at or engaged by other medical device, biotechnology or pharmaceutical companies, including our competitors or potential competitors. Some of these employees, consultants and contractors may have executed proprietary rights, non-disclosure and non-competition agreements in connection with such previous employment. Although we try to ensure that our employees and consultants do not use the intellectual property, proprietary information, know-how or trade secrets of others in their work for us, we may be subject to claims that we or these individuals have, inadvertently or otherwise, misappropriated the intellectual property or disclosed the alleged trade secrets or other proprietary information of these former employers or competitors or other third parties. In addition, we may be subject to claims that we are infringing, misappropriating or otherwise violating other intellectual property rights, such as trademarks or copyrights. To the extent that our employees, consultants or contractors use intellectual property or proprietary information owned by others in their work for us, disputes may arise as to the rights in related or resulting know-how and inventions. Litigation may be necessary to defend against these claims. There is no guarantee of success in defending these claims, and even if we are successful, litigation could result in substantial cost and be a distraction to our management and other employees.

We may be subject to claims challenging the inventorship or ownership of our patents and other intellectual property.

We may also be subject to claims that former employees, collaborators, or other third parties have an ownership interest in our current or future patents, patent applications, or other intellectual property, including as an inventor or co-inventor. We may be subject to ownership or inventorship disputes in the future arising, for example, from conflicting obligations of consultants, contractors or others who are involved in developing our products. Although it is our policy to require our employees and contractors who may be involved in the conception or development of intellectual property to execute agreements assigning such intellectual property to us, we may be unsuccessful in executing such an agreement with each party who, in fact, conceives or develops intellectual property that we regard as our own, and we cannot be certain that our agreements with such parties will be upheld in the face of a potential challenge, or that they will not be breached, for which we may not have an adequate remedy. The assignment of intellectual property rights may not be self-executing or the assignment agreements may be breached, and litigation may be necessary to defend against these and other claims challenging inventorship or ownership. If we fail in defending any such claims, in addition to paying monetary damages, we may lose valuable intellectual property rights, such as exclusive ownership of, or right to use, valuable intellectual property, and other owners may be able to license their rights to other third parties, including our competitors. Such an outcome could have a material adverse effect on our business. Even if we are successful in defending against such claims, litigation could result in substantial costs and be a distraction to management and other employees.

Additionally, we may be subject to claims from third parties challenging our ownership interest in intellectual property we regard as our own, based on claims that our employees or consultants have breached an obligation to assign inventions to another employer, to a former employer, or to another person or entity. Litigation may be necessary to defend against any other claims, and it may be necessary or we may desire to enter into a license to settle any such claim; however, there can be no assurance that we would be able to obtain a license on commercially reasonable terms, if at all. If our defense to those claims fails, in addition to paying monetary damages, a court could prohibit us from using technologies or features that are essential to our products, if such technologies or features are found to incorporate or be derived from the trade secrets or other proprietary information of the former employers. An inability to incorporate technologies or features that are important or essential to our products could have a material adverse effect on our business, financial condition

and results of operations, and may prevent us from selling our products. In addition, we may lose valuable intellectual property rights or personnel. Even if we are successful in defending against these claims, litigation could result in substantial costs and could be a distraction to management. Any litigation or the threat thereof may adversely affect our ability to hire employees or contract with independent sales representatives. A loss of key personnel or their work product could hamper or prevent our ability to commercialize our products, which could have an adverse effect on our business, financial condition and results of operations.

If our trademarks and tradenames are not adequately protected, then we may not be able to build name recognition in our markets and our business may be adversely affected.

We use our trademarks, service marks, tradenames and brand names to distinguish our products from the products of our competitors, and have registered or applied to register these trademarks. Our trademarks or trade names may be challenged, infringed, circumvented, declared generic or determined to be violating or infringing on other marks. We cannot assure you that our trademark applications will be approved for registration. During trademark registration proceedings, we may receive rejections. Although we are given an opportunity to respond to those rejections, we may be unable to overcome such rejections. In addition, in proceedings before the USPTO and comparable agencies in many foreign jurisdictions, third parties are given an opportunity to oppose pending trademark applications and to seek to cancel trademark registrations. Opposition or cancellation proceedings may be filed against our trademark filings in these agencies, and such filings may not survive such proceedings. Our competitors may also infringe or otherwise violate our trademarks and we may not have adequate resources to enforce our trademarks, which may have a material adverse effect on our business. While we may be able to continue the use of our trademarks in the event registration is not available, particularly in the United States, where trademark rights are acquired based on use and not registration, third parties may be able to enjoin the continued use of our trademarks if such parties are able to successfully claim infringement in court. In the event that our trademarks are successfully challenged, we could be forced to rebrand our products, which could result in loss of brand recognition and could require us to devote resources towards advertising and marketing new brands. At times, competitors may adopt trade names or trademarks similar to ours, thereby impeding our ability to build brand identity and possibly leading to market confusion. Certain of our current or future trademarks may become so well known by the public that their use becomes generic and they lose trademark protection. Over the long term, if we are unable to establish name recognition based on our trademarks and trade names, then we may not be able to compete effectively and our business, financial condition and results of operations may be adversely affected.

We have become aware of a third party's use of and pending U.S. application for the TEARCLEAR trademark in connection with ophthalmic pharmaceuticals, which we believe may be an infringement of our TEARCARE trademark. We are currently considering taking action against this third-party, which may include filing a complaint for trademark infringement in federal court.

Intellectual property rights do not necessarily address all potential threats.

The degree of future protection afforded by our intellectual property rights is uncertain because intellectual property rights have limitations and may not adequately protect our business or permit us to maintain our competitive advantage. For example:

- We, or current or future collaborators, might not have been the first to make the inventions covered by the issued patent or pending patent application that we license or may own in the future;
- We, or current or future collaborators, might not have been the first to file patent applications covering certain of our or their inventions;
- Others may independently develop similar or alternative technologies or duplicate any of our technologies without infringing, misappropriating or otherwise violating our intellectual property rights;

- It is possible that our pending patent applications or those that we may own in the future will not lead to issued patents;
- Issued patents that we hold rights to may be held invalid or unenforceable, including as a result of legal challenges by our competitors;
- Our competitors might conduct research and development activities in countries where we do not have patent rights and then use the information learned from such activities to develop competitive products for sale in our major commercial markets;
- We may not develop additional proprietary technologies that are patentable;
- The patents of others may harm our business; and
- We may choose not to file a patent in order to maintain certain trade secrets or know-how, and a third party may subsequently file a patent covering such intellectual property.

Should any of these events occur, they could have a material adverse effect on our business, financial condition, results of operations and prospects.

Risks Related to Government Regulation

Our products and operations are subject to extensive government regulation and oversight in the United States and elsewhere.

Our products are regulated as medical devices by the FDA. We and our products are subject to extensive regulation in the United States and elsewhere, including by state agencies, the FDA and the FDA's foreign counterparts. The FDA and foreign regulatory agencies regulate, among other things, with respect to medical devices: design, development, manufacturing and release; laboratory, preclinical and clinical testing; labeling, packaging, content and language of instructions for use and storage; product safety and efficacy; establishment registration and device listing; marketing, sales and distribution; pre-market clearance and approval; service operations; record keeping procedures; advertising and promotion; recalls and field safety corrective actions; post-market surveillance, including reporting of deaths or serious injuries and malfunctions that, if they were to recur, could lead to death or serious injury; post-market studies; and product import and export.

The regulations to which we are subject are complex, burdensome to understand and apply and have tended to become more stringent over time. Regulatory changes could result in restrictions on our ability to carry on or expand our operations, higher than anticipated costs or lower than anticipated sales. The FDA enforces these regulatory requirements through, among other means, periodic (unannounced) inspections and periodic reviews of public marketing and promotion materials. We do not know whether we will be found compliant in connection with any future FDA or foreign inspections or reviews. Failure to comply with applicable regulations could jeopardize our ability to sell our products and result in enforcement actions such as: warning letters; untitled letters; fines; injunctions; civil penalties; termination of distribution; recalls or seizures of products; delays in the introduction of products into the market; total or partial suspension of production; refusal to grant future clearances or approvals; withdrawals or suspensions of current approvals, resulting in prohibitions on sales of our products; and in the most serious cases, criminal penalties.

We may not receive, or may be delayed in receiving, the necessary clearances, certifications or approvals for our future products or modifications to our current products, and failure to timely obtain necessary clearances, certifications or approvals for our future products or modifications to our current products would adversely affect our ability to grow our business.

In the U.S., before we can market a new medical device, or a new use of, new claim for or significant modification to an existing product, we must first receive either clearance under Section 510(k) of the FDCA or approval of a pre-market approval application, or PMA, from the FDA, unless an exemption applies. In the

510(k) clearance process, before a device may be marketed, the FDA must determine that a proposed device is "substantially equivalent" to a legally-marketed "predicate" device, which includes a device that has been previously cleared through the 510(k) process, a device that was legally marketed prior to May 28, 1976 (pre-amendments device), a device that was originally on the U.S. market pursuant to an approved PMA and later down-classified, or a 510(k)-exempt device. To be "substantially equivalent," the proposed device must have the same intended use as the predicate device, and either have the same technological characteristics as the predicate device or have different technological characteristics and not raise different questions of safety or effectiveness than the predicate device. Clinical data are sometimes required to support substantial equivalence. In the process of obtaining PMA approval, the FDA must determine that a proposed device is safe and effective for its intended use based, in part, on extensive data, including, but not limited to, technical, preclinical, clinical trial, manufacturing and labeling data. The PMA process is typically required for devices that are deemed to pose the greatest risk, such as life-sustaining, life-supporting or implantable devices.

Modifications to products that are approved through a PMA application generally require FDA approval. Similarly, certain modifications made to products cleared through a 510(k) may require a new 510(k) clearance. Both the PMA approval and the 510(k) clearance process can be expensive, lengthy and uncertain. The FDA's 510(k) clearance process usually takes from three to 12 months, but can last longer. The process of obtaining a PMA is much more costly and uncertain than the 510(k) clearance process and generally takes from one to three years, or even longer, from the time the application is submitted to the FDA. Despite the time, effort and cost, a device may not be approved or cleared by the FDA. Any delay or failure to obtain necessary regulatory clearances or approvals could harm our business. Furthermore, even if we are granted regulatory clearances or approvals, they may include significant limitations on the indicated uses for the device, which may limit the market for the device.

In the U.S., we have obtained clearance from the FDA of OMNI through the 510(k) clearance process. We also market TearCare as a 510(k)-exempt device and intend to submit a 510(k) premarket notification seeking an expanded label for the device in the future. Any further modification to these products or their intended uses may require us to submit a new 510(k) premarket notification and obtain clearance, or submit a PMA and obtain FDA approval prior to implementing the change. Specifically, any modification to a 510(k)-cleared device that could significantly affect its safety or effectiveness, or that would constitute a major change in its intended use, design or manufacture, requires a new 510(k) clearance or, possibly, approval of a PMA. The FDA requires every manufacturer to make this determination in the first instance, but the FDA may review any manufacturer's decision. The FDA may not agree with our decisions regarding whether new clearances or approvals are necessary. We have made modifications to 510(k)-cleared products in the past and have determined based on our review of the applicable FDA regulations and guidance that in certain instances new 510(k) clearances or PMA approvals were not required. We may make modifications or add additional features in the future that we believe do not require a new 510(k) clearance or approval of a PMA. If the FDA disagrees with our determination and requires us to submit new 510(k) notifications or PMA applications for modifications to our products for which we have concluded that new clearances or approvals are unnecessary, we may be required to cease marketing or to recall the modified product until we obtain clearance or approval, and we may be subject to significant regulatory fines or penalties. If the FDA requires us to go through a lengthier, more rigorous examination for future products or modifications to existing products than we had expected, product introductions or modifications could be delayed or canceled, which could adversely affect our ability to grow our business.

The FDA can delay, limit or deny clearance or approval of a device for many reasons, including:

- Our inability to demonstrate to the satisfaction of the FDA that our products are safe or effective for their intended uses;
- The disagreement of the FDA with the design or conduct of our clinical trials or the interpretation of data from preclinical studies or clinical trials;
- Serious and unexpected adverse device effects experienced by participants in our clinical trials;

- The data from our preclinical studies and clinical trials may be insufficient to support clearance or approval, where required;
- Our inability to demonstrate that the clinical and other benefits of the device outweigh the risks;
- The manufacturing process or facilities we use may not meet applicable requirements; and
- The potential for approval policies or regulations of the FDA to change significantly in a manner rendering our clinical data or regulatory filings insufficient for clearance or approval.

In order to sell our products in member states of the EU, our products must comply with the essential requirements of the EU Medical Devices Directive (Council Directive 93/42/EEC). Compliance with these requirements is a prerequisite to be able to affix the CE mark to our products, without which they cannot be sold or marketed in the EU. To demonstrate compliance with the essential requirements we must undergo a conformity assessment procedure, which varies according to the type of medical device and its (risk) classification. Except for low-risk medical devices (Class I non-sterile, non-measuring devices), where the manufacturer can issue an EC Declaration of Conformity based on a self-assessment of the conformity of its products with the essential requirements of the EU Medical Devices Directive, a conformity assessment procedure requires the intervention of an organization accredited or designated by a member state of the EU to conduct conformity assessments, or a Notified Body. Depending on the relevant conformity assessment procedure, the Notified Body would typically audit and examine the technical file and the quality system for the manufacture, design and final inspection of our devices. The Notified Body issues a certificate of conformity following successful completion of a conformity assessment procedure conducted in relation to the medical device and its manufacturer and their conformity with the essential requirements. This certificate entitles the manufacturer to affix the CE mark to its medical devices after having prepared and signed a related EC Declaration of Conformity.

As a general rule, demonstration of conformity of medical devices and their manufacturers with the essential requirements must be based, among other things, on the evaluation of clinical data supporting the safety and performance of the products during normal conditions of use. Specifically, a manufacturer must demonstrate that the device achieves its intended performance during normal conditions of use, that the known and foreseeable risks, and any adverse events, are minimized and acceptable when weighed against the benefits of its intended performance, and that any claims made about the performance and safety of the device are supported by suitable evidence. If we fail to remain in compliance with applicable European laws and directives and corresponding EU member state laws, we would be unable to continue to affix the CE mark to our products, which would prevent us from selling them within the EU.

The aforementioned EU rules are generally applicable in the European Economic Area, or EEA, which consists of the 27 EU member states plus Norway, Liechtenstein and Iceland. Non-compliance with the above requirements would also prevent us from selling our products in these three countries.

Following the end of the “Brexit” Transition Period, from January 1, 2021 onwards, the MHRA will be responsible for the UK medical device market. The new regulations will require medical devices to be registered with the MHRA (but manufacturers will be given a grace period of four to 12 months to comply with the new registration process). Manufacturers based outside the UK will need to appoint a UK Responsible Person to register devices with the MHRA in line with the grace periods. By July 1, 2023, in the UK (England, Scotland, and Wales), all medical devices will require a UKCA (UK Conformity Assessed) mark but CE marks issued by EU Notified Bodies will remain valid until this time. However, UKCA marking alone will not be recognized in the EU. The rules for placing medical devices on the Northern Ireland market will differ from those in the UK. Compliance with this legislation is a prerequisite to be able to affix the UKCA mark to our products, without which they cannot be sold or marketed in the UK.

We may incur significant liability if it is determined that we are promoting off-label uses of our products in violation of federal and state regulations in the United States or elsewhere.

The FDA and other regulatory authorities strictly regulate the promotional claims that may be made about medical devices. In particular, the FDA requires that medical devices be labeled, advertised and promoted only in accordance with their approved or cleared indications for use (or, in the case of products which are exempt from premarket review, in accordance with the regulations pertaining to such premarket clearance-exempt product classification). Similar limitations are imposed through certain national and international requirements outside of the U.S.

We currently market TearCare as a Class II, 510(k)-exempt powered heating pad. We intend to seek FDA clearance of TearCare for an expanded indication for use in . However, the FDA may determine that the clinical data we have provided or will provide is insufficient to support this indication and therefore not grant or delay clearance. For example, in January 2021, the FDA requested that we provide additional information in connection with such submission, and we are currently in the process of collecting and analyzing the requested additional data. Further, the FDA may disagree with our belief that our existing indication is broad enough to include the delivery of localized heat where the current medical community recommends application of a warm compress, such as MGD, DED, and blepharitis, in which case the FDA could assert that we are marketing the product in a manner that causes the product not to be exempt from premarket clearance.

The FDA does not generally regulate the behavior of physicians in their choice of treatments. While physicians may choose to use medical devices for uses that are not described in the product's labeling and for uses that differ from those authorized by the FDA, our promotional materials, promotional activities and training methods must comply with applicable FDA regulations and other applicable federal, state and foreign laws and regulations, including the prohibition on the promotion of off-label uses of our products.

If the FDA or equivalent foreign authorities determine that our labeling, promotional materials or other communications (including communications by our employees or other agents) constitute promotion of an off-label use, they could request or require that we modify our promotional materials or subject us to regulatory or enforcement actions, including the issuance of a warning letter or untitled letter, suspension or withdrawal of a product from the market, or requiring a recall or institution of fines, which could result in the disgorgement of money, operating restrictions, injunctions, civil fines and criminal penalties. It is also possible that other federal, state or foreign enforcement authorities might take action if they consider our promotional or training materials to constitute promotion of an off-label use, which could result in significant fines or penalties, such as laws prohibiting false or fraudulent claims for payment of government funds, such as the U.S. federal False Claims Act. In that event, our reputation could be damaged and adoption of our products could be impaired.

Notwithstanding the regulatory restrictions on off-label promotion, the FDA and other regulatory authorities allow medical device companies to engage in truthful, non-misleading and non-promotional scientific exchange concerning their products. If the FDA or other regulatory or enforcement authorities determine that our communications regarding our marketed products are not in compliance with the relevant regulatory requirements and that we have improperly promoted off-label uses, we may be subject to significant liability, including civil, criminal and administrative penalties.

Failure to comply with post-marketing regulatory requirements could subject us to enforcement actions, including substantial penalties, and might require us to recall or withdraw a product from the market.

Even though we have obtained FDA clearance for OMNI and currently market TearCare in the U.S. pursuant to a 510(k) exemption, we are subject to ongoing and pervasive regulatory requirements governing, among other things, the manufacture, marketing, advertising, medical device reporting, sale, promotion, import, export, registration, and listing of devices. For example, we must submit periodic reports to the FDA as a condition of 510(k) clearance. These reports include information about failures and certain adverse events

associated with the device after its clearance. Failure to submit such reports, or failure to submit the reports in a timely manner, could result in enforcement action by the FDA. Following its review of the periodic reports, the FDA might ask for additional information or initiate further investigation. In addition, we must maintain an active registration of our facilities and listing of our products in order to legally market them in the United States. If the FDA were to disagree with our product listing or otherwise take issue with our registration and listing compliance, it could result in delisting of our products or other enforcement action resulting in potential inability to market our products. For example, in October 2020, the FDA communicated to us that TearCare may not be eligible for an exemption from 510(k) clearance. In response to that communication, among other things, we submitted a 510(k) premarket notification seeking clearance for TearCare in November 2020. The FDA requested several safety tests and modifications to this submission which we believe would have required additional time to complete beyond the designated review process. We voluntarily withdrew this submission in May 2021 to allow us to comply with the FDA's requests in a comprehensive manner. We intend to resubmit the 510(k) premarket notification for an expanded indication for use in .

The regulations to which we are subject are complex and have become more stringent over time. Regulatory changes could result in restrictions on our ability to continue or expand our operations, higher than anticipated costs, or lower than anticipated sales. Even after we have obtained the proper regulatory clearance to market a device, we have ongoing responsibilities under FDA regulations and applicable foreign laws and regulations. The FDA, state and foreign regulatory authorities have broad enforcement powers. Our failure to comply with applicable regulatory requirements could result in enforcement action by the FDA, state or foreign regulatory authorities, which may include any of the following sanctions:

- Untitled letters, warning letters or adverse publicity;
- Fines, injunctions, consent decrees and civil penalties;
- Recalls, termination of distribution, administrative detention, or seizure of our products;
- Customer notifications or repair, replacement or refunds;
- Operating restrictions or partial suspension or total shutdown of production;
- Delays in or refusal to grant our requests for future clearances or approvals or foreign clearance, certification or approval of new products, new intended uses, or modifications to existing products;
- Withdrawals or suspensions of 510(k) clearances, or requirements for new 510(k) clearances, resulting in prohibitions on sales of our products pending such further clearance;
- FDA refusal to issue certificates to foreign governments needed to export products for sale in other countries; and
- Criminal prosecution.

Any of these sanctions could result in higher than anticipated costs or lower than anticipated sales and have a material adverse effect on our reputation, business, financial condition and results of operations. In addition, the FDA may change its clearance policies, adopt additional regulations or revise existing regulations, or take other actions, which may prevent or delay clearance or approval of our future products under development or impact our ability to modify our currently cleared or 510(k)-exempt products on a timely basis. Such policy or regulatory changes could impose additional requirements upon us that could delay our ability to obtain new clearances or approvals, increase the costs of compliance or restrict our ability to maintain our clearances of our current products.

Our products must be manufactured in accordance with federal, state and foreign regulations, and we could be forced to recall our devices or terminate production if we fail to comply with these regulations.

The methods used in, and the facilities used for, the manufacture of our products must comply with the FDA's QSR and the European Union Medical Devices Directive (Council Directive 93/42/EEC), both of which

are complex regulatory schemes that cover the procedures and documentation of the design, testing, production, process controls, quality assurance, labeling, packaging, handling, storage, distribution, installation, servicing and shipping of medical devices. Furthermore, we are required to maintain, and to verify that our suppliers maintain, facilities, procedures and operations that comply with our quality standards and applicable regulatory requirements. The FDA enforces the QSR through periodic announced or unannounced inspections of medical device manufacturing facilities, which may include the facilities of subcontractors. Our products are also subject to similar state regulations, various laws and regulations of foreign countries governing manufacturing and a requirement for adherence to industry standards of the International Standards Organization, or ISO, in connection with our medical device operations outside of the United States. Failure to comply with applicable FDA requirements or later discovery of previously unknown problems with our products or manufacturing processes could result in, among other things: warning letters or untitled letters; fines, injunctions or civil penalties; suspension or withdrawal of clearances or approvals; seizures or recalls of our products; total or partial suspension of production or distribution; administrative or judicially imposed sanctions; the FDA's refusal to grant pending or future clearances or approvals for our products; clinical holds; refusal to permit the import or export of our products; and criminal prosecution of us, our suppliers, or our employees.

We have received ISO 13485:2016 certification for our quality management system. ISO certification generally includes recertification audits every third year, scheduled annual surveillance audits and periodic unannounced audits.

We can provide no assurance that we will be found to remain in compliance with the QSR or ISO standards upon a regulator's review. If the FDA or other regulator, inspects any of our manufacturers' facilities and discovers compliance problems, we may have to cease manufacturing and product distribution until we can take the appropriate remedial steps to correct the audit findings. Any of the actions noted above could significantly and negatively affect supply of our products. Taking corrective action may be expensive, time-consuming and a distraction for management. If any of these events occurs, our reputation could be harmed, we could be exposed to product liability claims and we could lose customers and experience reduced sales and increased costs.

Our products may cause or contribute to adverse medical events or be subject to failures or malfunctions that we are required to report to the FDA (or similar foreign authorities), and if we fail to do so, we would be subject to sanctions that could negatively affect our reputation, business, financial condition and results of operations. The discovery of serious safety issues with our products, or a recall of our products either voluntarily or at the direction of the FDA or another governmental authority, could have a negative impact on us.

We are subject to the FDA's medical device reporting regulations and similar foreign regulations, which require us to report to the FDA (and other foreign regulatory authorities) when we receive or become aware of information that reasonably suggests that one or more of our products may have caused or contributed to a death or serious injury or malfunctioned in a way that, if the malfunction were to recur, it could cause or contribute to a death or serious injury. The timing of our obligation to report is based on the date we become aware of the adverse event as well as on the nature of the event. We may fail to report adverse events of which we become aware within the prescribed timeframe. We may also fail to recognize that we have become aware of a reportable adverse event, especially if it is not reported to us as an adverse event or if it is an adverse event that is unexpected or removed in time from the use of the product. If we fail to comply with our reporting obligations, the FDA or its foreign counterparts could take action, including warning letters, untitled letters, administrative actions, criminal prosecution, imposition of civil monetary penalties, revocation of device clearance or approval, seizure of our products or delay in clearance or approval of future products, which could have a negative impact on us.

The FDA and foreign regulatory bodies have the authority to require the recall of commercialized products in the event of material deficiencies or defects in design or manufacture of a product or in the event that a product poses an unacceptable risk to health. The FDA's authority to require a recall must be based on a finding

that there is reasonable probability that the device could cause serious injury or death. We may also choose to voluntarily recall a product if any material deficiency is found. A government-mandated or voluntary recall by us could occur as a result of an unacceptable risk to health, component failures, malfunctions, manufacturing defects, labeling or design deficiencies, packaging defects or other deficiencies or failures to comply with applicable regulations. Product defects or other errors may occur in the future.

If we initiate a correction or removal for our products to reduce a risk to health posed by them or to remedy a violation of law that may present a risk to health, we would be required to submit a report to the FDA and may be required to submit similar notifications to other regulatory authorities. This report could lead to increased scrutiny by the FDA, other foreign regulatory agencies and our customers regarding the quality and safety of our products. Furthermore, the submission of these reports, to the extent made publicly available in accordance with FDA regulations, could be used by competitors against us or otherwise publicized and cause physicians to delay or cancel product orders, which will harm our reputation.

If we assess a potential quality issue or complaint as not requiring either a field action or regulatory notification, regulators may review documentation of that decision during a subsequent audit. If regulators disagree with our decision, or take issue with either our investigation process or the resulting documentation, regulatory agencies may impose sanctions and we may be subject to regulatory enforcement actions, including warning letters, all of which will negatively affect our business, financial condition and results of operations.

Depending on the corrective action we take to redress a product's deficiencies or defects, the FDA or FDA's foreign counterparts may require, or we may decide, that we will need to obtain new clearances, certifications or approvals for the device before we may market or distribute the corrected device. Seeking such clearances, certifications or approvals may delay our ability to replace the recalled devices in a timely manner. Moreover, if we do not adequately address problems associated with our devices, we may face additional regulatory enforcement action, including FDA warning letters, product seizure, injunctions, administrative penalties or civil or criminal fines.

Companies are required to maintain certain records of recalls and corrections, even if they are not reportable to the FDA. We may initiate voluntary withdrawals or corrections for our products in the future that we determine do not require notification of the FDA. If the FDA disagrees with our determinations, it could require us to report those actions as recalls, and we may be subject to enforcement action. A future recall announcement could harm our reputation with customers, potentially lead to product liability claims against us and negatively affect our sales. Any corrective action, whether voluntary or involuntary, as well as defending ourselves in a lawsuit, will require the dedication of our time and capital, distract management from operating our business and will negatively affect our reputation, business, financial condition and results of operations.

If we do not obtain and maintain applicable regulatory registrations, clearances, certifications or approvals for our products, we will be unable to market and sell our products outside of the U.S.

We intend to expand our sales operations outside of the U.S. Sales of our products outside of the U.S. are subject to foreign regulatory requirements that vary widely from country to country. In addition, the FDA regulates exports of medical devices from the U.S. While the regulations of some countries may not impose barriers to marketing and selling our products or only require notification, others require that we obtain the clearance or approval of a specified regulatory body. Complying with foreign regulatory requirements, including obtaining registrations, clearances, certifications or approvals, can be expensive and time-consuming, and we may not receive regulatory clearances, certifications or approvals in each country in which we plan to market our products or we may be unable to do so on a timely basis. The time required to obtain registrations, clearances, certifications or approvals, if required by other countries, may be longer than that required for FDA clearance or approval, and requirements for such registrations, clearances, certifications or approvals may significantly differ from FDA requirements. If we modify our products, we may need to apply for regulatory clearances or approvals before we are permitted to sell the modified product.

In addition, we may not continue to meet the quality and safety standards required to maintain the authorizations that we have received. If we are unable to maintain our authorizations in a particular country, we will no longer be able to sell the applicable product in that country.

Regulatory clearance or approval by the FDA does not ensure registration, clearance, certification or approval by regulatory authorities in other countries, and registration, clearance, certification or approval by one or more foreign regulatory authorities does not ensure registration, clearance, certification or approval by regulatory authorities in other foreign countries or by the FDA. However, a failure or delay in obtaining registration or regulatory clearance, certification or approval in one country may have a negative effect on the regulatory process in others.

The clinical trial or investigation process is lengthy and expensive with uncertain outcomes. Results of earlier studies may not be predictive of future clinical trial or investigation results, or the safety or efficacy profile for such products for such uses. Further, we may incur significant fines, penalties and other liabilities if it is determined that we are failing or have failed to comply with applicable regulatory requirements for the conduct of our clinical trials.

Clinical testing is difficult to design and implement, can take many years, can be expensive and carries uncertain outcomes. The results of preclinical studies and clinical trials and investigations of our products conducted to date and ongoing or future studies, trials and investigations of our current, planned or future products may not be predictive of the results of later clinical trials or investigations, and interim results of a clinical trial or investigation do not necessarily predict final results. Our interpretation of data and results from our clinical trials or investigations does not ensure that we will achieve similar results in future clinical trials or investigations. In addition, preclinical and clinical data are often susceptible to various interpretations and analyses, and many companies that have believed their products performed satisfactorily in preclinical studies and earlier clinical trials or investigations have nonetheless failed to produce strong results in later clinical trials or investigations. Products in later stages of clinical trials or investigations may fail to show the desired safety and efficacy despite having progressed through nonclinical studies and earlier clinical trials or investigations. We incur substantial expense for, and devote significant time to, clinical trials or investigations but cannot be certain that such trials will yield positive results relating to our products. Failure can occur at any stage of clinical testing. Our clinical trials or investigations may produce negative or inconclusive results, and we may decide, or regulators may require us, to conduct additional clinical and non-clinical testing in addition to those we have planned.

The initiation and completion of any of our clinical trials may be prevented, delayed, or halted for numerous reasons. We may experience delays in our ongoing clinical trials for a number of reasons, which could adversely affect the costs, timing or successful completion of our clinical trials, including related to the following:

- We may be required to submit an Investigational Device Exemption, or IDE, application to the FDA, which must become effective prior to commencing certain human clinical trials of medical devices, and the FDA may reject our IDE application and notify us that we may not begin clinical trials;
- Regulators and other comparable foreign regulatory authorities may disagree as to the design or conduct of our clinical trials or investigations;
- Regulators and/or institutional review boards, or IRBs, or other reviewing bodies may not authorize us or our investigators to commence a clinical trial or investigation, or to conduct or continue a clinical trial or investigation at a prospective or specific trial site;
- We may not reach agreement on acceptable terms with prospective contract research organizations, or CROs, and clinical trial sites, the terms of which can be subject to extensive negotiation and may vary significantly among different CROs and trial sites;
- Clinical trials or investigations may produce negative or inconclusive results, and we may decide, or regulators may require us, to conduct additional clinical trials or investigations or abandon product development programs;

- The number of subjects or patients required for clinical trials may be larger than we anticipate, enrollment in these clinical trials or investigations may be insufficient or slower than we anticipate, and the number of clinical trials or investigations being conducted at any given time may be high and result in fewer available patients for any given clinical trial, or patients may drop out of these clinical trials or investigations at a higher rate than we anticipate;
- Our third-party contractors, including those manufacturing products or conducting clinical trials or investigations on our behalf, may fail to comply with regulatory requirements or meet their contractual obligations to us in a timely manner, or at all;
- We might have to suspend or terminate clinical trials or investigations for various reasons, including difficulties in patient enrollment or a finding that the subjects are being exposed to unacceptable health risks;
- We may have to amend clinical trial or investigation protocols or conduct additional studies to reflect changes in regulatory requirements or guidance, which we may be required to submit to an IRB or other reviewing bodies and/or regulatory authorities for re-examination;
- Regulators, IRBs or other reviewing bodies, or other parties may require or recommend that we or our investigators suspend or terminate clinical research for various reasons, including safety signals or noncompliance with regulatory requirements;
- The cost of clinical trials or investigations may be greater than we anticipate;
- Clinical sites may not adhere to our clinical protocol or may drop out of a clinical trial or investigation;
- We may be unable to recruit a sufficient number of clinical trial or investigation sites;
- Regulators, IRBs, or other reviewing bodies may fail to approve or subsequently find fault with our manufacturing processes or facilities of third-party manufacturers with which we enter into agreement for clinical and commercial supplies, the supply of devices or other materials necessary to conduct clinical trials or investigations may be insufficient, inadequate or not available at an acceptable cost, or we may experience interruptions in supply;
- Approval policies or regulations of the FDA or applicable foreign regulatory agencies may change in a manner rendering our clinical data insufficient for approval; and
- Our current or future products may have undesirable side effects or other unexpected characteristics.

In addition, disruptions caused by the COVID-19 pandemic may increase the likelihood that we encounter such difficulties or delays in our planned and ongoing clinical trials or investigations. If COVID-19 continues to spread, we may experience disruptions that could have a material adverse impact on our clinical trial plans and timelines, including:

- Delays in receiving authorizations from local regulatory authorities to initiate planned clinical trials or investigations;
- Delays or difficulties in enrolling patients in our clinical trials or investigations;
- Delays or difficulties in clinical site initiation, including difficulties in recruiting clinical site investigators and clinical site staff;
- Delays in clinical sites receiving the supplies and materials needed to conduct our clinical trials, including interruptions in global shipping that may affect the transport of clinical trial materials;
- Changes in local regulations as part of a response to the COVID-19 pandemic which may require us to change the ways in which our clinical trials or investigations are conducted, which may result in unexpected costs, or to discontinue the clinical trials or investigations altogether;

- Diversion of healthcare resources away from the conduct of clinical trials or investigations, including the diversion of hospitals serving as our clinical trial sites and hospital staff supporting the conduct of our clinical trials or investigations;
- Interruption of key clinical trial or investigation activities, such as clinical trial site monitoring, due to limitations on travel imposed or recommended by federal or state governments, employers and others, or interruption of clinical trial subject visits and study procedures, the occurrence of which could affect the integrity of clinical trial data;
- Risk that participants enrolled in our clinical trials or investigations will contract COVID-19 while the clinical trial or investigation is ongoing, which could impact the results of the clinical trial or investigation, including by increasing the number of observed adverse events;
- Delays in necessary interactions with local regulators, ethics committees and other third parties and contractors due to limitations in employee resources or forced furlough of government employees;
- Limitations in employee resources that would otherwise be focused on the conduct of our clinical trials or investigations, including because of sickness of employees or their families or the desire of employees to avoid contact with large groups of people; and
- Refusal of the FDA to accept data from clinical trials or investigations in affected geographies.

Any of these factors may significantly harm our business, financial condition and prospects. In addition, many of the factors that cause, or lead to, a delay in the commencement or completion of clinical trials or investigations may also ultimately lead to the denial of regulatory approval of our product candidates, which may also significantly harm our business, financial condition and prospects.

Patient enrollment in clinical trials or investigations and completion of patient follow-up depend on many factors, including the size of the patient population, the nature of the trial protocol, the proximity of patients to clinical sites, the eligibility criteria for the clinical trial or investigation, patient compliance, competing clinical trials or investigations and clinicians' and patients' perceptions as to the potential advantages of the product being studied in relation to other available therapies, including any new treatments that may be approved for the indications we are investigating. For example, patients may be discouraged from enrolling in our clinical trials or investigations if the trial protocol requires them to undergo extensive post-treatment procedures, monitoring or follow-up to assess the safety and efficacy of a product, or they may be persuaded to participate in contemporaneous clinical trials of a competitor's product. In addition, patients participating in our clinical trials or investigations may drop out before completion of the trial or experience adverse medical events unrelated to our products. Delays in patient enrollment or failure of patients to continue to participate in a clinical trial or investigation may delay commencement or completion of the clinical trial or investigation, cause an increase in the costs of the clinical trial or investigation and delays, or result in the failure of the clinical trial.

Clinical trials and investigations must be conducted in accordance with the regulations of the FDA and other applicable regulatory authorities' legal requirements, regulations or guidelines, and are subject to oversight by these governmental agencies and IRBs or other regulatory bodies at the medical institutions where the clinical trials or investigations are conducted. In addition, clinical trials and investigations must be conducted with supplies of our devices produced under QSR requirements and other regulations. Further, clinical trials of medical devices for investigational uses must be conducted in accordance with the FDA's IDE regulations, which govern investigational device labeling, prohibit promotion of the device for investigational uses, and specify an array of recordkeeping, reporting and monitoring responsibilities of study sponsors and study investigators.

For certain devices which present a "significant risk" to human health, as defined by the FDA, the FDA requires the device sponsor to submit an IDE application to the FDA, which must become effective prior to commencing clinical trials. The FDA's IDE regulations, among other things, govern investigational device labeling, prohibit promotion of the investigational device, and specify an array of recordkeeping, reporting and

monitoring responsibilities of study sponsors and study investigators. Further, clinical trials of investigational devices which are non-significant risk devices must still comply with applicable regulatory requirements, including abbreviated IDE requirements, such as ensuring that investigators obtain informed consent, and labeling and record-keeping requirements. Regardless of the degree of risk presented by the medical device, clinical studies must be approved by, and conducted under the oversight of, an Institutional Review Board, or IRB, for each clinical site. We have in the past, and may in the future, conduct clinical trials and investigations that do not comply with all applicable regulations of the FDA and other applicable regulatory authorities' legal requirements, regulations or guidelines. For example, we did not seek an IDE from the FDA for the conduct of the GEMINI trial, but instead submitted a justification to the IRB that OMNI was a non-significant risk device. The non-significant risk justification and informed consent documents for the GEMINI trial both initially described the trial as a post-market trial. Subsequently, we amended the study protocol and obtained informed consent for a revised description of the trial. Even if we conclude that the conduct of any of our clinical trials or investigations comply with the applicable requirements, regulations or guidelines, there can be no guarantee that the FDA or other applicable regulatory authorities will agree with such conclusion. The FDA may conclude that our ongoing or planned clinical studies require the submission and approval of an IDE, which would require us to devote additional resources to ensuring compliance with IDE requirements in the conduct of our clinical programs.

If the FDA determines that we have failed to comply with applicable regulatory requirements for the conduct of our clinical trials and investigations, the FDA may refuse to accept any data generated from such clinical trials and investigations in any future premarket applications, and may take a variety of other compliance or enforcement actions, which may result in, among other things, warning letters, untitled letters, fines, injunctions, consent decrees, civil penalties, unanticipated expenditures, repairs, replacements, refunds, recalls or seizures of products, operating restrictions, total or partial suspension of production, the FDA's refusal to issue certificates to foreign governments needed to export products for sale in other countries, the FDA's refusal to grant future premarket clearances or approvals, suspensions of current product clearances or approvals and criminal prosecution.

Furthermore, we may rely on CROs, and clinical trial sites to ensure the proper and timely conduct of our clinical trials or investigations and we may have limited influence over their actual performance. We depend on our collaborators and on medical institutions and CROs to conduct our clinical trials or investigations in compliance with good clinical practice, or GCP, requirements. To the extent our collaborators or the CROs fail to enroll participants for our clinical trials and investigations, fail to conduct the study to GCP standards or are delayed for a significant time in the execution of trials, including achieving full enrollment, we may be affected by increased costs, program delays or both. In addition, clinical trials and investigations that are conducted in countries outside the United States may subject us to further delays and expenses as a result of increased shipment costs, additional regulatory requirements and the engagement of non-U.S. CROs, as well as expose us to risks associated with clinical investigators who are unknown to the FDA, and different standards of diagnosis, screening and medical care.

Even if our future products are cleared or approved in the U.S., commercialization of our products in foreign countries would require clearance, certification or approval by regulatory authorities in those countries. Clearance, certification or approval procedures vary among jurisdictions and can involve requirements and administrative review periods different from, and greater than, those in the U.S., including additional preclinical studies or clinical trials or investigations. Any of these occurrences could have an adverse effect on our business, financial condition and results of operations.

Changes in funding for, or disruptions caused by global health concerns impacting, the FDA and other government agencies could hinder their ability to hire and retain key leadership and other personnel, or otherwise prevent new products and services from being developed, cleared or approved or commercialized in a timely manner, which could negatively impact our business.

The ability of the FDA to review and approve new products can be affected by a variety of factors, including government budget and funding levels, ability to hire and retain key personnel and accept the payment of user fees, statutory, regulatory, and policy changes and other events that may otherwise affect the FDA's ability to perform routine functions. Average review times at the agency have fluctuated in recent years as a result. In addition, government funding of other government agencies that fund research and development activities is subject to the political process, which is inherently fluid and unpredictable.

Disruptions at the FDA and other agencies may also slow the time necessary for new devices to be reviewed and/or approved or cleared by necessary government agencies, which would adversely affect our business. For example, over the last several years, including for 35 days beginning on December 22, 2018, the U.S. government has shut down several times and certain regulatory agencies, such as the FDA, have had to furlough critical FDA employees and stop critical activities. Separately, in response to the COVID-19 pandemic, on March 10, 2020, the FDA announced its intention to postpone inspections of foreign manufacturing facilities and products, and subsequently, on March 18, 2020, the FDA temporarily postponed routine surveillance inspections of domestic manufacturing facilities. Subsequently, on July 10, 2020 the FDA announced its intention to resume certain on-site inspections of domestic manufacturing facilities subject to a risk-based prioritization system. The FDA intends to use this risk-based assessment system to identify the categories of regulatory activity that can occur within a given geographic area, ranging from mission critical inspections to resumption of all regulatory activities. Other regulatory authorities may adopt similar restrictions or other policy measures in response to the COVID-19 pandemic. If a prolonged government shutdown occurs, or if global health concerns continue to prevent the FDA or other regulatory authorities from conducting business as usual or conducting inspections, reviews or other regulatory activities, it could significantly impact the ability of the FDA to timely review and process our regulatory submissions, which could have a material adverse effect on our business.

In the European Union, Notified Bodies must be officially designated to certify products and services in accordance with the EU Medical Devices Regulation. Notified Bodies which have applied for designation under the EU Medical Devices Regulation are currently undergoing such designation assessments. Only a few Notified Bodies have been designated so far and the COVID-19 pandemic has significantly slowed down their designation process. Without EU Medical Devices Regulation designation, Notified Bodies may not yet start certifying devices in accordance with the new Regulation. This situation could impact the way we are conducting our business and lead to delays in recertification and compliance with the EU Medical Devices Regulation.

Under normal circumstances, medical devices manufacturers must undergo on-site audits by Notified Bodies in order to maintain their CE-mark certifications per the requirements of the EU Medical Devices Directive. As many CE-mark certifications will become void as part of the transition to the EU Medical Devices Regulation, Notified Bodies also have to start certifying medical devices in accordance with the EU Medical Devices Regulation. As another consequence of the COVID-19 pandemic, on-site Notified Bodies' audits have not been feasible due to quarantine and travel restrictions and most of them have been postponed. Even though some specific measures have been implemented to determine whether remote audits can be conducted or be supplemented with an on-site audit once travel restrictions are lifted, this situation could significantly impact the ability of Notified Bodies to timely review and process our regulatory submissions, which could have a material adverse effect on our business.

We are subject to certain federal, state and foreign fraud and abuse laws, health information privacy and security laws and transparency laws that could subject us to substantial penalties. Additionally, any challenge to or investigation into our practices under these laws could cause adverse publicity and be costly to respond to, and thus could harm our business.

There are numerous U.S. federal and state, as well as foreign, laws pertaining to healthcare fraud and abuse, including anti-kickback, false claims and physician transparency laws. Our business practices and relationships with providers are subject to scrutiny under these laws. We may also be subject to privacy and security regulation related to patient, customer, employee and other third-party information by both the federal government and the states and foreign jurisdictions in which we conduct our business. The healthcare laws and regulations that may affect our ability to operate include, but are not limited to:

- The federal Anti-Kickback Statute, which prohibits, among other things, persons and entities from knowingly and willfully soliciting, offering, receiving or providing remuneration, directly or indirectly, in cash or in kind, to induce either the referral of an individual or furnishing or arranging for a good or service, for which payment may be made, in whole or in part, under federal healthcare programs, such as Medicare and Medicaid. A person or entity does not need to have actual knowledge of the statute or specific intent to violate it to have committed a violation. The U.S. government has interpreted this law broadly to apply to the marketing and sales activities of manufacturers. Moreover, the government may assert that a claim including items or services resulting from a violation of the federal Anti-Kickback Statute constitutes a false or fraudulent claim for purposes of the federal civil False Claims Act. Violations of the federal Anti-Kickback Statute may result in significant civil monetary penalties, plus up to three times the remuneration involved. Civil penalties for such conduct can further be assessed under the federal False Claims Act. Violations can also result in criminal penalties, including significant criminal fines and imprisonment of up to 10 years. Similarly, violations can result in exclusion from participation in government healthcare programs, including Medicare and Medicaid;
- The federal civil and criminal false claims laws and civil monetary penalties laws, including the federal civil False Claims Act, which prohibit, among other things, individuals or entities from knowingly presenting, or causing to be presented, claims for payment from Medicare, Medicaid or other federal healthcare programs that are false or fraudulent. These laws can apply to manufacturers who provide information on coverage, coding, and reimbursement of their products to persons who bill third-party payors. Private individuals can bring False Claims Act “qui tam” actions, on behalf of the government and such individuals, commonly known as “whistleblowers,” may share in amounts paid by the entity to the government in fines or settlement. When an entity is determined to have violated the federal civil False Claims Act, the government may impose significant civil fines and penalties for each false claim, plus treble damages, and exclude the entity from participation in Medicare, Medicaid and other federal healthcare programs;
- The federal Civil Monetary Penalties Law, which prohibits, among other things, offering or transferring remuneration to a federal healthcare beneficiary that a person knows or should know is likely to influence the beneficiary’s decision to order or receive items or services reimbursable by the government from a particular provider or supplier;
- The Health Insurance Portability and Accountability Act of 1996, or HIPAA, which created additional federal criminal statutes that prohibit, among other things, executing a scheme to defraud any healthcare benefit program and making false statements relating to healthcare matters. Similar to the federal Anti-Kickback Statute, a person or entity does not need to have actual knowledge of the statute or specific intent to violate it to have committed a violation;
- The federal Physician Payments Sunshine Act which requires certain applicable manufacturers of drugs, devices, biologics and medical supplies for which payment is available under Medicare, Medicaid or the Children’s Health Insurance Program, or CHIP, to report annually to the DHHS Centers for Medicare and Medicaid Services, or CMS, information related to payments and other transfers of value to physicians, which is defined broadly to include other healthcare providers and

teaching hospitals, and applicable manufacturers and group purchasing organizations, to report annually ownership and investment interests held by physicians and their immediate family members. Additionally, on October 25, 2018, President Trump signed into law the "Substance Use-Disorder Prevention that Promoted Opioid Recovery and Treatment for Patients and Communities Act" which in part (under a provision entitled "Fighting the Opioid Epidemic with Sunshine") extends the reporting and transparency requirements for physicians in the Physician Payments Sunshine Act to physician assistants, nurse practitioners, and other mid-level practitioners (with reporting requirements going into effect in 2022 for payments made in 2021). Applicable manufacturers are required to submit annual reports to CMS. Failure to submit required information may result in significant civil monetary penalties (and additional penalties for "knowing failures"), for all payments, transfers of value or ownership or investment interests that are not timely, accurately, and completely reported in an annual submission, and may result in liability under other federal laws or regulations;

- HIPAA, as amended by the Health Information Technology for Economic and Clinical Health Act of 2009, or HITECH Act, and their respective implementing regulations, which impose requirements on certain covered healthcare providers, health plans and healthcare clearinghouses as well as their business associates that perform services for them that involve individually identifiable health information, relating to the privacy, security and transmission of individually identifiable health information without appropriate authorization, including mandatory contractual terms as well as directly applicable privacy and security standards and requirements. Failure to comply with the HIPAA privacy and security standards can result in significant civil monetary penalties, and, in certain circumstances, criminal penalties with fines and/or imprisonment. State attorneys general can also bring a civil action to enjoin a HIPAA violation or to obtain statutory damages on behalf of residents of his or her state;
- The FDCA, which prohibits, among other things, the adulteration or misbranding of drugs, biologics and medical devices;
- Federal and state laws and regulations regarding billing and claims payment applicable to our products and regulatory agencies enforcing those laws and regulations; and
- Analogous state and foreign 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 payor, including commercial insurers or patients; state laws that require device companies to comply with the industry's voluntary compliance guidelines and the applicable compliance guidance promulgated by the federal government or otherwise restrict payments that may be made to healthcare providers and other potential referral sources; state laws that require device manufacturers to report information related to payments and other transfers of value to physicians and other healthcare providers or marketing expenditures; consumer protection and unfair competition laws, which broadly regulate marketplace activities and activities that potentially harm customers, foreign and state laws, including the EU General Data Protection Regulation, or GDPR, governing the privacy and security of personal (including 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; and state laws related to insurance fraud in the case of claims involving private insurers.

These laws and regulations, among other things, constrain our business, marketing and other promotional and research activities by limiting the kinds of financial arrangements, including sales programs, we may have with hospitals, ambulatory surgery centers, physicians or other potential purchasers of our products. We have entered into consulting agreements with physicians, including some who have ownership interests in us, which could be viewed as influencing the purchase of or use of our products in procedures they perform. Compensation under some of these arrangements includes the provision of stock or stock options. Due to the breadth of these laws, the narrowness of statutory exceptions and regulatory safe harbors available, and the range of interpretations to which they are subject, it is possible that some of our current or future practices might be challenged under one or more of these laws.

Any action brought against us for violations of these laws or regulations, even if successfully defended, could cause us to incur significant legal expenses and divert our management's attention from the operation of our business. We may be subject to private qui tam actions brought by individual whistleblowers on behalf of the federal or state governments, with potential liability under the federal False Claims Act including mandatory treble damages and significant per-claim penalties.

To enforce compliance with the healthcare regulatory laws, certain enforcement bodies have recently increased their scrutiny of interactions between healthcare companies and healthcare providers, which has led to a number of investigations, prosecutions, convictions and settlements in the healthcare industry. Responding to investigations can be time-and resource-consuming and can divert management's attention from the business. Additionally, as a result of these investigations, healthcare providers and entities may have to agree to additional compliance and reporting requirements as part of a consent decree or corporate integrity agreement. Any such investigation or settlement could increase our costs or otherwise have an adverse effect on our business, financial condition and results of operations. Even an unsuccessful challenge or investigation into our practices could cause adverse publicity, and be costly to respond to.

Our activities, including those relating to providing billing, coding, coverage and reimbursement information about procedures using our products to our customers and the sale and marketing of our products, may be subject to scrutiny under these laws. The growth of our business and sales organization and our expansion outside of the United States may increase the potential of violating these laws or our internal policies and procedures. Any action brought against us for violation of these or other laws or regulations, even if we successfully defend against it, could cause us to incur significant legal expenses and divert our management's attention from the operation of our business. If our operations are found to be in violation of any of the federal, state and foreign laws described above or any other current or future fraud and abuse or other healthcare laws and regulations that apply to us, we may be subject to significant penalties, including significant criminal, civil, and administrative penalties, damages, fines, exclusion from participation in government programs, such as Medicare and Medicaid, imprisonment, contractual damages, reputation harm and disgorgement and we could be required to curtail, restructure or cease our operations. Any of the foregoing consequences will negatively affect our business, financial condition and results of operations.

We are subject to governmental regulations and other legal obligations, particularly related to privacy, data protection and information security, and we are subject to consumer protection laws that regulate our marketing practices and prohibit unfair or deceptive acts or practices. Our actual or perceived failure to comply with such obligations could harm our business. Ensuring compliance with such laws could also impair our efforts to maintain and expand our customer base, and thereby decrease our revenue.

In the conduct of our business, we may at times process personal data, including health-related personal data. The U.S. federal government and various states have adopted or proposed laws, regulations, guidelines and rules for the collection, distribution, use and storage of personal information of individuals. We may also be subject to U.S. federal rules, regulations and guidance concerning data security for medical devices, including guidance from the FDA. According to the Federal Trade Commission, or the FTC, failing to take appropriate steps to keep consumers' personal information secure constitutes unfair acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act, 15 U.S.C § 45(a). The FTC expects a company's data security measures to be reasonable and appropriate in light of the sensitivity and volume of consumer information it holds, the size and complexity of its business, and the cost of available tools to improve security and reduce vulnerabilities. Individually identifiable health information is considered sensitive data that merits stronger safeguards. State privacy and security laws vary from state to state and, in some cases, can impose more restrictive requirements than U.S. federal law.

In addition, certain state and non-U.S. laws, such as the European Union General Data Protection Regulation (2016/679), or GDPR, govern the privacy and security of personal (including health) data in certain circumstances, some of which are more stringent than U.S. federal law and many of which differ from each other

in significant ways and may not have the same effect, thus complicating compliance efforts. The GDPR is directly applicable in each member state and is extended to the EEA. Failure to comply with these laws, where applicable, can result in the imposition of significant civil and/or criminal penalties and private litigation. Where state laws are more protective, we must comply with the stricter provisions. In addition to fines and penalties that may be imposed for failure to comply with state law, some states also provide for private rights of action to individuals for misuse of personal information. For example, California enacted the California Consumer Privacy Act, or CCPA, on June 28, 2018, which went into effect on January 1, 2020. The CCPA creates individual privacy rights for California consumers and increases the privacy and security obligations of entities handling certain personal data. The CCPA provides for civil penalties for violations, as well as a private right of action for data breaches that is expected to increase data breach litigation. The CCPA may increase our compliance costs and potential liability, and many similar laws have been proposed at the federal level and in other states.

In Europe, the GDPR went into effect on May 25, 2018 and introduces strict requirements for processing the personal data of European Union data subjects. Companies that must comply with the GDPR face increased compliance obligations and risk, including more robust regulatory enforcement of data protection requirements and potential fines for noncompliance of up to €20 million or 4% of the annual global revenues of the preceding financial year of the noncompliant company, whichever is greater.

Among other requirements, the GDPR regulates transfers of personal data subject to the GDPR to third countries that have not been found to provide adequate protection to such personal data, including the United States, and the efficacy and longevity of current transfer mechanisms between the EU and the United States remains uncertain. For example, in 2016, the EU and United States agreed to a transfer framework for data transferred from the EU to the United States, called the Privacy Shield, but the Privacy Shield was invalidated in July 2020 by the Court of Justice of the European Union.

Further, from January 1, 2021, companies have to comply with the GDPR and also the United Kingdom General Data Protection Regulation, or the UK GDPR, which, together with the amended UK Data Protection Act 2018, retains the GDPR in UK national law. The UK GDPR mirrors the fines under the GDPR, i.e., fines up to the greater of €20 million (£17.5 million) or 4% of global turnover. The relationship between the United Kingdom and the European Union in relation to certain aspects of data protection law remains unclear, and it is also unclear how United Kingdom data protection laws and regulations will develop in the medium to longer term, and how data transfers to and from the United Kingdom will be regulated in the long term. These changes will lead to additional costs and increase our overall risk exposure. Currently there is a four to six month grace period agreed in the EU and United Kingdom Trade and Cooperation Agreement, ending June 30, 2021 at the latest, whilst the parties discuss an adequacy decision. The European Commission published a draft adequacy decision on February 19, 2021. If adopted, the decision will enable data transfers from EU member states to the United Kingdom for a four-year period, subject to subsequent extensions.

Any actual or perceived failure by us or the third parties with whom we work to comply with privacy or security laws, policies, legal obligations or industry standards, or any security incident that results in the unauthorized release or transfer of personally identifiable information, may result in governmental enforcement actions and investigations including by European Data Protection Authorities and U.S. federal and state regulatory authorities, fines and penalties, litigation and/or adverse publicity, including by consumer advocacy groups, and could cause our customers, their patients and other healthcare professionals to lose trust in us, which could harm our reputation and have a material adverse effect on our business, financial condition and results of operations.

We cannot assure you that any third-party service providers with access to our or our customers', suppliers', trial patients' and employees' personally identifiable and other sensitive or confidential information in relation to which we are responsible will not breach contractual obligations imposed by us, or that they will not experience data security breaches or attempts thereof, which could have a corresponding effect on our business, including putting us in breach of our obligations under privacy laws and regulations and/or which could in turn adversely

affect our business, results of operations and financial condition. We cannot assure you that our contractual measures and our own privacy and security-related safeguards will protect us from the risks associated with the third-party processing, storage and transmission of such information. Increasing use of social media could also give rise to liability, breaches of data security or reputational damage.

Although we work to comply with applicable laws, regulations and standards, our contractual obligations and other legal obligations, these requirements are evolving and may be modified, interpreted and applied in an inconsistent manner from one jurisdiction to another, and may conflict with one another or other legal obligations with which we must comply. Any failure or perceived failure by us or our employees, representatives, contractors, consultants, CROs, collaborators, or other third parties to comply with such requirements or adequately address privacy and security concerns, even if unfounded, could result in additional cost and liability to us, damage our reputation, and adversely affect our business and results of operations.

Our employees, consultants, and other commercial partners may engage in misconduct or other improper activities, including non-compliance with regulatory standards and requirements.

We are exposed to the risk that our employees, consultants, distributors and other commercial partners and business associates may engage in fraudulent or other illegal activity. Misconduct by these parties could include intentional, reckless or negligent conduct or other unauthorized activities that violate the regulations of the FDA and other regulators (both domestic and foreign), including those laws requiring the reporting of true, complete and accurate information to such regulators, manufacturing standards, healthcare fraud and abuse laws and regulations in the U.S. and internationally or laws that require the true, complete and accurate reporting of financial information or data. In particular, sales, marketing and business arrangements in the healthcare industry, including the sale of medical devices, are subject to extensive laws and regulations intended to prevent fraud, misconduct, kickbacks, self-dealing and other abusive practices. These laws and regulations may restrict or prohibit a wide range of pricing, discounting, marketing and promotion, sales commission, customer incentive programs and other business arrangements. It is not always possible to identify and deter misconduct by our employees, consultants and other third parties, and the precautions we take to detect and prevent this activity may not be effective in controlling unknown or unmanaged risks or losses or in protecting us from governmental investigations or other actions or lawsuits stemming from a failure to comply with these laws or regulations. If any such actions are instituted against us and we are not successful in defending ourselves or asserting our rights, those actions could result in the imposition of significant fines or other sanctions, including the imposition of civil, criminal and administrative penalties, damages, monetary fines, possible exclusion from participation in Medicare, Medicaid and other federal healthcare programs, contractual damages, reputational harm, diminished profits and future earnings, and curtailment of operations, any of which could adversely affect our business, financial condition and results of operations. Whether or not we are successful in defending against such actions or investigations, we could incur substantial costs, including legal fees and reputational harm, and divert the attention of management in defending ourselves against any of these claims or investigations.

Compliance with environmental laws and regulations could be expensive, and the failure to comply with these laws and regulations could subject us to significant liability.

Our research and development operations involve the use of hazardous substances, such as isopropyl alcohol and various adhesives. We are subject to a variety of federal, state, local and foreign environmental laws and regulations relating to the storage, use, handling, generation, manufacture, treatment, discharge and disposal of, hazardous substances. Our products may also contain hazardous substances, and they are subject to laws and regulations relating to labelling requirements and to their sale, collection, recycling, treatment, storage and disposal. Compliance with these laws and regulations may be expensive and noncompliance could result in substantial fines and penalties. Environmental laws and regulations also impose liability for the remediation of releases of hazardous substances into the environment and for personal injuries resulting from exposure to hazardous substances, and they can give rise to substantial remediation costs and to third-party claims, including for property damage and personal injury. Liability under environmental laws and regulations can be joint and

several and without regard to fault or negligence, and they tend to become more stringent over time, imposing greater compliance costs and increased risks and penalties associated with violations. We cannot assure you that violations of these laws and regulations, or releases of or exposure to hazardous substances, will not occur in the future or have not occurred in the past, including as a result of human error, accidents, equipment failure or other causes. The costs of complying with environmental laws and regulations, and liabilities that may be imposed for violating them, or for remediation obligations or responding to third-party claims, could negatively affect our business, financial condition and results of operations.

Healthcare policy changes, including recently enacted legislation reforming the U.S. healthcare system, could harm our business, financial condition and results of operations.

In the U.S., there have been and continue to be a number of legislative initiatives to contain healthcare costs. Federal and state lawmakers regularly propose and, at times, enact legislation that would result in significant changes to the healthcare system, some of which are intended to contain or reduce the costs of medical products and services. Current and future legislative proposals to further reform healthcare or reduce healthcare costs may limit coverage of or lower reimbursement for the procedures associated with the use of our products. The cost containment measures that payors and providers are instituting and the effect of any healthcare reform initiative implemented in the future could impact our revenue from the sale of our products. The Affordable Care Act, or ACA, made a number of substantial changes in the way healthcare is financed by both governmental and private insurers. Among other ways in which it may affect our business, the ACA:

- Imposed a new federal excise tax on the sale of certain medical devices, which was suspended, effective January 1, 2016, and permanently repealed in December 2019;
- Established a new Patient-Centered Outcomes Research Institute to oversee and identify priorities in comparative clinical effectiveness research in an effort to coordinate and develop such research;
- Implemented payment system reforms including a national pilot program on payment bundling to encourage hospitals, physicians and other providers to improve the coordination, quality and efficiency of certain healthcare services through bundled payment models; and
- Expanded the eligibility criteria for Medicaid programs.

Since its enactment, there have been judicial and Congressional challenges to certain aspects of the ACA, and we expect there will be additional challenges and amendments to the ACA in the future. By way of example, the Tax Cuts and Jobs Act of 2017, or TCJA, was enacted, which, among other things, removes penalties for not complying with the individual mandate to carry health insurance. On December 14, 2018, a U.S. District Court Judge in the Northern District of Texas (Texas District Court Judge) ruled that the individual mandate is a critical and inseverable feature of the ACA, and therefore, because it was repealed as part of the TCJA, the remaining provisions of the ACA are invalid as well. On December 18, 2019, the U.S. Court of Appeals for the 5th Circuit upheld the District Court ruling that the individual mandate was unconstitutional and remanded the case back to the District Court to determine whether the remaining provisions of the ACA are invalid as well. On March 2, 2020, the United States Supreme Court granted the petitions for writs of certiorari to review this case, and the Court held oral argument on November 10, 2020. The case is expected to be decided in mid-2021. It is unclear how this decision or other efforts to challenge, repeal or replace the ACA will impact the law and our business. Any expansion in the government's role in the U.S. healthcare industry may result in decreased profits to us, lower reimbursement by payors for procedures using OMNI, and/or reduced medical procedure volumes, any of which may have a material adverse effect on our business, financial condition or results of operations.

In addition, other legislative changes have been proposed and adopted since the Affordable Care Act was enacted. The Budget Control Act of 2011, among other things, reduced Medicare payments to providers by 2% per fiscal year, effective on April 1, 2013 and, due to subsequent legislative amendments to the statute, will remain in effect through 2030, with the exception of a temporary suspension from May 1, 2020 through March 31, 2021, unless additional Congressional action is taken. Additionally, the American Taxpayer Relief Act

of 2012, among other things, reduced Medicare payments to several providers, including hospitals, and increased the statute of limitations period for the government to recover overpayments to providers from three to five years. The Medicare Access and CHIP Reauthorization Act of 2015, or MACRA, enacted on April 16, 2015, repealed the formula by which Medicare made annual payment adjustments to physicians and replaced the former formula with fixed annual updates and a new system of incentive payments that are based on various performance measures and physicians' participation in alternative payment models such as accountable care organizations. It is unclear what effect new quality and payment programs, such as MACRA, may have on our business, financial condition, results of operations or cash flows.

We expect additional state and federal healthcare policies and reform measures to be adopted in the future, any of which could limit reimbursement for healthcare products and services or otherwise result in reduced demand for our products or additional pricing pressure and have a material adverse effect on our industry generally and on our customers. We cannot predict what other healthcare programs and regulations will ultimately be implemented at the federal or state level or the effect of any future legislation or regulation in the U.S. may negatively affect our business, financial condition and results of operations. The continuing efforts of the government, insurance companies, managed care organizations and other payors of healthcare services to contain or reduce costs of healthcare may adversely affect:

- Our ability to set a price that we believe is fair for our products;
- Our ability to generate revenue and achieve or maintain profitability; and
- The availability of capital.

Any changes of, or uncertainty with respect to, future coverage or reimbursement rates could affect demand for our products, which in turn could impact our ability to successfully commercialize these devices and could have a material adverse effect on our business, financial condition and results of operations.

Our ability to continue sales of our products in the European Union may be materially impaired if we do not take necessary steps to comply with the certification requirements of the new EU Medical Devices Regulation.

On May 25, 2017, the EU Medical Devices Regulation (Regulation 2017/745) entered into force, which repeals and replaces the EU Medical Devices Directive. Unlike directives, which must be implemented into the national laws of the EU member states, regulations are directly applicable (i.e., without the need for adoption of EU member state laws implementing them) in all EU member states and are intended to eliminate current differences in the regulation of medical devices among EU member states. The Medical Devices Regulation, among other things, is intended to establish a uniform, transparent, predictable and sustainable regulatory framework across the EU for medical devices and ensure a high level of safety and health while supporting innovation.

The Medical Devices Regulation was originally intended to become effective three years after publication, but in April 2020 the transition period was extended by the European Parliament and the Council of the EU by an additional year, until May 26, 2021. Devices lawfully placed on the market pursuant to the EU Medical Devices Directive prior to May 26, 2021 may generally continue to be made available on the market or put into service until May 26, 2025. Once effective, the new regulations will among other things:

- Strengthen the rules on placing devices on the market and reinforce surveillance once they are available;
- Establish explicit provisions on manufacturers' responsibilities for the follow-up of the quality, performance and safety of devices placed on the market;
- Improve the traceability of medical devices throughout the supply chain to the end-user or patient through a unique identification number;

- Set up a central database to provide patients, healthcare professionals and the public with comprehensive information on products available in the EU; and
- Strengthen the rules for the assessment of certain high-risk devices, which may have to undergo an additional check by experts before they are placed on the market.

These modifications may have an effect on the way we design and manufacture products and conduct our business in the EU and EEA (also including Norway, Liechtenstein and Iceland). For example, as a result of the transition towards the new regime, notified body review times have lengthened, and product introductions or modifications could be delayed or canceled, which could adversely affect our ability to grow our business.

The EU-UK Trade and Cooperation Agreement, or TCA, came into effect on January 1, 2021. The TCA does not specifically refer to medical devices. However, as a result of Brexit, the EU Medical Devices Regulation will not be implemented in the UK, and previous legislation that mirrored the EU Medical Devices Regulation in the UK law has been revoked. The regulatory regime for medical devices in the UK will continue to be based on the requirements derived from current EU legislation, and the UK may choose to retain regulatory flexibility or align with the EU MDR going forward. CE markings will continue to be recognized in the UK, and certificates issued by EU-recognized Notified Bodies will be valid in the UK, until June 30, 2023. For medical devices placed on the UK market after this period, the UK Conformity Assessment (UKCA) marking will be mandatory. In contrast, UKCA marking and certificates issued by UK Notified Bodies will not be recognized on the EU market. The TCA does provide for cooperation and exchange of information in the area of product safety and compliance, including market surveillance, enforcement activities and measures, standardization related activities, exchanges of officials, and coordinated product recalls (or other similar actions). For medical devices that are locally manufactured but use components from other countries, the “rules of origin” criteria will need to be reviewed. Depending on which countries products will be ultimately sold in, manufacturers may start seeking alternative sources for components if this would allow them to benefit from no tariffs. The rules for placing medical devices on the Northern Ireland market will differ from those in the UK. These modifications may have an effect on the way we design and manufacture products and we conduct our business in these countries.

Risks Related to This Offering

Our common stock has never been publicly traded, and we expect that the price of our common stock will fluctuate substantially.

Before this initial public offering, there has been no public market for our common stock. The initial public offering price for our common stock will be determined through negotiations between the underwriters and us and may vary substantially from the market price of our common stock following this offering. An active public trading market may not develop after completion of this offering or, if developed, may not be sustained. The lack of an active market may impair your ability to sell your shares at the time you wish to sell them or at a price that you consider reasonable. An inactive market may also impair our ability to raise capital by selling shares and may impair our ability to acquire other products, technologies or businesses using our shares as consideration. Furthermore, although our common stock has been approved for listing on the , there can be no guarantee that we will continue to satisfy the continued listing standards of the . If we fail to satisfy such exchange’s continued listing standards, we could be de-listed, which would have a negative effect on the price of our common stock.

Following this offering, the market price of our common stock may be highly volatile and may fluctuate or decline substantially as a result of a variety of factors, some of which are beyond our control or are related in complex ways, including:

- Changes in analysts’ estimates, investors’ perceptions, recommendations by securities analysts or our failure to achieve analysts’ estimates;
- Quarterly variations in our or our competitors’ results of operations;

- Periodic fluctuations in our revenue, which could be due in part to the way in which we recognize revenue;
- The financial projections we may provide to the public, any changes in these projections or our failure to meet these projections;
- Future sales of our common stock or other securities, by us or our stockholders, as well as the anticipation of lock-up releases or lock-up waivers;
- The trading volume of our common stock;
- General market conditions and other factors unrelated to our operating performance or the operating performance of our competitors;
- Changes in reimbursement by current or potential payors;
- Changes in operating performance and stock market valuations of other technology companies generally, or those in the medical device industry in particular;
- Actual or anticipated changes in regulatory oversight of our products;
- The results of our clinical trials;
- The loss of key personnel, including changes in our board of directors and management;
- Product recalls or other problems associated with our products;
- Legislation or regulation of our market;
- Lawsuits threatened or filed against us, including litigation by current or former employees alleging wrongful termination, sexual harassment, whistleblower or other claims;
- The announcement of new products or product enhancements by us or our competitors;
- Announced or completed acquisitions of businesses or technologies by us or our competitors;
- Announcements related to patents issued to us or our competitors and related litigation; and
- Developments in our industry.

In addition, the trading prices for common stock of other medical device companies have been highly volatile as a result of the COVID-19 pandemic. The COVID-19 outbreak continues to rapidly evolve. The extent to which the outbreak may impact our business will depend on future developments, which are highly uncertain and cannot be predicted with confidence.

In recent years, the stock markets generally have experienced extreme price and volume fluctuations that have often been unrelated or disproportionate to the operating performance of listed companies. Broad market and industry factors may significantly affect the market price of our common stock, regardless of our actual operating performance. These fluctuations may be even more pronounced in the trading market for our common stock shortly following this offering. If the market price of shares of our common stock after this offering does not ever exceed the initial public offering price, you may not realize any return on your investment in us and may lose some or all of your investment.

In addition, in the past, stockholders have instituted securities class action litigation following periods of market volatility. If we were to become involved in securities litigation, it could subject us to substantial costs, divert resources and the attention of management from our business and harm our business, results of operations, financial condition and reputation. These factors may materially and adversely affect the market price of our common stock.

Securities analysts may not publish favorable research or reports about our business or may publish no information at all, which could cause our stock price or trading volume to decline.

Our stock price and trading volume may be heavily influenced by the way analysts and investors interpret our financial information and other disclosures. If securities or industry analysts do not publish research or reports about our business, delay publishing reports about our business, or publish negative reports about our business, regardless of accuracy, our common stock price and trading volume could decline.

If a trading market for our common stock develops, the trading market will be influenced to some extent by the research and reports that industry or financial analysts publish about us and our business. We do not control these analysts. As a newly public company, we may be slow to attract research coverage and the analysts who publish information about our common stock will have had relatively little experience with us or our industry, which could affect their ability to accurately forecast our results and could make it more likely that we fail to meet their estimates. In the event we obtain securities or industry analyst coverage, if any of the analysts who cover us provide inaccurate or unfavorable research or issue an adverse opinion regarding our stock price, our stock price could decline. We may also fail to meet the expectations of these analysts, leading to a reduction in the market price of our common stock. If one or more of these analysts cease coverage of us or fail to publish reports covering us regularly, we could lose visibility in the market, which in turn could cause our stock price or trading volume to decline.

Even if our common stock is actively covered by analysts, we do not have any control over the analysts or the measures that analysts or investors may rely upon to forecast our future results. Over-reliance by analysts or investors on any particular metric to forecast our future results may lead to forecasts that differ significantly from our own.

We are an emerging growth company and a smaller reporting company and we cannot be certain if the reduced disclosure requirements applicable to us will make our common stock less attractive to investors.

We are an “emerging growth company,” as defined in the JOBS Act, and we expect to take advantage of certain exemptions and relief from various reporting requirements that are applicable to other public companies that are not emerging growth companies. In particular, while we are an emerging growth company, we will not be required to comply with the auditor attestation requirements of Section 404(b) of the Sarbanes-Oxley Act of 2002, or the Sarbanes-Oxley Act; we will be exempt from any rules that could be adopted by the Public Company Accounting Oversight Board requiring mandatory audit firm rotations or a supplement to the auditor’s report on financial statements; we will be subject to reduced disclosure obligations regarding executive compensation in our periodic reports and proxy statements; and we will not be required to hold nonbinding advisory votes on executive compensation or stockholder approval of any golden parachute payments not previously approved.

In addition, while we are an emerging growth company we can take advantage of an extended transition period for complying with new or revised accounting standards. This allows an emerging growth company to delay the adoption of certain accounting standards until those standards would otherwise apply to private companies. We have elected to take advantage of this extended transition period and, as a result, our operating results and financial statements may not be comparable to the operating results and financial statements of companies who have adopted the new or revised accounting standards.

We will remain an emerging growth company until the earlier of (1) December 31, 2026, (2) the last day of the fiscal year in which we have total annual gross revenue of at least $1.07 billion, (3) the last day of the fiscal year in which we are deemed to be a large accelerated filer, which requires the market value of our common stock that is held by non-affiliates to exceed $700.0 million as of the prior June 30th, or (4) the date on which we have issued more than $1.0 billion in non-convertible debt during the prior three-year period.

We are also a “smaller reporting company” as defined in the Exchange Act. We may continue to be a smaller reporting company even after we are no longer an emerging growth company. We may take advantage of

certain of the scaled disclosures available to smaller reporting companies and will be able to take advantage of these scaled disclosures for so long as our voting and non-voting common stock held by non-affiliates is less than $250.0 million measured on the last business day of our second fiscal quarter, or our annual revenue is less than $100.0 million during the most recently completed fiscal year and our voting and non-voting common stock held by non-affiliates is less than $700.0 million measured on the last business day of our second fiscal quarter.

Investors may find our common stock less attractive to the extent we rely on the exemptions and relief granted by the JOBS Act. We have elected to take advantage of these exemptions and relief. If some investors find our common stock less attractive as a result, there may be a less active trading market for our common stock and our stock price may decline or become more volatile.

If you purchase our common stock in this offering, you will incur immediate and substantial dilution in the book value of your shares.

Investors purchasing common stock in this offering will pay a price per share that substantially exceeds the pro forma as adjusted net tangible book value per share. As a result, investors purchasing common stock in this offering will incur immediate dilution of $ per share (or $ per share if the underwriters exercise their option to purchase additional shares in full), based on an initial public offering price of $ per share (the midpoint of the price range set forth on the cover page of this prospectus) and our pro forma as adjusted net tangible book value per share as of , 2021. For more information on the dilution you may suffer as a result of investing in this offering, see the section of this prospectus entitled “Dilution.” If outstanding options or warrants are exercised in the future, you will experience additional dilution.

This dilution is due to the substantially lower price paid by our investors who purchased shares prior to this offering as compared to the price offered to the public in this offering.

A significant portion of our total outstanding shares are restricted from immediate resale but may be sold into the market in the near future. This could cause the market price of our common stock to drop significantly, even if our business is doing well.

Sales of a substantial number of shares of our common stock in the public market could occur at any time. These sales, or the perception in the market that the holders of a large number of shares intend to sell their shares, could result in a decrease in the market price of our common stock. Upon the closing of this offering, we will have shares of common stock outstanding based on the number of shares outstanding as of , 2021. This includes the shares that we are selling in this offering, which may be resold in the public market immediately without restriction, unless purchased by our affiliates. Of the remaining shares, shares are currently restricted as a result of vesting restrictions, securities laws or 180-day lock-up agreements (which may be waived, with or without notice, by Morgan Stanley & Co. LLC and BofA Securities, Inc.) but will be able to be sold after the offering as described in the section of this prospectus entitled “Shares Eligible for Future Sale.” Moreover, after this offering, holders of an aggregate of up to shares of our common stock, including shares of our common stock issuable upon the conversion of the shares of our convertible preferred stock that will be outstanding immediately prior to the consummation of this offering, will have rights, subject to some conditions, to require us to file registration statements covering their shares or to include their shares in registration statements that we may file for ourselves or other stockholders as described in the section of this prospectus entitled “Description of Capital Stock—Registration Rights.”

We also intend to register all shares of common stock that we may issue under our equity compensation plans. Once we register these shares, they can be freely sold in the public market, subject to volume limitations applicable to affiliates and the lock-up agreements described in the section of this prospectus entitled “Underwriting.”

Sales of our common stock as restrictions end or pursuant to registration rights may make it more difficult for us to sell equity securities in the future at a time and at a price that we deem appropriate. These sales also

could cause the price of our common stock to fall and make it more difficult for you to sell shares of our common stock.

Our directors, executive officers and principal stockholders have significant voting power and may take actions that may not be in the best interests of our other stockholders.

After this offering, our executive officers, directors and principal stockholders each holding more than 5% of our common stock will collectively control approximately % of our outstanding common stock (assuming no exercise of the underwriters' option to purchase additional shares of common stock). As a result, these stockholders, if they act together, will be able to control the management and affairs of our company and most matters requiring stockholder approval, including the election of directors and approval of significant corporate transactions. This concentration of ownership may have the effect of delaying or preventing a change of control and might adversely affect the market price of our common stock. This concentration of ownership may not be in the best interests of our other stockholders.

We may allocate the net proceeds from this offering in ways that you and other stockholders may not approve.

Our management will have broad discretion in the application of the net proceeds from this offering, including for any of the purposes described in the section titled "Use of Proceeds." Because of the number and variability of factors that will determine our use of the net proceeds from this offering, their ultimate use may vary substantially from their currently intended use. Our management might not apply our net proceeds in ways that ultimately increase the value of your investment, and the failure by our management to apply these funds effectively could harm our business. Pending their use, we may invest the net proceeds from this offering in short- and intermediate-term, interest-bearing obligations, investment-grade instruments, certificates of deposit or direct or guaranteed obligations of the U.S. government. These investments may not yield a favorable return to our stockholders. If we do not invest or apply the net proceeds from this offering in ways that enhance stockholder value, we may fail to achieve expected results, which could cause our stock price to decline.

We will incur significant additional costs as a result of being a public company, and our management will be required to devote substantial time to compliance with our public company responsibilities and corporate governance practices.

Upon completion of this offering, we expect to incur costs associated with corporate governance requirements that will become applicable to us as a public company, including rules and regulations of the SEC, under the Sarbanes-Oxley Act, the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, and the Exchange Act, as well as the rules of Nasdaq. These rules and regulations are expected to significantly increase our accounting, legal and financial compliance costs and make some activities more time-consuming. We expect such expenses to further increase after we are no longer an emerging growth company. We also expect these rules and regulations to make it more expensive for us to maintain directors' and officers' liability insurance. As a result, it may be more difficult for us to attract and retain qualified persons to serve on our board of directors or as executive officers. Furthermore, these rules and regulations will increase our legal and financial compliance costs and will make some activities more time-consuming and costly. We cannot predict or estimate the amount of additional costs we will incur as a public company or the timing of such costs. Accordingly, increases in costs incurred as a result of becoming a publicly traded company may adversely affect our business, financial condition and results of operations.

We may also be subject to more stringent state law requirements. For example, on September 30, 2018, California signed into law Senate Bill 826, which generally requires public companies with principal executive offices in California to have a minimum number of females on the company's board of directors. By December 31, 2019, each public company with principal executive offices in California was required to have at least one female on its board of directors. By December 31, 2021, each public company is required to have at least two females on its board of directors if the company has at least five directors, and at least three females on

its board of directors if the company has at least six directors. The new law does not provide a transition period for newly listed companies. We are currently compliant with the requirements, but there are no assurances that we will be compliant in the future. If we fail to comply with this new law, we could be fined by the California Secretary of State, with a $100,000 fine for the first violation and a $300,000 fine for each subsequent violation, and our reputation may be adversely affected. Further, in September 2020, California enacted AB 979 requiring public companies headquartered in California to maintain minimum representation on their boards of directors from members of underrepresented communities as follow: by the end of 2021, at least one director from an underrepresented community, by end of 2022, public company boards with more than four but fewer than nine members will be required to have at least two directors from underrepresented communities, and public company boards with nine or more members will be required to have at least three directors from underrepresented communities. Failure to achieve designated minimum levels in a timely manner exposes such companies to financial penalties and reputational harm. If we are unable to recruit, attract and/or retain qualified members of the board and meet the requirements of the California laws it may expose us to penalties and/or reputational harm.

If we fail to maintain effective internal control over financial reporting and effective disclosure controls and procedures, we may not be able to accurately report our financial results in a timely manner or prevent fraud, which may adversely affect investor confidence in our company.

We are not currently required to comply with the rules of the SEC implementing Section 404 and, therefore, we are not required to make a formal assessment of the effectiveness of our internal control over financial reporting for that purpose. Upon becoming a public company, we will be required to comply with the SEC's rules implementing Sections 302 and 404 of the Sarbanes-Oxley Act, which require management to certify financial and other information in our quarterly and annual reports and provide an annual management report on the effectiveness of controls over financial reporting. Although we will be required to disclose changes made in our internal controls and procedures on a quarterly basis, we are not required to make our first annual assessment of our internal control over financial reporting pursuant to Section 404 until the year following our first annual report required to be filed with the SEC. As an emerging growth company, our independent registered public accounting firm will not be required to attest to the effectiveness of our internal control over financial reporting pursuant to Section 404 until the later of the year following our first annual report required to be filed with the SEC or the date we are no longer an emerging growth company. At such time, our independent registered public accounting firm may issue a report that is adverse in the event material weaknesses have been identified in our internal control over financial reporting.

To comply with the requirements of being a public company, we will need to undertake actions, such as implementing new internal controls and procedures and hiring additional accounting or internal audit staff. Testing and maintaining internal control can divert our management's attention from other matters that are important to the operation of our business. In addition, when evaluating our internal control over financial reporting, we may identify material weaknesses that we may not be able to remediate in time to meet the applicable deadline imposed upon us for compliance with the requirements of Section 404. If we identify any material weaknesses in our internal controls over financial reporting or we are unable to comply with the requirements of Section 404 in a timely manner or assert that our internal control over financial reporting is effective, or if our independent registered public accounting firm is unable to express an opinion as to the effectiveness of our internal control over financial reporting once we are no longer an emerging growth company, investors may lose confidence in the accuracy and completeness of our financial reports. As a result, the market price of our common stock could be materially adversely affected.

Material weaknesses in our internal control over financial reporting may cause us to fail to timely and accurately report our financial results or result in a material misstatement of our financial statements.

In connection with the audit of our financial statements for the year ended December 31, 2020, we identified a material weakness in our internal controls due to a lack of sufficient full-time accounting personnel with

requisite experience and deep technical accounting knowledge to (i) identify and resolve complex accounting issues under generally accepted accounting principles in the United States, or GAAP, and (ii) enable appropriate segregation of duties and reviews over the financial reviews over the financial close and reporting process.

We are evaluating and implementing additional internal controls and procedures to remediate this material weakness, however, we cannot assure you that these or other measures will fully remediate the material weakness in a timely manner or prevent future material weaknesses from occurring. As part of our remediation plan to address the material weakness identified above, we are actively working to hire additional accounting employees with specific technical accounting and financial reporting experience necessary for a public company. We will continue to assess the adequacy of our accounting personnel and resources, and will add additional personnel, as well as adjust our resources, as necessary, commensurate with any increase in the size and complexity of our business.

If we identify future material weaknesses in our internal controls over financial reporting or fail to meet the demands that will be placed upon us as a public company, including the requirements of the Sarbanes-Oxley Act, we may be unable to accurately report our financial results or report them within the timeframes required by law or stock exchange regulations. Failure to comply with Section 404 could also potentially subject us to sanctions or investigations by the SEC or other regulatory authorities. If additional material weaknesses exist or are discovered in the future, and we are unable to remediate any such material weaknesses, our reputation, financial condition, and operating results could suffer.

Provisions in our restated certificate of incorporation and restated bylaws and under Delaware law could make an acquisition of our company, which may be beneficial to our stockholders, more difficult and may prevent attempts by our stockholders to replace or remove our current management.

Provisions in our restated certificate of incorporation and our restated bylaws, which will become effective upon the closing of this offering may discourage, delay or prevent a merger, acquisition or other change in control of our company that stockholders may consider favorable, including transactions in which you might otherwise receive a premium for your shares. These provisions could also limit the price that investors might be willing to pay in the future for shares of our common stock, thereby depressing the market price of our common stock. In addition, because our board of directors is responsible for appointing the members of our management team, these provisions may frustrate or prevent any attempts by our stockholders to replace or remove our current management by making it more difficult for stockholders to replace members of our board of directors. Among other things, these provisions include those establishing:

- A classified board of directors with three-year staggered terms, which may delay the ability of stockholders to change the membership of a majority of our board of directors;
- No cumulative voting in the election of directors, which limits the ability of minority stockholders to elect director candidates;
- The exclusive right of our board of directors to elect a director to fill a vacancy created by the expansion of the board of directors or the resignation, death or removal of a director, which prevents stockholders from filling vacancies on our board of directors;
- The ability of our board of directors to authorize the issuance of shares of preferred stock and to determine the terms of those shares, including preferences and voting rights, without stockholder approval, which could be used to significantly dilute the ownership of a hostile acquirer;
- The ability of our board of directors to alter our bylaws without obtaining stockholder approval;
- The required approval of the holders of at least two-thirds of the shares entitled to vote at an election of directors to adopt, amend or repeal our bylaws or repeal the provisions of our restated certificate of incorporation regarding the election and removal of directors;
- A prohibition on stockholder action by written consent, which forces stockholder action to be taken at an annual or special meeting of our stockholders;

- The requirement that a special meeting of stockholders may be called only by the chairman of the board of directors, the chief executive officer, the president or the board of directors, which may delay the ability of our stockholders to force consideration of a proposal or to take action, including the removal of directors; and
- Advance notice procedures that stockholders must comply with in order to nominate candidates to our board of directors or to propose matters to be acted upon at a stockholders' meeting, which may discourage or deter a potential acquirer from conducting a solicitation of proxies to elect the acquirer's own slate of directors or otherwise attempting to obtain control of us.

Moreover, because we are incorporated in Delaware, we are governed by the provisions of Section 203 of the General Corporation Law of the State of Delaware, which prohibits a person who owns in excess of 15% of our outstanding voting stock from merging or combining with us for a period of three years after the date of the transaction in which the person acquired in excess of 15% of our outstanding voting stock, unless the merger or combination is approved in a prescribed manner.

Our restated certificate of incorporation will designate specific courts as the exclusive forum for certain litigation that may be initiated by our stockholders, which could limit our stockholders' ability to obtain a favorable judicial forum for disputes with us.

Our restated certificate of incorporation, which will become effective upon the closing of this offering, specifies that, unless we consent in writing to the selection of an alternative forum, the Court of Chancery of the State of Delaware will be the sole and exclusive forum for most legal actions involving claims brought against us by stockholders; provided that, the exclusive forum provision will not apply to suits brought to enforce any liability or duty created by the Securities Act, the Exchange Act, the rules and regulations thereunder or any other claim for which the federal courts have exclusive jurisdiction; and provided further that, if and only if the Court of Chancery of the State of Delaware dismisses any such action for lack of subject matter jurisdiction, such action may be brought in another state or federal court sitting in the State of Delaware. Our restated certificate of incorporation further provides that, unless we consent in writing to the selection of an alternative forum, the federal district courts of the United States of America shall, to the fullest extent permitted by law, be the sole and exclusive forum for the resolution of any complaint asserting a cause of action arising under the Securities Act. Any person or entity purchasing or otherwise acquiring any interest in shares of our capital stock shall be deemed to have notice of and to have consented to the provisions of our restated certificate of incorporation described above.

We believe these provisions benefit us by providing increased consistency in the application of Delaware law by chancellors particularly experienced in resolving corporate disputes and in the application of the Securities Act by federal judges, as applicable, efficient administration of cases on a more expedited schedule relative to other forums and protection against the burdens of multi-forum litigation. However, the provision may have the effect of discouraging lawsuits against our directors, officers, employees and agents as it may limit any stockholder's ability to bring a claim in a judicial forum that such stockholder finds favorable for disputes with us or our directors, officers, employees or agents. The provision may also have the effect of resulting in increased costs to a stockholder seeking to bring a claim against our directors, officers, employees or agents. The enforceability of similar choice of forum provisions in other companies' certificates of incorporation has been challenged in legal proceedings, and it is possible that, in connection with any applicable action brought against us, a court could find the choice of forum provisions contained in our restated certificate of incorporation to be inapplicable or unenforceable in such action. If a court were to find the choice of forum provision contained in our restated certificate of incorporation to be inapplicable or unenforceable in an action, we may incur additional costs associated with resolving such action in other jurisdictions, which could adversely affect our business, financial condition or results of operations.

SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS

This prospectus contains forward-looking statements about us and our industry. All statements other than statements of historical facts contained in this prospectus are forward-looking statements, including, but not limited to, statements regarding:

- Our plans to develop and commercialize our current or future technology or products;
- The timing or outcome of our ongoing or planned clinical trials for OMNI, TearCare and any future products;
- Business disruptions affecting our clinical trials, operations and financial results, including a public health emergency, such as the ongoing COVID-19 pandemic;
- The timing and our ability to obtain and maintain regulatory approvals for OMNI, TearCare and any future products, and to comply with federal, state and foreign regulatory requirements;
- The timing and our ability to obtain and maintain adequate levels of third-party coverage and reimbursement for OMNI, TearCare and any future products;
- The clinical utility of our products;
- Our commercialization, marketing and manufacturing capabilities and strategy;
- Our expectation about the willingness of ECPs to use OMNI, TearCare and any future products;
- Our expectation about the size of the addressable market for OMNI, TearCare and any future products;
- Our intellectual property position, including the scope of protection we are able to obtain, maintain, protect and enforce for intellectual property rights covering our products and technology;
- Our expected use of proceeds from this offering;
- Our competitive position and the development of and projections relating to our competitors or our industry;
- Our ability to identify, recruit and retain key personnel;
- The impact of laws and regulations;
- Our expectations regarding the time during which we will be an emerging growth company under the JOBS Act and a smaller reporting company under the Securities Act and Exchange Act;
- Our estimates and statements regarding our future revenue, future results of operations and financial position;
- Our business strategy;
- Our research and development costs;
- Our plans and objectives for future operations; and
- The plans and objectives of management.

These statements involve known and unknown risks, uncertainties and other important factors that may cause our actual results, performance or achievements to be materially different from any future results, performance or achievements expressed or implied by the forward-looking statements. In some cases, you can identify forward-looking statements by terms such as “may,” “will,” “should,” “expect,” “plan,” “anticipate,” “could,” “intend,” “target,” “project,” “contemplate,” “believe,” “estimate,” “predict,” “potential,” “would” or “continue” or the negative of these terms or other similar expressions, although not all forward-looking statements contain these words. The forward-looking statements in this prospectus are only predictions and are

based largely on our current expectations and projections about future events and financial trends that we believe may affect our business, financial condition and results of operations. These forward-looking statements speak only as of the date of this prospectus and are subject to a number of known and unknown risks, uncertainties and assumptions, including those described under the sections in this prospectus entitled “Risk Factors” and “Management’s Discussion and Analysis of Financial Condition and Results of Operations” and elsewhere in this prospectus. Because forward-looking statements are inherently subject to risks and uncertainties, some of which cannot be predicted or quantified and some of which are beyond our control, you should not rely on these forward-looking statements as predictions of future events. The events and circumstances reflected in our forward-looking statements may not be achieved or occur and actual results could differ materially from those projected in the forward-looking statements. Moreover, we operate in an evolving environment. New risk factors and uncertainties may emerge from time to time, and it is not possible for management to predict all risk factors and uncertainties. Except as required by applicable law, we do not plan to publicly update or revise any forward-looking statements contained herein, whether as a result of any new information, future events, changed circumstances or otherwise.

MARKET AND INDUSTRY DATA

We obtained the market and industry data in this prospectus from our own internal estimates and research as well as from industry and general publications and research, surveys and studies conducted by third parties. Industry publications, studies and surveys generally state that they have been obtained from sources believed to be reliable, although they do not guarantee the accuracy or completeness of such information. While we believe that each of these studies and publications is reliable, we have not independently verified market and industry data from third-party sources. Management's estimates are derived from publicly available information, their knowledge of our industry and their assumptions based on such information and knowledge, which we believe to be reasonable. While we believe our internal company research as to such matters is reliable and the market definitions are appropriate, neither such research nor these definitions have been verified by any independent source. These data involve a number of assumptions and limitations which are necessarily subject to a high degree of uncertainty and risk due to a variety of factors, including those described in "Risk Factors." These and other factors could cause our future performance to differ materially from the assumptions and estimates made by the independent parties or us.

USE OF PROCEEDS

We estimate that the net proceeds from this offering will be approximately $ million, assuming an initial public offering price of $ per share, which is the midpoint of the price range set forth on the cover page of this prospectus, and after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us. If the underwriters' option to purchase additional shares from us is exercised in full, we estimate that our net proceeds will be approximately $ million, after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us.

A $1.00 increase (decrease) in the assumed initial public offering price of $ per share, the midpoint of the price range set forth on the cover page of this prospectus, would increase (decrease) the net proceeds to us from this offering by approximately $ million, assuming the number of shares offered by us, as set forth on the cover page of this prospectus, remains the same, and after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us. Similarly, each increase (decrease) of 1,000,000 shares in the number of shares offered by us would increase (decrease) the net proceeds to us from this offering by approximately $ million, assuming no change in the assumed initial public offering price of $ per share, and after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us.

We anticipate that we will use the net proceeds from this offering, together with our existing cash and cash equivalents, for the following purposes:

- Approximately $ million to fund ongoing and future clinical trials for OMNI and TearCare;
- Approximately $ million to support the marketing and sales efforts for our products;
- Approximately $ million for research and development; and
- The remainder for working capital and other general corporate purposes.

This expected use of the net proceeds from this offering represents our intentions based upon our current plans and business conditions, which could change in the future as our plans and business conditions evolve. We may also use a portion of the net proceeds for acquisitions or strategic investments in complementary businesses, services, products, or technologies, although currently we have no specific agreements, commitments or understandings in this regard. As of the date of this prospectus, we cannot predict with certainty all of the particular uses for the net proceeds to be received upon the closing of this offering or the amounts that we will actually spend on the uses set forth above. Predicting the cost necessary to complete clinical trials can be difficult and we anticipate that we may need additional funds in the future. The amounts and timing of our actual expenditures and the extent of clinical development may vary significantly depending on numerous factors, including . As a result, our management will retain broad discretion over the allocation of the net proceeds from this offering.

Based on our current planned operations and planned use of the net proceeds from this offering, we expect that our cash and cash equivalents and additional borrowings available under our credit facility will enable us to fund our operations for at least the next twelve months. We have based this estimate on assumptions that may prove to be incorrect, and we could use our available capital resources sooner than we currently expect. We may satisfy our future cash needs through the sale of equity securities, debt financings, working capital lines of credit, corporate collaborations or license agreements, grant funding, interest income earned on invested cash balances or a combination of one or more of these sources.

Pending our use of the net proceeds from this offering, we intend to invest the net proceeds in a variety of capital preservation investments, including short-term and intermediate-term, interest-bearing, investment-grade, securities and government securities.

DIVIDEND POLICY

We have never declared or paid cash dividends on our capital stock. We currently intend to retain all available funds and future earnings, if any, to fund the operation, development and expansion of our business, and we do not anticipate paying any cash dividends in the foreseeable future. Any future determination regarding the declaration and payment of dividends will be at the discretion of our board of directors and will depend on then-existing conditions, including our financial condition, operating results, contractual restrictions, capital requirements, business prospects, and other factors our board of directors may deem relevant. In addition, we have entered into, and in the future may enter into additional, agreements that contain restrictions on payments of cash dividends, including the 2020 Term Loan and 2020 Revolver discussed elsewhere in this prospectus.

CAPITALIZATION

The following table sets forth our cash and cash equivalents and capitalization as of , 2021:

- On an actual basis;
- On a pro forma basis to give effect to (i) the automatic conversion of all outstanding shares of our redeemable convertible preferred stock into an aggregate of shares of common stock upon the closing of this offering, (ii) the automatic conversion of outstanding warrants to purchase shares of our redeemable convertible preferred stock into warrants to purchase shares of our common stock, and the related reclassification of redeemable convertible preferred stock warrant liability to additional paid in capital and (iii) the filing and effectiveness of our restated certificate of incorporation; and
- On a pro forma as adjusted basis to give further effect to our issuance and sale of shares of common stock in this offering at an assumed initial public offering price of $ per share, the midpoint of the price range set forth on the cover page of this prospectus, after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us.

The pro forma as adjusted information below is illustrative only, and our capitalization following the completion of this offering will be adjusted based on the actual initial public offering price and other terms of this offering determined at pricing. You should read the following table together with our financial statements and the related notes appearing at the end of this prospectus and the "Selected Financial Data," "Management's Discussion and Analysis of Financial Condition and Results of Operations" and "Description of Capital Stock" sections of this prospectus.

	As of , 2021		
	Actual	Pro Forma	Pro Forma As Adjusted (1)
	(in thousands, except share data)		
Cash and cash equivalents	$	$	$
Convertible preferred stock warrant liability			
Long-term debt			
Redeemable convertible preferred stock			
Convertible Preferred Stock, $0.001 par value; 14,241,390 shares authorized, 12,767,202 shares issued and outstanding, actual; no shares authorized, issued or outstanding, pro forma and pro forma as adjusted			
Stockholders' deficit:			
Preferred stock, $0.001 par value; no shares authorized, issued or outstanding, actual; shares authorized and no shares issued or outstanding, pro forma and pro forma as adjusted			
Common stock, par value $0.001 per share; 21,831,000 shares authorized, shares issued and outstanding, actual; shares authorized, pro forma and pro forma as adjusted; shares issued and outstanding, pro forma; shares issued and outstanding, pro forma as adjusted			
Additional paid in capital			
Accumulated deficit			
Total stockholders' (deficit) equity			
Total capitalization	$	$	$

(1) A $1.00 increase (decrease) in the assumed initial public offering price of $ per share, the midpoint of the price range set forth on the cover page of this prospectus, would increase (decrease) the pro forma as adjusted amount of each of cash and cash equivalents, total stockholders' (deficit) equity and total capitalization by approximately $ million, assuming that the number of shares

offered by us remains the same and after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us. Similarly, each increase (decrease) of 1,000,000 shares in the number of shares offered by us at the assumed initial public offering price per share would increase (decrease) the pro forma as adjusted amount of each of cash and cash equivalents, total stockholders' (deficit) equity and total capitalization by approximately $, assuming the assumed initial public offering price of $ per share remains the same, and after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us.

The information presented in the table above does not include:

- shares of our common stock issuable upon the exercise of stock options outstanding under our Existing Plan as of , 2021, at a weighted-average exercise price of $ per share;
- shares of our common stock issuable upon the exercise of stock options granted after , 2021 under the Existing Plan;
- shares of our common stock reserved for future issuance under our 2021 Plan, which will become effective in connection with this offering, as well as any automatic increases in the number of shares of our common stock reserved for future issuance under the 2021 Plan;
- shares of our common stock that will become available for future issuance under our 2021 ESPP, which will become effective in connection with this offering, as well as any automatic increases in the number of shares of our common stock reserved for future issuance under the 2021 ESPP; and
- shares of common stock issuable upon the exercise of warrants outstanding as of , 2021, at a weighted average exercise price of $ per share, which warrants shall not expire upon the closing of this offering if not exercised.

DILUTION

If you invest in our common stock in this offering, your ownership interest will be diluted immediately to the extent of the difference between the initial public offering price per share of our common stock and the pro forma as adjusted net tangible book value per share of our common stock immediately after this offering.

As of , 2021 we had a historical net tangible book value (deficit) of $ million, or $ per share of common stock. Our historical net tangible book value (deficit) is the amount of our total tangible assets less our total liabilities and the carrying value of our preferred stock, which is not included within stockholders' equity. Historical net tangible book value (deficit) per share represents historical net tangible book value (deficit) divided by the number of shares of our common stock outstanding as of , 2021.

Our pro forma net tangible book value as of , 2021 was $ million, or $ per share of our common stock. Pro forma net tangible book value represents the amount of our total tangible assets less our total liabilities, after giving effect to the automatic conversion of all shares of our preferred stock outstanding as of , 2021 into an aggregate of shares of common stock upon the closing of this offering. Pro forma net tangible book value per share represents our pro forma net tangible book value divided by the total number of shares outstanding as of , 2021 after giving effect to the pro forma adjustment described above.

After giving further effect to receipt of the net proceeds from our issuance and the sale of shares of common stock in this offering at an assumed initial public offering price of $ per share, which is the midpoint of the price range set forth on the cover page of this prospectus, and after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us, our pro forma as adjusted net tangible book value as of , 2021 would have been approximately $ million, or approximately $ per share. This represents an immediate increase in pro forma as adjusted net tangible book value per share of $ to existing stockholders and immediate dilution in pro forma as adjusted net tangible book value per share of $ to new investors purchasing common stock in this offering. Dilution per share to new investors purchasing common stock in this offering is determined by subtracting the pro forma as adjusted net tangible book value per share after this offering from the assumed initial public offering price per share paid by new investors. The following table illustrates this dilution on a per share basis:

Assumed initial public offering price per share		$
Historical net tangible book value per share as of , 2021	$	
Increase (decrease) per share attributable to the pro forma adjustments described above		
Pro forma net tangible book value (deficit) per share as of , 2021		
Increase per share attributable to this offering		
Pro forma as adjusted net tangible book value per share after this offering		$
Dilution per share to new investors in this offering		$

The dilution information described above is illustrative only and will change based on the actual initial public offering price and other terms of this offering determined at pricing. A $1.00 increase (decrease) in the assumed initial public offering price of $ per share, the midpoint of the price range set forth on the cover page of this prospectus, would increase (decrease) our pro forma as adjusted net tangible book value per share after this offering by $, and dilution to new investors purchasing common stock in this offering by $, assuming that the number of shares offered by us remains the same and after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us. Similarly, each increase (decrease) of 1,000,000 shares in the number of shares offered by us would increase (decrease) the total consideration paid by new investors by $ million and, in the case of an increase, would increase the

percentage of total consideration paid by new investors by percentage points and, in the case of a decrease, would decrease the percentage of total consideration paid by new investors by percentage points, assuming no change in the assumed initial public offering price.

The table above assumes no exercise of the underwriters' option to purchase additional shares in this offering. If the underwriters' option to purchase additional shares is exercised in full, our pro forma as adjusted net tangible book value per share after this offering would be $, representing an immediate increase in pro forma as adjusted net tangible book value per share of $ to existing stockholders and immediate dilution in pro forma as adjusted net tangible book value per share of $ to new investors purchasing common stock in this offering, assuming an initial public offering price of $ per share, which is the midpoint of the price range set forth on the cover page of this prospectus, and after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us.

The following table summarizes, as of , 2021, on the pro forma as adjusted basis described above, the total number of shares of common stock purchased from us on an as converted to common stock basis, the total consideration paid or to be paid, and the average price per share paid or to be paid by existing stockholders and by new investors purchasing common stock in this offering at an assumed initial public offering price of $ per share, which is the midpoint of the price range set forth on the cover page of this prospectus, before deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us. As the table shows, new investors purchasing common stock in this offering will pay an average price per share substantially higher than our existing stockholders paid.

	Shares Purchased		Total Consideration		Average Price
	Number	Percent	Amount	Percent	Per Share
Existing stockholders		%	$	%	$
New investors					
Total		100.0%		100.0%	$

A $1.00 increase (decrease) in the assumed initial public offering price of $ per share, the midpoint of the price range set forth on the cover page of this prospectus, would increase (decrease) the total consideration paid by new investors by $ and, in the case of an increase, would increase the percentage of total consideration paid by new investors by percentage points and, in the case of a decrease, would decrease the percentage of total consideration paid by new investors by percentage points, assuming that the number of shares offered by us remains the same. Similarly, each increase (decrease) of 1,000,000 shares in the number of shares offered by us at the assumed public offering price would increase (decrease) the total consideration paid by new investors by $ million and, in the case of an increase, would increase the percentage of total consideration paid by new investors by percentage points and, in the case of a decrease, would decrease the percentage of total consideration paid by new investors by percentage points, assuming no change in the assumed initial public offering price.

The table above assumes no exercise of the underwriters' option to purchase additional shares in this offering. If the underwriters' option to purchase additional shares is exercised in full, the number of shares of our common stock held by existing stockholders would be reduced to % of the total number of shares of our common stock outstanding after this offering, and the number of shares of common stock held by new investors purchasing common stock in this offering would be increased to % of the total number of shares of our common stock outstanding after this offering.

The information presented in the tables and discussions above is based on the number of shares of our common stock outstanding as of , 2021, and excludes:

- shares of common stock issuable upon the exercise of stock options outstanding under our Existing Plan as of , 2021, at a weighted-average exercise price of $ per share;

- shares of common stock issuable upon the exercise of stock options granted after , 2021 under our Existing Plan;
- additional shares of our common stock reserved for future issuance under our 2021 Plan, which will become effective in connection with this offering, as well as any automatic increases in the number of shares of our common stock reserved for future issuance under the 2021 Plan;
- shares of our common stock that will become available for future issuance under our 2021 ESPP, which will become effective in connection with this offering, as well as any automatic increases in the number of shares of our common stock reserved for future issuance under the 2021 ESPP; and
- shares of common stock issuable upon the exercise of warrants outstanding as of , 2021, at a weighted average exercise price of $ per share, which warrants shall not expire upon the closing of this offering if not exercised.

To the extent that outstanding stock options or warrants are exercised, new stock options or warrants are issued, or we issue additional shares of common stock in the future, there will be further dilution to new investors purchasing common stock in this offering. In addition, we may choose to raise additional capital due to market conditions or strategic considerations, even if we believe we have sufficient funds for our current or future operating plans. If we raise additional capital through the sale of equity or convertible debt securities, the issuance of these securities could result in further dilution to our stockholders.

SELECTED FINANCIAL DATA

We derived the selected consolidated statements of operations and comprehensive loss data for the fiscal years ended December 31, 2018, 2019 and 2020 and the consolidated balance sheet data as of December 31, 2019 and 2020 have been derived from our audited consolidated financial statements included elsewhere in this prospectus. The consolidated balance sheet data as of December 31, 2018 have been derived from our audited consolidated financial statements not included in this prospectus. The consolidated statement of operations and comprehensive loss data for the three months ended March 31, 2020 and 2021 and the consolidated balance sheet data as of March 31, 2021 have been derived from our unaudited condensed consolidated financial statements appearing elsewhere in this prospectus and have been prepared on the same basis as the audited consolidated financial statements. Results for the three months ended March 31, 2021 are not necessarily indicative of results to be expected for the full year. The selected consolidated financial data included in this section is not intended to replace the consolidated financial statements and related notes included elsewhere in this prospectus. You should read the selected financial data set forth below in conjunction with our consolidated financial statements, the notes to our financial statements and "Management's Discussion and Analysis of Financial Condition and Results of Operations" contained elsewhere in this prospectus. Our historical results are not necessarily indicative of our future performance.

	Years Ended December 31,			Three Months Ended March 31,	
	2018	2019	2020	2020	2021
	(*in thousands, except share data*)				
Consolidated Statement of Operations and Comprehensive Loss Data					
Revenue	$ 7,530	$ 23,348	$ 27,640	$ 6,496	$ 8,635
Cost of goods sold(1)	2,338	6,544	9,209	2,128	2,301
Gross profit	5,192	16,804	18,431	4,368	6,334
Operating expenses:					
Research and development(1)	5,426	8,124	8,874	2,400	3,440
Selling, general and administrative(1)	14,063	32,719	41,745	10,678	14,550
Total operating expenses	19,489	40,843	50,619	13,078	17,990
Loss from operations	(14,297)	(24,039)	(32,188)	(8,710)	(11,656)
Interest income	1	174	30	27	—
Interest expense	—	(1,961)	(2,403)	(552)	(1,084)
Other income (expense), net	—	(35)	(71)	91	552
Loss before income tax	(14,296)	(25,861)	(34,632)	(9,144)	(12,188)
Provision (benefit) for income tax	(6)	8	61	31	52
Net loss and comprehensive loss	$ (14,290)	$ (25,869)	$ (34,693)	$ (9,175)	$ (12,240)
Net loss per share outstanding attributable to common stockholders, basic and diluted(2)	$ (3.10)	$ (5.51)	$ (7.41)	$ (1.94)	$ (2.57)
Weighted-average common shares outstanding used in computing net loss per share attributable to common stockholders, basic and diluted(2)	4,611,325	4,693,534	4,678,109	4,724,693	4,758,635
Pro forma net loss per share outstanding, basic and diluted (unaudited) (2)					
Pro forma weighted-average common shares outstanding used in computing net loss per share attributable to common stockholders, basic and diluted (unaudited) (2)					

(1) Includes stock-based compensation as follows:

	Years Ended December 31,			Three Months Ended March 31,	
	2018	2019	2020	2020	2021
	(in thousands)				
Cost of goods sold	$ 2	$ 3	$ 20	$ 1	$ 7
Research and development	22	42	84	9	37
Selling, general and administrative	28	73	393	51	233
Total stock-based compensation expense	$ 52	$ 118	$ 497	$ 61	$ 277

(2) See the statements of operations and Note 13 to our consolidated financial statements and Note 12 to our unaudited condensed consolidated financial statements included elsewhere in this prospectus for an explanation of the method used to compute the historical net loss per share and pro forma net loss per share and the number of shares used in the computation of the per share amounts for the years ended December 31, 2018, 2019 and 2020 and three months ended March 31, 2021.

Consolidated Balance Sheet Data	As of December 31,			As of March 31,
	2018	2019	2020	2021
		(in thousands)		
Cash and cash equivalents	$ 4,242	$ 21,237	$ 61,511	$ 48,327
Working capital(1)	4,268	20,665	61,319	48,239
Total assets	8,094	30,741	72,806	60,533
Long-term debt	—	12,855	31,955	32,124
Redeemable convertible preferred stock	34,153	64,256	117,331	117,331
Additional paid-in capital	512	660	1,173	1,475
Accumulated deficit	(29,479)	(55,348)	(90,041)	(102,281)
Total stockholders' deficit	(28,962)	(54,683)	(88,849)	(100,801)

(1) Working capital is defined as total current assets less total current liabilities.

MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

You should read the following discussion and analysis of our financial condition and results of operations together with the section of this prospectus titled "Selected Financial Data" and our financial statements and the related notes included elsewhere in this prospectus. Some of the information contained in this discussion and analysis or set forth elsewhere in this prospectus, including information with respect to our plans and strategy for our business, includes forward-looking statements that involve risks and uncertainties. As a result of many factors, including those factors set forth in the "Risk Factors" section of this prospectus, our actual results could differ materially from the results described in or implied by these forward-looking statements. You should carefully read the "Risk Factors" to gain an understanding of the important factors that could cause actual results to differ materially from our forward-looking statements. Please also see the section of this prospectus titled "Special Note Regarding Forward-Looking Statements."

Overview

Our mission is to transform ophthalmology and optometry through the development and commercialization of proprietary devices that target the underlying causes of the world's most prevalent eye diseases. We are passionate about improving patients' lives. Our business philosophy is grounded in the following principles: comprehensively understanding disease physiology, developing products that are intended to restore natural physiological functionality to diseased eyes; developing and marketing products that achieve superior effectiveness versus current treatment paradigms while minimizing complications or side effects, providing intuitive, patient friendly solutions to ophthalmologists and optometrists; and delivering compelling economic value to all stakeholders, including patients, providers and third-party payors such as Medicare and commercial insurers. Our objective is to develop and market products for use in new treatment paradigms and to create an interventional mindset in eyecare whereby our products may be used in procedures which supplant conventional outdated approaches. We believe current eyecare treatment models rely heavily on prescription medications, symptom relief, or either flawed or highly invasive, later-stage procedural interventions, and fail to adequately address the true underlying cause of disease. We have focused our initial product development on the treatment of two of the world's most prevalent and underserved eye diseases, glaucoma and dry eye disease.

We have commercial products in each of our two reportable segments, Surgical Glaucoma and Dry Eye. Our Surgical Glaucoma segment consists of sales of the OMNI Surgical System, or OMNI, and also included sales of VISCO360 and TRAB360, OMNI's predicate devices, until they were discontinued in the first quarter of 2019. Our Dry Eye segment includes sales of the TearCare System, or TearCare, and related components and accessories. For the year ended December 31, 2020 and for the three months ended March 31, 2021, 94% and 6% of our revenues were derived from our Surgical Glaucoma and Dry Eye segments, respectively. We primarily sell both systems through a highly-involved direct sales model that offers intensive education, training and customer service. We believe this philosophy and model not only enables us to differentiate our products and our overall company from competitors, but also to expand our addressable market by educating ECPs, patients and other stakeholders on our products and evolving treatment paradigms. Outside of the U.S., we have historically sold OMNI primarily through a network of distributors, although we began employing a small direct sales force outside of the United States in April 2021.

We commercially launched OMNI and TearCare in February 2018 and April 2019, respectively. In May 2020, we introduced a new version of the OMNI Surgical System called OMNI Next Gen that incorporated extensive feedback from our physician users and that we believe improved upon the first-generation device. We sell OMNI to facilities where ophthalmic surgeons perform outpatient procedures, mainly ASCs and HOPDs, which are typically reimbursed by Medicare or private payors for procedures using our products. We sell TearCare to optometrist and ophthalmologist practices. Currently, there is no meaningful reimbursement coverage by Medicare or private payors for MGD procedures, including TearCare, and patients typically pay out-of-pocket for TearCare. We are continuing our controlled commercial launch and are focused upon

comprehensive, clinical data-driven long-term market development plan that aims to improve awareness and patient access to TearCare. As of March 31, 2021, we employed over 100 people to execute our commercial strategy in direct sales, marketing, training and professional services. The overall success of our approach to eyecare to date is evidenced by the over 60,000 estimated uses of OMNI and its direct predicates in over 1,000 hospitals and ASCs in the U.S. and Europe, and approximately 10,000 estimated uses of TearCare in nearly 400 eyecare facilities in the U.S. through April 30, 2021.

We have no manufacturing facilities of our own and instead contract with third parties for our production requirements. We believe our suppliers will be able to meet our current and anticipated manufacturing needs across all of our products. We do not currently plan to manufacture our products or any related components ourselves.

Our gross margin in our Surgical Glaucoma segment for the year ended December 31, 2020 and for the three months ended March 31, 2021 was 72.8% and 77.2%, respectively. Beginning with the production of finished goods inventory in February 2021, we are in the process of shifting our primary production of OMNI from a U.S.-based third-party contract manufacturer that has been able to partner closely with us on customization initiatives related to the development of OMNI and its predicate devices, to a network of lower cost, higher volume contract manufacturers in the U.S. and Asia. We believe that these cost optimization initiatives, which we expect to complete in 2021, will enable us to improve gross margins in our Surgical Glaucoma segment. The TearCare System includes the SmartHub component, which is typically only sold in initial purchase orders, and single-use SmartLids which are sold as part of initial purchase orders and through repeat orders as the ECP performs procedures over time. In an effort to build a meaningful TearCare installed base and encourage product trial and adoption by ECPs, our pricing strategy for SmartHubs has not focused on gross profit maximization. As the installed base of TearCare customers grows, we believe SmartLids, which generate higher gross margins than SmartHubs, will increase as a proportion of total Dry Eye segment revenues and gross profit. Given the earlier stage of TearCare's commercial development and our pricing strategy with respect to SmartHubs, we expect our Dry Eye segment's gross margins to be lower than our Surgical Glaucoma segment's gross margins for the near and medium-term. Our gross margin for our Dry Eye segment for the year ended December 31, 2020 and for the three months ended March 31, 2021 was (30.5%) and 10.7%, respectively.

We believe in the importance of continued strategic investment in initiatives that: further demonstrate our products' clinical effectiveness and safety to potential customers, patients, payors and regulators; enhance our commercial capabilities, including resources dedicated to sales, marketing and education; ensure the broadest possible patient access to the treatment alternatives that our products are cleared to offer, enhance and improve upon our existing product technologies; and allow us to innovate new products, devices or drugs, in glaucoma and DED or in new eye disease areas. As a result, we intend to continue to invest in clinical studies, sales and marketing, education initiatives, market access, and product development. Because of these and other factors, we expect to continue to incur net losses for at least the next several fiscal years. Moreover, we expect to incur additional expenses as a result of operating as a public company, including expenses related to compliance with the rules and regulations of the SEC and those of the Nasdaq Stock Market, additional insurance expenses, investor relations activities and other administrative and professional services. As a result of these and other factors, we may require and seek additional debt and equity financing to fund our operations and planned growth.

To date, our primary sources of capital have been private placements of redeemable convertible preferred stock, debt financing arrangements and revenue from sales of our products. Since inception, we have raised a total of $150.2 million in net proceeds from private placements of redeemable convertible preferred stock and the incurrence of debt. As of March 31, 2021, we had an outstanding term loan balance of $35.0 million (excluding debt discount and amortized debt issuance costs). As of March 31, 2021, we had cash and cash equivalents of $48.3 million and an accumulated deficit of $102.3 million.

During the years ended December 31, 2018, 2019 and 2020, we generated revenue of $7.5 million, $23.3 million, and $27.6 million, respectively, and $6.5 million and $8.6 million for the three months ended

March 31, 2020 and 2021, respectively. Gross margin was 68.9%, 72.0%, and 66.7% for the years ended December 31, 2018, 2019, and 2020, respectively, and 67.3% and 73.4% for the three months ended March 31, 2020 and 2021, respectively. Our net loss was $14.3 million, $25.9 million, and $34.7 million for the years ended December 31, 2018, 2019, and 2020, respectively, and $9.2 million and $12.2 million for the three months ended March 31, 2020 and 2021, respectively. For all periods presented, substantially all of our revenue was generated from customers in the U.S.

Impact of COVID-19

In December 2019, a novel strain of coronavirus, COVID-19, emerged in Wuhan, China. The World Health Organization declared COVID-19 to be a pandemic, spreading across the globe and impacting worldwide economic activity. In 2020, certain U.S. federal, state and local governmental authorities issued stay-at-home orders, proclamations and/or directives, including restrictions on elective procedures and therapies, aimed at minimizing the spread of COVID-19. As such, the global COVID-19 pandemic impacted and is expected to continue to impact demand for our products, which are used in procedures and therapies that are considered elective. Although some of these governmental restrictions have since been lifted or scaled back, recent and future surges of COVID-19 may result in restrictions being re-implemented in response to efforts to reduce the spread of COVID-19. We experienced a significant decrease in our revenues for both of our products in the second quarter of 2020 as compared to the first quarter of 2020. As elective eye care procedures in many facilities that utilize our products were temporarily suspended by governmental authorities, many patients avoided visiting ECPs, and, even in areas that allowed elective procedures, ECPs and healthcare facilities in general substantially reduced or. in some cases halted, the scheduling and performance of such procedures. The decrease in demand for our products due to COVID-19 most significantly impacted our revenues in the latter part of the quarter ended March 31, 2020 and the first half of the quarter ended June 30, 2020. Beginning in June 2020, we began to see an increase in the number of procedures using our products. In the first quarter of 2021, our customers experienced a significant number of procedure cancellations which we believe were largely driven by patients postponing in-office treatments until their COVID-19 vaccinations were completed (as opposed to any restrictions imposed on elective procedures), impacting our revenues. As vaccine availability and the vaccinated population increases across the U.S., we expect the recovery of our end markets to resume in the second quarter of 2021 and throughout the remainder of the year, provided that the lifting of restrictions on elective procedures and therapies continues and such restrictions are not reimposed. As a result, we believe that over the course of 2021, there may be a modest benefit to our revenues as glaucoma and DED patients schedule previously deferred elective procedures, provided that the lifting of restrictions on elective procedures and therapies continues and such restrictions are not reimposed.

We are continuing to closely monitor the global COVID-19 pandemic. In order to operate in a safe manner, we are following the health and safety guidelines of the U.S. Centers for Disease Control and Prevention, Occupational Safety and Health Administration, and local and state public health departments where we operate. The majority of our employees at our headquarters have been asked to work from home, with only limited access given to employees to work in the office when necessary. For roles that require employees to be on-site, such as our R&D and manufacturing technical staff, we are providing protective equipment, practicing social distancing, and enforcing mask wearing and we have increased sanitization standards. In addition, we have created a business continuity plan and incident management team to respond quickly and effectively to COVID-19 related issues in order to offer customers uninterrupted products, services and support while safeguarding the best interests of employees, suppliers and stakeholders. The ultimate impact of the global COVID-19 pandemic on our operations is unknown and will depend on future developments which are highly uncertain and cannot be predicted with confidence, including the duration and severity of the COVID-19 pandemic, the status of health and safety actions taken to contain its spread and any additional preventative and protective actions that governments, or we, may direct, any resurgence of COVID-19 that may occur and how quickly and to what extent economic and operating conditions normalize within the markets in which we operate. The global COVID-19 pandemic could disrupt the operations of our third-party manufacturers and other suppliers. Although we have not experienced disruptions in our supply chain to date, we cannot predict how long the pandemic and measures intended to contain the spread of COVID-19 will continue and what effect COVID-19 and the associated containment measures will have on our suppliers and vendors, in particular for any of our suppliers

and vendors that may not qualify as essential businesses and suffer more significant disruptions to their business operations. We are working closely with our manufacturing partners and suppliers to help ensure we are able to source key components and maintain appropriate inventory levels to meet customer demand.

Factors Affecting our Business and Results of Operations

We believe there are several important factors that have impacted and that will continue to impact our business and results of operations. These factors include, but are limited to:

Product Development

We believe our product development approach is a key differentiator of our team and our company. We are focused on continuous innovation and design and utilize input from our network of expert employees (including several ophthalmologists on staff), advisors and customers to rapidly iterate our pre-and post-commercial product designs with the aim of better satisfying the needs of our customers and their patients, and increasing adoption and utilization of our solutions. Once our products are launched, our customer feedback loop helps us further develop our products. This is particularly evident in the evolution of our OMNI Surgical System, which originated from the combined functionality of two internally developed, commercial predicate devices, each of which had their own multiple commercial iterations. We further refined ergonomics and functionality in OMNI Next Gen, which we launched in May 2020. Our future growth is dependent on our ability to continue innovating and applying our expertise of disease physiology to improve existing products and develop new products.

Market Education and Training on the Benefit of our Products vis-à-vis Existing Treatment Alternatives

One of the key drivers of our success is educating ophthalmologists, optometrists, patients, and third-party payors about the clinical and safety benefits of our products and of the benefits of more proactive, interventional approach to treating glaucoma and DED. We believe the required market education and development is best accomplished through a differentiated, highly involved commercial approach. As such, we devote significant resources to onboarding our sales professionals and to continuously augmenting their knowledge and capabilities. Our sales professionals provide ECPs with the necessary education, training and support to adopt and continue to use our products. We believe that increasing acceptance and usage of our products will require continued investment in our sales force and education efforts to ensure ECPs, patients and third-party payors learn more about our products and appreciate our benefits to their target patient populations.

Maximizing Product Usage by Customers

Demand for our products will be highly dependent on our ability to develop their potential addressable markets and maximize the breadth of patients our products can serve. OMNI is indicated for canaloplasty followed by trabeculotomy to reduce IOP in adult patients with POAG in the U.S. and with OAG, in the EU. We believe that OMNI is the only device that is authorized by the FDA as an *ab interno* procedure to: reduce IOP in adult patients with POAG across the spectrum of disease severity; be used in Mild-to-Moderate Combination Cataract or Standalone procedures; access 360 degrees of the diseased conventional outflow pathway through a single clear corneal incision; and facilitate two consecutive procedures, canaloplasty and trabeculotomy, to comprehensively treat all three primary points of resistance in the conventional outflow pathway in a single operating room visit. Our ability to establish OMNI as the standard of care for all POAG patients by continuing to grow its adoption and utilization in Combination Cataract procedures and by pioneering the development of the market for interventional Standalone procedures will have a substantial impact on our future growth.

TearCare serves as an elegant, compact, portable, intuitive solution that enables the application of localized heat to the eyelids in an anatomically customized way, and we believe it presents a compelling physiological profile to potentially address MGD. The current DED treatment market primarily consists of an abundance of OTC and prescription eyedrops that seek to lubricate the ocular surface, alleviate inflammation and/or increase

tear production. However, OTC and prescription eyedrops are incapable of clearing obstructions in the meibomian glands and do not address MGD's eyelid-borne physiology and poor tear quality. MGD is associated with 86% of DED cases and is a leading root cause of evaporative DED, which is characterized by low quality tears that evaporate prematurely. Clinical studies have demonstrated that treating MGD by liquefying and removing clogged meibum is the most effective method to eliminate obstructions and restore the lipid layer of tear film, thereby preventing premature evaporation of tears. TearCare was designed to be administered during the course of a routine office visit to an ECP, which makes it convenient for patients, and allows providers to maintain procedural throughput in their practices. Our ability to improve patient access and market education on TearCare and the benefits of proactive MGD treatment will be key drivers of TearCare's future growth.

Operational excellence and cost efficiency

We aim to achieve operating and financial milestones with optimal capital efficiency, and focus on our market value relative to invested capital as a key measurement of our performance. Since our inception, we have received net proceeds of $150.2 million from equity and debt financings. With a portion of these net proceeds (our March 31, 2021 cash and equivalents was $48.3 million), we believe we have developed and commercially launched two clinically differentiated products, funded multiple completed and ongoing clinical trials, and built our management team and company infrastructure to support the continued growth of our business. We believe that this level of operational and commercial progress relative to our total capital investment to date compares favorably to medical technology peers. We seek to design products that can achieve attractive long-term gross margins. For example, we have targeted the achievement of significantly higher gross margins as one of our long-term objectives for our Surgical Glaucoma segment. The achievement of this objective will be supported by our shift to high-volume contract manufacturers in 2021.

Components of our Results of Operations

Revenue

We currently derive all of our revenue from the sale of OMNI to ASCs and HOPDs and TearCare to ophthalmology and optometry practices. During each of the years ended December 31, 2018, 2019, 2020 and the first quarter of 2021, the revenues from our Surgical Glaucoma segment, including OMNI and its predicate devices, accounted for over 90% of our total revenues. Substantially all of our revenues for 2018, 2019, 2020 and the first quarter of 2021 were generated from sales within the U.S. Our OMNI customers place orders based on their expected procedure volume and reorder as needed, typically on a biweekly, monthly or bimonthly basis. Our TearCare customers typically purchase a TearCare System which consists of one or more SmartHubs, multiple single-use SmartLids and other accessories. After utilizing their initial inventory, customers will reorder SmartLids as needed. No single customer accounted for 10% or more of our revenue for any of the years ended December 31, 2018, 2019 and 2020 and for the three months ended March 31, 2020 and 2021.

The growth in our revenue from 2018 to 2020 was driven by the demand for elective surgery and treatment utilizing our products. Such demand is often lower during summer months because of ECP vacations and in winter months in certain parts of the world because of fewer business or surgery days due to holidays and adverse weather conditions.

Cost of Goods Sold and Gross Margin

Our products are produced by third-party manufacturers. Our cost of goods sold consists primarily of amounts paid for our products to third-party manufacturers, and our manufacturing overhead costs, which consist primarily of personnel expenses, including salaries, benefits and stock-based compensation, and reserves for excess, obsolete and non-sellable inventory. Cost of goods sold also includes depreciation expenses for production equipment which we provide to our third-party manufacturers and certain direct costs, such as shipping and handling costs.

We calculate gross margin as gross profit divided by revenue. Our gross margin has been and will continue to be affected by a variety of factors, including differences in segment gross margins, changes in average selling prices, product sales mix, production and ordering volumes, manufacturing costs, product yields, and headcount. In the near term, we expect our gross margins to increase as we transition production of OMNI to lower-cost manufacturers and as we expect Surgical Glaucoma revenues will grow as a percentage of our overall revenue mix. In general, we expect our gross margins to increase over the long-term to the extent our production and ordering volumes increase and to the extent we spread the fixed portion of our overhead costs over a larger number of units produced. We intend to use our design, engineering and manufacturing know-how and capabilities to further advance and improve the efficiency of our suppliers' manufacturing processes, which we believe will reduce costs and increase our gross margins. Our gross margins could fluctuate from quarter to quarter as we transition to new suppliers, introduce new products and adopt new manufacturing processes and technologies.

Research and Development Expenses

Research and development, or R&D, expenses consist primarily of engineering, product development, clinical studies to develop and support our products, including clinical trial design, clinical trial site initiation and study costs, internal and external costs associated with our regulatory compliance and quality assurance functions, medical affairs, cost of products used for clinical trials and other costs associated with products and technologies – either new or enhancements of existing platforms – that are in development. These expenses also include personnel expenses, including salaries, benefits and stock-based compensation, supplies, consulting, prototyping, testing, materials, travel expenses, depreciation expenses for equipment and an allocation of IT and facility overhead expenses. Our R&D expenses as a percentage of revenue may vary over time depending on the level and timing of new product development efforts, as well as clinical development, clinical trial and other related activities. We expect our R&D expenses to increase for the next several years as we continue to invest in our active clinical trial program, develop new products and improve our existing products.

Selling, General and Administrative Expenses

Selling, general and administrative, or SG&A, expenses consist primarily of personnel expenses, including salaries, benefits and stock-based compensation related to selling, marketing and corporate functions, allocation of IT and facility overhead expenses, bad debt expense, finance, legal and human resource costs. Other SG&A expenses include training, travel expenses, promotional activities, marketing initiatives, market research and analysis, conferences and trade shows, professional services fees (including external legal, audit, consulting and tax fees), insurance costs, and general corporate expenses. We expect SG&A expenses to continue to increase in absolute dollars as we expand our infrastructure to both drive and support the anticipated growth in revenue and due to additional legal, accounting, insurance and other expenses associated with being a public company.

Interest Expense

Interest expense consists primarily of interest incurred on our outstanding indebtedness and non-cash interest related to the amortization of debt discount and issuance costs associated with our outstanding loan.

Interest Income

Interest income consists of interest earned on our balances of cash and cash equivalents.

Other Income (Expense), Net

Other income (expense), net primarily consists of gains and losses resulting from the remeasurement of the fair value of our redeemable convertible preferred stock warrant liability at each balance sheet date. We will continue to record adjustments to the estimated fair value of the redeemable convertible preferred stock warrants

until they are exercised. At time of the redeemable convertible preferred stock warrants are exercised, the final fair value of the warrant liability will be reclassified to stockholders' deficit and we will no longer record any related periodic fair value adjustments.

Results of Operations

Comparison of the Three Months Ended March 31, 2020 and 2021 (dollars in thousands)

	Three Months Ended,		Change	
	2020	2021	$	%
	(unaudited)			
Revenue				
Surgical Glaucoma	$ 6,100	$ 8,139	$ 2,039	33.4%
Percentage of total revenue	*93.9%*	*94.3%*		
Dry Eye	396	496	100	25.3%
Percentage of total revenue	*6.1%*	*5.7%*		
Total	6,496	8,635	2,139	32.9%
Cost of goods sold				
Surgical Glaucoma	1,514	1,858	344	22.7%
Dry Eye	614	443	(171)	(27.9)%
Total	2,128	2,301	173	8.1%
Gross profit				
Surgical Glaucoma	4,586	6,281	1,695	37.0%
Dry Eye	(218)	53	271	(124.3)%
Total	4,368	6,334	1,966	45.0%
Gross margin				
Surgical Glaucoma	75.2%	77.2%		
Dry Eye	(55.1)%	10.7%		
Total	67.3%	73.4%		
Operating expenses				
Research and development	2,400	3,440	1,040	43.3%
Selling, general and administrative	10,678	14,550	3,872	36.3%
Total operating expenses	13,078	17,990	4,912	37.6%
Loss from operations	(8,710)	(11,656)	(2,946)	(33.8)%
Interest income	27	—	(27)	—
Interest expense	(552)	(1,084)	(532)	(96.4)%
Other income (expense), net	91	552	461	506.6%
Loss before income tax	(9,144)	(12,188)	(3,044)	33.3%
Provision (benefit) for income tax	31	52	21	67.7%
Net loss and comprehensive loss	$ (9,175)	$(12,240)	$(3,065)	33.4%

Revenue. Revenue in three months ended March 31, 2021 was $8.6 million, an increase of $2.1 million, or 32.9%, from our revenue in the three months ended March 31, 2020. Surgical Glaucoma and Dry Eye sales contributed $2.0 million and $0.1 million, respectively, to such increase from 2020 to 2021. The overall increase in Surgical Glaucoma revenue was primarily attributable to an increase in the number of OMNI units sold due to a higher number of ordering facilities and a higher average amount of units per order. This was partially offset by a modest decrease in our average selling prices. Our Dry Eye revenue growth was the result of an increased amount of SmartLids reordered by our existing customer base. Surgical Glaucoma sales represented 93.9% and 94.3% of our revenue generated in the three months ended March 31, 2020 and 2021, respectively.

Cost of Goods Sold and Gross Profit. The $0.2 million increase in cost of goods sold during the three months ended March 31, 2021 compared to the three months ended March 31, 2020 was attributable to a $0.4 million increase in cost of materials and manufacturing overhead driven by increased production to support our sales growth, which was partially offset by a decrease of $0.2 million in our inventory write-down reserve.

Our total gross profit increased $1.9 million from $4.4 million to $6.3 million during the three months ended March 31, 2021 compared to the three months ended March 31, 2020. Our total gross margin increased from 67.3% to 73.4% between the three months ended March 31, 2020 and 2021 primarily due to a higher volume of OMNI units sold. Gross margin in our Surgical Glaucoma segment increased from 75.2% to 77.2% during the three months ended March 31, 2021 compared to the three months ended March 31, 2020, and in our Dry Eye segment gross margin increased from (55.1)% to 10.7% during the three months ended March 31, 2021 compared to the three months ended March 31, 2020 due, in part, to lower average selling prices in 2020 for both SmartHubs and SmartLids designed to encourage new user adoption.

Research and Development Expenses. The $1.0 million increase in R&D expenses during the three months ended March 31, 2021 compared to the three months ended March 31, 2020 was primarily attributable to $0.3 million increase in personnel expenses as a result of increased headcount, $0.2 million net increase in contract manufacturing, lab supplies and Dry Eye product prototype development expenses, $0.2 million in legal services mainly related to registration of patents and $0.3 million in other services driven by overall increase in business activities.

Selling, General, and Administrative Expenses. The $3.9 million increase in SG&A expenses during the three months ended March 31, 2021 compared to the three months ended March 31, 2020 was primarily due to our continued commercial investment and scaling of operations and corporate headcount to support our growth, which resulted in an increase of $2.5 million in personnel expenses through headcount increases during the year, and a $1.4 million net increase in non-personnel SG&A expenses. Our largest areas of growth in non-personnel SG&A expenses between three months ended March 31, 2020 and 2021 were legal fees related to regulatory matters, particularly related to the March 2021 FDA clearance of OMNI’s expanded Indication for Use.

Interest Expense. The $0.5 million increase in interest expense during the three months ended March 31, 2021 compared to the three months ended March 31, 2020 was attributable to the increase in average debt outstanding due to our debt financing in November 2020.

Interest Income and Other Income (Expense), Net. Interest income did not change significantly during the three months ended March 31, 2021 compared to the three months ended March 31, 2020. The increase in other income (expense), net of $0.5 million, during the three months ended March 31, 2021 compared to the three months ended March 31, 2020 was attributable primarily to the remeasurement of our convertible preferred stock warrants and recognition of the change in fair value.

Comparison of the Years Ended December 31, 2019 and 2020 (dollars in thousands)

	Years Ended,		Change	
	2019	**2020**	**$**	**%**
Revenue				
Surgical Glaucoma	$ 22,304	$ 26,000	$ 3,696	16.6%
Percentage of total revenue	*95.5%*	*94.1%*		
Dry Eye	1,044	1,640	596	57.1%
Percentage of total revenue	*4.5%*	*5.9%*		
Total	23,348	27,640	4,292	18.4%
Cost of goods sold				
Surgical Glaucoma	5,132	7,069	1,937	37.7%
Dry Eye	1,412	2,140	728	51.6%
Total	6,544	9,209	2,655	40.7%
Gross profit				
Surgical Glaucoma	17,172	18,931	1,759	10.2%
Dry Eye	(368)	(500)	(132)	35.9%
Total	16,804	18,431	1,627	9.7%
Gross margin				
Surgical Glaucoma	77.0%	72.8%		
Dry Eye	(35.2)%	(30.5)%		
Total	72.0%	66.7%		
Operating expenses				
Research and development	8,124	8,874	750	9.2%
Selling, general and administrative	32,719	41,745	9,026	27.6%
Total operating expenses	40,843	50,619	9,776	23.9%
Loss from operations	(24,039)	(32,188)	(8,149)	33.9%
Interest income	174	30	(144)	(82.8)%
Interest expense	(1,961)	(2,403)	(442)	22.5%
Other income (expense), net	(35)	(71)	(36)	102.9%
Loss before income tax	(25,861)	(34,632)	(8,771)	33.9%
Provision (benefit) for income tax	8	61	53	662.5%
Net loss and comprehensive loss	$(25,869)	$(34,693)	$(8,824)	34.1%

Revenue. Revenue in 2020 was $27.6 million, an increase of $4.3 million, or 18.4%, from our revenue in 2019. Surgical Glaucoma and Dry Eye sales contributed $3.7 million and $0.6 million, respectively, to such increase from 2019 to 2020. The overall increase in revenue was primarily attributable to an increase in the number of OMNI units sold, which resulted in a $3.9 million increase in Surgical Glaucoma revenues, as well as the benefit of a full year of commercial sales of our Dry Eye Segment's TearCare System, which was launched in April 2019. These increases were partially offset by $0.2 million of revenue decrease from 2019 to 2020 due to the discontinuation of TRAB360 and VISCO360 sales in March 2019. Throughout 2019 and 2020, we expanded our overall commercial team from 31 professionals as of January 1, 2019 to 82 professionals as of December 31, 2020. As a result, we increased the number of surgeons and facilities that have been trained on, and the number of facilities that order, OMNI and TearCare. Revenue for the full year 2020 was negatively impacted by a steep decline in the number of products sold, in particular, during the second quarter of 2020 due primarily to the effects of the global COVID-19 pandemic. As a result, our revenues for the second quarter of 2020 decreased by $2.5 million as compared to the second quarter of 2019. Surgical Glaucoma represented 95.5% and 94.1% of our revenues generated in 2019 and 2020, respectively.

Cost of Goods Sold and Gross Profit. The $2.7 million increase in cost of goods sold from 2019 to 2020 was attributable to a $1.4 million write-down in 2020 of legacy OMNI inventory which is being replaced with OMNI Next Gen units, and a $1.3 million increase in the cost of materials and manufacturing overhead driven by increased production to support our sales growth and as a result of increased headcount.

Our total gross profit increased $1.6 million from $16.8 million to $18.4 million from 2019 to 2020. Our total gross margin declined from 72.0% to 66.7% between 2019 and 2020 primarily due to the legacy OMNI inventory write-down and increased sales in our lower margin Dry Eye segment as a percentage of total sales. Gross margin in our Surgical Glaucoma segment decreased from 77.0% in 2019 to 72.8% in 2020, and in our Dry Eye segment gross margin increased from (35.2)% in 2019 to (30.5)% in 2020. Excluding our OMNI inventory write-down, Surgical Glaucoma gross margins in 2020 would have increased to 78.2% due to a higher volume of units sold covering fixed costs. Our Dry Eye segment had a lower gross margin than our Surgical Glaucoma segment because TearCare is earlier in its commercial cycle than OMNI and SmartHub equipment is priced to encourage new user adoption rather than to maximize gross profit for its one-time, upfront purchase by ECPs. Our Dry Eye segment had a negative gross margin in each of 2019 and 2020, due primarily to $0.1 million and $0.4 million of inventory reserve charges in 2019 and 2020, respectively, and sales unit volumes which were not sufficient to cover $0.6 million and $0.9 million of unabsorbed manufacturing overhead in 2019 and 2020, respectively.

Research and Development Expenses. The $0.8 million increase in R&D expenses from 2019 to 2020 was primarily attributable to costs related to OMNI Next Gen, including an increase of $0.5 million in contract manufacturing for Dry Eye product development, $0.4 million in patent related legal expenses, $0.3 million in facility and information technology related expenses to support business growth and an increase of $0.3 million in personnel expenses primarily as a result of increased headcount, partially offset by a decrease of $0.1 million in travel expenses due in part to the global COVID-19 pandemic, and a decrease of $0.5 million in costs associated with our clinical studies as a result of completion of two clinical trials during the year. We expect our clinical trial costs to increase as we initiate and execute additional clinical trials over the coming years, develop new products and improve our existing products.

Selling, General, and Administrative Expenses. The $9.0 million increase in SG&A expenses from 2019 to 2020 was primarily due to our continued commercial investment and scaling of operations and corporate headcount to support our growth, which resulted in an increase of $7.6 million in personnel expenses through headcount increases during the year, and a $1.4 million net increase in non-personnel SG&A expenses. Our largest areas of growth in non-personnel SG&A expenses between 2019 and 2020 were promotional and advertisement expenses related to OMNI Next Gen launch, facility and information technology related expenses to support business growth, and legal fees related to general and regulatory matters. These increases were partially offset by a decrease in conference, tradeshows, training and travel expenses as a result of the global COVID-19 pandemic.

Interest Expense. The $0.4 million increase in interest expense from 2019 to 2020 was attributable to the debt financing in November 2020.

Interest Income and Other Income (Expense), Net. The $0.1 million decrease in interest income from 2019 to 2020 was primarily due to lower interest on our cash and equivalents in 2020. The increase in other income (expense), net, from 2019 to 2020 was attributable primarily to the remeasurement of our convertible preferred stock warrants and recognition of the change in fair value.

Comparison of the Years Ended December 31, 2018 and 2019 (dollars in thousands)

	Years Ended,		Change	
	2018	2019	$	%
Revenue				
Surgical Glaucoma	$ 7,530	$ 22,304	$ 14,774	196.2%
Percentage of total revenue	*100%*	*95.5%*		
Dry Eye	—	1,044	1,044	—
Percentage of total revenue	—	*4.5%*		
Total	7,530	23,348	15,818	210.1%
Cost of goods sold				
Surgical Glaucoma	2,338	5,132	2,794	119.5%
Dry Eye	—	1,412	1,412	—
Total	2,338	6,544	4,206	179.9%
Gross profit				
Surgical Glaucoma	5,192	17,172	11,980	230.7%
Dry Eye	—	(368)	(368)	—
Total	5,192	16,804	11,612	224%
Gross margin				
Surgical Glaucoma	68.9%	77.0%		
Dry Eye	—	(35.2)%		
Total	68.9%	72.0%		
Operating expenses				
Research and development	5,426	8,124	2,698	49.7%
Selling, general and administrative	14,063	32,719	18,656	132.7%
Total operating expenses	19,489	40,843	21,354	109.6%
Loss from operations	(14,297)	(24,039)	(9,742)	68.1%
Interest income	1	174	173	17,300.0%
Interest expense	—	(1,961)	(1,961)	—
Other income (expense), net	—	(35)	(35)	—
Loss before income tax	(14,296)	(25,861)	(11,565)	80.9%
Provision (benefit) for income tax	(6)	8	14	—
Net loss and comprehensive loss	$(14,290)	$(25,869)	(11,579)	81.0%

Revenue. Revenue in 2019 was $23.3 million, an increase of $15.8 million, or 210.1%, from our revenue in 2018. Sales from our Surgical Glaucoma and Dry Eye segments contributed $14.8 million and $1.0 million, respectively, to our year-over-year revenue growth in 2019. The growth from 2018 to 2019 reflects the impact of the commercial launch of OMNI in February 2018 and TearCare in April 2019 which was partially offset by a decrease of $2.5 million in revenues as a result of discontinuing the sale of TRAB360 and VISCO360 in March 2019. Over the course of the periods indicated, we trained a significant number of ECPs on our products, increased our sales efforts, including expanding our commercial team from 14 professionals as of January 1, 2018 to 70 professionals as of December 31, 2019, and cultivated adoption and recurring use of our products by key accounts, resulting in the increase in the number of units ordered.

Cost of Goods Sold and Gross Profit. Our cost of goods sold increased $4.2 million from 2018 to 2019 due to a $3.9 million increase in the cost of materials and manufacturing overhead driven by the increase in the number of units sold and the introduction of TearCare, including the associated ramp-up of production capacity in the middle of 2019, by an increase in personnel expenses primarily as a result of increased manufacturing-related headcount, and an increase in reserves for excess, obsolete and non-sellable inventory and shipping and handling expenses.

Our total gross profit increased by $11.6 million from 2018 to 2019, including $12.0 million of Surgical Glaucoma gross profit growth and ($0.4) million of gross profit declines in Dry Eye. Overall, our gross margin increased by 3.1% from 2018 to 2019 primarily due to the impact of the economies of scale in Surgical Glaucoma as the volumes of OMNI products sold continued to increase. The overall increase in our gross margin was partially offset by the introduction in mid-2019 of TearCare in our Dry Eye segment, which had a negative gross margin in 2019. The gross margin in our Surgical Glaucoma segment sales increased from 68.9% in 2018 to 77.0% in 2019, while the gross margin in our Dry Eye segment sales was (35.2)% in 2019.

Research and Development Expenses. The $2.7 million increase in R&D expenses from 2018 to 2019 was primarily attributable to an increase of $1.6 million in costs associated with our clinical studies, an increase of $1.3 million in personnel expenses primarily as a result of increased headcount, and an increase of $0.4 million related to development of the OMNI Next Gen prototype. The increase was offset in part by a $1.0 million decrease in contract manufacturing set up related expenses.

Selling, General and Administrative Expenses. The $18.7 million increase in SG&A expenses from 2018 to 2019 was primarily due to our continued investment in commercial capabilities and in the infrastructure to support our growth, which resulted in an increase of $10.4 million in total personnel expenses, an increase of $2.0 million in travel and entertainment expenses, an increase of $2.4 million in non-labor commercial spend, including promotional activities, conferences and tradeshows and marketing initiatives, an increase of $0.8 million in facility and information technology related expenses, an increase of $1.0 million in sales training and demos, an increase of $0.9 million in consulting services to support business growth and an increase of $0.4 million in legal fees related to general and regulatory matters.

Interest Expense. The $2.0 million increase in interest expense from 2018 to 2019 was primarily attributable to the additional interest expense associated with the $14.0 million of borrowings under the 2019 Term Loan. We did not have any debt prior to entering into the 2019 Term Loan and 2019 Revolver in January 2019.

Interest Income and Other Income (Expense), Net. The $0.2 million increase in interest income from 2018 to 2019 was primarily due to higher average cash balances in 2019, resulting from the proceeds from our 2019 Term Loan and our Series D redeemable convertible preferred stock financing. The $35 thousand increase in other expense, net, from 2018 to 2019 was attributable primarily to the remeasurement of our convertible preferred stock warrants and recognition of the change in fair value.

Cash Flows

The following table summarizes our cash flows for the periods indicated (in thousands):

	Year Ended December 31,			Three Months Ended March 31,	
	2018	2019	2020	2020	2021
				(unaudited)	
Net cash used in operating activities	$(14,475)	$(24,997)	$(32,174)	$ (9,561)	$ (12,870)
Net cash used in investing activities	(570)	(672)	(953)	(513)	(104)
Net cash provided by (used in) financing activities	12,203	42,664	73,401	30,056	(210)
Net increase (decrease) in cash	$ (2,842)	$ 16,995	$ 40,274	$ 19,982	$ (13,184)

Net Cash Used in Operating Activities.

Net cash used in operating activities for the three months ended March 31, 2021 was $12.9 million, consisting primarily of a net loss of $12.2 million and an increase in net operating assets of $1.1 million, partially offset by non-cash charges of $0.4 million. The $1.1 million increase in our net operating assets was primarily due to a $1.8 million decrease in accrued compensation, a $1.0 million increase in other noncurrent assets, and a $0.3 million increase in accounts receivable, partially offset by a $1.0 million increase in accounts payable, and a

$1.0 million increase in accrued and other liabilities. The non-cash charges primarily related to $0.3 million stock-based compensation, a $0.2 million increase in our provision for excess and obsolete inventories, $0.2 million from the accretion of debt discount and amortization of debt issuance costs, $0.2 million of right of use asset amortization related to our office lease, and $0.1 million of depreciation and amortization, partially offset by change in fair value of redeemable convertible preferred stock warrant of $0.6 million.

Net cash used in operating activities for the three months ended March 31, 2020 was $9.6 million, consisting primarily of a net loss of $9.2 million and an increase in net operating assets of $1.3 million, partially offset by non-cash charges of $0.9 million. The increase in net operating assets was primarily due to a $1.1 million decrease in accrued compensation, $0.3 million decrease in accrued and other liabilities, $0.2 million increase in inventory, and $0.2 million increase in prepaid expenses, partially offset by $0.3 million increase in accounts payable, and $0.2 million decrease in accounts receivable. The non-cash charges primarily consisted of a $0.4 million increase of our provision for excess and obsolete inventories, $0.1 million of depreciation and amortization, $0.1 million accretion of debt discount and amortization of debt issuance costs, $0.1 million provision for doubtful accounts, and $0.1 million from the right of use asset amortization related to our office lease.

Net cash used in operating activities for the year ended December 31, 2020 was $32.2 million, consisting primarily of a net loss of $34.7 million, which included a $2.2 million benefit from the proceeds from our Paycheck Protection Program, or PPP, loan under the Coronavirus Aid, Relief, and Economic Security Act, or CARES Act, and an increase in net operating assets of $0.7 million, partially offset by non-cash charges of $4.0 million. The $0.7 million increase in our operating assets was primarily due to a $1.5 million increase in accounts receivable, a $1.7 million increase in our inventory, and a $0.7 million increase in our prepaid expenses, each to support the continued growth of our operations, partially offset by a $1.9 million increase in accrued compensation and $2.0 million in accrued and other liabilities. The non-cash charges primarily consisted of a $1.4 million provision for excess and obsolete inventories, primarily related to the write-down of legacy first generation OMNI inventory due to the launch of our OMNI Next Gen in 2020, $0.5 million related to stock-based compensation, $0.6 million of right of use asset amortization related to office lease, $0.6 million of accretion of debt discount and amortization of debt issuance costs and $0.6 million in depreciation and amortization.

Net cash used in operating activities for the year ended December 31, 2019 was $25.0 million, consisting primarily of a net loss of $25.9 million and an increase in net operating assets of $0.3 million, partially offset by non-cash charges of $1.2 million. The increase in net operating assets was primarily due to increases in accounts receivable of $2.3 million, inventories of $1.8 million and other noncurrent assets to support the growth of our operations, partially offset by similar growth in our accounts payable, accrued compensation and accrued and other liabilities as we scaled our operations. The non-cash charges primarily consisted of depreciation and amortization of $0.3 million, the accretion of debt discount and amortization of debt issuance costs of $0.5 million, stock-based compensation of $0.1 million and non-cash operating lease expense of $0.1 million.

Net cash used in operating activities for the year ended December 31, 2018 was $14.5 million, consisting primarily of a net loss of $14.3 million and an increase in net operating assets of $0.4 million, partially offset by non-cash charges of $0.2 million. The increase in net operating assets was primarily due to increases in accounts receivable of $1.4 million, prepaid expenses of $0.6 million and inventories of $0.2 million to support the growth of our operations, partially offset by similar increases in our accounts payable of $1.0 million, accrued compensation of $0.5 million and accrued and other liabilities of $0.3 million as we scaled our operations. The non-cash charges primarily consisted of depreciation and amortization and stock-compensation expense.

Net Cash Used in Investing Activities.

Net cash used in investing activities in the three months ended March 31, 2020 and 2021 was $0.5 million and $0.1 million, consisting of purchases of property and equipment.

Net cash used in investing activities in the years ended December 31, 2020, 2019 and 2018 was $0.9 million, $0.7 million and $0.6 million, consisting of purchases of property and equipment.

Net Cash Provided by (Used in) Financing Activities.

Net cash used in financing activities in the three months ended March 31, 2021 of $0.2 million primarily relates to payments of costs related to our initial public offering preparation.

Net cash provided by financing activities in the three months ended March 31, 2020 of $30.1 million was primarily related to proceeds from issuance of Series E redeemable convertible preferred stock of $30.2 million, offset by $0.1 million in related offering costs.

Net cash provided by financing activities in the year ended December 31, 2020 of $73.4 million primarily relates to proceeds from issuance of debt of $20.3 million, proceeds of $53.4 million from the issuance of our Series E redeemable convertible preferred stock and Series F redeemable convertible preferred stock, partially offset by the related offering costs of $0.3 million.

Net cash provided by financing activities in the year ended December 31, 2019 was related to proceeds from issuance of debt of $14.0 million and proceeds from issuance of Series D redeemable convertible preferred stock of $30.7 million, offset by $2.1 million in the related offering costs.

Net cash provided by financing activities in the year ended December 31, 2018 of $12.2 million primarily relates to proceeds from the issuance of Series C redeemable convertible preferred stock during 2018, offset by issuance costs of $0.1 million.

Selected Unaudited Quarterly Financial Information

The following table sets forth certain unaudited quarterly information for the nine quarters presented. The unaudited quarterly information set forth below has been prepared on a basis consistent with our audited annual financial statements included elsewhere in this prospectus and include, in our opinion, all normal recurring adjustments necessary for the fair presentation of the results of operations for the periods presented. Our historical quarterly results are not necessarily indicative of the results that may be expected in the future. The following quarterly financial information should be read in conjunction with our financial statements and related notes thereto included elsewhere in this prospectus. The numbers in the following table that relate to dollars are in thousands.

	Three Months Ended,								
	March 31, 2019	June 30, 2019	September 30, 2019	December 31, 2019	March 31, 2020	June 30, 2020	September 30, 2020	December 31, 2020	March 31, 2021
Revenue:									
Surgical Glaucoma	3,828	5,827	5,931	6,718	6,100	3,299	7,883	8,718	8,139
Percentage of total revenue	*100.0%*	*97.5%*	*93.4%*	*93.4%*	*93.9%*	*94.2%*	*91.1%*	*97.0%*	*94.3%*
Dry Eye	—	147	420	477	396	203	768	273	496
Percentage of total revenue	*0.0%*	*2.5%*	*6.6%*	*6.6%*	*6.1%*	*5.8%*	*8.9%*	*3.0%*	*5.7%*
Total:	3,828	5,974	6,351	7,195	6,496	3,502	8,651	8,991	8,635
Cost of goods sold:									
Surgical Glaucoma	962	1,476	1,263	1,431	1,514	1,508	1,946	2,101	1,858
Dry Eye	7	482	530	393	614	577	674	275	443
Total:	969	1,958	1,793	1,824	2,128	2,085	2,620	2,376	2,301
Gross Profit:									
Surgical Glaucoma	2,866	4,351	4,668	5,287	4,586	1,791	5,937	6,617	6,281
Dry Eye	(7)	(335)	(110)	84	(218)	(374)	94	(2)	53
Total:	2,859	4,016	4,558	5,371	4,368	1,417	6,031	6,615	6,334
Gross Margin:									
Surgical Glaucoma	*74.9%*	*74.7%*	*78.7%*	*78.7%*	*75.2%*	*54.3%*	*75.3%*	*75.9%*	*77.2%*
Dry Eye	*-100.0%*	*-228.0%*	*-26.1%*	*17.6%*	*-55.1%*	*-183.8%*	*12.2%*	*-0.9%*	*10.8%*
Total:	*74.7%*	*67.2%*	*71.8%*	*74.6%*	*67.3%*	*40.4%*	*69.7%*	*73.6%*	*73.3%*
Operating expenses:									
Research and development	1,487	2,045	2,063	2,529	2,400	1,443	2,158	2,873	3,440
Selling, general and administrative	5,958	8,879	8,216	9,666	10,678	7,664	11,228	12,175	14,550
Total operating expenses:	7,445	10,924	10,279	12,195	13,078	9,107	13,386	15,048	17,990
Loss from operations	(4,586)	(6,908)	(5,721)	(6,824)	(8,710)	(7,690)	(7,355)	(8,433)	(11,656)
Interest income	14	20	68	72	27	2	1	—	—
Interest expense	(392)	(487)	(535)	(547)	(552)	(549)	(538)	(764)	(1,084)
Other income (expense)	(2)	1	1	(35)	91	(73)	(197)	108	552
Loss before income taxes	(4,966)	(7,374)	(6,187)	(7,334)	(9,144)	(8,310)	(8,089)	(9,089)	(12,188)
Provision (benefit) for income taxes	(4)	3	—	9	31	6	8	16	52
Net loss and comprehensive loss	(4,962)	(7,377)	(6,187)	(7,343)	(9,175)	(8,316)	(8,097)	(9,105)	(12,240)

Liquidity and Capital Resources

Sources of Liquidity

To date, our primary sources of capital have been private placements of redeemable convertible preferred stock, debt financing agreements and revenue from the sale of our products. Since our inception, we have raised an aggregate of approximately $117.3 million in net proceeds from the sale of our redeemable convertible preferred stock and borrowed $32.9 million of net proceeds under our term loans.

As of March 31, 2021, we had cash and cash equivalents of $48.3 million, an accumulated deficit of $102.3 million and $35.0 million outstanding under our term loan agreement (before debt discount) and under our PPP loan. Based on our current planned operations, we expect our cash and cash equivalents and additional borrowings available under the 2020 Term Loan and the 2020 Revolver will enable us to fund our operations for at least the next twelve months.

MidCap Loan Agreements

In January 2019, we entered into a loan and security agreement, or the 2019 MidCap Credit Facility, with MidCap Financial Services, or the Lender, which provided for a term loan facility, or the 2019 Term Loan, and a revolving line of credit, or the 2019 Revolver. The original agreement included a maximum of $25.0 million credit facility consisting of a senior secured 2019 Term Loan of up to $20.0 million and a $5.0 million 2019 Revolver. In November 2020, we entered into a loan and security agreement, or the 2020 MidCap Credit Facility, with the Lender, which replaced the 2019 MidCap Credit Facility, and provided for a term loan facility, or the 2020 Term Loan, and a revolving line of credit, or the 2020 Revolver. The 2020 MidCap Credit Facility includes a maximum of $40.0 million credit facility consisting of a senior secured term loan of up to $35.0 million and a $5.0 million revolver.

2019 Term Loan

The 2019 Term Loan had a four-year term and a stated floating interest rate which equated to reserve-adjusted LIBOR, *plus* 6.75%. Under certain circumstances, the floating interest rate could have been based on the prime rate instead of LIBOR. The Term Loan was split into three tranches as follows: (i) the Tranche One Loans provided for $12.0 million in term loans, (ii) the Tranche Two Loans provided for up to $2.0 million in term loans, and (iii) the Tranche Three Loans provided for up to $6.0 million in term loans. We borrowed $14.0 million under the Tranche One Loans and Tranche Two Loans. Although the conditions necessary to draw the Tranche Three Loans had been met as of December 31, 2019, we did not draw the Tranche Three Term Loans. The 2019 Term Loan required 18 interest only payments, which began on January 31, 2019, followed by 30 equal monthly installments of principal, plus interest. The interest-only period was extended by an additional six months upon achievement of a milestone defined in the agreement with respect to the Tranche Three Loans.

We incurred $1.5 million of issuance costs in conjunction with the 2019 Term Loan which were netted against the borrowed funds in the balance sheet and were being accreted using the effective interest method as interest expense over the contractual period of four years. The 2019 Term Loan had an effective interest rate of 14.52% per year.

In conjunction with the funding of Tranche One Loans and Tranche Two Loans under the 2019 Term Loan, we issued a 10-year warrant to the Lender to purchase 29,514 shares of our Series C redeemable convertible preferred stock, or the 2019 MidCap Warrants, at an exercise price of $9.4868 per share.

The estimated fair value of the 2019 MidCap Warrants was $0.2 million. The 2019 MidCap Warrants were recorded at the fair value as a debt discount and as a warrant liability. The debt discount was being accreted using the effective interest method as interest expense over the contractual period of four years for the 2019 Term Loan.

The 2019 Term Loan granted us the right to voluntarily prepay the borrowings in full, with a prepayment premium beginning at 3.0% in the first year from tranche funding and declining to 2.0% in the second year from tranche funding, to 1.0% in the third year from tranche funding thereafter. In addition, a final payment fee of 5% of the original Tranche One Loans and Tranche Two Loans amounts borrowed was payable at the end of the term or when the borrowings are repaid in full. The borrowings were collateralized by a security interest in substantially all of our assets.

The 2019 Term Loan terms included making us subject to financial covenants related to minimum trailing net revenue targets that began on January 1, 2019 and were tested on a monthly basis. As of December 31, 2019, we were in compliance with the applicable financial covenants.

2019 Revolver

The 2019 Revolver had a four-year term and had a stated floating interest rate which equated to reserve-adjusted LIBOR, *plus* 4.25%. Under certain circumstances, the floating interest rate could have been based on the prime rate instead of LIBOR. An unused line fee of 0.5% was payable monthly based on the average unused balance and a collateral management fee of 0.5% was payable monthly based on the outstanding balance of the 2019 Revolver. We could have requested to increase the 2019 Revolver commitment amount to $10.0 million under the terms of the agreement. As of December 31, 2019, $4.0 million was available to be drawn under the 2019 Revolver.

The 2019 Revolver provided for a prepayment premium equal to an amount determined by multiplying the commitment amount by 3.0% in the first year, 2.0% in year 2, and 1.0% thereafter.

The 2019 Revolver had not been drawn upon as of December 31, 2019.

2020 Amendment to MidCap Loan Agreements

In November 2020, we amended the 2019 Term Loan and 2019 Revolver agreements, which resulted in an increase to our term loan borrowing availability, an extension of maturities and non-amortization periods, and changes to a number of other terms and conditions as summarized below.

2020 Term Loan

The amended term loan extended the maturity date to November 1, 2025 and increased the stated floating interest rate to reserve-adjusted LIBOR, *plus* 7.00%. Outstanding principal amounts of Tranche One Loans and Tranche Two Loans borrowed under the 2019 Term Loan were designated as Tranche One Loans and Tranche Two Loans under the 2020 Term Loan, and the Tranche Three Loans commitment amount was increased to $21.0 million. We drew the entire commitment amount of the Tranche Three Loans in November 2020. The 2020 Term Loan begins to amortize on December 1, 2022, and, if certain conditions are met, the initiation of the amortization period can be extended to December 1, 2023 or December 1, 2024. In addition, the final payment fee was increased to 6.0%. We are subject to financial covenants related to minimum trailing revenue targets that began on November 30, 2020, and are tested on a monthly basis. As of December 31, 2020 and March 31, 2021, the Company was in compliance with the applicable financial covenant.

We incurred $0.7 million of issuance costs in conjunction with the 2020 Term Loan which were netted against the borrowed funds in the balance sheet and are being accreted using the effective interest method as interest expense over the contractual period of five years. The 2020 Term Loan had an effective interest rate of 13.59% per year.

In conjunction with the funding of the 2020 Term Loan, we issued a 10-year warrant to the Lender to purchase 300,000 shares of our Series F redeemable convertible preferred stock at an exercise price of $21.8779 per share, or the 2020 MidCap Warrant, with the estimated fair value of $1.8 million. The 2020 MidCap Warrants were recorded at the fair value as a debt discount and as a warrant liability. The debt discount is being accreted using the effective interest method as interest expense over the contractual period of four years for the 2020 Term Loan.

Other key terms of the 2020 Term Loan remained substantially unchanged compared to those of the 2019 Term Loan.

2020 Revolver

The 2020 Revolver extended maturity date to November 1, 2025 and increased the stated floating interest rate to reserve-adjusted LIBOR plus 4.50%. As of December 30, 2020, $4.8 million was available to be drawn under the 2020 Revolver which remains undrawn upon.

Our obligations under the 2020 Term Loan and the 2020 Revolver are guaranteed by us and our future subsidiaries, subject to exceptions for certain foreign subsidiaries. Our obligations under the agreements are secured by substantially all of our assets, including our material intellectual property. Additionally, we are subject to customary affirmative and negative covenants, including covenants that limit or restrict the ability of us to, among other things, incur indebtedness, grant liens, merge or consolidate, make investments, dispose of assets, make acquisitions, pay dividends or make distributions, repurchase stock and enter into certain transactions with affiliates, in each case subject to certain exceptions.

Other key terms of the 2020 Revolver remained substantially unchanged compared to those of 2019 Revolver.

The 2020 Term Loan and the 2020 Revolver each contain events of default that include, among others, non-payment of principal, interest or fees, breach of covenants, inaccuracy of representations and warranties, cross-defaults and bankruptcy and insolvency events.

Paycheck Protection Program Loan

In May 2020, we received a loan of $2.2 million pursuant to the Paycheck Protection Program, or PPP, under the CARES Act. The Small Business Administration required that PPP loans only be used for eligible payroll costs, business mortgage interest payments, rent or utilities. Per SBA guidelines, we would be eligible to apply for loan forgiveness if we used the loan proceeds for acceptable expenses during the 8-week period after disbursement. We believe we have satisfied all of the terms and conditions of the PPP loan and applied for loan forgiveness in September 2020. The Company has elected to recognize this government grant income as a reduction of the related expenses and expects a decision from the SBA on loan forgiveness in the second quarter of 2021.

In connection with the PPP loan, we executed a promissory note in favor of Bank of America. If the SBA confirms full and complete forgiveness of the unpaid balance of the PPP loan and reimburses Bank of America for the total outstanding balance, principal and interest, our obligations under the PPP loan will be deemed fully satisfied and paid in full. If the PPP loan is not forgiven, we will be required to repay the PPP loan by May 2022 at a fixed interest rate not greater than 1%.

Lease Agreements

Our corporate headquarters are located in Menlo Park, California, where we lease approximately 10,823 square feet of office, research and development, engineering and laboratory space which is currently pursuant to a sublease agreement which was effective as of September 17, 2019 and expires on July 31, 2021. Effective August 1, 2021, we will remain in the same space under a new lease agreement with the direct landlord to that space which will extend through August 31, 2024. We also lease approximately 2,040 square feet of office space, which is primarily used by our commercial leadership team, in Southlake, Texas, pursuant to a lease that commenced on April 30, 2019 and expires on May 15, 2024.

Critical Accounting Policies and Estimates

Our financial statements have been prepared in accordance with U.S. generally accepted accounting principles. The preparation of these financial statements requires us to make estimates and assumptions for the

reported amounts of assets, liabilities, revenue, expenses and related disclosures. Our estimates are based on our historical experience and on various other factors that we believe are reasonable under the circumstances, the results of which form the basis for making judgments about the carrying value of assets and liabilities that are not readily apparent from other sources. Actual results may differ from these estimates under different assumptions or conditions and any such differences may be material.

While our significant accounting policies are more fully described in Note 2 to our financial statements included elsewhere in this prospectus, we believe the following discussion addresses our most critical accounting policies, which are those that are most important to our financial condition and results of operations and require our most difficult, subjective and complex judgments.

Revenue Recognition

We apply the following five steps in order to determine the appropriate amount of revenue to be recognized as we fulfill our obligations under each of its arrangements:

- Identify the contract with a customer,
- Identify the performance obligations in the contract,
- Determine the transaction price,
- Allocate the transaction price to performance obligations in the contract, and
- Recognize revenue as the performance obligations are satisfied.

Our revenue is generated from the sale of our products from our Surgical Glaucoma product portfolio and our Dry Eye product portfolio to hospitals, medical centers and ECPs in the United States through sales representatives and distributors. Our contracts are in the form of a combination of signed agreements and/or purchase orders. We account for a contract with a customer when there is approval and commitment from both parties, the rights and obligations of the parties are identified, payment terms are identified, the contract has commercial substance, and it is probable that we will collect substantially all of the consideration to which it will be entitled.

Each of our Surgical Glaucoma and Dry Eye products specified in a contract represents a distinct good and is accounted for as a separate performance obligation. Revenue is recognized when control of promised goods is transferred to a customer in amount that reflects the consideration that we expect to receive in exchange for those goods. Control of our products is transferred to our customers at a point in time, either upon shipment or delivery of the product to the customer under our standard terms and conditions. The customer is able to direct the use of, and obtain substantially all of the benefits from, the product at the time the product shipped or is delivered. We consider control to have transferred upon shipment or delivery because we have a present right to payment at that time, the customer has legal title to the asset, we have transferred physical possession of the asset, the customer has accepted the asset, and the customer has significant risks and rewards of ownership of the asset.

Payments for our contracts are typically due within 30 days of transfer of control of our products to its customers. We exclude taxes assessed by governmental authorities on revenue-producing transactions from the measurement of the transaction price.

In the normal course of business, we do not accept product returns, unless the item is defective as manufactured. We establish provisions for estimated returns and warranties. In addition, we do not typically provide customers with the right to a refund.

Our contracts all have an original duration of one year or less. As a practical expedient, we do not consider the time value of money for such contracts. Further, because of the short duration of these contracts, we do not disclose the transaction price for the remaining performance obligations as of the end of each reporting period or when we expect to recognize this revenue.

We expense shipping and handling costs as incurred and include them in the cost of goods sold. In those cases where we bill shipping and handling costs to customers, we will classify the amounts billed as a component of revenue.

As a practical expedient, we recognize the incremental costs of obtaining contracts, such as sales commissions, as an expense when incurred since the amortization period of the asset we otherwise would have recognized is one year or less. Sales commissions are recorded within selling, general, and administrative expenses in the statements of operations.

Inventory

Inventory represents finished goods purchased from a third-party manufacturer and is valued at the lower of cost or net realizable value. Cost is determined using actual costs on a first-in, first-out basis for all inventory. Net realizable value is determined as the estimated selling prices in the ordinary course of business, less reasonably predictable costs of completion, disposal, and transportation. We regularly review inventory quantities in consideration of actual loss experiences, projected future demand, and remaining shelf life to record a provision for excess and obsolete inventory when appropriate. The shelf life of our Surgical Glaucoma inventory averages approximately 24 months and for our Dry Eye inventory varies depending on the component of TearCare, as SmartHubs have no expiration date while SmartLids have a shelf life of 24 months. Our policy is to write down inventory that has become obsolete, inventory that has a cost basis in excess of its expected lower of cost or net realizable value, and inventory in excess of expected requirements. The estimate of excess quantities is judgmental and primarily dependent on our estimates of future demand for the particular product.

Stock-Based Compensation and Fair Value of Common Stock

We measure and record the expense related to stock-based payment awards based on the fair value of those awards as determined on the date of grant. We recognize stock-based compensation expense over the requisite service period of the individual grant, generally equal to the vesting period and use the straight-line method to recognize stock-based compensation, and account for forfeitures as they occur. Prior to our initial public offering, we selected the Black-Scholes-Merton, or Black-Scholes, option-pricing model as the method for determining the estimated fair value for stock options. The Black-Scholes option-pricing model requires the use of highly subjective and complex assumptions, which determine the fair value of share-based awards, including the option's expected term, expected volatility of the underlying stock, risk-free interest rate and expected dividend yield.

- Expected Term: The expected term was calculated using the simplified method. The simplified method is based on the vesting period and the contractual term for each grant or for each vesting tranche for awards with graded vesting. The midpoint of the vesting date and the maximum contractual expiration date is used as the expected term under this method. For awards with multiple vesting tranches, the time from grant until the midpoints for each of the tranches may be averaged to provide an overall expected term.
- Expected Volatility: We used an average historical stock price volatility of a peer group of publicly traded companies to be representative of its expected future stock price volatility, as we did not have any trading history for our common stock. For purposes of identifying these peer companies, we considered the industry, stage of development, size, and financial leverage of potential comparable companies. For each grant, we measured historical volatility over a period equivalent to the expected term.
- Risk-Free Interest Rate: The risk-free interest rate is based on the implied yield currently available on US Treasury zero-coupon issues with remaining terms equivalent to the expected term of a stock award.
- Expected Dividend Yield: We have not paid, and do not anticipate paying, any dividends in the near future. Accordingly, we estimated the dividend yield to be 0%.

Prior to our initial public offering, the fair value of our common stock was determined by the board of directors with assistance from management and, in part, on input from an independent third-party valuation firm. The board of directors determines the fair value of common stock by considering a number of objective and subjective factors, including valuations of comparable companies, sales of redeemable convertible preferred stock, operating and financial performance, the lack of liquidity of our common stock and the general and industry-specific economic outlook.

Our valuations of our common stock were determined in accordance with the guidelines outlined in the American Institute of Certified Public Accountants Practice Aid, Valuation of Privately-Held-Company Equity Securities Issued as Compensation, or the Practice Aid. The methodology to determine the fair value of our common stock included estimating the fair value of the enterprise using the "backsolve" method, which estimates the fair value of our company by reference to the value and preferences of our last round of financing, as well as our capitalization.

The assumptions used to determine the estimated fair value of our common stock are based on numerous objective and subjective factors, combined with management's judgment, including external market conditions affecting the pharmaceutical and biotechnology industry and trends within the industry:

- Our stage of development;
- The rights, preferences, and privileges of our redeemable convertible preferred stock relative to those of our common stock;
- The prices at which we sold shares of our redeemable convertible preferred stock;
- Our financial condition and operating results, including our levels of available capital resources;
- The progress of our research and development efforts, our stage of development, and business strategy;
- Equity market conditions affecting comparable public companies; and
- General U.S. market conditions and the lack of marketability of our common stock.

The Practice Aid identifies various available methods for allocating enterprise value across classes and series of capital stock to determine the estimated fair value of common stock at each valuation date. In accordance with the Practice Aid, we considered the following methods:

- *Income approach.* The income approach attempts to value an asset or security by estimating the present value of the future economic benefits it is expected to produce. These benefits can include earnings, cost savings, tax deductions, and disposition proceeds from the asset. An indication of value may be developed in this approach 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, the expected rate of inflation over the asset's holding period, and the risks associated with realizing the cash flows in the amounts and at the times projected. The discount rate selected is typically based on rates of return available from alternative investments of similar type and quality as of the valuation date. The most commonly employed income approach to valuation is the discounted cash flow analysis.
- *Market Approach.* The market approach attempts to value an asset or security by examining observable market values for similar assets or securities. Sales and offering prices for comparable assets are adjusted to reflect differences between the asset being valued and the comparable assets, such as, location, time and terms of sale, utility, and physical characteristics. When applied to the valuation of equity, the analysis may include consideration of the financial condition and operating performance of the company being valued relative to those of publicly traded companies or to those of companies acquired in a single transaction, which operate in the same or similar lines of business.
- *Cost Approach.* The cost approach to valuation is based upon the concept of replacement cost as an indicator of value and the notion that an investor would pay no more for an asset than what it would

cost to replace the asset with one of equal utility. The cost approach estimates value based upon the estimated cost of replacing or reproducing the asset, less adjustments for physical deterioration and functional obsolescence, if relevant. When applied to an enterprise, a type of cost approach referred to as the Net Asset Method is sometimes employed. This method measures the value of equity as the sum of the values of its assets reduced by the sum of the values of its liabilities. The resulting equity is reflective of a 100% ownership interest in the business. This approach is frequently used in valuing holding companies.

Based on our early stage of development and other relevant factors, our board of directors considered all three approaches and have chosen to apply both income and market approaches in our analyses. Our board of directors determined these approaches were the most appropriate methods for allocating our enterprise value to determine the estimated fair value of our common stock for valuations performed for periods as of December 31, 2020 or earlier. In determining the estimated fair value of our common stock, our board of directors also considered the fact that our stockholders could not freely trade our common stock in the public markets. Accordingly, we applied discounts to reflect the lack of marketability of our common stock based on the estimated time to liquidity. The estimated fair value of our common stock at each grant date reflected a non-marketability discount partially based on the estimated timing of a future liquidity event.

After the completion of this offering, the fair value of each share of underlying common stock will be determined based on the closing quoted market price of our common stock on the date of grant.

Redeemable Convertible Preferred Stock Warrants

Our redeemable convertible preferred stock warrants require liability classification and accounting as the underlying redeemable convertible preferred stock is considered contingently redeemable and may obligate us to transfer assets to the holders at a future date upon occurrence of a deemed liquidation event. The warrants are recorded at fair value upon issuance and are subject to remeasurement to fair value at each balance sheet date, with any changes in fair value recognized as other expense in the statements of operations. The warrants liability is recorded as other noncurrent liabilities in the balance sheets. We will continue to adjust the warrant liability for changes in fair value until the earlier of the exercise or expiration of the redeemable convertible preferred stock warrants, occurrence of a deemed liquidation event, or conversion of redeemable convertible preferred stock into common stock. At that time, the liability associated with the redeemable convertible preferred stock warrants that are converted into warrants to purchase common stock will be reclassified to additional paid-in capital, while the liability associated with any expired warrants will be recognized as a gain within the statements of operations and comprehensive loss. As a result, the redeemable convertible preferred stock warrant liability will be settled and will no longer be subject to remeasurement.

Quantitative and Qualitative Disclosures About Market Risk

Interest Rate Risk

The risk associated with fluctuating interest rates is primarily limited to our cash equivalents, which are carried at quoted market prices. Due to the short-term maturities and low risk profile of our cash equivalents, an immediate 100 basis point change in interest rates would not have a material effect on the fair value of our cash equivalents. We do not currently use or plan to use financial derivatives in our investment portfolio. As of March 31, 2021, we had $35.0 million in variable rate debt outstanding. Our 2020 Term Loan bears interest per annum at 7.00% plus LIBOR for such interest period, and our 2020 Revolver bears interest per annum at 4.50% plus LIBOR for such interest period. A hypothetical change in interest rates of 10% would have resulted in a change of $0.2 million in interest expense in 2020.

Foreign Currency Risk

Our business is primarily conducted in U.S. dollars. Any transactions that may be conducted in foreign currencies are not expected to have a material effect on our results of operations, financial position or cash flows.

JOBS Act Accounting Election

The Jumpstart Our Business Startups Act of 2012 (JOBS Act) permits an "emerging growth company" such as us to take advantage of an extended transition period to comply with new or revised accounting standards applicable to public companies. We have elected to use this extended transition period under the JOBS Act. As a result, our financial statements may not be comparable to the financial statements of issuers who are required to comply with the effective dates for new or revised accounting standards that are applicable to public companies, which may make comparison of our financials to those of other public companies more difficult.

Recently Issued Accounting Pronouncements

See Note 2 to our financial statements included elsewhere in this prospectus for new accounting pronouncements not yet adopted as of the date of this prospectus.

BUSINESS

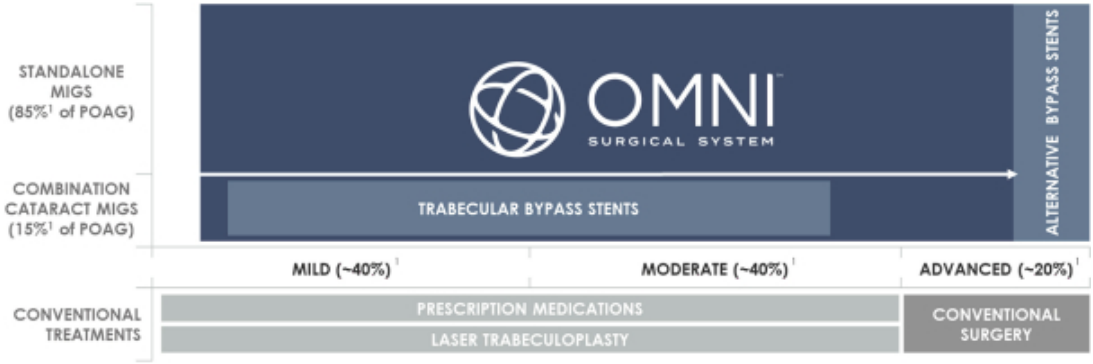
Overview

Our mission is to transform ophthalmology and optometry through the development and commercialization of proprietary devices that target the underlying causes of the world's most prevalent eye diseases. We are passionate about improving patients' lives. Our business philosophy is grounded in the following principles: comprehensively understanding disease physiology; developing products that are intended to restore natural physiological functionality to diseased eyes; developing and marketing products that achieve superior effectiveness versus current treatment paradigms while minimizing complications or side effects; providing intuitive, patient friendly solutions to ophthalmologists and optometrists (together, eyecare professionals or ECPs), and delivering compelling economic value to all stakeholders, including patients, providers and third-party payors such as Medicare and commercial insurers. Our objective is to develop and market products for use in new treatment paradigms and to create an interventional mindset in eyecare whereby our products may be used in procedures which supplant conventional outdated approaches. We believe current eyecare treatment models rely heavily on prescription medications, symptom relief, or either flawed or highly invasive, later-stage procedural interventions, and often fail to adequately address the true underlying cause of disease.

We have focused our initial product development efforts on the treatment of two of the world's most prevalent and underserved eye diseases, glaucoma and dry eye disease, or DED. We estimate the annual addressable U.S. market opportunities for the products in our Surgical Glaucoma and Dry Eye segments are approximately $6 billion and approximately $10 billion, respectively, while 2020 U.S. manufacturer revenues in the surgical glaucoma and DED markets were approximately $350 million and $2.4 billion, respectively, demonstrating that currently available solutions have not addressed a large part of the market need.

Glaucoma, a group of chronic, often asymptomatic, diseases that damage the optic nerve, is the world's leading cause of irreversible blindness. Glaucoma does not have a cure and is a progressive disease; if left untreated or insufficiently treated, glaucoma can lead to irreversible disability and blindness. An estimated 102 million people worldwide suffer from glaucoma. Primary open-angle glaucoma, or POAG, is the most prevalent form of glaucoma and affects over 60 million people worldwide, including 4.1 million people in the United States, of whom an estimated 3.4 million have been diagnosed. One of the greatest risk factors for POAG, and the only risk factor that can be controlled, is elevated intraocular pressure, or IOP. Elevated IOP is often caused by malfunctioning drainage pathways in the eye that provide abnormal resistance to the outflow of aqueous humor, a clear, watery fluid which bathes and nourishes the lens and maintains pressure within the eye.

Figure 1. OMNI Enables New Glaucoma Treatment Paradigm



1 Represents % of U.S. POAG patients.

Our OMNI Surgical System, or OMNI, is a handheld, single use, therapeutic device that allows ophthalmic surgeons to reduce IOP in adult glaucoma patients. OMNI allows the ophthalmic surgeon to sequentially complete two well-established but historically invasive *ab externo* glaucoma procedures, canaloplasty and trabeculotomy, in an efficient, minimally invasive manner using a single, bloodless and sutureless clear corneal microincision. Conventional canaloplasty and trabeculotomy procedures have been used to effectively treat glaucoma for decades but involve invasive approaches that are difficult to perform, traumatize the eye, have higher risk of intraoperative and post-operative complications and require longer patient recovery times. OMNI allows ophthalmic surgeons to transform these two distinct, historically invasive *ab externo* glaucoma procedures into a sequential, *ab interno* minimally invasive glaucoma surgery, or MIGS, procedure. MIGS procedures are performed through a one to two millimeters clear corneal incision similar to those used in cataract surgery for intraocular access and have a strong demonstrated safety profile, characterized by minimal trauma to the eye and quick patient recovery times. The FDA has authorized the use of OMNI for reducing IOP in all adult POAG patients both by itself on a standalone basis, which we refer to as Standalone procedures, or in combination with cataract procedures, which we refer to as Combination Cataract procedures. Several competing MIGS devices, including the current market leaders, have only been authorized by the FDA for use in Combination Cataract procedures for adult patients with Mild-to-Moderate severity. We estimate that over 85% of the U.S. addressable market opportunity for POAG cannot be served with Combination Cataract procedures because less than 15% of POAG patients receive cataract surgery in any given year.

We believe that OMNI delivers the highest level of effectiveness of any available MIGS product, as it is the only device that provides access to 360 degrees of the diseased conventional outflow pathway and can address all three primary points of resistance in the conventional outflow pathway (trabecular meshwork, Schlemm's canal, and the distal collector channels), through a single clear corneal incision. We believe there is no diagnostic to determine where the resistance lies in the conventional outflow pathway which increases the appeal of OMNI given it is singularly well-suited to address all three primary points of resistance. OMNI's indication for use, which we believe is among the most comprehensive in MIGS, was cleared by the FDA in March 2021 based upon the review of clinical data from ROMEO, our recently completed U.S. multi-center clinical study of OMNI in Combination Cataract and Standalone procedures. In ROMEO, we observed that Standalone OMNI patients with preoperative IOP greater than 18 mmHg experienced a mean IOP reduction of 28% (from 21.8 mmHg to 15.6 mmHg) and a mean reduction in hypotensive medication usage of 35% (from 1.71 medications to 1.17 medications) 12 months after treatment. In Combination Cataract patients with preoperative IOP greater than 18 mmHg, we observed a mean IOP reduction of 31% (from 21.9 mmHg to 15.1 mmHg) and a mean reduction in hypotensive medication usage of 45% (from 2.04 medications to 1.13 medications) 12 months after treatment. We believe it is noteworthy that our Standalone IOP and medication reduction results are highly comparable to our Combination Cataract results, as it supports our belief that OMNI is the key driver of IOP and medication reduction in both Standalone and Combination Cataract procedures.

Figure 2. Conventional Outflow Pathway – Three Primary Points of Resistance[1]

1 Extends 360° around the circumference of the iridocorneal angle where the iris and cornea meet.

OMNI has received 510(k) clearance from the FDA and a CE Mark to be marketed in the U.S. and the EU, respectively, for canaloplasty (microcatheterization and transluminal viscodilation of Schlemm's canal) followed by trabeculotomy (cutting of trabecular meshwork) to reduce IOP in adult patients with POAG in the U.S. or with open-angle glaucoma, or OAG, in the EU. We believe OMNI is the first custom-designed, *ab interno* MIGS device that was cleared by the FDA to lower IOP in both Combination Cataract and Standalone cases for all adults with POAG based upon the review of *ab interno* Combination Cataract and Standalone clinical data. By comparison, trabecular bypass stents are indicated for use only in Combination Cataract procedures for patients with Mild-to-Moderate severity in the U.S. Other MIGS devices are only authorized for cases with failed prior glaucoma surgery or that are unresponsive to maximum tolerated medical therapy, which are known as Refractory cases, or do not have indications for use that were based on the FDA's review of accompanying *ab interno* clinical data. Trabecular bypass stents were the first MIGS implant devices to be authorized by the FDA. We believe the combination of their restricted indication for use and their market leadership position has unnaturally skewed the U.S. MIGS market towards Combination Cataract procedures.

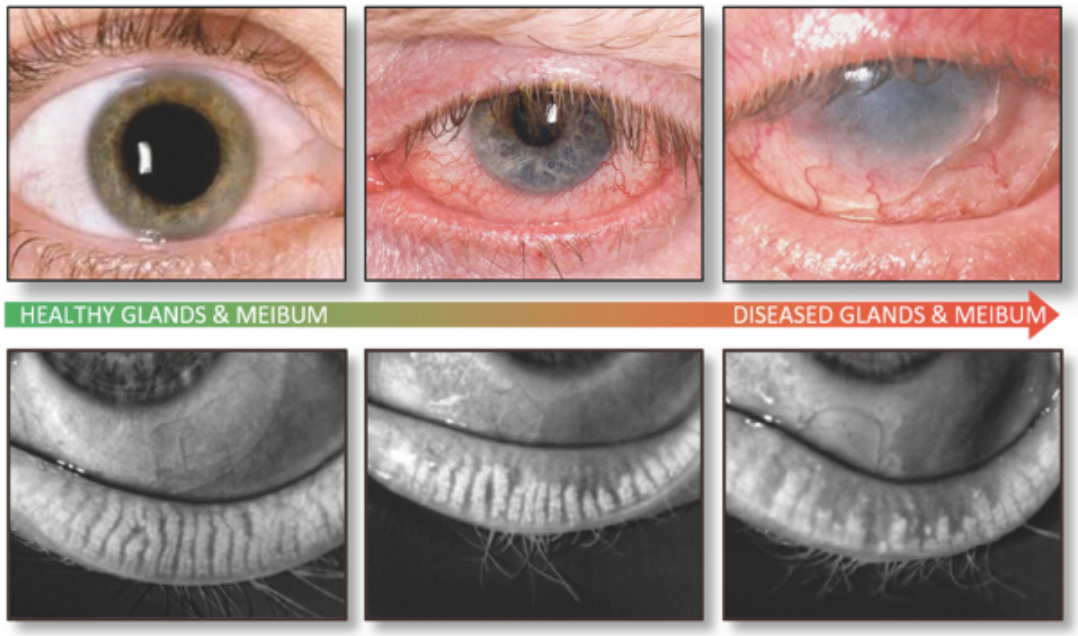
Our goal is to establish OMNI as the standard of care for all POAG patients by continuing to grow its adoption and utilization in the existing Combination Cataract market segment, which we believe remains underpenetrated and estimate is capturing less than one-third of its current potential procedural volume, and by pioneering the development of the Standalone market segment (over 85% of the potential U.S. POAG market). Published data from ROMEO and several single surgeon datasets show a remarkable consistency in IOP reduction following treatment with OMNI. Almost all patients across these groups (98 of 103, 95%) had an IOP decrease following treatment with OMNI, and three out of four (77 of 103, 75%) had at least a 20% decrease. For eyes with preoperative IOP of at least 15 mmHg, we observed lower postoperative IOP in 94 of 96 (98%) cases. Patients in these studies also experienced reductions in the use of glaucoma medication following their OMNI procedures, a benefit not observed in the "medication washout" trabecular bypass stent trials designed to isolate and thereby maximize IOP reduction in a non-real world manner. We believe the consistent therapeutic outcomes OMNI delivers are important for patients and surgeons alike. For patients, we believe the anxiety that may accompany the need for ocular surgery can be tempered with the knowledge that there is a high likelihood of success. For surgeons, consistent outcomes simplify the treatment choice and the decision to perform a procedure. We believe this is especially important for Standalone MIGS procedures which must deliver a very high consistency of efficacy and a very high degree of effectiveness to not only justify the procedure, but also provide surgeons with enough confidence to recommend Standalone surgery to their patients and take them to the operating room for a singular reason. We believe delivering consistently effective results will be crucial to unlocking the Standalone market, as well as capitalizing on the full potential of the Combination Cataract market. An internal field study of our user base has indicated that Standalone procedures in 2020 constituted greater than 20% of our customers' total OMNI procedures.

After receiving our initial FDA 510(k) clearance for OMNI in late 2017, we began the commercial sale of the device in February 2018. We primarily sell OMNI in the U.S. through our dedicated Surgical Glaucoma sales team, which includes a subset of representatives solely focused on educating existing and potential customers and primary care ECPs on the broad utility and use cases for OMNI and on Standalone treatment alternatives generally. Our commercial strategy for OMNI centers on building confidence and conviction amongst the glaucoma community through continued execution of our clinical trials and publishing their results in peer-reviewed journals. In addition, our highly involved sales and training model serves to promote a world-class surgical experience and identify additional OMNI use cases within its cleared indication, including in additional Standalone procedures and across all addressable POAG severities. The procedure enabled by OMNI, canaloplasty followed by trabeculotomy, is covered and reimbursed by all Medicare Administrative Contractors, or MACs, and numerous private insurers, covering an estimated 67% of U.S. POAG sufferers. Designed for use in well-established clinical procedures, and with advantages that have been observed to promote safe, effective and highly consistent clinical outcomes, we believe that OMNI has the potential to establish a more proactive, interventional paradigm for IOP reduction in POAG. Our Surgical Glaucoma segment, which includes OMNI, represented 94% of our total revenues for the year ended December 31, 2020 and the three months ended March 31, 2021.

The TearCare System, or TearCare, is a technologically sophisticated system which utilizes a wearable, open-eye design to apply localized heat to the eyelids in an anatomically customized way. We believe TearCare has a compelling physiological profile to address obstruction from meibomian gland dysfunction, or MGD, which is the primary cause of evaporative DED, a disease characterized by low quality tears that evaporate prematurely. Dry eye complaints are the most common reason for a patient visit to an eye doctor. There are an estimated 739 million people globally and 38 million people in the U.S. who suffer from DED. DED is the most common reason for a patient visit to an eye doctor, yet of the 38 million people with DED in the U.S., only 17 million have been diagnosed with DED. Dry eye symptoms have a significant impact on the quality of life and productivity of patients suffering from DED. If left untreated, DED can be extremely painful, leading to permanent cornea damage and vision impairment.

Studies have shown that evaporative DED resulting from MGD is associated with approximately 86% of all DED cases. In healthy eyes, there are 25-30 meibomian glands located within each of the upper and lower eyelids. These glands produce and secrete an oily substance called meibum which forms the outer layer of healthy tears, which is also known as the lipid layer. Meibum normally has an olive oil-like consistency and contributes a vital element of the tear film that prevents premature tear evaporation. In patients with MGD, meibum hardens within the glands causing obstructions that can partially or completely block the oily secretions from reaching the tear film. The resulting compromised outer surface of the tear leads to accelerated tear evaporation and DED. Third-party clinical studies have also demonstrated that treating MGD by liquefying and removing clogged meibum is the most effective method of eliminating obstructions and restoring a healthy tear film lipid layer, thereby preventing premature evaporation of tears.

Figure 3. Progression of DED and Ocular Surface Disease



TearCare is designed to enable ECPs to heat and liquefy meibomian gland blockages, followed promptly by manual, comprehensive clearing of these blockages with a separate clearance tool. We developed TearCare to serve as an elegant, compact, portable, and intuitive solution comprised of a re-usable hardware controller, the SmartHub, and a breakthrough, wearable, software-controlled eyelid technology, the SmartLids. Applied adhesively and non-invasively to the outside of the eyelids, single-use SmartLids deliver a precise therapeutic

level of heat into the meibomian glands. Engineering SmartLids to remain comfortably adhered to virtually all shapes and sizes of eyelids while allowing freedom to blink and delivering precise therapeutic heat is one of our most significant design accomplishments. This heating process is intended to melt obstructions in the glands and restore the production and release of healthy, clear meibum onto the tear surface. The proprietary, highly conformant, open-eye design of TearCare allows patients to blink naturally throughout the thermal portion of the procedure, which facilitates movement of melted meibum and also provides a comfortable patient experience. TearCare can be utilized by an ECP in a straightforward in-office procedure and can be accommodated during the course of a routine patient visit. Additionally, TearCare does not require a large capital equipment investment by ECPs, and we believe that it offers an attractive economic value proposition to providers, patients and third-party payors.

In OLYMPIA, our large multi-center, randomized control trial, or RCT, TearCare was associated with statistically significant clinical improvements in all assessed signs and symptoms of DED. This included TBUT and MGSS, objective measurements of DED that were the trial's primary endpoints, as well as patient-reported symptoms surveys, including EDS, OSDI and SANDE, at all time periods measured (both two weeks and four weeks post-treatment). Further, TearCare had a statistically significantly higher proportion of subjects improving by at least one OSDI category than did the comparator group receiving a single treatment using a version of the first device FDA-cleared for the application of localized heat and pressure therapy in adult patients with chronic cystic conditions of the eyelids, including MGD.

We began selling TearCare in a controlled product launch in mid-2019 to DED-focused ECP practices through a dedicated commercial team. The initial launch phase was successful in garnering valuable feedback from our customers and the broader DED community as well as demonstrating the existing market demand for the product. We believe the MGD market requires additional ECP and patient education, including clinical data to differentiate procedural and product alternatives, and enhanced patient access through the potential advancement of reimbursement coverage. Our goals with the development of TearCare are to fully transform the current outdated treatment paradigm based primarily on over-the-counter, or OTC, and prescription eyedrops which do not address obstruction of the meibomian glands, the primary root cause of MGD, and establish use of TearCare as the standard of care for the millions of patients suffering from evaporative DED caused by MGD. Revenues from our Dry Eye segment, which includes TearCare and related accessories, represented 6% of our total revenues for the year ended December 31, 2020 and the three months ended March 31, 2021.

We currently market TearCare as a Class II, 510-exempt powered heating pad indicated for the application of localized heat where the medical community recommends the application of a warm compress to the eyelids. In November 2020, we submitted a 510(k) premarket notification seeking an expanded indication for use for TearCare. The FDA requested several safety tests and modifications which we believe would have required additional time to complete beyond the designated review process. We voluntarily withdrew this submission in May 2021 to allow us to comply with the FDA's requests in a comprehensive manner. We are currently conducting these follow-up safety tests and modifications, and we intend to resubmit the 510(k) premarket notification for an expanded indication for use in .

We focus on continuous innovation and seek regular input from our network of expert employees (including several ophthalmologists on staff), advisors and customers to rapidly iterate our pre- and post-commercial product designs with the aim of better satisfying the needs of our customers and their patients, and increasing adoption and utilization of our solutions. This is particularly evident in the evolution of OMNI, which originated from the combined functionality of two internally developed, commercial predicate devices, each of which went through multiple commercial iterations. We further refined the ergonomics and functionality in OMNI Next Gen, which we launched in May 2020. This dynamic process has also helped guide the intuitive design of our products and our hands-on instructional programs that allow ECPs to use OMNI and TearCare with confidence and with minimal adverse events. Between January 2019 and April 2021, we shipped over 50,000 units of OMNI and over 10,000 single-use SmartLid units to customers. During this period, we became aware of nine events that were reported to the FDA in accordance with 21 CFR §803 as 30-day MDRs, representing less than 0.015% of units shipped.

Our desire and capability to continuously and rapidly innovate our products is a core competency of our company. Our treatment philosophy and approach to product innovation have resulted in a patent portfolio of 27 issued U.S. patents, 34 issued patents outside of the U.S. (including four issued European patents and their national validations), 16 pending U.S. non-provisional patent applications, one pending U.S. provisional patent application, 15 pending foreign patent applications and one pending Patent Cooperation Treaty patent application as of April 30, 2021.

The overall success of our innovative approach to eyecare to date has been confirmed by the over 60,000 estimated uses of OMNI and its direct predicates in over 1,000 hospitals and ambulatory service centers, or ASCs, in the U.S. and EU, and over 10,000 estimated uses of TearCare in over 400 eyecare facilities in the U.S. through April 30, 2021. We have experienced significant growth and market adoption since launching OMNI and are executing a long-term plan for further development of the market for TearCare.

Market Opportunity

We believe there is a significant opportunity to broadly improve existing treatment paradigms throughout ophthalmology and optometry to benefit more patients worldwide. Advancements in treatment effectiveness across a number of prominent eye diseases have been limited in recent years due to a lack of significant innovation. We believe that there are few companies in eyecare that excel in both product development and commercial activities. As a result, conventional treatment algorithms that rely heavily on prescription medications and symptom relief but fail to comprehensively address the true underlying cause of the disease have persisted.

Our objective is to develop products that enable us to open new treatment paradigms and create an interventional mindset in eyecare. We believe that our track record with OMNI and TearCare has demonstrated our ability to leverage our internal capabilities in product development, clinical trial execution, and commercialization to bring viable products to market efficiently and to rapidly refine and innovate them based on real-world input from our customers and advisors. We believe that our products have the potential to transform the treatment paradigms of their respective target diseases. Through continued product and technological innovation, the generation and compilation of differentiated clinical data, and our highly involved and training-intensive user experience programs, we strive to transform and lead two of the most prevalent and most underpenetrated segments of eyecare – POAG and DED.

Primary Open-Angle Glaucoma

Glaucoma, a group of chronic, often asymptomatic, diseases that damage the optic nerve, is the world's leading cause of irreversible blindness. Glaucoma does not have a cure and is a progressive disease; if left untreated or insufficiently treated, glaucoma can lead to irreversible disability, vision loss and blindness. In 2020, 102 million people worldwide were estimated to suffer from glaucoma. POAG is the most prevalent form of glaucoma and in 2020 affected over 60 million people worldwide and 4.1 million people in the U.S., of whom 3.4 million were diagnosed. Elevated IOP, often caused by malfunctioning drainage pathways in the eye with abnormal resistance to the outflow of aqueous humor, is one of the greatest risk factors for POAG and the only one that can be controlled.

In patients with POAG, increased resistance to aqueous humor outflow causes pressure to build up in the eye and the resultant tension applies stress to and cuts off the blood supply to the optic nerve in the back of the eye, resulting in optic nerve cell death and irreversible vision loss. Decades of research have demonstrated that the fluid buildup primarily results from malfunctions in the eye's conventional outflow pathway for aqueous humor. If left untreated, glaucoma can damage the optic nerve, resulting in permanent partial or complete loss of vision. The stages of glaucoma are classified based on risk of visual loss on a scale that ranges from ocular hypertension, or OHT, to Mild, to Moderate, then Advanced/Severe, and finally, End-Stage. In the U.S., it is estimated that Mild and Moderate cases each account for approximately 40% of all POAG cases with the

remaining 20% representing Advanced/Severe cases. There is no universally accepted standard for diagnosis of glaucoma severity. OHT, which is characterized by elevated IOP without indications of optic nerve damage or changes in visual field, is a condition that will often progress to glaucoma. While physicians may vary in their diagnostic approach to an individual patient's stage of glaucoma, Mild and Moderate diagnoses are generally attributed to the abnormal appearance of the optic nerve head (i.e., cupping) with early visual field loss for Moderate cases only, followed by visual abnormalities in both left and right hemispheres of the visual fields for Advanced/Severe cases.

The current treatment paradigm for POAG includes less invasive options such as prescription eyedrops and laser treatments for milder cases and more invasive conventional surgical procedures for more severe cases.

Prescription eyedrops and laser treatments seek to increase aqueous outflow or reduce aqueous production while conventional surgical procedures seek to improve drainage by creating new, artificial, or unnatural outlets for aqueous fluid that bypass the conventional outflow pathway. These conventional surgical procedures involve incisions to the conjunctiva and sclera that can cause significant trauma and scarring to the eye. Safety concerns for conventional surgical procedures are such that they are typically reserved for Severe cases where the risk of vision loss is imminent and outweighs the risk of the invasive procedure itself. Each of these treatment modalities addresses just a single aspect of the disease at a specific point in the progression of the disease state. As a complex progressive disease, there has historically been no "one size fits all" treatment for glaucoma. Physicians have historically used a combination of treatments because no single treatment could adequately slow disease progression to a manageable level over the long term. Further, due to the progressive nature of the disease, data suggest that legacy interventions can become ineffective as the disease state matures. In 2019, worldwide glaucoma prescription medications were estimated to represent over 80% of the nearly $6 billion global glaucoma treatment market. MIGS, glaucoma diagnostic equipment and other surgical devices were estimated to represent 7.0%, 6.3% and 4.8%, respectively.

POAG is the most common type of OAG and is characterized by an open, normal appearing anterior chamber and angle, elevated IOP, typical optic nerve head damage and associated visual field loss, but no other detectable underlying ocular or systemic disease. In healthy eyes, the majority of aqueous fluid drains via the conventional outflow pathway — passing through the trabecular meshwork into Schlemm's canal and out of the eye through the distal collector channels that connect to the episcleral venous system, with the remainder draining from the alternative uveoscleral or unconventional pathway. We believe treating the conventional outflow pathway with minimally invasive access offers the safest and most effective treatment option for POAG. The *ab interno* approach involves minimal trauma to the eye, enabling fast healing times with minimal complications, and does not compromise the structural integrity of the eye, thereby allowing episcleral venous pressure, which acts as the body's natural IOP backstop, to ensure that IOP will not be inadvertently reduced to dangerously low levels (5 mmHg or less), a condition known as hypotony. Other approaches, such as invasive filtering procedures (e.g., trabeculectomy) or suprachoroidal bypass procedures, create artificial drainage channels and are susceptible to serious complications, including hypotony, which can develop when drainage from artificial pathways cannot be adequately controlled. Hypotony can lead to corneal decompensation, accelerated cataract formation, and vision loss.

Recently, MIGS procedures have gained in popularity due to favorable safety profiles, demonstrable effectiveness, and minimal disruption and trauma to ocular tissues. Trabecular bypass stents were the first MIGS implants to come to market in 2012. During a trabecular bypass stent procedure, one or more stents are implanted into the trabecular meshwork through the same type of microincision used to perform cataract surgery. As an implant into the trabecular meshwork, trabecular bypass stents address only one (the diseased trabecular meshwork) of three primary points of potential resistance in the conventional outflow pathway, and have only modest incremental IOP-lowering effectiveness vis-à-vis cataract surgery alone. To date, the FDA has only authorized trabecular bypass stents for use in Combination Cataract surgery for patients with Mild-to-Moderate severity. To attain expanded indications beyond the Mild-to-Moderate Combination Cataract segment in the U.S., we believe trabecular bypass stents will need to demonstrate safety and effectiveness when used alone and without the assistance of the well documented IOP-lowering impact of cataract surgery itself. It is estimated that

there were approximately 205,000 MIGS stent procedures in the U.S. in 2020. In 2019, without COVID-19 related impacts, there were an estimated 220,000 MIGS stent procedures in the U.S.

Alternative bypass stents, another category of implantable MIGS device, have been designed to artificially shunt aqueous humor from the anterior chamber away from the conventional outflow pathway and into the subconjunctival or suprachoroidal spaces in the eye. Alternative bypass stents create a new drainage channel, circumventing the diseased conventional outflow pathway. Currently available alternative bypass stents have only been approved for Refractory cases, such as failed prior surgeries and those unresponsive to maximum tolerated medical therapy, which limits their potential market due to the relatively lower incidence of Refractory cases. Alternative bypass stents that are implanted in a manner that shunts fluid unnaturally have greater safety concerns than MIGS devices that leverage the conventional outflow pathway. In 2018, Alcon's Cypass stent was withdrawn from the market due to concerns over rates of corneal endothelial cell loss. The FDA classified the event as a Class I recall, which indicates there is a reasonable probability that use of the product will cause serious adverse health consequences or death. The Cypass product has not returned to market.

In surgical glaucoma, each diseased eye requires an independent procedure and, as a result, requires its own surgical device for the treatment. An estimated 4.2 million people in the U.S. suffer from POAG and PEX (pseudoexfoliation glaucoma), of which only 3.5 million have been diagnosed. Of this combined population, 0%-6% are estimated to suffer from PEX, resulting in an estimated 3.4 million people in the U.S. diagnosed with POAG at the 3% PEX midpoint. Applying a ratio of 1.8 assumed eyes with POAG per affected person (or 80% with bilateral POAG) to the estimated 3.4 million people diagnosed with POAG in the U.S. results in a total addressable treatment population of 6.1 million diagnosed eyes with POAG. Based on average selling prices for MIGS devices in 2020, the implied total addressable market opportunity in the U.S. for devices that could effectively treat all diagnosed POAG sufferers is approximately $6 billion. We estimate that currently available trabecular bypass stents are effectively precluded from participating in over 85% of this addressable market given the limitations of their indications for use and the fact that less than 15% of the diagnosed U.S. POAG population has cataract surgery each year based on the estimated 774,000 eyes that had OHT or any type of glaucoma among all of the cataract surgeries performed in 2019. Currently available alternative bypass stents are limited to Refractory cases, which we believe represent a smaller portion of the total U.S. POAG market. The current market for glaucoma surgery devices that can deliver both the effectiveness to substantially reduce IOP and/or IOP-lowering medication utilization, and a best-in-class safety profile, has potential for substantial growth and expansion.

Currently, MIGS devices, which we define as implantable microstents and non-implantable Schlemm's canal surgery devices that facilitate aqueous drainage and access the eye using an *ab interno* approach via sutureless corneal microincisions, make up the largest and fastest growing segment of the surgical glaucoma market. The trabecular bypass stent market has projected U.S. and worldwide CAGRs of 27% and 37%, respectively, from 2020 to 2025. The global revenue forecast for canal surgery devices nearly triples from 2020 to 2025, increasing from $77 million in 2020 to $228 million in 2025. MIGS devices accounted for an estimated $342 million of the total estimated $575 million global glaucoma surgical device market in 2020. In 2019, without COVID-related procedural impacts, MIGS devices accounted for $422 million out of the $706 million global glaucoma surgical devices market. Due to the estimated greater than 60% market share held by trabecular bypass stents, however, the U.S. MIGS device market has been unnaturally skewed toward the Combination Cataract Mild-to-Moderate severity segment for which trabecular bypass stents have been authorized. We expect the overall MIGS device market to grow well beyond its current size as surgeons employ more comprehensive and consistently effective non-implantable procedures to treat a broader range of patients. The Combination Cataract market is also expected to exhibit market growth, as we estimate that current Combination Cataract procedure volumes represent less than one-third of their potential in the U.S.

The prevalence of POAG is projected to increase in the U.S. due to aging populations (glaucoma primarily affects people over 60), demographic shifts (POAG has a higher incidence among black and Hispanic populations), and the growth of other medical conditions associated with glaucoma such as diabetes, heart disease and high blood pressure. In addition, glaucoma has been historically underdiagnosed but recent medical

advancements in screening protocols and diagnostic testing combined with growing awareness have contributed to more accurate diagnosis rates. As surgical glaucoma procedures evolve to become more efficient, less invasive and safer while offering increased effectiveness, the potential for these treatments to become the standard of care for POAG patients earlier in the continuum of disease progression continues to increase.

Dry Eye Disease

DED refers to a group of disorders caused by either low quality tears, known as evaporative DED, or inadequate tear production, known as aqueous deficient DED. Studies have shown that dry eye symptoms have a significant impact on patient quality of life and productivity and are the most common reason for a patient visit to an eye doctor. If left untreated, DED can be extremely painful, and lead to permanent cornea damage and vision impairment. Studies have also shown that evaporative DED resulting from meibomian gland dysfunction, or MGD, is associated with approximately 86% of all DED cases.

MGD is a chronic, multifactorial abnormality of the meibomian glands that alters gland morphology and physiology. In healthy eyes, there are 25-30 meibomian glands located within each of the upper and lower eyelids. These glands produce and secrete an oily substance called meibum which forms the outer layer of healthy tears and helps prevent premature tear evaporation. Healthy meibum has the consistency of olive oil and is released with each blink. Alterations in meibum chemistry and gland hyperkeratinization can lead to hyposecretion and ultimately the accumulation and hardening of meibum within the meibomian glands. The resulting gland obstruction, if not treated effectively and efficiently, can cause up-regulation of neighboring glands, gland inflammation, and atrophy of the glands, causing MGD. MGD greatly affects the ocular surface leading to tear film instability, rapid tear evaporation and drying, tear hyperosmolarity and subsequent inflammatory damage of the ocular surface. Clinically, these changes result in symptoms such as visual degradation, blurred vision, ocular fatigue, ocular discomfort and foreign body sensation.

There are an estimated 739 million people globally and 38 million people in the U.S. who suffer from signs and symptoms of DED. Of the 38 million people with DED in the U.S., only 17 million have been diagnosed with DED, of which an estimated 14 million diagnosed sufferers have evaporative DED associated with MGD. MGD prevalence is expected to continue to grow as the population ages and behavioral risk factors like contact lens usage, LASIK surgery, prescription medication usage, and screen viewing time become more common. We estimate that based on current out-of-pocket expenditure levels for DED prescription eyedrops and the estimated size of the MGD patient population, the addressable U.S. market for MGD treatment is approximately $10 billion per year, as compared to MGD procedures representing less than $100 million of U.S. manufacturer revenues in 2020 (in total, U.S. DED treatments represented $2.4 billion of 2020 manufacturer revenues). We believe that evaporative DED caused by MGD is one of the most prevalent diseases in all of medicine that lacks any meaningful reimbursement coverage by Medicare and private payors.

Although MGD is the primary root cause of DED, we believe it is relatively “new” to eyecare research and product development. As a result, despite the enormous population of DED sufferers, the vast majority of eyecare centers have underdeveloped DED treatment practices. We believe this is the direct result of the limited effectiveness of prevailing medications and treatments, and the practically nonexistent reimbursement coverage regimes currently in place among third-party payors for MGD procedures and associated meaningful limitations on patient access. We believe that any devices that have been clinically proven to be safe and effective and authorized by the FDA for use in MGD procedures will have the opportunity to drive ECP and patient adoption and improve patient access. There are approximately 40,000 optometrists and approximately 20,000 general ophthalmologists who regularly see patients with DED at over 40,000 eyecare facilities in the U.S. Only an estimated 5,000 of these facilities, however, have what we consider to be high volume DED practices today. We define “high volume” as facilities that write more than 36 DED prescriptions per month or actively perform in-office DED procedures, such as punctal plug insertion, amniotic membrane grafts or thermal-based MGD procedures. Similar to glaucoma, we believe that improvements in third-party diagnostic capabilities, combined with increasing professional and patient awareness will drive increased diagnosis and treatment of DED. We believe that significant growth of the MGD

procedure market will result from increasing patient access through the potential establishment of broad-based third-party payor coverage, and from greater adoption by ECPs as they accumulate experience in integrating and administering new and improved procedure-based DED solutions in their practices.

Current Alternatives and Limitations

A variety of pharmaceutical and procedure-based treatment alternatives exist for POAG and DED but there is no cure for either disease. Because many of the current alternatives focus on treating symptoms rather than the underlying causes of the disease, they offer suboptimal effectiveness and durability.

Primary Open-Angle Glaucoma

Physicians classify POAG based on risk of visual loss on a scale that ranges from Mild, to Moderate, then Advanced/Severe. General ophthalmologists and optometrists who provide primary eyecare services are typically the first to diagnose and treat POAG. These frontline ECPs typically diagnose OHT or Mild-to-Moderate cases and will refer patients to glaucoma specialists when more advanced treatment is necessary.

Ongoing treatment is complicated by the progressive and chronic nature of POAG. We believe prescription medications and surgical interventions currently offered to treat POAG patients yield suboptimal outcomes due to non-compliance, limited durability of effect, or invasiveness.

Table 1: Treatments for Management of High Intraocular Pressure by Stage of Progression

Stage	Treatment	Notes
Ocular Hypertension	Topical eyedrops or monitor IOP	Some practitioners prefer to treat with topical eyedrops to reduce the risk of developing glaucoma.
Mild POAG	Topical eyedrops	Prostaglandin analogs are generally first line due to effectiveness, safety and once-a-day dosing; other classes of medications may be added if needed.
	Selective Laser Trabeculoplasty (SLT)	May be a first line alternative to eyedrops where there is risk for poor tolerance or compliance.
	Microinvasive glaucoma surgery (MIGS)	Combination Cataract procedures can be employed if cataract surgery is indicated due to minimal added risk with MIGS; trabecular bypass stents are limited to Combination Cataract procedures. Interventional Standalone MIGS procedures such as those using OMNI, are also available.
Moderate POAG	Sequenced as for Mild, but because there is more advanced disease, threshold for escalating to next steps is reduced.	Approved Standalone MIGS procedures, such as those using OMNI, may be performed in advance of traditional invasive surgeries or if such surgeries have failed.
	Bleb-forming procedures (e.g., trabeculectomy, tube-shunts)	Bleb-forming (filtration) surgeries provide maximum IOP-lowering effectiveness but are reserved for cases where drugs and less invasive procedures have failed to halt or sufficiently slow disease progression. Very infrequent usage at this stage.

Stage	Treatment	Notes
		High rate of post-op bleb management/revision; potential risks for sight-threatening adverse events.
Advanced/Severe POAG	Bleb-forming procedures	Risk of vision loss high, benefit of maximum IOP-lowering balances surgical risks. Approved Standalone MIGS procedures may be performed after failed conventional surgeries

Prescription eyedrops are the most common first line therapy used to treat OHT and Mild glaucoma and often continue to be utilized for the treatment of Moderate and Advanced/Severe patients. There are a broad range of prescription medications available to treat glaucoma including prostaglandin analogs, beta blockers, carbonic anhydrase inhibitors and alpha agonists. These medications typically work to either increase the drainage of aqueous fluid through the uveoscleral and conventional pathways (prostaglandin analogs), reduce the production of aqueous fluid (beta blockers, carbonic anhydrase inhibitors) or both (alpha agonists).

The effectiveness of prescription eyedrops for POAG patients is dependent on patient behavior and compliance, providing inconsistent protection from POAG progression for those who have adherence challenges. POAG disproportionately affects an older demographic who may experience several barriers to adhering to medication regimens, including physical limitations that inhibit the self-instillation of eyedrops, forgetfulness, and difficulties following the medication schedule. For example, a systematic review of 29 studies showed that up to 80% of glaucoma patients do not follow their prescribed medication regimen. Further, although multiple eyedrops can add incremental effectiveness to a medication program, they may concurrently complicate the dosing regimen, reduce patient compliance, and exacerbate side effects including damage to the ocular surface.

Studies have demonstrated that chronic use of glaucoma medication contributes to ocular surface disease, an inflammation of the ocular surface, which is irritating and painful (further contributing to poor adherence) and can contribute to greater risk of surgical failure should traditional glaucoma surgery (such as trabeculectomy) be required. It has also been reported that the long-term use of glaucoma medications is associated with increased expression of proinflammatory mediators in the conjunctiva, and that even preservative-free prostaglandin eyedrops have been shown to promote macrophage infiltration in the eyelids with long-term use.

Sustained pharmaceutical delivery through an intraocular implant is another method of drug administration. While intracameral sustained drug delivery mitigates issues relating to patient medication adherence, it could introduce new challenges associated with leaving an intracameral implant in the eye for several months or years, or the procedural complexity and risks associated with implanting objects in the eye and potentially removing them. Durysta, the only intracameral implant for glaucoma that has been approved by the FDA, is a bioabsorbable intracameral implant providing sustained release of a prostaglandin analog (bimatoprost) in a single administration that is designed to elute the drug for a period of four to six months. The FDA has approved Durysta with a label that warns that the drug should be limited to a single implant per eye without retreatment. In the pivotal clinical trials, the IOP reduction associated with Durysta was non-inferior to timolol (beta blocker), with a mean IOP reduction of 5 to 8 mmHg in patients from a mean baseline IOP (washed out) of 24.5 mmHg. Durysta is procedurally appealing because it can be delivered at the slit lamp in an efficient in-office procedure and because it naturally biodegrades and is absorbed by the body over the course of its treatment duration. However, because the implant can freely move around the eye for several months, we believe long-term safety data on the risks of potential complications such as corneal endothelial cell loss resulting from repeated implantations will be key to the long-term viability of this alternative. Another intracameral implant that has not been authorized for use by the FDA is reportedly in Phase II and III clinical trials. This product features a sustained release implant that is surgically implanted and fixed into place within the sclera at the angle where the iris and cornea meet through an *ab interno* approach similar to MIGS. Unlike Durysta, however, this titanium implant is not biodegradable and requires an initial operating room visit for skilled implantation, as well as potential follow-up *ab interno* procedures to remove or refill the existing implant or install a new implant at regular intervals.

As POAG progresses to the Moderate stage and beyond, or as medications prove ineffective, there are multiple procedures that can be performed, which range from non-invasive SLT to minimally invasive MIGS to invasive conventional surgery. In an SLT procedure in an ECP's office, laser energy is applied to the trabecular meshwork tissue in the eye's conventional outflow pathway which initiates a change in the tissue that results in better drainage of fluid out of the eye. SLT procedures can eventually result in a lowering of IOP. SLT offers a non-invasive, energy-based solution and short recovery times, with effectiveness similar to a prostaglandin analog eyedrop but with a waning treatment effect at less than one year for up to half of patients.

The most common conventional surgical options are bleb-forming procedures, including trabeculectomy (also called filtering surgery) and tube shunt implantation, and each has been in use for several decades. Blebs are permanent blisters on the outside of the eye intended to serve as drainage reservoirs. Conventional surgeries are multi-step invasive procedures, and surgeons only turn to them when they need maximal reductions in IOP to prevent visual field loss or when treatment of the conventional outflow pathway has failed. Unfortunately, despite their success at reducing IOP, serious complications or even surgical failure are not uncommon with conventional surgical procedures. In one prominent study, 34% of the 82 trabeculotomy procedures followed were considered failures after three years. Furthermore, these conventional surgeries are considered as a last line of defense for Advanced/Severe stage patients because the procedures create a physiologically artificial pathway that can be difficult to control, carry a life-long risk of complications (e.g., hypotony, blebitis, bleb failure), and typically require longer recovery periods. Post-operative care can include a regimen of prescription antibiotic and steroid eyedrops to prevent infection and inflammation, wearing protective eye shields when sleeping, avoiding strenuous activities and refraining from driving.

We believe the observed benefits and safety data for the MIGS category generally, and the problems typically associated with topical medications have created a paradigm shift towards earlier surgical intervention. Prior to the introduction of implantable MIGS devices in 2012, there was a significant difference between the relatively low risk and moderate effectiveness of prescription eyedrops and laser procedures and the high risk and high effectiveness of conventional surgical treatments. Trabecular bypass stents have steadily grown in usage among surgeons performing cataract procedures because the devices are relatively straightforward to implant, involve minimal complications and have an established reimbursement pathway. Trabecular bypass stents have demonstrated modest reduction of IOP beyond the IOP-lowering benefits typically seen from Standalone cataract surgery. One RCT found that the trabecular bypass stent plus Combination Cataract cohort had a mean reduction in IOP of 7.0 mmHg versus a mean reduction of 5.4 mmHg at 24 months in the cataract surgery only cohort. The attractive safety profile of MIGS has expanded the intent of MIGS surgery beyond solely IOP lowering goals for patients with elevated IOP to also include medication reduction both in patients with elevated IOP and in patients whose IOP is controlled by medications. The FDA's authorization of trabecular bypass stents has been limited to Mild-to-Moderate cases in Combination Cataract surgery, thereby restricting the use of procedures with such stents to the less than 15% of diagnosed POAG patients who undergo cataract surgery in a given year.

Based on our field research, we believe that the majority of surgeons who perform Combination Cataract procedures with MIGS stents are primarily specialists whose practices rely on successful cataract procedures. For patients with Mild-to-Moderate POAG, we believe that cataract surgery creates an opportunity for early surgical intervention without adding significant risk to the patient or to the success of the cataract surgery. In many Combination Cataract cases, the incremental effectiveness of a MIGS procedure in reducing IOP is secondary to the success of the cataract procedure, which can immediately and dramatically improve the patient's vision and is the primary reason for the operating room visit. Given these dynamics and the IOP-lowering impact of cataract surgery by itself, for a Mild Combination Cataract patient, safety and efficiency can be as important as the incremental effectiveness of the trabecular bypass stent procedure. Conversely, MIGS utilization in the Standalone market must be a deterministic, as opposed to an opportunistic, decision. A Standalone procedure is not a mere add-on to a cataract procedure that has already been scheduled, but is the only reason for the operating room visit and must deliver a very high consistency of efficacy and a very high degree of effectiveness to not only justify the procedure, but also provide the surgeon with enough confidence to take the patient to the operating room for a singular reason. Among currently-available MIGS devices, we believe that OMNI is the

only alternative that can deliver consistent, significant IOP reductions in Standalone cases because of its ability to not only address all three primary points of resistance in the conventional outflow pathway through two sequential procedures — canaloplasty and trabeculotomy — and distinct mechanisms of action (*high consistency of effectiveness*) but also do so in a complete, circumferential, 360-degree fashion (*high degree of effectiveness*). In contrast to OMNI's ability to comprehensively address the entire conventional outflow pathway, currently-available trabecular bypass stents were, as their name implies, designed to address only one of the three primary sources of outflow resistance (*less expected consistency of effectiveness*) and do so over just a single quadrant of the diseased outflow pathway (*less expected degree of effectiveness*).

Dry Eye Disease

Although MGD is the primary root cause of DED, we believe it is relatively "new" to eyecare research and product development. In contrast, we believe aqueous deficiency, which is a less prominent root cause of DED, has historically dominated the medical community's mindshare regarding DED and has been synonymous with the disease. This has contributed to the current DED treatment market being characterized by an abundance of OTC artificial tears and lubricating eyedrops, and prescription DED eyedrops. Given the relatively recent focus on and understanding of MGD, MGD procedures for DED have had limited commercial traction and represent a significant but underdeveloped market opportunity.

DED is treated by ophthalmologists and optometrists. OTC eyedrops, which are palliative, and prescription eyedrops, which aim to alleviate inflammation and/or increase aqueous layer tear production, are the predominant current alternatives utilized to treat DED. Both AbbVie's Restasis and Novartis' Xiidra DED prescription eyedrops have achieved commercial success, with 2019 global revenues of $1.1 billion and approximately $400 million, respectively. Restasis is believed to partially suppress an immune response that prevents tear production while Xiidra blocks migration of activated T cells to the ocular surface, reducing cytokine release that can cause inflammation. While Restasis and Xiidra have demonstrated the commercial viability of DED solutions, we believe both are limited in their ability to treat the substantial majority of DED sufferers. Neither medication is indicated to treat MGD, the primary underlying cause of evaporative DED, which is associated with 86% of all DED cases. Furthermore, patient non-compliance, the high rate of side effects, and high out-of-pocket costs further limit the ability of prescription eyedrops to treat DED effectively and with maximal patient access.

In contrast, the market for solutions that treat MGD in a targeted manner is highly underdeveloped. MGD procedures represented less than $100 million of U.S. manufacturer revenues in 2020. We are marketing TearCare for its currently-authorized use and, as part of our long term market development plan, intend to seek FDA clearance for an expanded indication for use to more specifically reflect its effectiveness in the treatment of DED due to MGD. In general, currently available devices for the treatment of MGD can be difficult for providers to administer, which places significant time and oversight demands on the ECP and are uncomfortable or ill-fitting for patients. We believe that TearCare uniquely has the required physiological profile to liquefy hardened meibum within the diseased meibomian glands to allow an ECP to remove the underlying obstructions from meibomian glands that cause MGD in a consistently effective manner. Further, we believe lack of patient access to reimbursed MGD procedures has been a major obstacle to widespread adoption and market development. Many competing MGD procedures require high upfront capital equipment purchases for providers, as well as high costs of ongoing consumable supplies, which lowers the overall value proposition to providers, patients and third-party payors.

Our Solutions

We have designed OMNI and TearCare to be interventional ophthalmology devices. We believe that both glaucoma and DED are significantly underserved by current treatment offerings and that there are large market opportunities for effective solutions that restore the natural functionality of diseased eyes.

Our Product Development Approach

The past, current, and ongoing development of OMNI and TearCare follows our internal product development approach, which is governed by four fundamental requirements that we believe are critical to delivering the most effective, safe and consistent clinical outcomes for patients with eye disease.

- **Comprehensive Understanding of Disease Physiology.** We review and analyze all available clinical data, science, and literature that is relevant to a disease to achieve a sound understanding of its underlying cause(s), which guides the development of our products.
- **Treatment of Underlying Causes.** Healthy eyes are self-regulating marvels of evolution, biomechanics, chemistry and physiology. We believe that restoring the natural functionality of diseased eyes by comprehensively treating underlying cause(s) of disease provides the optimal combination of effectiveness and safety.
- **Intuitive Design.** Our products are designed to transform complex, impractical or invasive treatment approaches into intuitive, minimally invasive, user-friendly procedures. Our product development goals are focused on delivering a preferred “go to” treatment of choice for ophthalmologists and optometrists.
- **Patient Access.** We seek to maximize availability and accessibility of our products for as many patients as possible. We believe that our devices have the potential to offer differentiated clinical, experiential and economic value to all eyecare stakeholders. For conditions where patients lack optimal treatment access due to insurance coverage limitations or difficult patient-pay economics, we plan to demonstrate the value proposition of our solutions through data from rigorous clinical trial data and real-world results to improve access.

We aim and expect to be a clinical leader in every eyecare segment we enter and seek to achieve all four criteria in any of our product development projects. From device ideation to commercialization, we take into consideration the perspectives of patients, providers and third-party payors throughout our product development process. When possible, we seek to streamline our product commercialization process by judiciously designing our products to achieve the most efficient routes for FDA clearance or authorization for each applicable indication and reimbursement coverage by third-party payors.

We also actively seek to protect the intellectual property involving our products, technologies, and methods. As of April 30, 2021, our patent portfolio consisted of 62 issued patents and patent applications for our Surgical Glaucoma segment and 32 issued patents and patent applications for our Dry Eye segment.

OMNI Surgical System

Figure 4a. Canaloplasty using OMNI

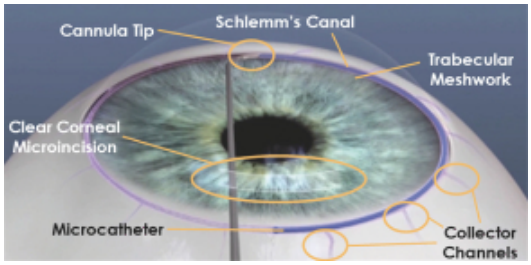
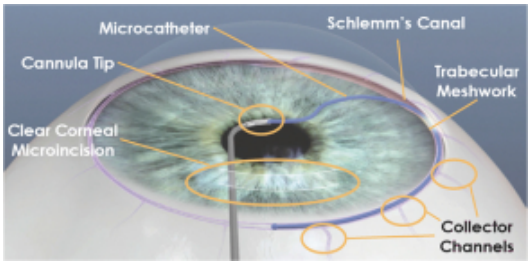


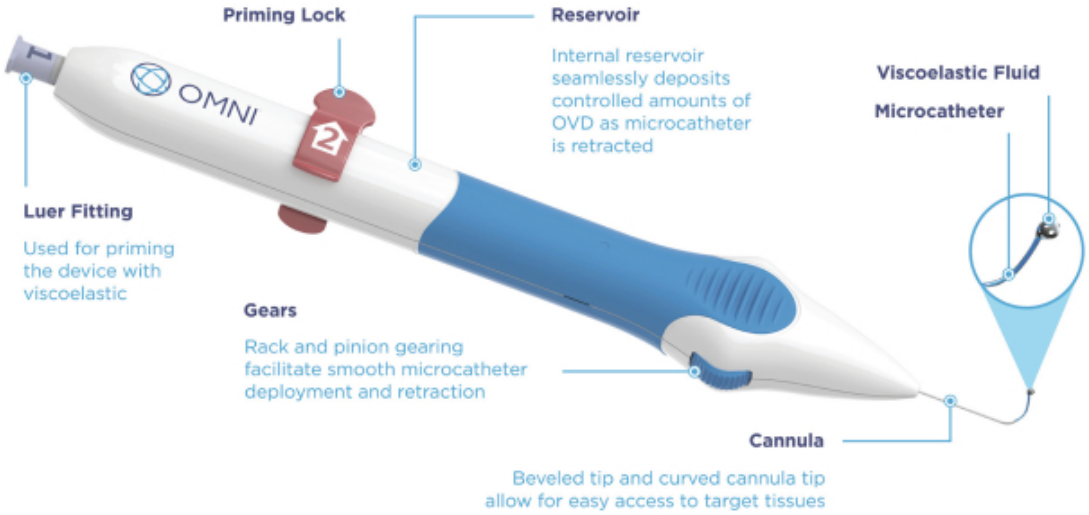
Figure 4b. Trabeculotomy using OMNI



OMNI is a handheld, single use, therapeutic device for minimally invasive glaucoma surgery, or MIGS. OMNI is designed to restore the eye's natural drainage system without compromising the structural integrity of the eye or leaving implants behind post-surgery. We have received 510(k) clearance from the FDA in the U.S. and a CE Mark in the EU to market OMNI. OMNI is indicated for canaloplasty (see Figure 4a; microcatheterization and transluminal viscodilation of Schlemm's canal) followed by trabeculotomy (see Figure 4b; cutting of trabecular meshwork) to reduce IOP in adult patients with POAG in the U.S. and with OAG in the EU.

In late 2017, OMNI received its initial 510(k) clearance from the FDA for delivery of small amounts of viscoelastic fluid and cutting of the trabecular meshwork during trabeculotomy. In March 2021, OMNI received FDA clearance for its current expanded indication for use, which we believe reflects the capabilities of OMNI to reduce IOP in adult patients with POAG across the spectrum of disease severity in both Combination Cataract and Standalone cases. In connection with this clearance, the FDA reviewed clinical data from our ROMEO multi-center study. We believe that ROMEO represents the first and only *ab interno* clinical data reviewed by the FDA that has successfully resulted in a Standalone indication in Mild-to-Moderate glaucoma. Together with our clinical trial results, we believe our expanded indication for use will further bolster confidence in the device among current and prospective surgeons, primary care ECPs, patients and third-party payors. We believe that OMNI is the first and only MIGS device that the FDA has indicated for *ab interno* procedures to lower IOP across all severities of POAG, including Standalone procedures. We further believe that OMNI is also the first and only multi-procedure MIGS device dually indicated for canaloplasty followed by trabeculotomy.

Figure 5. The OMNI Surgical System and Instructions for Use



OMNI Instructions for Use:

OMNI includes a stainless-steel cannula, polymeric microcatheter, removable priming lock, internal reservoir and plunger tube, a Luer fitting for direct connection with an OVD cartridge to prime the internal reservoir, and two advancement wheels. A single advancement wheel is located on each side of the handle. This allows OMNI to be used in either eye (OD or OS) and in either hand of the surgeon (left or right), by turning the device 180 degrees along its vertical axis. These wheels are used to advance and retract the microcatheter.

The stainless-steel cannula has a curved shape with a beveled tip for entry through the trabecular meshwork into Schlemm's canal. To perform the combined and sequential canaloplasty/trabeculotomy procedures, the canaloplasty is performed first, followed by trabeculotomy as explained in further detail below.

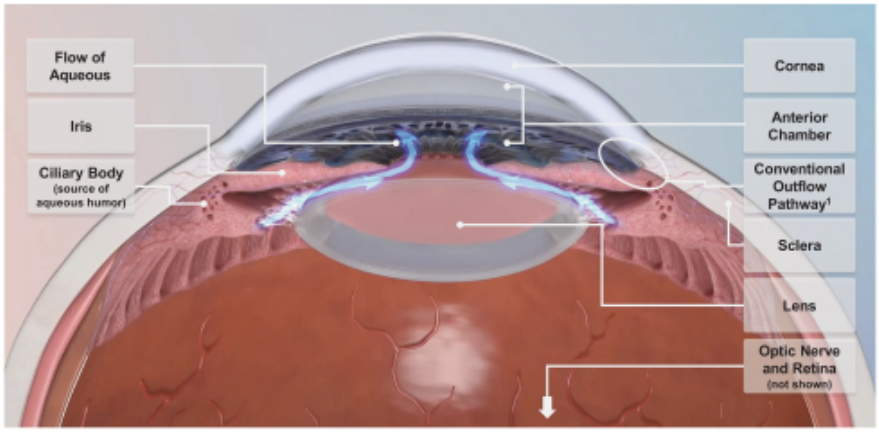
Performing Canaloplasty First: the microcatheter is advanced into Schlemm's canal up to 180 degrees (one hemisphere) by rotating the advancement wheel forward until the wheel stops (about 20 mm). When the device is being used to deliver viscoelastic fluid, retraction of the microcatheter causes the plunger tube to advance into the viscoelastic fluid reservoir thereby automatically dispensing viscoelastic fluid along the length of Schlemm's canal and collector channels. The microcatheter can be advanced/retracted up to 20 mm per cycle by manually rotating the advancement wheel. The microcatheter can be fully advanced/retracted multiple times, however, viscoelastic fluid can only be dispensed during the first two advancement/retraction cycles in order to dispense viscoelastic fluid along each hemisphere of Schlemm's canal. Thus, OMNI is designed to be used twice within Schlemm's canal to deliver a controlled volume of viscoelastic fluid along the first 180 degrees of the canal, followed by a second delivery of viscoelastic fluid along the other 180 degrees. OMNI delivers a total viscoelastic fluid volume of 11 microliters throughout Schlemm's canal (approximately 5.5 microliters for each of the first two advancement/retraction cycles).

Performing Trabeculotomy Second: the beveled tip of the curved stainless-steel cannula is re-positioned into the same Schlemm's canal location after finishing canaloplasty. The polymeric microcatheter is re-advanced into Schlemm's canal up to 180 degrees (one hemisphere) by rotating the advancement wheel forward until the wheel stops (about 20 mm). With the microcatheter resting in the canal, the cannula is removed from the corneal incision and out of the eye causing the microcatheter to cut through the trabecular meshwork. This process can be repeated in the second Schlemm's hemisphere.

Surgeons have performed canaloplasty and trabeculotomy to treat glaucoma for decades using conventional, invasive surgical methods. In a canaloplasty procedure, a surgeon advances a specialized microcatheter through the trabecular meshwork then into and around Schlemm's canal and injects viscoelastic fluid to dilate the drainage canal and points of egress. Canaloplasty primarily addresses distal resistance (i.e., collapsed Schlemm's canal, blocked collector channel ostia) and has some presumed effects on the inner wall of Schlemm's canal and the trabecular meshwork due to dilation and stretching. In a trabeculotomy procedure, a surgeon unroofs Schlemm's canal by cutting the trabecular meshwork to provide aqueous humor with direct access to the drainage points in the conventional outflow pathway. Trabeculotomy addresses proximal resistance (i.e., outflow resistance in the trabecular meshwork and inner wall of Schlemm's canal). While there exists an abundance of clinical data supporting the effectiveness of canaloplasty and trabeculotomy procedures generally in reducing

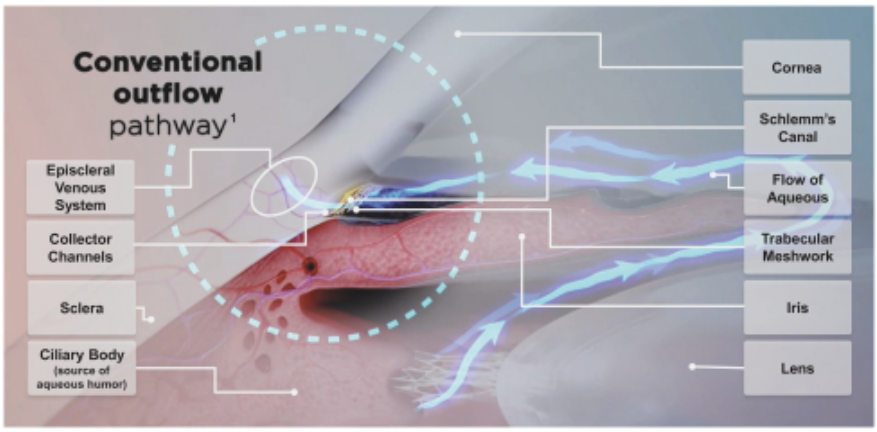
IOP, we believe these procedures are difficult to perform, traumatize the eye, have higher risk of intraoperative and post-operative complications and require longer patient recovery times because they were historically performed invasively through an *ab externo* approach which required deep scleral incisions to access the diseased conventional outflow pathway. During our initial research and development in the glaucoma space, we came to believe that products that could combine the benefits of *ab externo* circumferential surgery with less invasive clear corneal MIGS access, would have a global impact on POAG by driving mainstream surgeon adoption of intuitive, effective, and interventional surgical procedures to patients across the disease progression spectrum. We believe that the sequential combination of canaloplasty followed by trabeculotomy is uniquely capable of treating all three primary points of resistance in the conventional outflow pathway of the eye as detailed in Figures 6a and 6b below. We believe treating all three primary points of resistance is critical to achieving the consistency and level of effectiveness in reducing IOP and medication requirements necessary to expand the use case for MIGS procedures to the Standalone market and to all disease severities among adult POAG patients.

Figure 6a. Aqueous Humor Outflow through the Conventional Outflow Pathway



1 Extends 360o around the circumference of the iridocomeal angle where the iris and cornea meet.

Figure 6b. Close Up on the Conventional Outflow Pathway



1 Extends 360o around the circumference of the iridocomeal angle where the iris and cornea meet.

OMNI has roots from two handheld predicate devices, the VISCO360 and TRAB360. Both of these devices received CE Marks for the reduction of IOP in patients with POAG in 2016. In the U.S. from 2013 to 2018, VISCO360 and TRAB360 each received FDA clearances to deliver small amounts of viscoelastic fluid during ophthalmic surgery and to cut the trabecular meshwork during trabeculotomy procedures, respectively. After years of extensive development of the predicate devices with our physician advisors and other practicing surgeons across the U.S. and in Europe, we designed OMNI to combine their functionality into a single device. OMNI received its CE Mark in 2015 and its initial FDA 510(k) clearance in December 2017 by demonstrating substantial equivalence to predicate devices. OMNI received 510(k) clearance in March 2021 for its current expanded label.

We have applied our medical expertise, as well as specialized design and engineering capabilities, to create a complex device that is simple in appearance and intuitive to use. Each OMNI device consists of 29 separate precision-engineered parts that have been optimized for performance, effectiveness and usability. After inserting the cannula tip into the corneal microincision and accessing Schlemm's canal, the surgeon can advance and retract the catheter with a fingertip dial up to 180 degrees. Upon retraction of the catheter, OMNI delivers viscoelastic fluid to complete the viscodilation of Schlemm's canal. The surgeon can complete a full 360 degree canaloplasty by reinserting the catheter and advancing it in the opposite direction. To perform the trabeculotomy following the canaloplasty, the same microcatheter can be reinserted into Schlemm's canal and used to deroof the trabecular meshwork in a titratable manner (90, 180, 270 or 360 degrees). OMNI's versatility and titratable functionality, which we believe are unmatched by other MIGS products currently on the market, enable surgeons to perform sequential comprehensive outflow treatments that they can customize based on an individual patient's disease severity and eye anatomy in both Combination Cataract and Standalone settings.

We believe that OMNI has the potential to offer the following benefits:

- **Effectiveness and Safety**. We designed OMNI to set the standard for consistently effective IOP reduction in adult POAG patients by focusing on what we believe is a primary underlying cause of the disease: diseased conventional outflow pathway with increased resistance to the drainage of aqueous humor. OMNI facilitates two complementary and sequential procedures, canaloplasty and trabeculotomy, which enable a surgeon to address the three primary points of resistance in the conventional outflow pathway with a single device using a single clear corneal incision during a single outpatient visit. Further, we believe that OMNI fits all of the criteria for a product to have a market leading safety profile: it restores natural functionality to the eyes, involves minimal complications and we are aware of only eight MDRs submitted to the FDA that were "possibly" related to OMNI during that time period. None of these events were unexpected as possibilities for this type of glaucoma surgery. We believe that the effectiveness and safety of OMNI is further demonstrated by the clinical data from our four completed trials and five peer-reviewed publications to date (with several additional publications planned).
- **Intuitive Design.** The intuitive, ergonomic, single-handed design of OMNI, coupled with surgeon familiarity with the *ab interno* minimally invasive approach to glaucoma surgery, facilitates physician adoption and utilization. We believe that OMNI's intuitive design enables a steep learning curve and allows surgeons to become comfortable using OMNI relatively quickly. In May 2020, we introduced a new version of the OMNI Surgical System called OMNI Next Gen that incorporated extensive user and ergonomic feedback from our surgeon team members, advisors, and customers and that we believe improved upon the first-generation device. We designed OMNI Next Gen for improved ergonomics, enhanced canalicular access through modifications of the cannula tip and microcatheter tip, smoother deployment and retraction mechanism for the microcatheter, and increased viscoelastic fluid volume. In the second half of 2020, OMNI Next Gen represented over 90% of our Surgical Glaucoma revenue.
- **Versatility.** We believe that OMNI's broad FDA-cleared indication for use and comprehensive titratable 360 degree access to the diseased conventional outflow pathway make it a valuable option for all adult POAG patients in either Standalone or Combination Cataract settings. In practice, our field

research indicates that surgeons utilize OMNI for cases across the entire POAG disease severity continuum, as well as both on a Standalone basis and in Combination Cataract surgery. We believe that from a device effectiveness and an indication for use standpoint, OMNI should be the MIGS device of choice for IOP reduction in the full range of adult POAG patients and supports transforming physicians' approach to POAG by bridging the chasm between current first line treatment options, such as eyedrop medications and SLT, and higher risk conventional surgical procedures.

- **Market Access.** The procedure enabled by OMNI, canaloplasty followed by trabeculotomy, is covered and reimbursed by all MACs and numerous private insurers, covering an estimated 67% of U.S. POAG sufferers. We believe that OMNI enables safe, fast healing and effective ambulatory care procedures that are attractive to all stakeholders, including patients, surgeons, facilities and third-party payors.

TearCare System

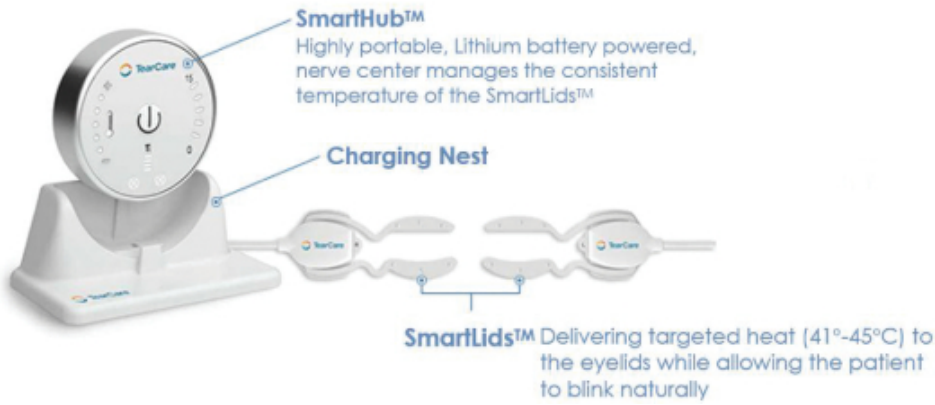
Figure 7. The Open-Eye Design of TearCare's SmartLids

TearCare has been commercially available since 2019 and is currently marketed as a 510(k)-exempt powered heating pad for the application of localized heat when the current medical community recommends the application of a warm compress to the eyelids. Such applications would include Meibomian Gland Dysfunction, Dry Eye, or Blepharitis. Based on our favorable randomized controlled trial results as well as over 10,000 cases of real-world evidence, we intend to seek clearance of TearCare for an expanded indication for use in .

In an effort to optimize the treatment of evaporative DED due to MGD, we custom designed TearCare to facilitate what we believe is the optimal method for clearing meibomian gland obstructions based on numerous clinical studies: warming the glands to a minimum of 41 degrees Celsius for 15 minutes to melt congealed meibum followed by manual, clinician customized and performed removal of the liquefied obstructions using forceps to help facilitate restoration of healthy meibum production to naturally fortify the tear's protective lipid layer. Tear film is a complex, continuously renewed solution that is necessary for maintaining a healthy cornea and optical clarity. Tears consist of three layers: an inner mucous layer that nourishes the cornea and helps stabilize and anchor the tear film; a middle aqueous layer that lubricates the eye, removes particles and prevents infection; and an outer lipid layer, or meibum, that prevents premature evaporation and maintains tear film stability. MGD occurs when meibum accumulates and hardens within the meibomian gland. Over time, the glands can become blocked or clogged, which prevents meibum from reaching the tear, fortifying the outermost tear lipid layer, and protecting the integrity of the tear. As evidenced by our design of TearCare and desired

indication for use, we believe the most effective treatment for DED due to MGD requires the application of consistent therapeutic levels of heat to the meibomian glands for a prescribed period of time followed by a comprehensive clearance of obstructed meibomian glands, thus restoring the eyelid's natural ability to produce healthy lipid secretions and recovering the integrity of the tear film. We believe that the open-eye design of TearCare allows patients to blink naturally throughout the thermal portion of the procedure This blinking motion has the potential to facilitate the natural flow of melted meibum which can then be further complemented by an ECP's manual expression of the previously obstructed glands using forceps.

Figure 8. The TearCare System



Our TearCare System includes a pair of single-use SmartLids, the first wearable, highly conformant, precision heating device for the eyelids. SmartLids allow for eyes to be open and blink during the thermal portion of the process and are software-controlled, delivering precise heat to the tarsal plates of the eyelids directly overlying the meibomian glands while continuously monitoring temperature and communicating 144 times per second with the SmartHub, a compact, finely calibrated power source and control unit which can make instantaneous adjustments to ensure delivery of the desired amount of heat and therapeutic temperature level. Engineering SmartLids to remain comfortably adhered to virtually all shapes and sizes of eyelids while allowing freedom to blink and delivering precise therapeutic heat is one of our most significant design accomplishments. Following therapeutic heat application by TearCare, ECPs can use commercially available forceps to manually express melted meibum from each gland. ECPs can tailor the amount of pressure applied during expression to specific glands based on a desired full evacuation of the glands, thereby allowing the eyelids to resume the production of healthy, new meibum to coat and protect tears.

According to patient and ECP feedback, treatments using TearCare are comfortable for patients since they can keep their eyes open during the thermal portion of the procedure and have the freedom to blink naturally. Additionally, TearCare was designed to be administered during the course of a routine office visit to an ECP, which makes it convenient for patients, and allows providers to maintain procedural throughput in their practices. We believe that these features of the patient and ECP experience with TearCare procedures offer a stark contrast to other available alternatives which we believe are burdened by ineffective and suboptimal product design, including awkward and uncomfortable patient experiences through closed eye solutions and/or manual solutions that require extremely close patient proximity to the ECP throughout the treatment.

We believe that TearCare has the potential to offer the following benefits:

- **Compelling Clinical Data**. We developed TearCare to address the underlying physiology and root cause of MGD and we believe our clinical data will demonstrate that TearCare treats the signs and symptoms of DED due to MGD. In our OLYMPIA RCT we observed that:
  - Use of TearCare in patients with DED was associated with improved symptoms as measured by patient-reported symptoms surveys, such as Ocular Surface Disease Index, or OSDI, and Symptom Assessment in Dry Eye, or SANDE, as well as improved signs, such as tear break up time, or TBUT, and meibomian gland secretion score, or MGSS. TBUT is a measure of the rate of evaporation of the tear film and is an indicator of tear film stability. MGSS is a measure of the quality and quantity of meibum secretion;
  - A single TearCare procedure was associated with improvement in each of the signs and symptoms of DED at two and four weeks post-treatment in subjects with MGD, as measured by TBUT, MGSS, corneal and conjunctival staining, and OSDI; and
  - The TearCare group had a statistically significantly higher proportion of subjects (72%) improving by at least one OSDI category than the group receiving a competing treatment (59%)
- **Minimal MDRs Reported.** We believe TearCare's design, with the SmartLids applied externally to the eyelids allowing the precise heat delivery to be managed by our software-controlled SmartHub, reduces the risk of adverse events arising from using TearCare. We have shipped over 10,000 single-use SmartLid units to customers through April 2021 and have reported to the FDA a single MDR for which the root cause has not been determined and may possibly be related to the device.
- **ECP and Patient Experience.** We believe our straightforward and intuitive training process helps ECPs and facilities integrate TearCare into their practices quickly. We have already developed the flexibility to train and certify new TearCare customers for the device's currently-authorized use either in person or remotely via videoconferences, and we believe we could do so for an expanded indication as well. Additionally, TearCare has a compact design, which we believe makes it easy for providers to adopt and implement regardless of their clinic's physical footprint, as well as providing portability for movement within an office or to other locations for multi-office eyecare practices. TearCare was designed to allow patients to keep their eyes open and blink naturally during the heating process, for a uniquely comfortable treatment experience.
- **Versatility**. We believe that TearCare has the potential to be a part of the optimal approach for reducing the signs and symptoms of DED due to MGD across all degrees of meibomian gland obstruction and all severities of DED. Our OLYMPIA trial enrolled Moderate and Advanced/Severe dry eye patients and we observed statistically significant clinical improvements in all signs and symptoms of dry eye assessed across both severities of disease, including TBUT and MGSS, objective measurements of DED that were the trial's primary endpoints, as well as patient-reported symptoms surveys, including EDS, OSDI and SANDE, at both two and four weeks following treatment in subjects with MGD. We believe that TearCare can be used as part of a procedure to restore natural meibomian gland functionality and lead to higher quality tears with a fortified lipid layer.
- **Economics**. We believe TearCare already provides compelling value for all stakeholders, something that will only increase as its clinical evidence, reimbursement coverage and authorized indications for use each expand. We believe we offer ECPs a thoughtful business model featuring minimal upfront cost, affordable single-use SmartLids, and an efficient patient flow that fits into existing practices and a recurring annual or semiannual procedure cycle. While our initial commercial success has proven that a significant patient-pay market exists for TearCare, we believe that improving access from Medicare and private payors will be the most effective way to meet the needs of the estimated 14 million diagnosed, but underserved, MGD sufferers in the U.S. To that end, we are pursuing a comprehensive long term market development plan that aims to improve patient awareness and insured access to TearCare.

Our Success Factors

Our mission is to transform eyecare by developing products that address the underlying causes of the world's most prevalent eye diseases. We design our products to enable ECPs to perform safe and effective interventional procedures that can transform treatment paradigms. We believe the following success factors will drive the growth of our company:

Large market opportunities in eyecare with flawed treatment paradigms. We estimate the total addressable annual market opportunities in the U.S. for OMNI and TearCare are approximately $6 billion and approximately $10 billion, respectively, yet combined 2020 U.S. manufacturer revenues in these markets implied less than 20% total addressable market penetration. We believe the addressable market penetration in Standalone MIGS and in MGD procedures are less than 10% each. We believe that market leading MIGS alternatives do not consistently and comprehensively address the underlying causes of POAG and do not adequately treat a broad enough range of disease sufferers. In POAG, we estimate that over 85% of diagnosed sufferers can only be treated with Standalone procedures because they do not require cataract surgery. Similarly, we believe that the market leading DED products do not address the primary underlying cause of the disease, MGD, while those that do attempt to treat MGD lack user friendly design and do not provide broad patient access. Given the narrow historical product development focus on aqueous deficiency, DED patients are currently limited by a mismatched treatment set (typically prescription or OTC eyedrops) which do not address the root causes of MGD, the predominant underlying cause of the condition. We believe patients suffering from many other eye diseases could also benefit from the transformation of stale treatment practices.

Continual development of innovative technologies. Our ability to transform treatment paradigms in large, underserved eyecare markets will depend on our ability to develop and commercialize products which are differentiated in how they treat underlying diseases, in their safety and effectiveness, in the breadth of their patient access and in their ease of use for the ECP. We believe our product development approach is a key differentiator of our team and our company. We design and iterate our products with continual input from our advisor network, an elite group of ECPs who prioritize efficiency, safety and effectiveness. Once our products are authorized by the FDA and launched, our customer feedback loop helps us further develop our products. This collaborative and iterative process led to the development of our first generation OMNI Surgical System from two predicate devices, as well as our improved OMNI Next Gen which we launched in May 2020, our TearCare System, and new products that are in progress.

Consistent delivery of exceptional customer experience. One of the key drivers of our success will be fully developing the potential addressable markets for POAG and MGD, by maximizing the breadth of patients that our products can serve. We believe developing our target markets requires a consistent, exceptional customer experience, which is best accomplished through a differentiated, highly involved commercial model. Our sales professionals provide ECPs with the necessary education, training and support to adopt and continue to use our products for their authorized uses. We devote significant resources to onboarding our sales professionals and to continuously augmenting their knowledge and capabilities. Our management team and commercial organization are highly experienced in developing primary markets and commercializing disruptive products designed to satisfy unmet patient needs.

Prioritization of clinical excellence and market education. We are deeply committed to a robust clinical trial program and are investing significant resources to generate additional scientific evidence regarding the safety and effectiveness of OMNI and TearCare through numerous clinical studies and the publication of our findings in leading peer-reviewed journals. We believe OMNI is growing rapidly in adoption because of its superior effectiveness and comparable safety compared to alternative MIGS devices and that patients, surgeons and other stakeholders will all benefit from our continued investment in clinical trials and our broader market education initiatives, which include actively engaging in scientific conventions, presenting at conferences, and conducting educational and promotional activities, including peer-to-peer events. We also believe that treatment decisions should be evidence-based and that rigorous clinical studies with high quality data are crucial to achieving and maintaining optimal patient access.

Focus on compelling economics and value creation for all eyecare stakeholders. We focus on developing products to generate substantial benefits for patients, providers and payors. We believe use of our devices will ultimately reduce the all-in cost of treating these diseases for payors. For the sequential procedures using OMNI, surgeons and facilities use the longstanding permanent Category I CPT code for canaloplasty which is broadly covered by Medicare and private payors. TearCare can provide ECP practices with an attractive recurring revenue business model with only a modest initial investment. While there is a viable patient-pay market for TearCare, we believe that improving access to treatments using TearCare through insurance coverage by Medicare and private payors will be the most effective way to reach the largest number of patients. Leveraging the results from our OLYMPIA RCT, we are currently pursuing FDA clearance to expand TearCare's indication for use and plan to pursue further clearances for more robust indications for use as we build out our library of clinical trial and real-world data regarding the benefits of TearCare treatments. DED is the most common reason for patient visits to an ECP and has major negative effects on patient health and society. One study estimated the overall direct and indirect costs of DED in the U.S. to be $55.4 billion per year.

Scale culture built on community, passion, courage and perseverance. Our organization is designed to be nimble, innovative, adaptive and growth oriented. We have an entrepreneurial and creative foundation that is complemented with an experienced executive team, who provide deep relationships throughout the eyecare community. We share a passion for improving the lives of people suffering from eye diseases and our success has engendered significant esprit-de-corps at all levels of our organization. We believe that our focus on thought leadership, high performance and collaboration, as well as our hiring and recruiting processes, have enabled us to attract and retain a world class team that is prepared to transform eyecare for all stakeholders.

Our Growth Strategy

The fundamental objectives of our growth strategy are to establish robust clinical data to support the development of our target markets and the continued commercialization of our products and to deliver an exceptional customer experience to the ECPs and patients who utilize our products. We believe that our expertise and product innovation process are applicable across many undertreated and prevalent diseases within eyecare. Our current growth strategies include:

- **Establish OMNI as the standard of care for interventional glaucoma treatment.** We believe OMNI has the unique potential to transform the treatment paradigm for IOP reduction in adult POAG patients by greatly expanding the universe of patients who can be treated with MIGS treatment alternatives. We believe OMNI has distinct advantages with respect to effectiveness, safety and its broad indication for use to reduce IOP across all adult POAG patients in both Standalone and Combination Cataract procedures. High-volume cataract surgeons who are familiar with MIGS procedures are our highest priority customer acquisition targets and we have directed our initial commercial efforts towards them. We have successfully gained commercial traction with many of these surgeons. Based on our field research, we believe that after gaining experience using OMNI and confidence in its consistency and effectiveness in familiar Combination Cataract cases, surgeons will often expand the use case for OMNI to include more proactive and interventional POAG cases. We believe many of these cases will involve Mild-to-Moderate Standalone procedures for which we believe OMNI is the only MIGS device authorized by the FDA for lowering IOP via an *ab interno* approach. An internal field study of our user base has indicated that Standalone procedures constituted greater than 20% of our customers' total OMNI procedures in 2020. Given these strong initial results, we plan to invest additional resources to execute our interventional POAG market development plan, which includes educating surgeons, facility administrators, primary care ECP referral networks and patients on the clinical benefits of OMNI in both Combination Cataract and Standalone procedures. Our planned clinical studies include head-to-head RCTs versus a leading trabecular bypass stent and a leading prescription OAG medication.
- **Develop the MGD treatment market through a patient access-led strategy.** We are executing a comprehensive long-term strategy to increase patient access to TearCare beyond its current patient pay

market. Our long-term goal is for TearCare procedures to achieve broad reimbursement from private payors and Medicare for effectively treating the signs and symptoms of DED due to MGD. We believe the MGD market is the most underserved in eyecare and that current treatment protocols either fail to directly address MGD's root cause, require cost-prohibitive capital equipment purchases, lack elegant and user-friendly design, and/or lack the compelling clinical data required to transform treatment paradigms and properly develop the market. Key components of our strategy include: pursuing clearance from the FDA to expand TearCare's indications for use to treat DED due to MGD; execution of our SAHARA RCT, which will compare treatments using TearCare to the leading prescription eyedrop treatment and assess the durability of TearCare procedures over a 24 month period (SAHARA was designed specifically to provide key clinical data that could support potential reimbursement decisions by third-party payors); developing real-world prior authorization and reimbursement claims evidence to educate payors on the benefits of TearCare for its authorized uses, facilitated by our market access team; and converting our temporary Category III CPT code for TearCare to a permanent Category I CPT code.

- **Drive adoption and utilization of our products by leveraging additional clinical trials and market education.** We believe our existing clinical data demonstrates the compelling safety and effectiveness of OMNI for its cleared indication, and we plan to continue delivering additional clinical evidence regarding its safety and effectiveness. In our ROMEO study, we observed that use of OMNI was associated with controlled or reduced IOP and reduced medication burden in adult patients. Across several studies, we have observed a consistency of IOP reductions that we believe may appeal to surgeons evaluating the utilization of OMNI in Standalone and Combination Cataract procedures. We intend to dedicate significant resources to further establish definitive clinical studies regarding the use of OMNI for IOP reduction and/or medication reduction in adult patients. We also intend to seek clearance from the FDA for an expanded indication for use for TearCare in the future. We believe the effectiveness and safety data from our OLYMPIA RCT and other ongoing and planned studies and our real-world results could potentially support such a clearance. In our OLYMPIA RCT, we observed that a single use of TearCare was associated with improvement in each of the signs and symptoms of DED assessed, including TBUT and MGSS, objective measurements of DED that were the trial's primary endpoints, as well as patient-reported symptoms surveys, including EDS, OSDI and SANDE, at both two and four weeks following treatment in subjects with MGD. We have two additional ongoing and planned studies intended to evaluate the safety and effectiveness of TearCare. We believe the results of these studies will support potential clearances for expanded indications for use and our patient access development strategy.
- **Deepen and broaden our commercial organization**. We plan to continue investing resources to grow our commercial team, both in the U.S. and internationally. In addition to competing in the market for devices used for Combination Cataract MIGS procedures in adult POAG patients, we are investing significant resources in our Standalone market development plan, which includes a team of representatives focused on educating ECPs, ophthalmic surgeons and patients on the broad utility and use cases for OMNI and on Standalone treatment alternatives generally. Through March 31, 2021, we had sold OMNI and its predicate devices to over 1,000 facilities in the U.S. This includes over 600 currently active ordering facilities. There are over 10,000 ophthalmologists focused on performing cataract and glaucoma surgeries in the U.S. and over 3,000 are currently MIGS trained, a figure that is expected to grow as MIGS utilization increases, in part driven by the benefits offered by OMNI. As of March 31, 2021, over 1,000 surgeons have been trained on OMNI An internal field study of our user base has indicated that Standalone procedures in 2020 constituted greater than 20% of our customers' total OMNI procedures — an adoption rate achieved without a focused Standalone marketing campaign. Our targeted and controlled launch of TearCare in the U.S. through a small, dedicated sales team has been successful, providing insights into the large patient pay market. We plan to grow our commercial organization over time by matching its growth to the achievement of key milestones in our long-term plan to develop our target markets.

- **Expand into international markets**. We believe there is a substantial market opportunity for clinically effective glaucoma and DED products such as OMNI and TearCare outside of the U.S., or OUS. Over the next several years, we intend to increase our OUS investment. The number of U.S. POAG and DED sufferers represents a small fraction of global sufferers — approximately 6% and 5%, respectively — yet the U.S. represents approximately 60% and approximately 40% of the global glaucoma surgical device and DED treatment markets, respectively. There are currently a number of developed OUS markets with ECPs who have relevant ophthalmologic and optometric experience and existing reimbursement for MIGS devices, particularly in the EU where OMNI has a broad CE Mark to lower IOP for all adult OAG patients. Trabecular bypass stents have established significant markets in Europe and other geographies. We also believe that a number of OUS market fundamentals are attractive with respect to potential OMNI adoption throughout Europe and Asia:

  - Surgeons in certain OUS markets choose to intervene at a later stage of eye disease which places increased criticality on highly robust and dependable effectiveness;
  - Circumferential canal procedures are widely accepted and adopted in select large OUS markets. For example, *ab externo* canaloplasty has been very successful in Germany and *ab externo* circumferential trabeculotomy has been a preferred glaucoma surgery for many years in Japan; and
  - Surgeons in certain OUS markets are typically salaried and less specialized than U.S. peers and while procedural efficiency and/or potential case volumes are still significant considerations for these OUS surgeons, clinical effectiveness is of increased relative importance.

  We believe that OUS markets can be extremely compelling for clinically differentiated products. Our OMNI clinical trial program includes head-to-head RCTs against competing treatments in European markets that are designed to address the needs of regulatory bodies and third-party payors in those markets. We believe the results of these trials will help OMNI penetrate and gain adoption in these geographies. We also plan to commercialize TearCare in OUS markets and believe MGD procedures have significant potential. In 2020, we engaged an experienced international commercial leader to develop our European expansion plans and in 2021 we hired this executive as a full-time employee. In Europe, we currently rely on a combination of direct sales personnel (the first of whom were hired in April 2021) and independent distributors to sell our products, and we intend to grow our international sales through a combination of direct and distributor sales.
- **Continuously innovate premium product offerings throughout eyecare.** Over the course of our ten year operating history, we have successfully brought to market multiple iterations of OMNI, its predicate devices and TearCare. Our product development approach, which targets underserved eyecare populations, and our ability to effectively navigate commercialization pathways, has enabled us to launch our products in a highly capital efficient manner, which we believe is distinctive relative to other medical device technology companies and allows us to retain financial flexibility to continue investing in further product enhancements or to explore other avenues of research and development for future pipeline products in eyecare, including drug therapies, sustained release drug delivery platforms and devices. Our internal and external advisor and customer networks provide us with ongoing real-world feedback, which we use to rapidly implement improvements and further develop our products. Our product development roadmap focuses on improving our current products, seeking required FDA authorizations, and disrupting other eyecare categories where stakeholders' needs remain unmet. We believe our product development capabilities and process provide us with a competitive advantage.

Clinical Data

We believe that treatment decisions should be evidence-based and hold ourselves to the highest clinical and ethical standards to build and maintain credibility in the medical community. We are deeply committed to conducting studies to evaluate the safety, effectiveness and durability of treatments using our products, and

subjecting the results to the rigorous peer review process for publication in leading journals. Our robust and growing libraries of evidence to support OMNI and TearCare are helping to drive their awareness and adoption, and ultimately advancing patient care in ophthalmology and optometry.

We are currently conducting active and robust clinical trial programs in both POAG and MGD, with two completed studies, 17 papers published in peer-reviewed journals, and an additional eleven ongoing or planned studies that we expect to provide data for future publications. Our completed, ongoing, and planned clinical trials include several head-to-head RCTs against market leading treatments. We also support IIT programs, of which eight are completed and two are currently in progress. We plan to support other IITs in the future.

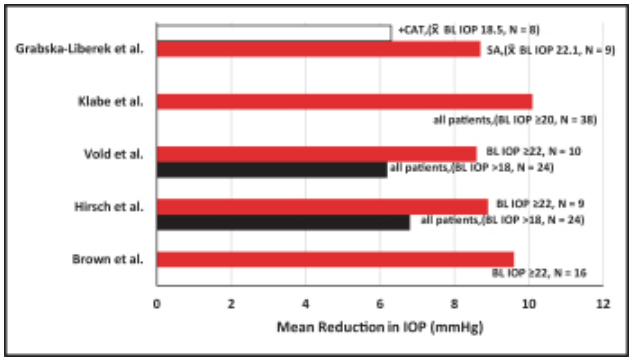
OMNI Surgical System

OMNI Clinical Program Overview

Building on a solid foundation of completed and ongoing clinical trials, we are investing significant resources to further develop clinical data regarding the use of OMNI. Clinical trial designs for OMNI include both RCTs and retrospective real-world studies, based on our belief that each of these approaches has unique strengths. RCTs provide high-level evidence in a strictly controlled setting minimizing confounding influences and extraneous variability. On the other hand, we believe that retrospective studies provide the best insight into the generalizability of effectiveness in actual clinical practice. We believe the clinical evidence that we have generated to date demonstrates the substantial benefits of OMNI across a range of adult POAG patients with various backgrounds, degrees of disease severity, and prior treatment histories. Since 2018, there have been 11 articles published in peer-reviewed journals for OMNI and its Sight Sciences predicate devices and procedures. Our robust clinical trial program for OMNI intends to include nearly 2,000 subjects across our trials, including: one completed multi-center study (ROMEO) that was used to support OMNI's indication for use expansion in March 2021 and resulted in two published articles in peer-reviewed journals; an in-process prospective, multi-center, historical control, single-arm, U.S. study (GEMINI); one RCT ongoing in Europe versus the leading trabecular bypass stent (TRIDENT); an ongoing extension of our ROMEO multi-center study (ROMEO II); RCTs in the U.S. versus a leading trabecular bypass stent (PRECISION) and versus the leading glaucoma prescription medication eyedrop (JAEGER); and several additional studies currently in the planning phase.

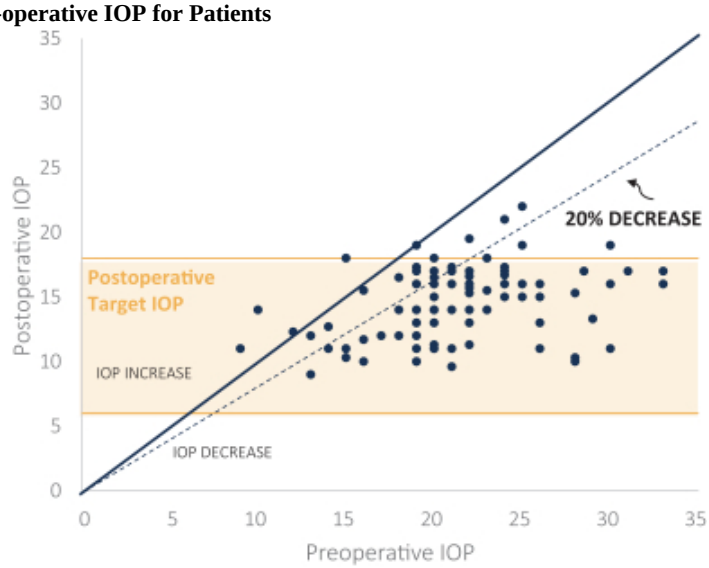
Results from our recently completed ROMEO multi-center retrospective study, and published data from single surgeon datasets show a remarkable consistency in the IOP reduction observed with OMNI in both Standalone and Combination Cataract procedures. Figure 9, below presents data for mean IOP reduction observed following OMNI procedures (both Standalone and Combination Cataract) from four clinical studies in five peer-reviewed publications. Where preoperative IOP was at least 20 mmHg, a mean 8.5 to 10 mmHg decrease in IOP was observed in all four studies.

Figure 9. IOP Reduction Across OMNI Clinical Studies



Similarly, Figure 10 shows that, at the individual patient level, almost all patients (98 of 103, 95%) had an IOP decrease following treatment with OMNI, and three out of four (77 of 103, 75%) had at least a 20% decrease. For eyes with preoperative IOP of at least 15 mmHg, we observed lower postoperative IOP in 94 of 96 (98%) cases. These real-world patients also experienced substantial reductions in glaucoma medication usage following their OMNI procedures, a benefit not reflected in a number of "medication washout" trabecular bypass stent trials designed to isolate and thereby maximize IOP reduction in a non-real world manner. We believe consistent therapeutic outcomes are important for patients and surgeons alike. For patients, we believe the anxiety that may accompany the need for ocular surgery can be tempered with the knowledge that there is a high likelihood of success. For surgeons, consistent outcomes simplify the treatment choice and the decision to perform a procedure. We believe this is especially important for Standalone MIGS procedures which must deliver a very high consistency of efficacy and a very high degree of effectiveness to not only justify the procedure, but also provide surgeons with enough confidence to take patients to the operating room for a singular reason. We believe delivering consistently effective results will be crucial to unlocking the Standalone market, as well as capitalizing on the full potential of the Combination Cataract market.

Figure 10. Pre-operative versus Post-operative IOP for Patients



Vold et al., Hirsch et al., Brown et al., and Grabska-Liberek et al. A position below the diagonal reflects an IOP decrease post-operatively. These data represent cross-study observations under different conditions.

In March 2021, OMNI received FDA 510(k) clearance for an expanded indication for canaloplasty (microcatheterization and transluminal viscodilation of Schlemm's canal) followed by trabeculotomy (cutting of trabecular meshwork) to reduce intraocular pressure in adult patients with POAG. As part of this process, the FDA reviewed our submission of clinical data from our ROMEO study that was collected through a real-world evidence approach evaluating use of OMNI for the reduction of IOP in adult POAG patients during the general practice of medicine.

We believe that OMNI's recent clearance is one of few, if not the only, successful use of retrospective real-world data to support an expansion of an indication for use of an ophthalmic medical device. We believe the FDA's reliance on this data to support the clearance speaks to the quality of the ROMEO clinical study data and that the expanded indication for use differentiates OMNI's effectiveness and versatility from other MIGS

devices. We believe that OMNI is the only device that has been authorized by the FDA specifically as an *ab interno* procedure to:

- Reduce IOP in adult patients with POAG across the spectrum of disease severity;
- Be used in Mild-to-Moderate Combination Cataract or Standalone procedures;
- Access 360 degrees of the diseased conventional outflow pathway through a single clear corneal incision; and
- Facilitate two consecutive procedures, canaloplasty and trabeculotomy, that can comprehensively treat all three primary points of resistance in the conventional outflow pathway in a single operating room visit.

Table 3 below summarizes our completed, ongoing and planned clinical trials for OMNI.

Table 3: Sight Sciences OMNI Clinical Studies

Stage	Name	Study Goals	Study Design	Subjects	Patients	N	Status / Publication
Completed	ROMEO	Real world effectiveness and safety of OMNI Standalone or in Combination Cataract surgery	Retrospective, real-world, multi-center, stratified, U.S. study. 12 month	OMNI with Combination Cataract surgery; OMNI Standalone in pseudophakic eyes	Mild-to-Moderate OAG	129 (81 in Combination Cataract, 48 Standalone)	Vold et al. *Ophthalmology Glaucoma* (2021). Hirsch et al. *JCRS* (2021).
Ongoing	GEMINI	Safety and effectiveness of OMNI in Combination Cataract surgery	Prospective, multi-center, historical control, single-arm, U.S. study 12-month	OMNI with Combination Cataract surgery; cataract surgery alone (historical control)	Mild-to-Moderate OAG	145	12-month follow up complete; final database lock planned in 2H 2021
	TRIDENT	Effectiveness as Standalone procedure versus trabecular bypass stent	Prospective, multi-center, randomized, active-controlled, E.U./U.K. study. 12 month	(i) OMNI (canaloplasty + trabeculotomy) Standalone in Pseudophakic eyes; (ii) OMNI (canaloplasty only) Standalone in pseudophakic eyes; (iii) trabecular bypass stent in pseudophakic eyes	Mild-to-Moderate OAG	459	Initiated Q4 2020. Study completion expected
	ROMEO II	Expand ROMEO database; collect longer-term data on original ROMEO cohort	Retrospective, real-world, multi-center, U.S. study. 12-month and longer follow-up	OMNI with Combination Cataract surgery; OMNI Standalone in pseudophakic. Preop IOP >18 mmHg	Mild-to-Moderate OAG	N/A	Initiated Q1 2021. Planned manuscript submission expected
Planned	TREY	Effectiveness in eyes previously treated with trabecular bypass stent	Retrospective, real-world, multi-center, U.S. post-market study. Available follow-up	OMNI in eyes previously treated with trabecular bypass stent	Mild-to-Advanced OAG, previously treated with trabecular bypass stent	50	Initiation expected
	ARTEMIS	Effectiveness in treating more advanced disease	Prospective, real-world, multi-center, U.S. post-market study. 12 month	OMNI in eyes with Moderate to Advanced / Severe glaucoma	Moderate-to-Severe POAG	50	Initiation expected
	GEMINI 2.0	Long-term safety and effectiveness of OMNI in Combination Cataract surgery	Retrospective/ Prospective, multi-center, single-arm, U.S. post-market study; 24 month	OMNI with Combination Cataract surgery	Mild-to-Moderate OAG in Combination Cataract surgery minimum of 550 days prior to enrollment	up to 150	Initiation expected

Stage	Name	Study Goals	Study Design	Subjects	Patients	N	Status / Publication
	ORION 2.0	Long-term safety and effectiveness of OMNI Standalone	Retrospective/ Prospective, multi-center, single-arm, observational; 24 month	Pseudophakic eyes	Mild-to-moderate POAG Standalone procedure; minimum of 150 days prior to enrollment	up to 100	Initiation expected
	JAEGER	Safety and effectiveness of OMNI Standalone in OAG versus medications	Prospective, multi-center, randomized, active-controlled, U.S. IDE study. 36 month	(i) OMNI (canaloplasty + trabeculotomy) Standalone; (ii) OMNI (canaloplasty only) Standalone; (iii) leading Glaucoma Medication	Mild-to-Moderate OAG	459	Initiation expected
	PRECISION	Effectiveness in Combination Cataract surgery versus trabecular bypass stent	Prospective, multi-center, randomized, triple arm active-controlled, U.S. IDE study. 36 month	(i) OMNI (canaloplasty + trabeculotomy) with Combination Cataract surgery; (ii) OMNI (canaloplasty only) with Combination Cataract surgery; (iii) trabecular bypass stent with Combination Cataract surgery	Mild-to-Moderate OAG	459	Initiation expected

There is a substantial body of historical clinical evidence supporting the effectiveness of circumferential, 360-degree surgical treatment of the conventional outflow pathway to reduce resistance to aqueous outflow and reduce intraocular pressure. Canaloplasty and trabeculotomy originated as invasive, “non-MIGS”, *ab externo* procedures requiring multiple conjunctival and scleral dissections to access the diseased outflow pathway. While the effectiveness of the invasive *ab externo* variants of circumferential angle surgery were compelling, these procedures are difficult to perform, traumatize the eye, have higher risk of intraoperative and post-operative complications and require longer patient recovery times. Moreover, the conjunctival and scleral dissections required during invasive surgery can limit future surgical options such as trabeculectomy or other filtering glaucoma procedures due to potential scarring.

The VISCO360 and TRAB360 predicates to OMNI could each be used to deliver small, controlled amounts of viscoelastic fluid (VISCO360) or cut the trabecular meshwork (TRAB360). Table 4 summarizes three IITs evaluating canaloplasty procedures performed using VISCO360 or OMNI. Table 5 summarizes two IITs evaluating trabeculotomy procedures using TRAB360. In one study, a series of 81 eyes with Refractory glaucoma, was observed to have a 34% mean reduction in IOP at 12 months following trabeculotomy with TRAB360. In another study, VISCO360 was used to treat 72 eyes where IOP was poorly controlled in patients with Mild to Moderate OAG. At 12 months, the mean IOP reduction was 41%. These *ab interno* canaloplasty and *ab interno* trabeculotomy single-center studies with open-label designs demonstrated substantial improvement in IOP control.

Table 4: Published Sight Sciences *Ab Interno* Canaloplasty Investigator Initiated Trials

Reference	Diagnosis	N	Mean Baseline IOP and Range	Mean IOP and Range at Last Follow-up (length of follow-up)	Percent Change	Medication Change
Ondrejka and Körber 2019*	POAG	IOP ³18 mmHg 72	24.6±7.1	(12 month) 14.6±2.8	-40.7	-1.9
		IOP <18 mmHg 34	14.9±1.8	13.6±2.3	-8.7	-1.6
Tracer et al. 2019*	OAG	IOP ³18 mmHg 111	22.0±5.5	(12 month) 17.2±5.1	-21.8	no change
		IOP <18 mmHg 69	14.3±2.3	15.4±4.1	+7.7	-0.5
Hughes and Traynor 2020*	OAG	89	24.5±8.3	15.8 ± 2.5 (18 month)	-35.5	-0.8

* Sight Sciences supported independent research.

Table 5: Published Sight Sciences *Ab Interno* Trabeculotomy Investigator Initiated Trials

Reference	Diagnosis	N		Baseline IOP and Range	Mean IOP at Last Follow-up and Range (length of follow-up)	Percent Change	Medication Change
Sarkisian et al. 2019*	POAG (83%)	81		23.7±6.0†	15.7±5.5† (12 month)	-33.8	-0.6
Areaux et al. 2020**	Pediatric	N	Success††	30.9	20.3	-34	-1.0
	PCG	21	81%				
	JOAG	8	6 83%				
	GANASDS	2	50%				
	GANOA	4	0%				
	GAAC	5	50%				
	GFCS		60%				

PCG: primary congenital glaucoma; JOAG: juvenile OAG; GANASDS: glaucoma associated with a nonacquired systemic disease or syndrome; GANOA: glaucoma associated with a nonacquired ocular anomaly; GAAC: glaucoma associated with an acquired condition; GFCS: glaucoma following cataract surgery.

† Standard deviation estimated from error bars in published figure

†† Success defined as post-operative IOP £ 24 mmHg with or without medications and no additional surgery

* Sight Sciences supported independent research

** No Sight Sciences funding

As much as these individual circumferential MIGS procedures had advantages over their more invasive, non-MIGS variants or the far less comprehensive trabecular bypass stents, neither procedure alone could completely and effectively address all three primary sources of resistance to aqueous outflow that may be present in the conventional outflow pathway in glaucoma patients. We believe that combining the two procedural mechanisms of action (*ab interno* canaloplasty and *ab interno* trabeculotomy) provides a comprehensive solution addressing all three potential primary points of resistance in the conventional outflow pathway. The clinical history described above and the focus on physically and procedurally optimizing the surgical treatment of the

entire diseased conventional outflow pathway in glaucoma (titratable up to 360 degrees of trabecular meshwork, 360 degrees of Schlemm's canal, 360 degrees of collector channels) is the genesis of OMNI.

ROMEO Study (Completed)

The ROMEO study was a multi-center retrospective study conducted from February 2018 through April 2020 and designed to assess safety and effectiveness of OMNI in reducing IOP and hypotensive medication usage in Mild-to-Moderate OAG patients at 12 months post-operation. This study evaluated the clinical effect of *ab interno* canaloplasty and trabeculotomy performed using OMNI in both Standalone and Combination Cataract procedures, the use of ocular hypotensive medications and safety in patients with OAG. Clinical data from ROMEO supported our March 2021 FDA 510(k) clearance for an expanded indication for use of OMNI.

The study evaluated two different groups of patients based on baseline IOP with different treatment goals: The Elevated IOP Group had a preoperative IOP greater than 18 mmHg and its treatment goal was IOP reduction. The Controlled IOP Group had a preoperative IOP less than or equal to 18 mmHg, with a treatment goal of IOP maintenance and medication reduction. The primary endpoint was defined as the proportion of subjects at 12 months post-operation with IOP between 6 mmHg and 18 mmHg or with a 20% or greater reduction from preoperative baseline IOP, on the same or fewer number of ocular hypotensive medications compared to the preoperative baseline, and with no additional IOP-lowering surgery or laser treatment. IOP of 18 mmHg or below is a well-established benchmark by the clinical community for control of POAG progression and is based on the belief that maintenance of IOP control should be considered a "success" for patients already controlled on medication. For patients not controlled on medication, a 20% reduction in IOP is the recommended primary efficacy endpoint according to FDA guidance for implantable MIGS devices, which we have relied upon in designing our retrospective nonimplantable device study. Safety endpoints included ocular adverse events, and efficacy endpoints included secondary surgical interventions.

The proportion of subjects meeting the success criteria overall and stratified by type of procedure and baseline IOP are presented below, in Table 6.

Table 6: Proportion of Subjects Meeting Success Criteria (Month 12)

Group	N	Number of Subjects Meeting Success Criteria	Proportion of Successes	95% Confidence Interval
Combination Cataract	81	65	80.2%	71.4, 89.0
Standalone	48	35	72.9%	60.1, 85.7
p value Combination Cataract vs Standalone			0.3855	
Total	**129**	**100**	**77.5%**	**70.1, 84.9**

Mean preoperative IOP and at months one, six and 12 post-operation and mean preoperative medication usage and at month 12 post-operation for both the Elevated IOP Groups and the Controlled IPO Group of both Standalone and Combination Cataract cohorts are shown in Figures 11-18. Error bars are ± 95% confidence interval.

Figure 11. Mean IOP Over Time. Standalone Use of OMNI (Elevated IOP Group)

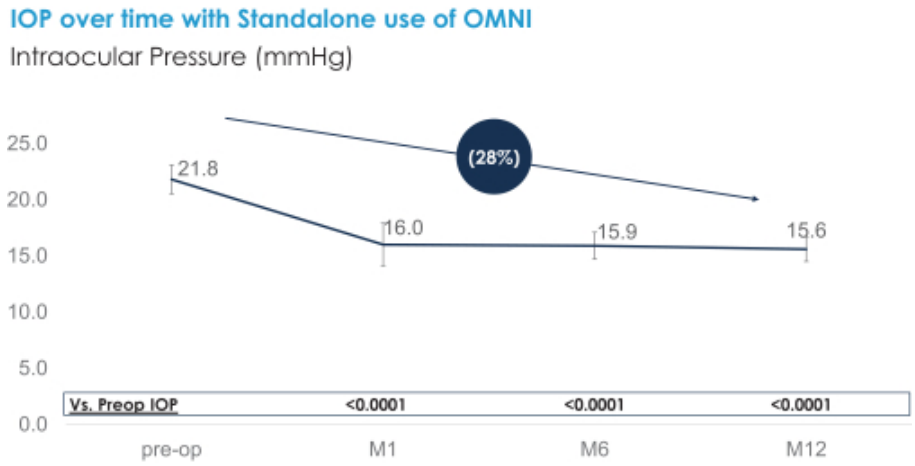


Figure 12. Mean IOP-lowering Medication Use. Standalone Use of OMNI (Elevated IOP Group)

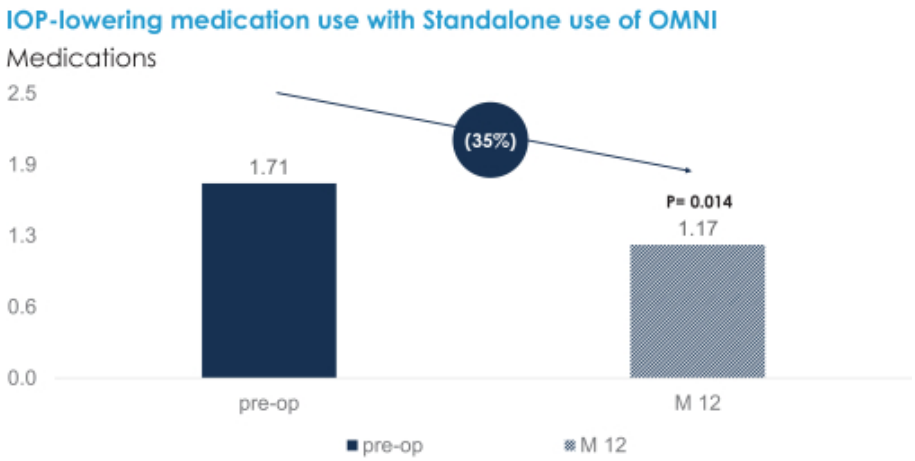


Figure 13. Mean IOP Over Time. Standalone Use of OMNI (Controlled IOP Group)

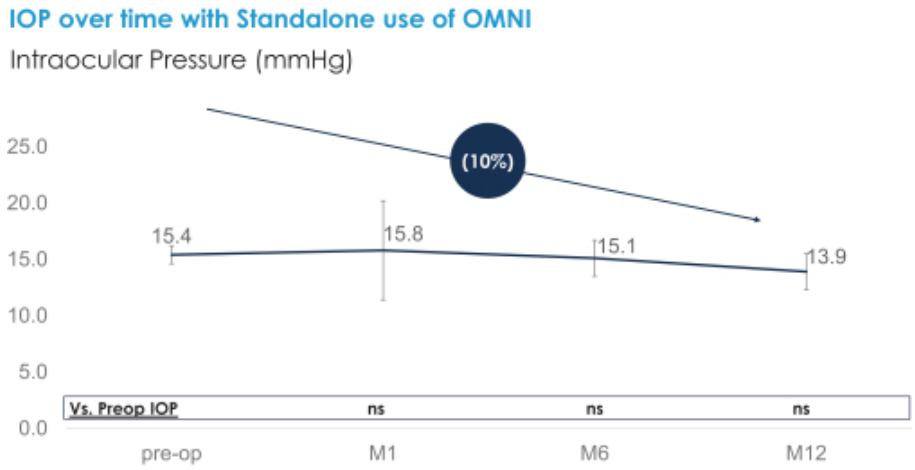


Figure 14. Mean IOP-lowering Medication Use. Standalone Use of OMNI (Controlled IOP Group)

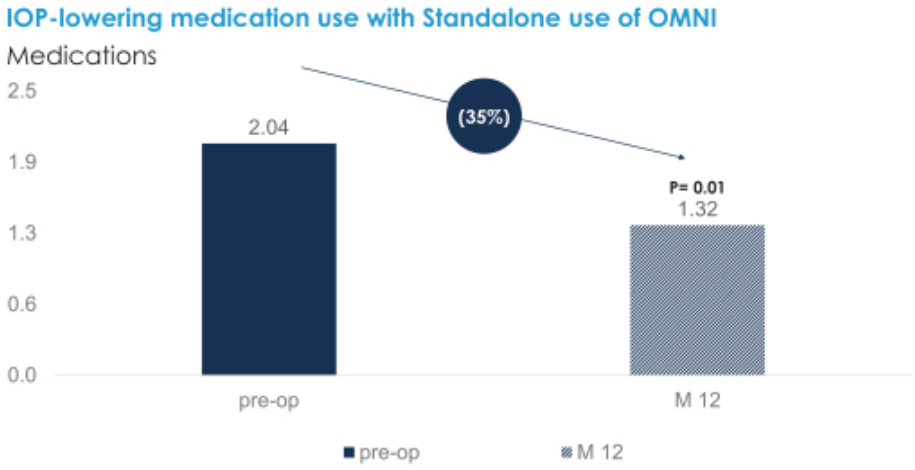


Figure 15. Mean IOP Over Time. OMNI Combination Cataract Procedure (Elevated IOP Group)

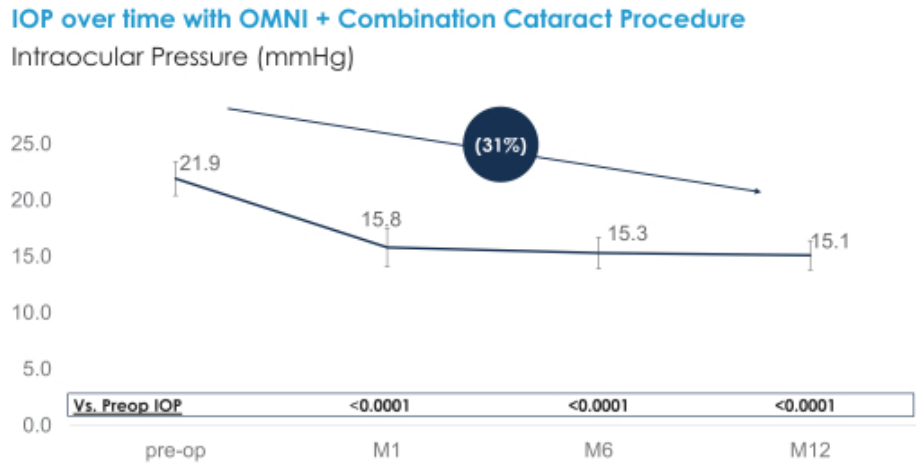


Figure 16. Mean IOP-lowering Medication Use. OMNI Combination Cataract Procedure (Elevated IOP Group)

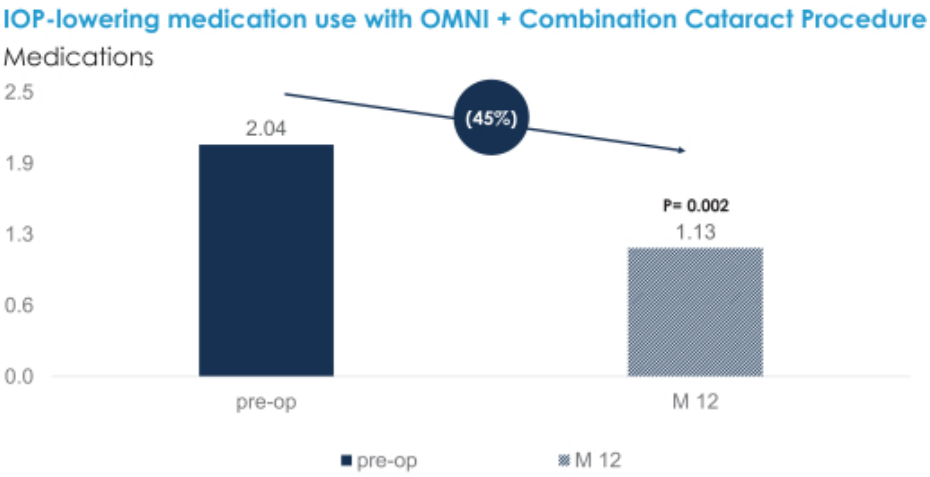


Figure 17. Mean IOP Over Time. OMNI Combination Cataract Procedure (Controlled IOP Group)

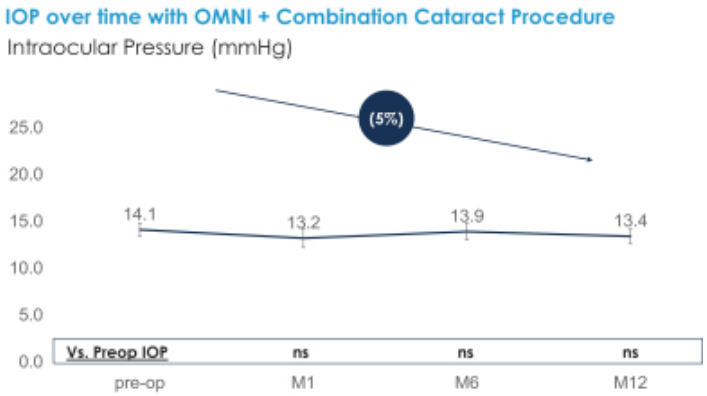
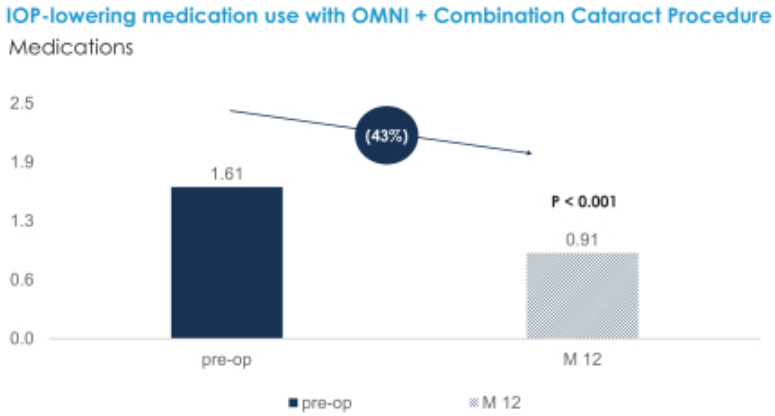


Figure 18. Mean IOP-lowering Medication Use. OMNI Combination Cataract Procedure (Controlled IOP Group)



As shown in Figures 11 and 15, mean IOP was significantly reduced from baseline at all follow-up timepoints for both Standalone and Combination Cataract cohorts in the Elevated IOP Group. As shown in Figures 13 and 17, in the Controlled IOP Group, statistically significant differences with respect to mean IOP reductions from baseline were not observed either in the Standalone or Combination Cataract cohorts.

For all patients, in both Standalone and Combination Cataract cohorts, statistically significant (P<0.05) decreases in the mean number of medications compared to preoperative baseline were observed (Figures 12, 14, 16 and 18). In the Elevated IOP Group, mean medication usage decreased from 1.71± 1.31 to 1.17 ± 1.28 (P = .014), and from 2.04 ± 1.27 to 1.13 ± 1.09 (P = .002) for Standalone and Combination Cataract, respectively. Mean medication usage for Controlled IOP Group patients decreased from 2.04 ± 1.31 to 1.32 ± 1.26 (P = .001) and from 1.61 ± 1.25 to 0.91 ± 1.17 (P < .001), for Standalone and Combination Cataract, respectively.

Adverse Events, or AEs, observed in this study were generally mild, non-serious, transient in nature and consistent with expected events for the population under study. The most frequent AEs observed were posterior capsule opacity (15%), mild anterior chamber inflammation (11%), a rise in IOP greater than 10 mmHg above the baseline IOP at or after 30 days post-operation (4.7%), corneal edema (4.7%), and hyphema (3.9%). The incidence of these AEs were comparable to rates reported in studies of trabecular bypass stents. All of these AEs

were observed to be temporary and mild. Nine subjects (7.0%) required a secondary surgical intervention for IOP control. Best corrected visual acuity was generally observed to have improved postoperatively overall.

GEMINI Study

GEMINI is an ongoing prospective, multi-center, single-arm, historic-controlled, interventional clinical trial designed to assess the safety and effectiveness of OMNI in Combination Cataract surgery in patients with Mild to Moderate OAG at 12 months postoperatively. The GEMINI study initiated in February 2019, completed enrollment in March 2020 (n=145) and completed final patient 12-month follow up by the end of April 2021. We plan to submit multiple articles based on data from GEMINI for publication in peer-reviewed journals and present the results at major ophthalmology conferences later in 2021.

All GEMINI patients underwent a complete ophthalmic screening prior to surgery, and postoperative follow-up examinations were performed at one day, one week, and one, three, six, and twelve months following treatment. GEMINI's inclusion criteria closely followed the large pivotal trials of trabecular bypass stents with cataract surgery only (control arms) of these studies to be used as the control group in GEMINI. In conducting GEMINI we had initially described the trial as a post-market trial to the Institutional Review Board, or IRB, and in informed consent documents. Subsequently, we amended the study protocol and obtained informed consent for a revised description of the trial. The FDA has also granted us an expanded indication for use for OMNI, which is consistent with how we had initially described the trial to the IRB and in informed consent documents.

Additional Ongoing and Planned Sight Sciences OMNI Clinical Studies

We have two additional studies for OMNI ongoing. TRIDENT is a E.U. and U.K. 12-month, multi-center three arm RCT evaluating Standalone procedure patients with pseudophakic eyes (post cataract surgery), treated with OMNI for canaloplasty and trabeculotomy, OMNI for canaloplasty alone, and a leading trabecular bypass stent. With ROMEO II, we plan to expand our retrospective data from ROMEO and extend follow up periods beyond the 12 month endpoint for ROMEO.

We also have six studies in planning stages: TREY, ARTEMIS, GEMINI 2.0, ORION 2.0, JAEGER and PRECISION, further demonstrating our ongoing commitment to developing complete and robust clinical data regarding OMNI. These studies will aim to evaluate the comparative effectiveness and safety of OMNI versus current treatment alternatives, such as leading trabecular bypass stents and leading topical pharmaceuticals, in both the Combination Cataract and Standalone settings, across the full spectrum of POAG severity.

Sight Sciences Supported OMNI Investigator Initiated Trial Program

There are also several completed or ongoing IITs of OMNI. Although we provide financial support for many of these studies, they are independent in conception, execution, and reporting. Investigators seeking support for their research submit a detailed study proposal, which is then reviewed by our IIT review committee for scientific merit and fit with company strategic goals, but without consideration for their associated commercial opportunities. There are currently two recently completed OMNI IITs and two ongoing. These are summarized in Table 7 below.

Table 7: Sight Sciences OMNI Investigator Initiated Trials

Stage	Investigator	Study Goals	Study Design	Treatment Groups	Patients	N	Status / Publication
Completed	**Matthew Traynor MD**	Outcomes of canaloplasty as a Standalone or Combination Cataract surgery	Retrospective, single center, case series. 18 months of follow-up	Canaloplasty in Standalone or Combination Cataract surgery with either VISCO360 or OMNI	Mild-to-Moderate OAG	89	Hughes T, Traynor MP. Clin Ophthalmol (2020)
	Karsten Klabe MD	Outcomes for OMNI as a Standalone procedure in medically uncontrolled OAG	Retrospective single center case series. 12 months of follow-up	OMNI Standalone in either pseudophakic or phakic eyes	Mild-to-Moderate OAG	38	Submitted to Journal of Glaucoma
Ongoing	**Daniel Terveen MD**	Safety and effectiveness of OMNI Standalone	Retrospective, multi- center, case series. 3 months of follow-up	OMNI standalone in pseudophakic eyes	Mild-to-Moderate OAG	100	Ongoing. Abstract submitted to ASCRS 2021
	Iwona Grabska-Liberek, MD	Outcomes for OMNI as Standalone procedure or Combination Cataract surgery	Prospective case-series; 24 months		Mild-to-Moderate OAG	17	Ongoing 12-month results published: Grabska-Liberek, Eur J Ophthalmol (2021)

These IITs are retrospective case series in Mild-to-Moderate OAG patients, patients inadequately controlled on maximum tolerated medical therapy, Standalone procedures in both pseudophakic and phakic eyes and Combination Cataract procedures. We believe the investigators plan to present their results at major ophthalmic congresses, such as the American Academy of Ophthalmology and the American Society of Corneal and Refractive Surgery, and publish their results in peer-reviewed ophthalmology journals.

TearCare System

TearCare Clinical Program Overview

We designed TearCare to comprehensively address meibomian gland dysfunction, which we believe to be the primary underlying cause of evaporative DED. We have developed robust clinical data evaluating TearCare. We have completed one RCT for TearCare, have one RCT in the early stages of patient enrollment and have one additional study in the planning stage, as summarized in Table 8 below. In our completed OLYMPIA RCT, we observed significant improvements in the signs and all symptoms of DED as assessed by an array of measures including both functional and biologic markers, and patient-reported symptoms surveys. We observed TearCare to be safe and well tolerated, with only minor AEs that resolved without any further treatment. We have two additional ongoing and planned studies intended to evaluate the safety and effectiveness of TearCare in reducing signs and symptoms of DED due to MGD and plan to leverage the results of these studies to support FDA clearances to expand indications for use of TearCare and to support our patient access strategy.

The primary and secondary endpoints we used in OLYMPIA and plan to use in our ongoing or planned studies are homeostatic markers and patient-reported symptoms surveys used extensively in the study and diagnosis of DED. TBUT is a measure of the rate of evaporation of the tear film and is an indicator of tear film stability, according to the American Academy of Ophthalmology, and measurements below ten seconds are considered abnormal. Longer TBUT is desirable as it indicates a lower rate of evaporative loss. Corneal and conjunctival staining allows detection of corneal erosions and other ocular surface damage. MGSS is a measure of the quality and quantity of meibum secretion, which helps prevent evaporative loss of tears. Patient-reported

symptoms surveys such as Ocular Surface Disease Index, or OSDI, Symptom Assessment in Dry Eye, or SANDE, and Eye Dryness Score, or EDS, are standard questionnaires designed to determine the severity of DED symptoms that are completed by patients and provide an overall score that increases with increased symptom severity.

Table 8: Sight Sciences TearCare Clinical Studies

Status	Name	Study Goals	Study Design	Treatment Groups	Patients	N	Status / Publication
Completed	OLYMPIA	Safety and effectiveness of a single TearCare treatment compared to a single LipiFlow treatment to treat the signs and symptoms of DED in adult patients	Prospective, multi-center, randomized, active-controlled, U.S. abbreviated IDE study, 1 month	Single TearCare Tx vs Single LipiFlow Tx	Patients with moderate to severe dry eye associated with MGD	235	**Pub1:** Submitted to *Cornea* **Pub2:** To be submitted to *Ocular Surface* **Pub3:** Exploratory analysis—to be submitted to *Clinical Ophthalmology*
Ongoing	SAHARA	Safety and effectiveness of TearCare treatments compared to Restasis to treat the signs and symptoms of DED in adult patients	Prospective, multi-center, randomized, active-controlled, U.S. abbreviated IDE study, 24 months	TearCare Tx vs Restasis Rx	Patients with moderate to severe dry eye associated with MGD	300	Initiated Q4 2020. Study completion expected
Planned	RESTORE	Safety and effectiveness of TearCare to treat the signs and symptoms of DED in patients previously treated with Restasis or Xiidra	Retrospective, real-world, multi-center, U.S. post-market study	TearCare Tx	Patients with moderate to severe dry eye associated with MGD and history of Restasis or Xiidra and are treated with TC at least 4 weeks prior to enrollment	300	Initiation expected . Study completion expected

Tx = treatment, Rx = prescription eyedrop, MGD = meibomian gland dysfunction, TC = TearCare, CE = cataract extraction

OLYMPIA Study (Completed)

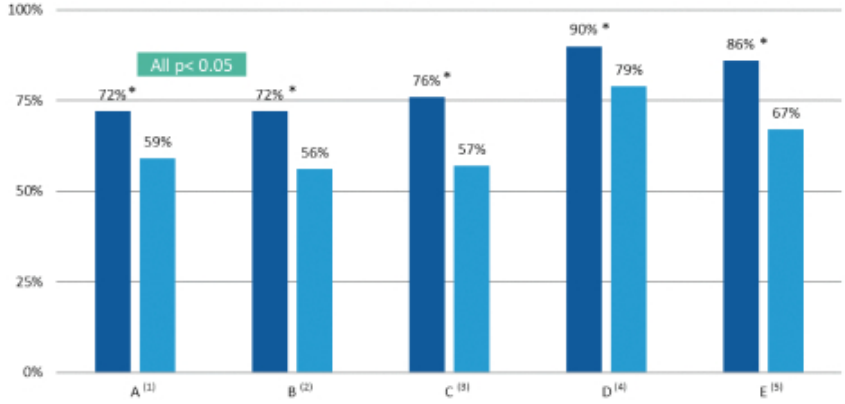
Our OLYMPIA study was a masked, multi-center RCT conducted at ten U.S. sites designed to study the safety and effectiveness of a single treatment with TearCare in reducing the signs and symptoms of DED associated with MGD as compared to a single treatment with the LipiFlow Thermal Pulsation System (Johnson & Johnson), or LipiFlow.

Subjects with signs and symptoms of DED and MGD (N=235) were randomized 1:1 to a single treatment using either TearCare or LipiFlow. Key inclusion criteria were regular use of lubricating drops, OSDI score between 23 to 79 (moderate to severe), MGSS £ 12, TBUT of £ 7 seconds, and at least 15 expressible glands in each lower eyelid. The primary endpoint for the study was non-inferiority of TearCare to LipiFlow, as measured by TBUT, and MGSS scores at one month. Secondary endpoints included corneal and conjunctival staining and number of meibomian glands yielding clear liquid. To reduce potential bias in subjective endpoint assessments, the clinician performing the treatments did not perform the endpoint assessments and the clinician performing the endpoint assessment was blinded to which treatment the patient had received. Symptoms were recorded using OSDI, SANDE, and EDS questionnaires. Any AEs, either patient reported or observed by the investigators, were recorded to assess safety.

In OLYMPIA, the non-inferiority primary endpoint was met for all endpoints and a greater proportion of subjects in the TearCare group reported better symptomatic relief compared to the LipiFlow group assessed by

OSDI; p<0.05 (Figure 18). Use of TearCare was associated with a statistically significant improvement in all assessed signs and symptoms of DED in subjects with MGD, including TBUT and MGSS, objective measurements of DED that were the trial's primary endpoints, as well as patient-reported symptoms surveys, including EDS, OSDI and SANDE, at both two and four weeks following treatment. While statistically significant superiority differences between the TearCare and LipiFlow groups were not observed, in a post-hoc analysis, the TearCare group demonstrated consistently greater improvements in most signs and symptoms assessed. Statistically significant improvements in the primary endpoints of mean TBUT and MGSS from baseline were observed in both the TearCare group (3.0 ± 4.4 and 11.2 ± 11.1, respectively) and the LipiFlow group (2.6 ± 3.3 and 11.09 ± 10.4, respectively (p< .0001)). In the TearCare group, mean corneal and conjunctival staining were reduced from baseline by 0.3 ± 2.0 and 0.7 ± 2.3, respectively; the mean number of expressible glands and glands expressing clear liquid increased from baseline by 4.3 ± 3.6 and 1.8 ± 3.7, respectively. The TearCare group improved in mean SANDE (by 38.2 ± 31.0 from baseline), EDS (by 35.4 ± 34.1 from baseline), and OSDI scores (by 27.9 ± 20.5 from baseline). Although statistically significant differences between the TearCare and LipiFlow groups were not observed with respect to the primary endpoints, in a post-hoc analysis, the TearCare group had a statistically significantly higher proportion of subjects (72%) improving by at least one OSDI category than did the LipiFlow group (59%); p<0.05. A total of 11 AEs were reported in eight subjects treated with TearCare, nine of which were ocular AEs in seven subjects and only four (one Chalazion, two Superficial Punctate Keratitis, one Blepharitis) of these were device-related AEs reported in three subjects. A total of 15 AEs were reported in 10 subjects treated with LipiFow, 13 of which were ocular AEs in eight subjects and seven (two Blepharitis, three Foreign body sensation, two Dry eye disease) of these were device-related AEs reported in four subjects. No serious AEs were reported in either treatment group.

Figure 19. Change in OSDI at 1 month



* Statistically significantly higher proportion of subjects showed clinically meaningful improvement in TearCare group compared with LipiFlow group

(1) % Subjects improved at least by 1 OSDI category

(2) % Subjects who had severe OSDI at baseline and who improved at least by 1 OSDI category

(3) % Female subjects improved at least by 1 OSDI category

(4) Statistically significantly higher proportion of female subjects in TearCare group improved by Miller definition (7.4 point improvement in moderate OSDI and 10.4 point improvement in severe OSDI)

(5) Statistically significantly higher proportion of female subjects who had TBUT <4.0 in TearCare group improved at least by 1 OSDI category

Additional Ongoing and Planned Clinical Studies

In addition to the above completed studies, we have two additional ongoing or planned studies to evaluate the safety and effectiveness of TearCare for the reduction of signs and symptoms of DED. Our SAHARA study

is a multi-center RCT designed to compare TearCare treatments to Restasis, a current prescription eyedrop for DED, and to test the durability of TearCare treatments in 300 patients. We began recruiting subjects for SAHARA in the first quarter of 2021. SAHARA was designed specifically to provide key clinical data that we believe could support potential reimbursement decisions by third-party payors. RESTORE is a planned retrospective, multi-center study of TearCare in 50 patients with a history of using prescription eyedrops such as Restasis or Xiidra. We plan to leverage the results of these studies to seek further premarket clearances from the FDA for more robust indications for use of TearCare.

Sight Sciences TearCare Investigator Initiated Trials

We actively support independent study of TearCare through our IIT program. Dr. Thomas Chester completed a study of 134 eyes (both eyes of 67 patients) treated in his clinic with TearCare. The study compares pre- and post-treatment (8-12 weeks) dry eye symptoms as measured by the Standardized Patient Evaluation of Eye Dryness, or SPEED, questionnaire, and pre- and post-treatment meibomian gland expression scores. In this study, a single TearCare treatment was effective in reducing both the signs and symptoms of dry eye, as measured by meibomian gland expression and SPEED surveys, respectively.

Commercial Approach

Figure 20. OMNI in Use.

We have built a world-class direct sales commercial organization that features professionals and executives with substantial leadership experience from leading ophthalmic product companies. In particular, we have recruited professionals with track records that include launching new technologies, growing primary demand and changing treatment paradigms. We believe this expertise is crucial to achieve our market development objectives for interventional Standalone MIGS and MGD treatment. Sales representatives typically have relevant experience across all facets of medical device and/or pharmaceutical sales focused on eyecare to ensure the development of a trusted consultative relationship with our ECPs. As we have continued to develop additional clinical data and brand recognition, we believe our team has differentiated our product offerings and gained commercial traction through exceptional, highly involved training, support and ongoing professional education. As of March 31, 2021, our overall commercial team consisted of over 100 professionals dedicated to sales, marketing, commercial support, training and professional relations.

We created distinct sales, marketing, and training teams to sell OMNI and TearCare because the products are predominantly sold to different types of customers and require specialized product specific sales expertise and ECP training to integrate our products into their practices. We sell OMNI to facilities where ophthalmic surgeons perform outpatient procedures, mainly ASCs and HOPDs. We sell TearCare to optometry and ophthalmology practices.

Our marketing efforts are centered around increasing awareness share of our products and presenting clinical study results through leading medical publications and at-large industry and scientific meetings, both directly and through our advisors. We have also partnered with early-adopting ECPs to speak to peers on our behalf through educational forums either in-person or via virtual meetings. Clinical data that demonstrate the benefits of OMNI and TearCare for their authorized uses will continue to underpin our commercial efforts, and we will continue to devote significant resources to conduct new clinical studies and publish articles in peer-reviewed journals.

OMNI

Since the commercial launch of OMNI in February 2018, we have pursued a three-part strategy to gain rapid commercial adoption and simultaneously expand its potential market:

(i) Target and train the over 3,000 high volume cataract surgeons who are already familiar with MIGS approaches (*ab interno* access techniques) and have a willingness to trial new technologies;

(ii) Leverage positive clinical experiences and outcomes to expand the utilization of OMNI among these MIGS-trained surgeons and drive adoption from additional surgeons and facilities; and

(iii) Promote interventional Standalone treatments with OMNI for the larger population of adult POAG patients for whom other leading MIGS devices are not indicated.

The majority of our OMNI sales representatives cover dedicated geographic territories or specialized customer segments, such as academic or government institutions, across the U.S. These sales representatives establish new accounts, train new surgeons and operating room personnel and nurture the continuing use of OMNI at existing accounts. In addition, we have positioned overlay sales representatives in our highest density customer markets to educate existing users of OMNI and primary care ECPs regarding the potential benefits of OMNI in interventional Standalone procedures in adult patients with POAG. The general ophthalmologists and optometrists who provide primary eyecare services are typically the first to diagnose POAG and deliver first line treatment. We aim to educate these primary ECPs regarding the clinical benefits and use cases for OMNI as they often have referral relationships with ophthalmic surgeons for patients who require advanced treatment. We seek to increase usage of OMNI among the ophthalmic surgeons who have already been trained and convert those who are not.

We believe our initial commercial efforts for OMNI have been successful and we plan to accelerate growth with the expansion of our team to cover more geographic territories and provide increased support to accounts, as well as roll-out large-scale marketing programs for the interventional Standalone opportunity in 2021. Although the vast majority of our sales are in the U.S., we have also begun to sell OMNI in select European countries both on a direct basis and through distributors. In 2020, we engaged an experienced international commercial leader to develop our European expansion plans and, in 2021, we hired this executive as a full-time employee and hired our first direct sales professionals in Europe. We expect to scale up our efforts in Europe and other regions over time.

TearCare

We implemented a controlled launch of TearCare in the U.S. in April 2019 with a limited sales effort. We have assembled a proprietary list of over 5,000 practices that are prime targets for our device and, as of April 30, 2021, we had sold TearCare to over 400 eyecare facilities.

While the success of our initial launch has shown that a significant patient-pay market exists for TearCare, market research indicates that improving access to TearCare through Medicare and private payors will accelerate adoption of the product. Currently, no third-party payors have formal policies establishing coverage for procedures using TearCare, although we believe that some payors may agree to provide coverage outside of formal policy based on medical need. As an early step of a comprehensive long-term market development plan, our market access team is assisting key strategic accounts and their patients in the pursuit of prior authorization approvals and reimbursement claims for TearCare on a case-by-case basis. Simultaneously, we are also continuing to support our customers with patient-pay models, which remains a significant growth opportunity.

Our dedicated commercial team for TearCare consists of sales representatives and leaders, marketing professionals, dedicated trainers, and independent sales representatives. We intend to scale up this team to the extent we achieve key market development and patient access milestones, including completion of clinical trials and our pursuit of FDA clearances for more robust indications for use of TearCare. Our sales representatives collaborate with stakeholders across the practice to train doctors and staff, implement workflow processes and monitor operations to ensure proper integration. As we help customers incorporate the use of TearCare, we have gained insights that enable us to continually improve our selling model. We expect to add new accounts and increase utilization at existing accounts, as we methodically grow our commercial team dedicated to TearCare.

Reimbursement

There are three primary aspects of reimbursement in the United States: coding, coverage and payment. Each aspect is an important determinant of our customers' ability to obtain reimbursement.

- **Coding** refers to the availability of billing codes for use by healthcare providers to report the provision of medical procedures, and the use of supplies and resources for specific patients, to insurance providers and organizations that make payments for healthcare, commonly referred to as third-party payors. The Healthcare Common Procedure Coding System, or HCPCS, is a national, standardized code set used by providers to capture and report healthcare services and products. This code set consists of two subsystems: Level I, Current Procedural Terminology, or CPT, codes, representing procedures performed, and Level II, commonly referred to as HCPCS codes, representing healthcare products (e.g. devices, drugs, durable medical equipment), supplies and services not captured in the CPT code set. CPT codes are published by the American Medical Association, or AMA, and are used to report medical services and procedures performed in the outpatient setting of care by or under the direction of physicians. HCPCS codes are established and maintained by the Centers for Medicare and Medicaid Services, or CMS, and identify items used in the course of care delivery. Health plans pay outpatient facilities and physicians for services based on submission of a claim using one or more CPT and/or HCPCS codes. CPT codes fall into one of three categories.
    - Category I CPT codes have been approved by the AMA as permanent procedure codes based on a number of factors, including the level of published clinical evidence. They are identified with a five-digit number and official code description. Approved Category I CPT codes have typically been endorsed by relevant medical specialty societies, are consistent with contemporary medical practice, and represent procedures performed by many physicians in clinical practice in multiple locations. Category I codes are only available to procedures for which the technology (e.g., device, drug, test) has been FDA approved/cleared when such a regulatory requirement exists.
    - Category II CPT Codes are supplemental tracking codes used for performance measurement. They are intended to facilitate data collection about quality of care by coding certain services and/or test results that support performance measures and that have been agreed upon as contributing to good patient care. Some codes in this category may relate to compliance by health care professionals with state or federal law.
    - Category III CPT codes are a temporary set of tracking codes for new and emerging technologies. These codes are designed to facilitate data collection for the assessment of new procedures.

Additionally, Category III codes provide a mechanism for payors to value a new procedure. Temporary codes are not automatically assigned Relative Value Units, or RVUs, or weights and, therefore, do not typically have a widely accepted payment rate methodology. To achieve Category III status, a new procedure is required to have either an approved protocol for a study of procedures being performed, support from the specialties that would use the procedure, availability of US peer-reviewed literature, or current clinical trials that outline the effectiveness of the procedure. Once granted, Category III CPT codes expire five years after the initial application was approved, although they can be extended beyond the five-year limit.

- Level II HCPCS codes are alpha-numeric codes governed by CMS that identify medical products and items or services that are not appropriately designated by another code set (e.g., CPT). Criteria must be met in order to qualify for an HCPCS code, including such requirements as regulatory approval (if necessary), national programmatic need, and a distinct difference from existing HCPCS codes.
- **Coverage** refers to decisions made by third-party payors as to whether there is sufficient published clinical evidence to support medical necessity, or to consider a healthcare item or service "reasonable and necessary" (as per Medicare guidelines). Coverage can be established by explicit medical policies that outline specific procedures and/or technologies, and under what conditions coverage is permitted, including specific diagnoses, clinical indications and therapeutic prerequisites. Coverage can also be implicit, as when payors are "silent" on a procedure or technology (i.e., no formal policy is developed). In the absence of formal policy, coverage may be granted one of two ways: 1) with no required review, as with long-standing established healthcare items or services, or 2) on a case-by-case basis via review of each patient's circumstance, as may be the case with newer procedures/technologies. Each payor can make its own decision as to which procedures or technologies warrant formal policy.
- **Payment** refers to the reimbursement rate for a healthcare item or service. The amount paid by third-party payors to providers, including facilities and doctors, for specific procedures and items (e.g., medical devices, drugs, ancillary supplies) is determined by each payor. Payments for professional services under CPT coding are generally determined by the RVUs of a specific billing code. These RVUs identify the time and intensity of the work required, the practice expense incurred and the level of risk related to the procedure. Payors can use their organization-specific formula or conversion factor to translate RVUs into payment rates, or may establish payment by reference to a national Medicare payment amount. Likewise, facility payments are weighted based on the resources (e.g., operating suite time, devices and supplies) needed for the procedure to be performed in the facility setting. Most payment rates are geographically adjusted, taking into account the cost of providing services in different wage index areas across the country. As with procedure payments, payments for healthcare items (e.g., products reported using HCPCS coding) are determined by individual health plans, often based on some form of manufacturer's invoice or billed charges based on the provider's mark-up methodology, or based on established fee schedule rates. It is important to recognize that not all reportable codes are separately payable. Some codes are bundled with related items or services and do not have a separate payment allowance.

For further information regarding reimbursement, see "Risk Factors—We may not be able to maintain adequate levels of third-party coverage and payment for procedures in which OMNI is used, and third parties may rescind or modify their coverage related to OMNI. We may not be able to secure any, or adequate levels of, third-party coverage and payment for procedures in which TearCare is used, and even if third parties provide coverage they may rescind or modify their coverage related to TearCare".

Our commercial activities are substantially within the United States. We sell OMNI primarily to ASCs and HOPDs, who in turn bill various third-party payors, such as Medicare and private health insurance plans for the healthcare services and resources rendered to treat a patient. TearCare is not currently covered or paid by Medicare or private payors under any formal policy, although some payors may agree to provide case-based coverage outside of a formal policy. Our market access team facilitates patient access to the OMNI and TearCare

systems by engaging payors on coverage, coding and payment matters, and by providing support to patients and our customers as they seek reimbursement from payors that do not have positive coverage or those that do not have formal policies in place regarding our products.

Reimbursement for Uses of the OMNI Surgical System

Surgeons are able to use OMNI to sequentially perform two well-established glaucoma procedures, canaloplasty followed by trabeculotomy.

Canaloplasty and trabeculotomy are covered by Medicare outside of formal policy, based on a claim-by-claim adjudication. Widespread coverage is important for commercial adoption. Based on POAG prevalence, we estimate that currently over 70% of patients who receive glaucoma treatment using OMNI are covered by Medicare, and that this percentage may decline modestly over time as usage of OMNI expands to include patients with a broader range of OAG progression. Private payor coverage policies for canaloplasty and trabeculotomy vary. Some private payors, including Aetna and certain Blue Cross Blue Shield plans, have written policies that consider canaloplasty medically necessary for the treatment of glaucoma, though specific criteria for coverage may vary depending on the payor. Where coverage is less consistent or is limited, as is the case with certain private payors, our market access team works with payers directly and with customers to facilitate patient access to our solutions and verify that appropriate reimbursement can be obtained. We have established and continue to build a substantial library of clinical trial data and published articles to directly address the needs of some payors. We believe that the results from our nine completed, in progress and planned clinical trials and subsequent accompanying peer-reviewed articles will help to expand coverage of the use of OMNI. We estimate that, as of March 2021, 38% of the covered lives within the top nine national private payors (including commercial, Medicare Advantage and Medicaid Managed Care plans) cover the procedures performed using OMNI. The OMNI procedure is covered and reimbursed by all Medicare Administrative Contractors and numerous private insurers, covering an estimated 67% of U.S. POAG sufferers.

Virtually all sales of OMNI in the U.S. are to ASCs and HOPDs. Surgeons may use OMNI to perform canaloplasty and trabeculotomy sequentially, with CPT code 66174 used to report the procedure. Per Medicare and many private payor payment policies, when certain procedures are performed in the ASC setting, such as cataract surgery and canaloplasty, multiple procedure payment reduction rules apply. Therefore, when a canaloplasty is performed with cataract surgery are performed on the same patient on the same day, payment of the lower-cost procedure (most commonly the cataract procedure) is reduced by 50%. Multiple procedure payment reduction rules also typically apply to professional services. Physician payments are likely to be paid at a reduced rate for lower valued procedures when performed concomitantly. In the HOPD setting, Medicare procedures performed using OMNI as well as cataract procedures are paid under comprehensive ambulatory payment classifications (C-APCs). In this site of service, the highest valued code is paid at 100%, with payment for additional procedures performed during the same operative session bundled into the single highest payment rate. Many commercial payers use a similar payment methodology, but payment rules can vary across health plans, particularly across plan types (e.g., HMO, PPO, POS).

In the ASC setting, the 2021 Medicare national unadjusted average facility payment rate for CPT 66174 is $1,872.33. In the HOPD setting, the 2021 Medicare national unadjusted average facility payment rate for CPT 66174 is $3,917.74. These payments are classified as comprehensive C-APCs, therefore the highest valued code will be paid and other C-APC classified procedures will be bundled into the highest paid procedure. Regardless of facility setting, the Medicare national unadjusted physician payment rate for CPT 66174 is $947.70. Based on customer feedback, we believe the rates for facility and physician reimbursement in both settings reflect attractive and reasonable payments to cover all of our customers' costs and economic needs related to glaucoma treatments using OMNI for both Standalone and Combination Cataract procedures.

While commercialization of OMNI has primarily been focused on the U.S., we have also begun international commercialization efforts. Outside the U.S., we have made the most progress in Germany where we

have established and trained an ophthalmic distributor with successful experience commercializing the invasive form of canaloplasty. Although Germany employs a single-payor health system and a national MIGS procedure code which includes canaloplasty and trabeculotomy, coverage decisions are decentralized. Our distributor is working, and will work, with the decentralized Physician's Associations (*Kassenärztliche Vereinigung*) to facilitate access to OMNI for patients and ECPs. As we expand into other countries, we will establish reimbursement strategies that are appropriate for each local market.

Reimbursement for Uses of the TearCare System

TearCare is not currently covered by Medicare or private payors via formal medical policy, although some payors may agree to provide coverage and subsequent payment outside of formal policy. We intend to seek FDA clearance of TearCare for an expanded indication for use in . We believe that the current standard of care (representing over 95% of the existing market), which primarily consists of over-the-counter artificial tears or lubricating eyedrops, and prescription eyedrops, does not treat the root cause of MGD. We believe TearCare, if cleared by the FDA for an expanded indication for use, has the potential to offer a better standard of care for evaporative dry eye patients and reduced overall costs for payors.

Despite the presence of a large and growing patient-pay market for TearCare as shown in our controlled launch, we believe that improving access to TearCare through positive coverage decisions by Medicare and private payors will help grow the market for the device. We are pursuing a vigorous market development plan to convince Medicare and private payors to increase access to procedures using TearCare in the U.S.

In 2018, we applied for a Category III CPT code that describes the heating of meibomian glands using a wearable open-eye device and manual evacuation of meibomian glands. This new code, 0563T, was granted in 2019 and became effective January 1, 2020, allowing providers to pursue reimbursement claims and payors to establish payment rates for the procedure. Prior to formal coverage decisions or a permanent Category I code, third-party payors may cover procedures billed with temporary Category III codes that meet their coverage criteria.

We have already begun to generate clinical data to support positive coverage decisions from Medicare and private payors. In January 2021, an article discussing results from our OLYMPIA RCT was submitted to *Cornea The Journal of Cornea and External Disease*. This randomized controlled trial compared treatment using TearCare to the leading alternative MGD treatment device on the market. In the study, we observed that a single use of TearCare was associated with improvement in each of the signs and symptoms of DED within two weeks of treatment in subjects with MGD. In a post-hoc analysis we also observed that a greater proportion of subjects in the TearCare group reported better symptomatic relief relative to the comparator group as assessed by patient reported outcomes. We plan to submit additional articles discussing the results from our OLYMPIA RCT to *The Ocular Surface* and *Clinical Ophthalmology* in the near future.

Our comprehensive long term strategy to improve patient access to TearCare includes the following key initiatives:

- **Demonstrate the effectiveness, safety and durability of TearCare with rigorous clinical data**. Building on supportive data from completed studies, our upcoming clinical program for TearCare, including the SAHARA and RESTORE studies, aims to advance the development of TearCare for the signs and symptoms of DED due to MGD with comparative trial designs established to evaluate the effectiveness and durability of treatment with TearCare, which our research suggests would be the primary criteria for payors to decide coverage determinations. SAHARA, which will commence in 2021 and features a trial design directly informed by a masked panel of medical directors from eight payors, is a RCT of TearCare versus the leading DED prescription eyedrop, and will compare effectiveness and safety, as well as assess durability of effect through a 24-month follow up period.
- **Augment library of published articles on TearCare**. We plan to facilitate publication of numerous articles describing the results of our studies of TearCare in peer-reviewed journals. We collaborate with

our advisors to design and conduct our studies, and ensure findings undergo the rigorous peer review process for publication in leading ophthalmology and optometry journals, recognizing that third-party payors base coverage decisions on reviews of the published medical literature.

- **Support coverage applications**. Our market access team assists key strategic accounts in their submission of high quality reimbursement requests for uses of TearCare. Our market access team also works with customers and patients to navigate the reimbursement process with third-party payors, including prior authorization approvals and appeals for denial of coverage or low payment. As more claims for uses of TearCare are accepted, we will work with third-party payors to formalize coverage decisions to streamline the coverage and payment processes.
- **Convert to permanent Category I CPT code**. We plan to leverage our clinical studies, peer-reviewed publications, society and medical community support, and utilization / real world reimbursement claims data to support conversion of our Category III CPT code for TearCare to a permanent Category I CPT code. Although Medicare and private payors may cover Category III CPT codes that meet their coverage criteria, we believe AMA approval of a permanent Category I CPT code for uses of TearCare, along with potential enhanced indications for use, will bolster our efforts to gain positive coverage determinations from Medicare and private payors.

Competition

We believe our focus on developing and marketing intuitively designed products that are intended to restore the eye's natural physiological function by addressing underlying causes of eye disease will be an important factor in our future success. The medical device and pharmaceutical industries are intensely competitive, subject to rapid change and significantly affected by new product introductions and other market activities of industry participants. We compete with medical device and pharmaceutical companies that develop and commercialize products for eye conditions. Notable competitors with approved MIGS products include Glaukos (iStent and iStent Inject), Ivantis (Hydrus Microstent) and AbbVie/Allergan (Xen), while AbbVie/Allergan (Restasis), Novartis (Xiidra), Johnson & Johnson (LipiFlow), and Alcon (iLux) have notable approved products to treat DED. Other competitors with approved ophthalmic products in glaucoma and DED include Alcon (Simbrinza), Novartis (Travatan, Duotrav), AbbVie/Allergan (Durysta, Lumigan, Combigan), Aerie Pharmaceuticals (Roclatan, Rhopressa), Bausch and Lomb (Vyzulta), MST (Trabectome and TrabEx), New World Medical (Kahook Dual Blade), Nova Eye (iTrack), Kala Pharmaceuticals (Eyesuvis) and Sun Pharmaceutical (Cequa). Notable competitors seeking approval for new MIGS and sustained release treatments include Glaukos (iDose), Ocular Therapeutix (OTX-TIC), and iSTARMedical (MINIject), and in pharmaceutical DED treatments include, among others, Aldeyra Therapeutics (Reproxalap), Bausch and Lomb (NOV03), Ocular Therapeutix (OTX-CSI), Oyster Point (OC-01) and Tarsus Pharmaceuticals (TP-03). Some of our competitors are larger, well-capitalized companies with greater market share and resources than us currently. Consequently, they are able to spend more on product development, marketing, sales and other product initiatives than we can. We also compete with a number of smaller medical device companies that have single products or a limited range of products. Some of our competitors have:

- Significantly greater name recognition;
- Broader or deeper relations with healthcare professionals, customers and third-party payors;
- More established distribution networks;
- Additional lines of products and the ability to offer rebates or bundle products to offer greater discounts or other incentives to attract adoption;
- Greater experience in conducting research and development, manufacturing, clinical trials, marketing and obtaining regulatory clearance or approval for products; and
- Greater financial and human resources for product development, sales and marketing and patent and other intellectual property litigation.

We compete primarily on the basis that our medical devices are able to treat patients with prevalent eye diseases safely and effectively. Our continued success depends on our ability to:

- Develop innovative, proprietary technology and products that can cost-effectively address significant clinical needs;
- Obtain and maintain regulatory clearances or approvals for the use of our products;
- Obtain and maintain favorable reimbursement decisions relating to the use of our products;
- Demonstrate clinical safety and effectiveness in our sponsored and third-party trials and studies;
- Attract and retain skilled research and development and sales personnel; and
- Successfully market and sell products.

Manufacturing

From its launch in early 2018 until February 2021, OMNI was solely assembled and produced by Second Source Medical LLC, or SSM, a contract manufacturer based in San Jose, California on an individual purchase-order basis, pursuant to a regulatory and quality framework established by the Supplier Quality Agreement and Plan dated April 5, 2018.

On January 14, 2021, we entered into a Supply Agreement, or the Peter's Supply Agreement, with Peter's Technology (Suzhou) CO LTD., or PTCS, a Chinese subsidiary of Peter's Co., Ltd., a Taiwan-based contract manufacturer. In February 2021, PTCS began to produce commercially saleable OMNI units for us at its Suzhou City, China production facility. Our objective is to transition OMNI production from SSM to Peter's and an additional high-volume contract manufacturer with domestic U.S. production facilities by the end of the third quarter of 2021. The Peter's Supply Agreement governs the assembly and supply of OMNI by PTCS, pursuant to which PTCS purchases components from our approved suppliers for assembly and we make purchases from PTCS on a purchase order basis. The initial term of the three year Peter's Supply Agreement expires January 14, 2024. The Peter's Supply Agreement automatically renews for additional one year periods if neither party provides notification that they intend to terminate the agreement within 90 days of the term ending. We have the right to terminate the agreement without cause during its term by providing 180 days' advance written notice, or with 30 days' written notice with any material agreement default by PTCS.

For the production of TearCare, we currently have supply arrangements with separate U.S. medical device manufacturers for the production of each of TearCare's SmartLids and TearCare's SmartHubs.

We directly engage with several third-party suppliers for key components used in our products. We believe that third-party suppliers will be adequate to meet our current and anticipated manufacturing needs. We do not currently plan to manufacture our products or any related components ourselves.

Manufacturing facilities that produce medical devices or their component parts intended for distribution world-wide are subject to regulation and periodic unannounced inspection by the FDA and other domestic and international regulatory agencies. In the United States, any products we sell are required to be manufactured in compliance with the FDA's Quality System Regulation, which covers the methods used in, and the facilities used for, the design, testing, control, manufacturing, labeling, quality assurance, packaging, storage and shipping of our products.

The distribution of our products is handled directly through a third-party logistics provider. Our finished goods are shipped from our contract manufacturers to Sterigenics for gamma sterilization in Hayward, California after which they are shipped to distribution facilities and are distributed from there to customers.

Intellectual Property

Our commercial success depends in part on our ability to obtain and maintain proprietary protection for our current and future products and product candidates, novel discoveries, product development technologies and know-how; to operate without infringing on the proprietary rights of others; and to prevent others from infringing our proprietary rights. Our policy is to seek to protect our proprietary position by, among other methods, seeking to obtain or in-licensing U.S. and foreign patents and patent applications related to our proprietary technology that are important to the development and implementation of our business. We seek to obtain domestic and international patent protection, and endeavor to promptly file patent applications for new commercially valuable inventions. We file new patent applications as we conduct research and development, initiate new programs, and monitor the activities of others. We also rely on other approaches to protecting our proprietary position, such as trademarks, trade secrets, know-how, and/or continuing technological innovation to develop and maintain our proprietary position.

The patent positions of medical device companies like us are generally uncertain and involve complex legal, scientific and factual questions. In addition, the coverage claimed in a patent may be challenged in courts after issuance. Moreover, many jurisdictions permit third parties to challenge issued patents in administrative proceedings, which may result in further narrowing or even cancellation of patent claims. We cannot predict whether the patent applications we are currently pursuing will issue as patents in any particular jurisdiction or at all, whether the claims of any patent applications, should they issue, will cover our products or product candidates, or whether the claims of any issued patents will provide sufficient protection from competitors or otherwise provide any competitive advantage.

We cannot be certain of the priority of inventions covered by our patents and pending patent applications, in part because patent applications in the United States and certain other jurisdictions are maintained in secrecy for 18 months or potentially even longer, and because publication of discoveries in the scientific or patent literature often lags behind actual discoveries and patent application filings. Accordingly, we may not have been the first to invent the subject matter disclosed in some of our patents and patent applications or the first to file patent applications covering such subject matter.

Patent Term

Generally, issued patents are granted a term of 20 years from the earliest claimed non-provisional filing date. In certain instances, U.S. patent term can be adjusted to recapture a portion of delay by the U.S. Patent & Trademark Office, or USPTO, in examining the patent application (patent term adjustment) or extended to account for term effectively lost as a result of the FDA regulatory review period (patent term extension), or both. In some cases, the term of a U.S. patent may be shortened by terminal disclaimer, such that its term is reduced to end with that of an earlier-expiring patent.

Trade Secrets

In addition to patents, we rely on or may in the future rely on trade secrets and know-how to develop and maintain our competitive position. We typically rely on or may in the future rely on trade secrets to protect aspects of our business that are not amenable to, or that we do not consider appropriate for, patent protection. It is our policy to protect trade secrets and/or know-how by establishing confidentiality agreements and invention assignment agreements with our employees, consultants, scientific advisors, contractors and collaborators. These agreements provide that all confidential information developed or made known during the course of an individual or entity’s relationship with us must be kept confidential during and after the relationship. These agreements also provide that all inventions resulting from work performed for us or relating to our business and conceived or completed during the period of employment or assignment, as applicable, shall be our exclusive property. In addition, we take other appropriate precautions, such as physical and technological security measures, to guard against misappropriation of our proprietary information by third parties.

OMNI

As of April 30, 2021, we owned 19 issued U.S. patents, 25 issued patents outside the U.S. (which includes three issued European patents and their national validations), nine pending U.S. non-provisional patent applications, one pending U.S. provisional patent application and eight pending foreign patent applications in our OMNI portfolio. The issued patents include claims directed to devices and methods for canaloplasty and/or trabeculotomy, ocular implants, and related methods.

Subject to payment of required maintenance fees, annuities, and other charges, our issued U.S. patents in our OMNI Surgical System portfolio have expiration dates between 2027 and 2037, with six of our issued U.S. patents having expiration dates before 2030, 12 having expiration dates between 2031 and 2035, and the remaining one expiring in 2037, in each case exclusive of possible patent term extensions. Of the ten pending U.S. patent applications in our OMNI Surgical System portfolio, one was filed in 2015, four were filed in 2019, three, including our U.S. provisional patent application, were filed in 2020, and two were filed in 2021. Our pending U.S. non-provisional patent applications, if issued, have expected expiration dates between 2026 and 2040, exclusive of any possible patent term adjustments or patent term extensions.

The foreign jurisdictions where we own issued patents in our OMNI Surgical System portfolio include: Australia, China, France, Germany, Italy, Japan, Spain, Switzerland, and the United Kingdom. Subject to payment of required annuities and other charges, these foreign patents have expiration dates between 2027 and 2035. We have pending patent applications in our OMNI surgical system portfolio in Australia, Canada, China, Europe, Hong Kong, and Japan which, if issued, have expected expiration dates between 2032 and 2035.

TearCare

As of April 30, 2021, we owned eight issued U.S. patents, nine issued patents outside the U.S. (which includes one issued European patent and its national validations), seven pending U.S. non-provisional patent applications, seven pending foreign patent applications, and one pending Patent Cooperation Treaty, or PCT, patent application in our TearCare portfolio. The issued patents include claims directed to the TearCare apparatus and methods of using the TearCare apparatus, components of the TearCare apparatus (including the SmartHub and SmartLids) and methods of their use, the TearCare apparatus in combination with an eyelid compression instrument and methods of their use, and methods of using the TearCare apparatus with patients wearing contact lenses.

Subject to payment of required maintenance fees, annuities, and other charges, our issued U.S. patents in our TearCare portfolio have expiration dates in 2032, in each case exclusive of possible patent term extensions. Of the seven pending U.S. non-provisional patent applications in our TearCare portfolio, one was filed in 2016, one was filed in 2018, one was filed in 2019, two were filed in 2020, and two were filed in 2021. Any patents issuing from these pending U.S. non-provisional patent applications would have expected expiration dates between 2032 and 2040, exclusive of any possible patent term adjustments or patent term extensions.

The foreign jurisdictions where we own issued patents in our TearCare portfolio include: China, France, Germany, Italy, Japan, Spain, and the United Kingdom, all of which will expire in 2032. We have additional pending patent applications in our TearCare portfolio in Brazil, China, Europe, and Japan which, if issued, have expected expiration dates between 2032 and 2039. Our pending PCT patent application is not eligible to become an issued patent unless and until, among other things, we file a national stage patent application within 30 months from the earliest priority date of the PCT patent application in the countries in which we seek patent protection.

As of April 30, 2021, we owned eight U.S. trademark registrations, one German trademark registration and one pending E.U. trademark application.

For information regarding the risks related to our intellectual property, please see the section titled “Risk Factors—Risks Related to Our Intellectual Property.”

Government Regulation

Our products and our operations are subject to extensive regulation by the U.S. Food and Drug Administration, or FDA, and other federal, state, and local authorities in the United States, as well as comparable authorities in foreign jurisdictions. Our products are subject to regulation as medical devices in the United States under the Federal Food, Drug, and Cosmetic Act, or FDCA, and its implementing regulations.

United States Regulation

The FDA regulates, among other things, the development, design, non-clinical and clinical testing, manufacturing, safety, effectiveness, labeling, packaging, storage, installation, servicing, recordkeeping, premarket clearance or approval, adverse event reporting, advertising, promotion, marketing and distribution, and import and export and post-marketing surveillance of medical devices in the United States to ensure that medical devices distributed domestically are safe and effective for their intended uses and otherwise meet the requirements of the FDCA.

FDA Premarket Clearance and Approval Requirements

Unless an exemption applies, each new or significantly modified medical device commercially distributed in the United States requires either FDA clearance of a 510(k) premarket notification, or approval of a premarket approval, or PMA, application. Both the 510(k) clearance and PMA processes can be resource intensive, expensive, and lengthy.

Under the FDCA, medical devices are classified into one of three classes—Class I, Class II or Class III—depending on the degree of risk associated with each medical device and the extent of manufacturer and regulatory control needed to ensure its safety and effectiveness. Class I devices are those for which safety and effectiveness can be assured by adherence to the FDA's general controls for medical devices, which include compliance with the applicable portions of FDA's current good manufacturing practices for devices, as reflected in the Quality System Regulation, or QSR, establishment registration and device listing, reporting of adverse medical events, and truthful and non-misleading labeling, advertising, and promotional materials. Some Class I devices, also called Class I reserved devices, also require premarket clearance by the FDA through the 510(k) premarket notification process described below. Most Class I devices are exempt from the premarket notification requirements.

Class II devices are subject to the FDA's general controls, and any other special controls deemed necessary by the FDA to ensure the safety and effectiveness of the device. These special controls can include performance standards, special labeling requirements, post-market surveillance, patient registries and FDA guidance documents.

Most Class II devices are required to submit to the FDA a premarket notification under Section 510(k) of the FDCA requesting permission to commercially distribute the device. The FDA's permission to commercially distribute a device subject to a 510(k) premarket notification is generally known as 510(k) clearance.

Class III devices include devices deemed by the FDA to pose the greatest risks, such as life sustaining, life supporting or some implantable devices, or devices that have a new intended use, or use advanced technology that is not substantially equivalent to that of a legally marketed device, requiring approval of a PMA. Due to the level of risk associated with Class III devices, the FDA's general controls and special controls alone are insufficient to assure their safety and effectiveness. Devices placed in Class III general require the submission of a PMA application demonstrating the safety and effectiveness of the device, which must be approved by the FDA prior to marketing, or the receipt of a 510(k) de novo classification, which provides for the reclassification of the device in Class I or II. The PMA approval process is generally more costly and time consuming than the 510(k) process. Through the PMA application process, the applicant must submit data and information demonstrating

reasonable assurance of the safety and effectiveness of the device for its intended use to the FDA's satisfaction. Accordingly, a PMA application typically includes, but is not limited to, extensive technical information regarding device design and development, pre-clinical and clinical trial data, manufacturing information, labeling and financial disclosure information for the clinical investigators in device studies. The PMA application must provide valid scientific evidence that demonstrates to the FDA's satisfaction a reasonable assurance of the safety and effectiveness of the device for its intended use.

If a new medical device does not qualify for the 510(k) premarket notification process because no predicate device to which it is substantially equivalent can be identified, the device is automatically classified into Class III. The Food and Drug Administration Modernization Act of 1997 established a new route to market for low to moderate risk medical devices that are automatically placed into Class III due to the absence of a predicate device, called the "Request for Evaluation of Automatic Class III Designation," or the de novo classification process. This process allows a manufacturer whose novel device is automatically classified into Class III to request down-classification of its medical device into Class I or Class II on the basis that the device presents low or moderate risk, rather than requiring the submission and approval of a PMA. If the manufacturer seeks reclassification into Class II, the manufacturer must include a draft proposal for special controls that are necessary to provide a reasonable assurance of the safety and effectiveness of the medical device. The FDA may reject the reclassification petition if it identifies a legally marketed predicate device that would be appropriate for a 510(k) or determines that the device is not low to moderate risk and requires PMA or that general controls would be inadequate to control the risks and special controls cannot be developed.

Obtaining FDA marketing authorization, de novo down-classification, or approval for medical devices is expensive and uncertain, and may take several years, and generally requires significant scientific and clinical data.

Some pre-amendment devices are unclassified, but are subject to FDA's premarket notification and clearance process in order to be commercially distributed. Our currently marketed OMNI products are regulated as Class II devices subject to 510(k) clearance. We currently market our TearCare product as a Class II, 510(k)-exempt powered heating pad.

Investigational Device Process

Clinical trials are almost always required to support a PMA and are sometimes required to support a 510(k) submission. In the United States, absent certain limited exceptions, human clinical trials intended to support medical device clearance or approval or to determine safety and effectiveness of a device for an investigational use must be conducted in accordance with the FDA's investigational device exemption, or IDE, regulations which govern investigational device labeling, prohibit promotion of the investigational device, and specify an array of recordkeeping, reporting and monitoring responsibilities of study sponsors and study investigators. If the device presents a "significant risk," to human health, as defined by the FDA, the FDA requires the device sponsor to submit an IDE application to the FDA, which must become effective prior to commencing human clinical trials. The IDE application must be supported by appropriate data, such as animal and laboratory testing results, showing that it is safe to test the device in humans and that the testing protocol is scientifically sound. The IDE application must be approved in advance by the FDA for a specified number of subjects. Generally, clinical trials for a significant risk device may begin once the IDE application is approved by the FDA and the study protocol and informed consent are approved by appropriate institutional review boards at the clinical trial sites. There can be no assurance that submission of an IDE will result in the ability to commence clinical trials, and although the FDA's approval of an IDE allows clinical testing to go forward for a specified number of subjects, it does not bind the FDA to accept the results of the trial as sufficient to prove the product's safety and effectiveness, even if the trial meets its intended success criteria.

If the device under evaluation does not present a significant risk to human health, then the device sponsor is not required to submit an IDE application to the FDA before initiating human clinical trials, but must still comply

with abbreviated IDE requirements when conducting such trials. A significant risk device is one that presents a potential for serious risk to the health, safety or welfare of a patient and either is implanted, used in supporting or sustaining human life, substantially important in diagnosing, curing, mitigating or treating disease or otherwise preventing impairment of human health, or otherwise presents a potential for serious risk to a subject. An IDE application must be supported by appropriate data, such as animal and laboratory test results, showing that it is safe to test the device in humans and that the testing protocol is scientifically sound. The IDE will automatically become effective 30 days after receipt by the FDA unless the FDA notifies the company that the investigation may not begin. If the FDA determines that there are deficiencies or other concerns with an IDE for which it requires modification, the FDA may permit a clinical trial to proceed under a conditional approval.

Regardless of the degree of risk presented by the medical device, clinical studies must be approved by, and conducted under the oversight of, an Institutional Review Board, or IRB, for each clinical site. The IRB is responsible for the initial and continuing review of the IDE, and may pose additional requirements for the conduct of the study. If an IDE application is approved by the FDA and one or more IRBs, human clinical trials may begin at a specific number of investigational sites with a specific number of patients, as approved by the FDA. If the device presents a non-significant risk to the patient, a sponsor may begin the clinical trial after obtaining approval for the trial by one or more IRBs without separate approval from the FDA, but must still follow abbreviated IDE requirements, such as monitoring the investigation, ensuring that the investigators obtain informed consent, and labeling and record-keeping requirements. Acceptance of an IDE application for review does not guarantee that the FDA will allow the IDE to become effective and, if it does become effective, the FDA may or may not determine that the data derived from the trials support the safety and effectiveness of the device or warrant the continuation of clinical trials. An IDE supplement must be submitted to, and approved by, the FDA before a sponsor or investigator may make a change to the investigational plan that may affect its scientific soundness, study plan or the rights, safety or welfare of human subjects.

During a study, the sponsor is required to comply with the applicable FDA requirements, including, for example, trial monitoring, selecting clinical investigators and providing them with the investigational plan, ensuring IRB review, adverse event reporting, record keeping and prohibitions on the promotion of investigational devices or on making safety or effectiveness claims for them. The clinical investigators in the clinical study are also subject to FDA's regulations and must obtain patient informed consent, rigorously follow the investigational plan and study protocol, control the disposition of the investigational device, and comply with all reporting and recordkeeping requirements. Additionally, after a trial begins, we, the FDA or the IRB could suspend or terminate a clinical trial at any time for various reasons, including the following:

- The FDA or other regulatory authorities do not approve a clinical trial protocol or a clinical trial, or place a clinical trial on hold;
- Patients do not enroll in clinical trials at the rate expected;
- Patients do not comply with trial protocols;
- Patient follow-up is not at the rate expected;
- Patients experience adverse events;
- Patients die during a clinical trial, even though their death may not be related to the products that are part of the trial;
- Device malfunctions occur with unexpected frequency or potential adverse consequences;
- Side effects or device malfunctions of similar products already in the market that change the FDA's view toward approval of new or similar PMAs or result in the imposition of new requirements or testing;
- Institutional review boards and third-party clinical investigators may delay or reject the trial protocol;

- Third-party clinical investigators decline to participate in a trial or do not perform a trial on the anticipated schedule or consistent with the clinical trial protocol, investigator agreement, investigational plan, good clinical practices, the IDE regulations, or other FDA or IRB requirements;
- Third-party investigators are disqualified by the FDA;
- We or third-party organizations do not perform data collection, monitoring and analysis in a timely or accurate manner or consistent with the clinical trial protocol or investigational or statistical plans, or otherwise fail to comply with the IDE regulations governing responsibilities, records, and reports of sponsors of clinical investigations;
- Third-party clinical investigators have significant financial interests related to us or our study such that the FDA deems the study results unreliable, or the company or investigators fail to disclose such interests;
- Regulatory inspections of our clinical trials or manufacturing facilities, which may, among other things, require us to undertake corrective action or suspend or terminate our clinical trials;
- Changes in government regulations or administrative actions;
- The interim or final results of the clinical trial are inconclusive or unfavorable as to safety or effectiveness; or
- The FDA concludes that our trial design is unreliable or inadequate to demonstrate safety and effectiveness.

510(k) Clearance Process

Under the 510(k) process, the manufacturer must submit to the FDA a premarket notification submission demonstrating that the proposed device is "substantially equivalent," as defined in the FDCA, to a legally marketed predicate device.

A predicate device is a legally marketed device that is not subject to premarket approval, i.e., a device that was legally marketed prior to May 28, 1976 (pre-amendments device) and for which a PMA is not required, a device that has been reclassified from Class III to Class II or I, or a device that was found substantially equivalent through the 510(k) process. A device is considered to be substantially equivalent if, with respect to the predicate device, it has the same intended use and has either (i) the same technological characteristics; or (ii) different technological characteristics, but the information provided in the 510(k) submission demonstrates that the device does not raise different questions of safety or effectiveness than the predicate device.

Before the FDA will accept a 510(k) premarket notification for substantive review, the FDA will first assess whether the submission satisfies a minimum threshold of acceptability. If the FDA determines that the 510(k) submission lacks necessary information for substantive review, the FDA will issue a "Refuse to Accept" letter which generally outlines the information the FDA believes is necessary to permit a substantive review and to reach a determination regarding substantial equivalence. An applicant must submit the requested information before the FDA will proceed with additional review of the submission. If a 510(k) submission is accepted for substantive review, the Medical Device User Fee Amendments sets a performance goal of 90 days for FDA review of a 510(k) submission, but the review time can be delayed if FDA raises questions or requests addition information during the review process. As a practical matter, clearance often takes longer, and clearance is never assured. Thus, as a practical matter, clearance often takes longer than 90 days. Although many 510(k) premarket notifications are cleared without clinical data, the FDA may require further information, including clinical data, to make a determination regarding substantial equivalence, which may significantly prolong the review process. If the FDA agrees that the device is substantially equivalent, it will grant clearance to commercially market the device.

If the FDA determines that the device is substantially equivalent to a predicate device, it will grant 510(k) clearance to commercially market the device. If the FDA determines that the device is "not substantially

equivalent" to a previously cleared device, the device is automatically designated as a Class III device. The device sponsor must then fulfill more rigorous requirements of the PMA approval process, or can request a risk-based classification determination for the device in accordance with the "*de novo*" process, which is a route to market for certain novel medical devices that are low to moderate risk and are not substantially equivalent to a predicate device.

Medical devices can only be marketed for the indications for use for which they are cleared or approved. After a device receives 510(k) clearance, any modification that could significantly affect its safety or effectiveness, or that would constitute a major change or modification in its intended use, will require a new 510(k) clearance or, depending on the modification, PMA approval or *de novo* reclassification. The FDA requires each manufacturer to determine whether the proposed change requires submission of a 510(k), *de novo* request or a PMA in the first instance, but the FDA may review this determination to evaluate the regulatory status of the modified product at any time and may require the manufacturer to cease marketing and/or request the recall of the modified device until 510(k) marketing clearance or PMA approval is obtained or a *de novo* request is granted. Also, in these circumstances, the manufacturer may be subject to significant regulatory fines or penalties.

Over the last several years, the FDA has proposed reforms to its 510(k) clearance process, and such proposals could include increased requirements for clinical data and a longer review period, or could make it more difficult for manufacturers to utilize the 510(k) clearance process for their products. For example, in November 2018, FDA officials announced steps that the FDA intended to take to modernize the premarket notification pathway under Section 510(k) of the FDCA. Among other things, the FDA announced that it planned to develop proposals to drive manufacturers utilizing the 510(k) pathway toward the use of newer predicates. These proposals included plans to potentially sunset certain older devices that were used as predicates under the 510(k) clearance pathway, and to potentially publish a list of devices that have been cleared on the basis of demonstrated substantial equivalence to predicate devices that are more than 10 years old. These proposals have not yet been finalized or adopted, although the FDA may work with Congress to implement such proposals through legislation.

More recently, in September 2019, the FDA issued revised final guidance describing an optional "safety and performance based" premarket review pathway for manufacturers of "certain, well-understood device types" to demonstrate substantial equivalence under the 510(k) clearance pathway by showing that such device meets objective safety and performance criteria established by the FDA, thereby obviating the need for manufacturers to compare the safety and performance of their medical devices to specific predicate devices in the clearance process. The FDA has developed and maintains a list device types appropriate for the "safety and performance based" pathway and continues to develop product-specific guidance documents that identify the performance criteria for each such device type, as well as recommended testing methods, where feasible.

PMA Approval Process

Class III devices require PMA approval before they can be marketed, although some pre-amendment Class III devices for which FDA has not yet required a PMA are cleared through the 510(k) process. The PMA process is more demanding than the 510(k) premarket notification process. In a PMA, the manufacturer must demonstrate that the device is safe and effective for its intended use, and the PMA must be supported by extensive data, including data from preclinical studies and human clinical trials. The PMA must also contain a full description of the device and its components, a full description of the methods, facilities, and controls used for manufacturing, and proposed labeling. Following receipt of a PMA, the FDA conducts an administrative review to determine whether the application is sufficiently complete to permit a substantive review. If it is not, the agency will refuse to file the PMA. If FDA accepts the application for substantive review, it has 180 days under the FDCA to complete its review of a filed PMA application, although in practice, the FDA's review often takes significantly longer, and can take up to several years. During this review period, the FDA may request additional information or clarification of information already provided, and the FDA may issue a major

deficiency letter to the applicant, requesting the applicant's response to deficiencies communicated by the FDA. The FDA considers a PMA or PMA supplement to have been voluntarily withdrawn if an applicant fails to respond to an FDA request for information (e.g., major deficiency letter) within a total of 360 days. Before approving or denying a PMA application, an advisory panel of experts from outside the FDA may be convened to review and evaluate the application and provide recommendations to the FDA as to whether the FDA should approve the submission, approve it with specific conditions, or not approve it. The FDA may or may not accept the panel's recommendation. Prior to approval of a PMA, the FDA may conduct inspections of the clinical trial data and clinical trial sites, as well as conduct inspections of the applicant or its third-party manufacturers' or suppliers' manufacturing facility or facilities to, among other things, ensure compliance with the QSR. PMA applications are also subject to the payment of user fees, which for fiscal year 2021 includes a standard application fee of $365,657.

Overall, the FDA review of a PMA application generally takes between one and three years, but may take significantly longer. The FDA can delay, limit or deny approval of a PMA application for many reasons, including:

- The device may not be shown safe or effective to the FDA's satisfaction;
- The data from pre-clinical studies and/or clinical trials may be found unreliable or insufficient to support approval;
- The manufacturing process or facilities may not meet applicable requirements; and
- Changes in FDA approval policies or adoption of new regulations may require additional data.

If the FDA evaluation of a PMA is favorable, the FDA will issue either an approval letter, or an approvable letter, the latter of which usually contains a number of conditions that must be met in order to secure final approval of the PMA. When and if those conditions have been fulfilled to the satisfaction of the FDA, the agency will issue a PMA approval letter authorizing commercial marketing of the device, subject to the conditions of approval and the limitations established in the approval letter. The FDA may approve a PMA with post-approval conditions intended to ensure the safety and effectiveness of the device, including, among other things, restrictions on labeling, promotion, sale and distribution, and collection of long-term follow-up data from patients in the clinical study that supported PMA approval or requirements to conduct additional clinical studies post-approval. The FDA may condition PMA approval on some form of post-market surveillance when deemed necessary to protect the public health or to provide additional safety and effectiveness data for the device in a larger population or for a longer period of use. In such cases, the manufacturer might be required to follow certain patient groups for a number of years and to make periodic reports to the FDA on the clinical status of those patients. Failure to comply with the conditions of approval can result in material adverse enforcement action, including withdrawal of the approval. If the FDA's evaluation of a PMA application or manufacturing facilities is not favorable, the FDA will deny approval of the PMA or issue a not approvable letter. The FDA also may determine that additional tests or clinical trials are necessary, in which case the PMA approval may be delayed for several months or years while the trials are conducted and data is submitted in an amendment to the PMA, or the PMA is withdrawn and resubmitted when the data are available. The PMA process can be expensive, uncertain and lengthy and a number of devices for which the FDA approval has been sought by other companies have never been approved by the FDA for marketing.

Certain changes to an approved device, such as changes in manufacturing facilities, methods, quality control procedures, sterilization, packaging, expiration date, labeling, device specifications, ingredients, materials, or design of a device, or other changes which affect the safety or effectiveness of the device that has been approved through the PMA process require submission of a new PMA or PMA supplement. PMA supplements often require submission of the same type of information as a PMA, except that the supplement is limited to information needed to support any changes from the device covered by the original, approved PMA and may not require as extensive clinical data or the convening of an advisory panel, depending on the nature of the proposed change. Certain other changes to an approved device require the submission of a new PMA, such as when the

design change causes a different intended use, mode of operation, and technical basis of operation, or when the design change is so significant that a new generation of the device will be developed, and the data that were submitted with the original PMA are not applicable for the change in demonstrating a reasonable assurance of safety and effectiveness. None of our products are currently marketed pursuant to a PMA.

Ongoing Regulation by the FDA

Even after the FDA permits a device to be marketed, numerous and pervasive regulatory requirements continue to apply. These include:

- Establishment registration and device listing with the FDA;
- QSR requirements, which require manufacturers, including third-party manufacturers, to follow stringent design, testing, control, supplier/contractor selection, compliant handling, documentation and other quality assurance procedures during all aspects of the design and manufacturing process;
- Labeling regulations, advertising and promotion requirements, restrictions on sale, distribution or sale of a device, each including the FDA prohibition against the promotion of products for any uses other than those authorized by the FDA, which are commonly known as "off-label" uses;
- The Medical Device Reporting, or MDR, regulations, which require that a manufacturer report to the FDA if a device it markets may have caused or contributed to a death or serious injury, or has malfunctioned and the device or a similar device that it markets would be likely to cause or contribute to a death or serious injury, if the malfunction were to recur;
- Medical device correction and removal reporting regulations, which require that manufacturers report to the FDA field corrections or removals if undertaken to reduce a risk to health posed by the device or to remedy a violation of the FDCA that may present a risk to health;
- Recall requirements, including a mandatory recall if there is a reasonable probability that the device would cause serious adverse health consequences or death;
- An order of repair, replacement, or refund;
- Device tracking requirements; and
- Post-market study and surveillance requirements.

After a device receives 510(k) clearance, any modification that could significantly affects its safety or effectiveness, or that would constitute a major change in its intended use, will require a new 510(k) or possibly a PMA. The FDA requires each manufacturer to make this determination initially, but the FDA can review any such decision and can disagree with a manufacturer's determination. If the FDA disagrees with our determination not to seek a new 510(k) clearance, the FDA may retroactively require us to seek 510(k) clearance or possibly a PMA. The FDA could also require us to cease marketing and distribution and/or recall the modified device until 510(k) clearance or a PMA is obtained. Also, in these circumstances, we may be subject to significant regulatory fines and penalties.

Some changes to an approved PMA device, including changes in indications, labeling, or manufacturing processes or facilities, require submission and FDA approval of a new PMA application or PMA supplement, as appropriate, before the change can be implemented. Supplements to a PMA often require the submission of the same type of information required for an original PMA application, except that the supplement is generally limited to that information needed to support the proposed change from the device covered by the original PMA. The FDA uses the same procedures and actions in reviewing PMA supplements as it does in reviewing original PMA applications.

FDA regulations require us to register as a medical device manufacturer with the FDA. Additionally, some states also require medical device manufacturers and/or distributors doing business within the state to register

with the state or apply for a state license, which could subject our facility to state inspection as well as FDA inspection on a routine basis for compliance with the QSR and any applicable state requirements. These regulations require that we manufacture our products and maintain related documentation in a prescribed manner with respect to manufacturing, testing and control activities.

Manufacturing processes for medical devices are required to comply with the applicable portions of the QSR, which cover the methods and the facilities and controls for the design, manufacture, testing, production, processes, controls, quality assurance, labeling, packaging, distribution, installation and servicing of finished devices intended for human use. The QSR also requires, among other things, maintenance of a device master file, device history file, and complaint files. As a manufacturer, we are subject to periodic scheduled or unscheduled inspections by the FDA. Failure to maintain compliance with the QSR requirements could result in the shutdown of, or restrictions on, manufacturing operations and the recall or seizure of marketed products, which would have a material adverse effect on our business. The discovery of previously unknown problems with any of our products, including unanticipated adverse events or adverse events of increasing severity or frequency, whether resulting from the use of the device within the scope of its clearance or off-label by a physician in the practice of medicine, could result in restrictions on the device, including the removal of the product from the market or voluntary or mandatory device recalls.

The FDA has broad regulatory compliance and enforcement powers. If the FDA determines that a manufacturer has failed to comply with applicable regulatory requirements, it can take a variety of compliance or enforcement actions, which may result in any of the following sanctions:

- Warning letters, untitled letters, fines, injunctions, consent decrees and civil penalties;
- Recalls, withdrawals, or administrative detention or seizure of our products;
- Operating restrictions or partial suspension or total shutdown of production;
- Refusing or delays in processing, clearing, or approving submissions or applications for new products or modifications to existing products;
- Suspension or withdrawal of 510(k) clearances or PMA approvals that have already been granted;
- FDA refusal to issue certification to foreign governments needed to export our products for sale in other countries; or
- Criminal prosecution.

Our facilities, records and manufacturing processes are subject to periodic unscheduled inspections by the FDA. Failure to comply with the applicable United States medical device regulatory requirements could result in, among other things, warning letters, untitled letters, fines, injunctions, consent decrees, civil penalties, unanticipated expenditures, repairs, replacements, refunds, recalls or seizures of products, operating restrictions, total or partial suspension of production, the FDA's refusal to issue certificates to foreign governments needed to export products for sale in other countries, the FDA's refusal to grant future premarket clearances or approvals, withdrawals or suspensions of current product clearances or approvals and criminal prosecution.

Regulation of Medical Devices in the European Union

The European Union, or EU, has adopted specific directives regulating the design, manufacture, clinical investigations, conformity assessment, labeling and adverse event reporting for medical devices. EU directives must be implemented into the national laws of the EU member states and national laws may vary from one member state to another.

In the EU, there is currently no premarket government review of medical devices. However, the EU requires that all medical devices placed on the market in the EU must meet the relevant essential requirements laid down

in the Council Directive 93/42/EEC, or the Medical Devices Directive, and the Council Directive 90/385/EEC, or the Active Implantable Medical Devices Directive. The most fundamental essential requirement is that a medical device must be designed and manufactured in such a way that it will not compromise the clinical condition or safety of patients, or the safety and health of users and others. In addition, the device must achieve the performances intended by the manufacturer and be designed, manufactured, and packaged in a suitable manner. The European Commission has adopted various standards applicable to medical devices. These include standards governing common requirements, such as sterilization and safety of medical electrical equipment and product standards for certain types of medical devices. There are also harmonized standards relating to design and manufacture. While not mandatory, compliance with these standards is viewed as the easiest way to satisfy the essential requirements as a practical matter. Compliance with a standard developed to implement an essential requirement also creates a rebuttable presumption that the device satisfies that essential requirement.

To demonstrate compliance with the essential requirements laid down in Annex I to the Medical Devices Directive, medical device manufacturers must undergo a conformity assessment procedure, which varies according to the type of medical device and its (risk) classification. Conformity assessment procedures require an assessment of available clinical evidence, literature data for the product, and post-market experience in respect of similar products already marketed. Except for low-risk medical devices (Class I non-sterile, non-measuring devices), where the manufacturer can self-declare the conformity of its products with the essential requirements (except for any parts which relate to sterility or metrology), a conformity assessment procedure requires the intervention of a Notified Body. Notified Bodies are independent organizations designated by EU countries to assess the conformity of devices before being placed on the market. A Notified Body would typically audit and examine a product's technical dossiers and the manufacturers' quality system (which must, in particular, comply with ISO 13485:2016 related to Medical Devices Quality Management Systems). If satisfied that the relevant product conforms to the relevant essential requirements, the Notified Body issues a certificate of conformity, which the manufacturer uses as a basis for its own declaration of conformity. The manufacturer may then apply the CE Mark to the device, which allows the device to be placed on the market throughout the EU.

Notified Body certificates of conformity are valid for a fixed duration (which shall not exceed five years). Throughout the term of the certificate, the manufacturer will be subject to periodic surveillance audits to verify continued compliance with the applicable requirements. In particular, there will be a new audit by the Notified Body before it will renew the relevant certificate(s).

As a general rule, demonstration of conformity of medical devices and their manufacturers with the essential requirements must be based, among other things, on the evaluation of clinical data supporting the safety and performance of the products during normal conditions of use. Specifically, a manufacturer must demonstrate that the device achieves its intended performance during normal conditions of use, that the known and foreseeable risks, and any adverse events, are minimized and acceptable when weighed against the benefits of its intended performance, and that any claims made about the performance and safety of the device are supported by suitable evidence. All manufacturers placing medical devices into the market in the EU must comply with the EU medical device vigilance system. Under this system, incidents must be reported to the relevant authorities of the EU member states, and manufacturers are required to take Field Safety Corrective Actions, or FSCAs, to reduce a risk of death or serious deterioration in the state of health associated with the use of a medical device that is already placed on the market. An incident is defined as any malfunction or deterioration in the characteristics and/or performance of a device, as well as any inadequacy in the labeling or the instructions for use which, directly or indirectly, might lead to or might have led to the death of a patient or user or of other persons or to a serious deterioration in their state of health. An FSCA may include the recall, modification, exchange, destruction or retrofitting of the device. FSCAs must be communicated by the manufacturer or its legal representative to its customers and/or to the end users of the device through Field Safety Notices.

The advertising and promotion of medical devices is subject to some general principles set forth by EU directives. According to the Medical Devices Directive, only devices that are CE-marked may be marketed and advertised in the EU in accordance with their intended purpose. Directive 2006/114/EC concerning misleading

and comparative advertising and Directive 2005/29/EC on unfair commercial practices, while not specific to the advertising of medical devices, also apply to the advertising thereof and contain general rules, for example requiring that advertisements are evidenced, balanced and not misleading. Specific requirements are defined at national level. EU member states laws related to the advertising and promotion of medical devices, which vary between jurisdictions, may limit or restrict the advertising and promotion of products to the general public and may impose limitations on promotional activities with healthcare professionals.

Many EU member states have adopted specific anti-gift statutes that further limit commercial practices for medical devices, in particular vis-à -vis healthcare professionals and organizations. Additionally, there has been a recent trend of increased regulation of payments and transfers of value provided to healthcare professionals or entities. In addition, many EU member states have adopted national "Sunshine Acts" which impose reporting and transparency requirements (often on an annual basis), similar to the requirements in the United States, on medical device manufacturers. Certain countries also mandate implementation of commercial compliance programs.

On May 25, 2017, Regulation 2017/745, or the EU Medical Devices Regulation, entered into force, which repeals and replaces the Medical Devices Directive and the Active Implantable Medical Devices Directive. Unlike directives, which must be implemented into the national laws of the EU member states, regulations are directly applicable, without the need for adoption of EU member state laws implementing them, in all EU member states and are intended to eliminate current differences in the regulation of medical devices among EU member states. The Medical Devices Regulation, among other things, is intended to establish a uniform, transparent, predictable and sustainable regulatory framework across the EU for medical devices and ensure a high level of safety and health while supporting innovation.

The Medical Devices Regulation was originally intended to become applicable three years after publication, but in April 2020 the transition period was extended by the European Parliament and the Council of the EU by an additional year – until May 26, 2021. Devices lawfully placed on the market pursuant to the Medical Devices Directive and the Active Implantable Medical Devices Directive prior to May 26, 2021 may generally continue to be made available on the market or put into service until May 26, 2025. Once applicable, the new regulations will among other things:

- Strengthen the rules on placing devices on the market and reinforce surveillance once they are available;
- Establish explicit provisions on manufacturers' responsibilities for the follow-up of the quality, performance and safety of devices placed on the market;
- Improve the traceability of medical devices throughout the supply chain to the end-user or patient through a unique identification number;
- Set up a central database to provide patients, healthcare professionals and the public with comprehensive information on products available in the European Union, or EU; and
- Strengthen the rules for the assessment of certain high-risk devices, which may have to undergo an additional check by experts before they are placed on the market.

The aforementioned EU rules are generally applicable in the European Economic Area, or EEA, which consists of the 27 EU member states plus Norway, Liechtenstein and Iceland. Other countries, such as Switzerland, have entered into Mutual Recognition Agreements and allow the marketing of medical devices that meet EU requirements.

The EU-UK Trade and Cooperation Agreement, or TCA, came into effect on January 1, 2021. The TCA does not specifically refer to medical devices. However, as a result of Brexit, the Medical Devices Regulation will not be implemented in the UK, and previous legislation that mirrored the Medical Devices Regulation in the UK law has been revoked. The regulatory regime for medical devices in the UK will continue to be based on the

requirements derived from current EU legislation, and the UK may choose to retain regulatory flexibility or align with the Medical Devices Regulation going forward. CE markings will continue to be recognized in the UK, and certificates issued by EU recognized Notified Bodies will be valid in the UK, until June 30, 2023. For medical devices placed on the UK market after this period, the UK Conformity Assessment, or UKCA, marking will be mandatory. In contrast, UKCA marking and certificates issued by UK Notified Bodies will not be recognized on the EU market. The TCA does provide for cooperation and exchange of information in the area of product safety and compliance, including market surveillance, enforcement activities and measures, standardization related activities, exchanges of officials, and coordinated product recalls (or other similar actions). For medical devices that are locally manufactured but use components from other countries, the "rules of origin" criteria will need to be reviewed. Depending on which countries products will ultimately be sold in, manufacturers may start seeking alternative sources for components if this would allow them to benefit from no tariffs. The rules for placing medical devices on the Northern Ireland market will differ from those in the UK.

Healthcare Fraud and Abuse Laws

In the United States, we are subject to a number of federal and state healthcare regulatory laws that restrict business practices in the healthcare industry. These laws include, but are not limited to, federal and state anti-kickback, false claims, transparency and other healthcare fraud and abuse laws.

The U.S. federal Anti-Kickback Statute prohibits, among other things, any person or entity from knowingly and willfully offering, paying, soliciting, receiving or providing any remuneration, directly or indirectly, overtly or covertly, to induce or in return for purchasing, leasing, ordering, or arranging for or recommending the purchase, lease, or order of any good, facility, item or service reimbursable, in whole or in part, under Medicare, Medicaid or other federal healthcare programs. The term "remuneration" has been broadly interpreted to include anything of value, including cash, improper discounts, and free or reduced price items and services. Among other things, the Anti-Kickback Statute has been interpreted to apply to arrangements between medical device manufacturers on the one hand and prescribers and purchasers on the other. Although there are a number of statutory exceptions and regulatory safe harbors protecting some common activities from prosecution, the exceptions and safe harbors are drawn narrowly. The government can exercise enforcement discretion in taking action against unprotected activities. Further, a person or entity does not need to have actual knowledge of the statute or specific intent to violate it in order to have committed a violation. The majority of states also have anti-kickback laws, which establish similar prohibitions, and in some cases may apply to items or services reimbursed by any third-party payor, including commercial insurers and self-pay patients.

The federal false claims, including the civil False Claims Act, prohibit, among other things, any person or entity from knowingly presenting, or causing to be presented, a false, fictitious or fraudulent claim for payment to, or approval by, the federal government, knowingly making, using, or causing to be made or used a false record or statement material to a false or fraudulent claim to the federal government, or knowingly making a false statement to avoid, decrease or conceal an obligation to pay money to the U.S. federal government. A claim includes "any request or demand" for money or property presented to the U.S. government. Actions under the civil False Claims Act may be brought by the Attorney General or as a qui tam action by a private individual in the name of the government. Moreover, a claim including items or services resulting from a violation of the U.S. federal Anti-Kickback Statute constitutes a false or fraudulent claim for purposes of the federal civil False Claims Act. In addition, various states have enacted false claim laws analogous to the federal False Claims Act, although many of these state laws apply where a claim is submitted to any third-party payor and not merely a federal healthcare program.

The federal Health Insurance Portability and Accountability Act of 1996 created additional federal criminal statutes that prohibit, among other actions, knowingly and willfully executing, or attempting to execute, a scheme to defraud any healthcare benefit program, including private third-party payors, knowingly and willfully embezzling or stealing from a healthcare benefit program, willfully obstructing a criminal investigation of a healthcare offense, and knowingly and willfully falsifying, concealing or covering up a material fact or making

any materially false, fictitious or fraudulent statement in connection with the delivery of or payment for healthcare benefits, items or services. Similar to the U.S. federal Anti-Kickback Statute, a person or entity does not need to have actual knowledge of the statute or specific intent to violate it in order to have committed a violation.

The federal Physician Payments Sunshine Act requires certain manufacturers of drugs, devices, biologics and medical supplies for which payment is available under Medicare, Medicaid or the Children's Health Insurance Program, with specific exceptions, to report annually to the Centers for Medicare & Medicaid Services, or CMS, information related to payments or other transfers of value made to physicians (defined to include doctors, dentists, optometrists, podiatrists and chiropractors), and teaching hospitals, and applicable manufacturers and applicable group purchasing organizations to report annually to CMS ownership and investment interests held by physicians and their immediate family members. Beginning in 2022, such obligations will include payments and other transfers of value provided in the previous year to additional healthcare professionals, including physician assistants, nurse practitioners, clinical nurse specialists, certified nurse anesthetists, anesthesiologist assistants and certified nurse midwives.

Violations of fraud and abuse laws, including federal and state anti-kickback and false claims laws, may be punishable by criminal and civil sanctions, including fines and civil monetary penalties, the possibility of exclusion from federal healthcare programs (including Medicare and Medicaid), disgorgement and corporate integrity agreements, which impose, among other things, rigorous operational and monitoring requirements on companies. Similar sanctions and penalties, as well as imprisonment, also can be imposed upon executive officers and employees of such companies.

Coverage and Reimbursement

In the United States, our currently cleared products are not separately reimbursed by any third-party payors and if covered, are paid for as part of the procedure in which the product is used. Outside of the United States, there are many reimbursement programs through private payors as well as government programs. In some countries, government reimbursement is the predominant program available to patients and hospitals. Our commercial success depends in part on the extent to which governmental authorities, private health insurers and other third-party payors provide coverage for and establish adequate reimbursement levels for the procedures in which our products are used. Failure by physicians, hospitals, ambulatory surgery centers and other users of our products to obtain coverage and adequate reimbursement from third-party payors for procedures in which our products are used, or adverse changes in government and private third-party payors' coverage and reimbursement policies, may adversely impact demand for our products.

Based on our experience to date, third-party payors generally reimburse for the procedures in which our products are used only if the patient meets the established medical necessity criteria for surgery. Some payors are moving toward a managed care system and control their healthcare costs by establishing coverage policies that categorically restrict coverage of certain procedures, or by limiting authorization for procedures, including elective procedures using our devices. No uniform policy of coverage and reimbursement among payors in the United States exists and coverage and reimbursement for procedures can differ significantly from payor to payor. Third-party payors are increasingly auditing and challenging the prices charged for medical products and services with concern for upcoding, miscoding, using inappropriate modifiers, or billing for inappropriate care settings. Some third-party payors must approve coverage for new or innovative devices or procedures before they will reimburse healthcare providers who use the products or therapies. Even though a new product may have been cleared for commercial distribution by the FDA, we may find limited demand for our product unless reimbursement approval can be obtained and/or maintained from governmental and private third-party payors.

In addition to uncertainties surrounding coverage policies, there are periodic changes to reimbursement levels. Third-party payors regularly update reimbursement amounts and also from time to time revise the methodologies used to determine reimbursement amounts. This includes routine updates to payments to

physicians, hospitals and ambulatory surgery centers for procedures during which our products are used. These updates could directly impact the demand for our products.

We believe the overall escalating cost of medical products and services being paid for by the government and private health insurance has led to, and will continue to lead to, increased pressures on the healthcare and medical device industry to reduce the costs of products and services. Third-party payors are developing increasingly sophisticated methods of controlling healthcare costs through prospective reimbursement and capitation programs, group purchasing, redesign of benefits, and exploration of more cost-effective methods of delivering healthcare. In the United States, some insured individuals enroll in managed care programs, which monitor and often require pre-approval of the services that a member will receive. Some managed care programs pay their providers on a per capita (patient) basis, which puts the providers at financial risk for the services provided to their patients by paying these providers a predetermined payment per member per month and, consequently, may limit the willingness of these providers to use our products.

In international markets, reimbursement and healthcare payment systems vary significantly by country, and many countries have instituted price ceilings on specific product lines and procedures. In the European Union, member states are facing increased pressure to limit public healthcare spending. There can be no assurance that procedures using our products will be covered for a specific indication, that our products will be considered cost-effective by third-party payors, that an adequate level of reimbursement will be available or that the third-party payors' reimbursement policies will not adversely affect our ability to sell our products profitably. More and more, local, product specific reimbursement law is applied as an overlay to medical device regulation, which has provided an additional layer of clearance requirement.

Healthcare Reform

The United States and some foreign jurisdictions are considering or have enacted a number of legislative and regulatory proposals to change the healthcare system in ways that could affect our ability to sell our products profitably. Among policy makers and payors in the United States and elsewhere, there is significant interest in promoting changes in healthcare systems with the stated goals of containing healthcare costs, improving quality or expanding access. Current and future legislative proposals to further reform healthcare or reduce healthcare costs may limit coverage of or lower reimbursement for the procedures associated with the use of our products. The cost containment measures that payors and providers are instituting and the effect of any healthcare reform initiative implemented in the future could impact our revenue from the sale of our products.

The implementation of the Affordable Care Act, or ACA, in the United States, for example, has changed healthcare financing and delivery by both governmental and private insurers substantially, and affected medical device manufacturers significantly. The ACA, among other things, provided incentives to programs that increase the federal government's comparative effectiveness research, and implemented payment system reforms including a national pilot program on payment bundling to encourage hospitals, physicians and other providers to improve the coordination, quality and efficiency of certain healthcare services through bundled payment models. Additionally, the ACA expanded eligibility criteria for Medicaid programs and created a new Patient-Centered Outcomes Research Institute to oversee, identify priorities in, and conduct comparative clinical effectiveness research, along with funding for such research. Since its enactment, there have been judicial, executive and political challenges to certain aspects of the ACA. The U.S. Supreme Court is currently reviewing the constitutionality of the ACA in its entirety, although it remains unclear how the Supreme Court will rule.

In addition, other legislative changes have been proposed and adopted since the ACA was enacted. For example, the Budget Control Act of 2011, among other things, reduced Medicare payments to providers by 2% per fiscal year, effective on April 1, 2013 and, due to subsequent legislative amendments to the statute, will remain in effect through 2030, with the exception of a temporary suspension from May 1, 2020 through March 31, 2021, unless additional Congressional action is taken. Additionally, the American Taxpayer Relief Act of 2012, among other things, further reduced Medicare payments to several providers, including hospitals, and

increased the statute of limitations period for the government to recover overpayments to providers from three to five years. The Medicare Access and CHIP Reauthorization Act of 2015 repealed the formula by which Medicare made annual payment adjustments to physicians and replaced the former formula with fixed annual updates and a new system of incentive payments that began in 2019 that are based on various performance measures and physicians' participation in alternative payment models, such as accountable care organizations.

We expect additional state and federal healthcare reform measures to be adopted in the future, any of which could limit the amounts that federal and state governments will pay for healthcare products and services, which could result in reduced demand for our products or additional pricing pressure.

Data Privacy and Security Laws

Numerous state, federal and foreign laws, including consumer protection laws and regulations, govern the collection, dissemination, use, access to, confidentiality and security of personal information, including health-related information. In the United States, numerous federal and state laws and regulations, including data breach notification laws, health information privacy and security laws, including HIPAA, and federal and state consumer protection laws and regulations (e.g., Section 5 of the FTC Act), that govern the collection, use, disclosure, and protection of health-related and other personal information could apply to our operations or the operations of our partners. In addition, certain state and non-U.S. laws, such as the CCPA, the CPRA and the GDPR, govern the privacy and security of personal information, including health-related information in certain circumstances, some of which are more stringent than HIPAA and many of which differ from each other in significant ways and may not have the same effect, thus complicating compliance efforts. Failure to comply with these laws, where applicable, can result in the imposition of significant civil and/or criminal penalties and private litigation. Privacy and security laws, regulations, and other obligations are constantly evolving, may conflict with each other to complicate compliance efforts, and can result in investigations, proceedings, or actions that lead to significant civil and/or criminal penalties and restrictions on data processing.

In Europe, the GDPR went into effect on May 25, 2018 and introduces strict requirements for processing the personal data of European Union data subjects. Companies that must comply with the GDPR face increased compliance obligations and risk, including more robust regulatory enforcement of data protection requirements and potential fines for noncompliance of up to €20 million or 4% of the annual global revenues of the preceding financial year of the noncompliant company, whichever is greater.

Among other requirements, the GDPR regulates transfers of personal data subject to the GDPR to third countries that have not been found to provide adequate protection to such personal data, including the United States, and the efficacy and longevity of current transfer mechanisms between the EU and the United States remains uncertain. For example, in 2016, the EU and United States agreed to a transfer framework for data transferred from the EU to the United States, called the Privacy Shield, but the Privacy Shield was invalidated in July 2020 by the Court of Justice of the European Union.

Further, from January 1, 2021, companies have to comply with the GDPR and also the United Kingdom General Data Protection Regulation, or the UK GDPR, which, together with the amended UK Data Protection Act 2018, retains the GDPR in UK national law. The UK GDPR mirrors the fines under the GDPR, i.e., fines up to the greater of €20 million (£17.5 million) or 4% of global turnover. The relationship between the United Kingdom and the European Union in relation to certain aspects of data protection law remains unclear, and it is also unclear how United Kingdom data protection laws and regulations will develop in the medium to longer term, and how data transfers to and from the United Kingdom will be regulated in the long term. Currently there is a four to six month grace period agreed in the EU and United Kingdom Trade and Cooperation Agreement, ending June 30, 2021 at the latest, whilst the parties discuss an adequacy decision. The European Commission published a draft adequacy decision on February 19, 2021. If adopted, the decision will enable data transfers from EU member states to the United Kingdom for a four-year period, subject to subsequent extensions.

Facilities

Our corporate headquarters are located in Menlo Park, California, where we lease approximately 10,823 square feet of office, research and development, engineering and laboratory space pursuant to a sublease agreement which was effective as of September 17, 2019 and expires on July 31, 2021. Effective August 1, 2021, we will remain in the same space under a new lease agreement with the direct landlord to that space which will extend through August 31, 2024. We believe that our existing facilities are adequate to meet our business requirements for the near-term, and that additional space will be available on commercially reasonable terms, if required.

Human Capital

As of March 31, 2021, we had 169 full-time employees. Our highly qualified and experienced team includes scientists, physicians and professionals across sales, marketing, regulatory, finance and other important functions that are critical to our success. We believe that the success of our business will depend, in part, on our ability to attract and retain qualified personnel. None of our employees are represented by a labor union or are a party to a collective bargaining agreement and we believe that we have good relations with our employees.

Our human capital resources objectives include, as applicable, identifying, recruiting, retaining, incentivizing and integrating our existing and new employees, advisors and consultants. The principal purposes of our equity and cash incentive plans are to attract, retain and reward personnel through the granting of stock-based and cash-based compensation awards, in order to increase stockholder value and the success of our company by motivating such individuals to perform to the best of their abilities and achieve our objectives.

Legal Proceedings

We are not currently a party to any material legal proceedings. We may, however, in the ordinary course of business face various claims brought by third parties, and we may, from time to time, make claims or take legal actions to assert our rights, including intellectual property rights as well as claims relating to employment matters and the safety or effectiveness of our products. Any of these claims could subject us to costly litigation, and, while we generally believe that we have adequate insurance to cover many different types of liabilities, our insurance carriers may deny coverage, may be inadequately capitalized to pay on valid claims, or our policy limits may be inadequate to fully satisfy any damage awards or settlements. If this were to happen, the payment of any such awards could have a material adverse effect on our business, financial condition and results of operations. Additionally, any such claims, whether or not successful, could damage our reputation and business.

MANAGEMENT

Executive Officers and Directors

The following table sets forth the name, age and position of each of our executive officers and directors as of the date of this prospectus.

Name	Age	Position
Executive Officers		
Paul Badawi	46	President and Chief Executive Officer and Director
David Badawi, M.D.	51	Chief Technology Officer and Director
Jesse Selnick	46	Chief Financial Officer
Shawn O'Neil	48	Chief Commercial Officer
Sam Park	60	Chief Operating Officer
Jeremy Hayden	51	Chief Legal Officer
Directors		
Staffan Encrantz	69	Chairman of the Board of Directors
Mack Hicks	40	Director
Andrew Offer	38	Director
Erica Rogers	58	Director
Valeska Schroeder, Ph.D.	48	Director
Donald Zurbay	53	Director

(1) Member of the audit committee.
(2) Member of the compensation committee.
(3) Member of the nominating and corporate governance committee.

Executive Officers

Paul Badawi is a co-founder of our Company and has served as our Chief Executive Officer and a member of our Board since the Company was founded in 2011. Mr. Badawi holds an M.B.A. from the University of California, Los Angeles and a B.S. in Biological Sciences from the University of Chicago. We believe that Mr. Badawi's experience in the industry and knowledge of our Company qualify him to serve on our board of directors.

David Badawi, M.D. is a co-founder of our Company and has served as our Chief Technology Officer and a member of our Board since the Company was founded in 2011. Since 2012, Dr. Badawi has also served as the president and a practicing ophthalmologist at Central Eye Care Ltd, an ophthalmology practice. Dr. Badawi holds an M.D. from Georgetown University and a B.S. in Microbiology from the University of Maryland. We believe that Dr. Badawi's medical experience and knowledge of our Company qualify him to serve on our board of directors.

Jesse Selnick has served as our Chief Financial Officer since January 2018. From March 2012 to March 2017, Mr. Selnick served as the Chief Financial Officer and a member of the board of Electric Lightwave (previously known as Integra Telecom), a telecom infrastructure company, until its purchase by Zayo Group Holdings, Inc. in March 2017. Prior to that, Mr. Selnick worked at The Blackstone Group from 2003 to February 2012, where he most recently served as Managing Director. Mr. Selnick holds an M.B.A. from Harvard Business School and a B.S. in Economics from the Wharton School at the University of Pennsylvania.

Shawn O'Neil has served as our Chief Commercial Officer since October 2017. From October 2003 to October 2017, Mr. O'Neil held various leadership positions at Alcon, Inc., a global leader in eye care, where he most recently served as the Head of Sales and Marketing, Surgical Glaucoma. Mr. O'Neil holds a B.A. in Economics from Princeton University.

Sam Park has served as our Chief Operating Officer since March 2020. From March 2016 to May 2019, Mr. Park served as the founder and Chief Executive Officer of Park Medical, a medical device company. Mr. Park holds a B.S. in Mechanical Engineering from the University of California, Irvine.

Jeremy Hayden has served as our Chief Legal Officer since April 2020. From August 2017 to April 2020, Mr. Hayden served as General Counsel of Endologix, Inc. Prior to that, Mr. Hayden served as General Counsel and Vice President, Business Development at Cytori Therapeutics, Inc. from July 2016 to August 2017 and from May 2012 to August 2017 he served as Assistant General Counsel at Volcano Corporation, publicly traded medical device company that was acquired by Royal Phillips in 2015. Mr. Hayden holds a J.D. from the University of Michigan Law School and an A.B. in Politics from Princeton University. Endologix, Inc. filed for Chapter 11 bankruptcy in July 2020.

Directors

Staffan Encrantz has served as a member of our Board since 2017. Mr. Encrantz is the founder of Allegro Investment Fund, L.P. and has served as its chairman since 1997. Mr. Encrantz holds a law degree from Uppsala University, Sweden. We believe that Mr. Encrantz' financial and industry experience qualify him to serve on our board of directors.

Mack Hicks has served as a member of our Board since 2011. Since 2007, Mr. Hicks has been a Partner of Hicks Holdings LLC, an investment company. Prior to that, Mr. Hicks served as a research analyst at Halcyon Asset Management from 2005 to 2006 and worked at Credit Suisse in 2004. Mr. Hicks holds a B.A. in History from the University of Texas at Austin. We believe that Mr. Hicks' financial and industry experience qualify him to serve on our board of directors.

Andrew Offer has served as a member of our Board since September 2020. Since 2007, Mr. Offer has held various positions, and currently serves as the Chief Executive Officer of Scientific Health Development, a healthcare investment company. From 2004 to 2007, Mr. Offer served as a senior analyst and associate at Value Management Group, a healthcare transaction advisory company. Mr. Offer holds a B.B.A. in Finance from the Mays School of Business at Texas A&M University. We believe that Mr. Offer's experience in the healthcare industry qualifies him to serve on our board of directors.

Erica Rogers has served as a member of our Board since November 2019. Since October 2012, Ms. Rogers has served as President and Chief Executive Officer and a member of the board of Silk Road Medical, a medical device company. Ms. Rogers is also a director of Lucira Health, a diagnostics company, and currently serves as an advisor to Alydia Health and Venture Investors. Ms. Rogers holds a B.S. in Zoology from San Diego State University. We believe that Ms. Rogers' experience in the medical device industry qualifies her to serve on our board of directors.

Valeska Schroeder, Ph.D. has served as a member of our Board since 2019. Since 2016, Dr. Schroeder has served as a Managing Director of KCK Medical Technologies, a single family evergreen fund that invests in medical technologies. From March 2014 to July 2016, Dr. Schroeder served as Senior Vice President, Product Management of Vital Connect, Inc., a wearable biosensor technology company. Dr. Schroeder holds a Ph.D., M.S. and B.S. in Materials Sciences and Engineering from the University of California at Berkeley. We believe that Dr. Schroeder's experience in the healthcare industry qualifies her to serve on our board of directors.

Donald Zurbay has served as a member of our Board since July 2020. Since June 2018, Mr. Zurbay has served as the Chief Financial Officer of Patterson Companies, a global medical device company. Before that, from March 2004 to February 2017, Mr. Zurbay held various leadership positions at St. Jude Medical, Inc., where he most recently served as Vice President and Chief Financial Officer from August 2012 to January 2017. Mr. Zurbay currently serves on the board of Silk Road Medical. Mr. Zurbay holds a B.S. in Business Accounting from the University of Minnesota. We believe that Mr. Zurbay's experience with publicly-traded healthcare companies and financial expertise qualify him to serve on our board of directors.

Board Composition and Election of Directors

Director Independence

Our board of directors currently consists of members. Our board of directors has determined that, of our directors, , , , , and do not have a relationship that would interfere with the exercise of independent judgment in carrying out the responsibilities of a director and that each of these directors is "independent" as that term is defined under the rules of The Nasdaq Stock Market LLC, or the Nasdaq Rules. The Nasdaq Rules' independence definition includes a series of objective tests, such as that the director is not, and has not been for at least three years, one of our employees and that neither the director nor any of his or her family members has engaged in various types of business dealings with us. In addition, as required by the Nasdaq Rules, our board of directors has made a subjective determination as to each independent director that no relationships exist that, in the opinion of our board of directors, would interfere with the exercise of independent judgment in carrying out the responsibilities of a director. In making these determinations, our board of directors reviewed information provided by the directors and us with regard to each director's business and personal activities and relationships as they may relate to us and our management. There are no family relationships among any of our directors or executive officers.

Classified Board of Directors

In accordance with our restated certificate of incorporation that will go into effect upon the closing of this offering, our board of directors will be divided into three classes with staggered, three-year terms. At each annual meeting of stockholders, the successors to directors whose terms then expire will be elected to serve from the time of election and qualification until the third annual meeting following election. Effective upon the closing of this offering, our directors will be divided among the three classes as follows:

- The Class I directors will be , , and , and their terms will expire at our first annual meeting of stockholders following this offering;
- The Class II directors will be , and , and their terms will expire at our second annual meeting of stockholders following this offering; and
- The Class III directors will be , and , and their terms will expire at the third annual meeting of stockholders following this offering.

Our restated certificate of incorporation that will go into effect upon the closing of this offering will provide that the authorized number of directors may be changed only by resolution of the board of directors. Any additional directorships resulting from an increase in the number of directors will be distributed among the three classes so that, as nearly as possible, each class will consist of one-third of the directors. The division of our board of directors into three classes with staggered three-year terms may delay or prevent a change of our management or a change in control of our company. Our directors may be removed only for cause by the affirmative vote of the holders of at least two-thirds of our outstanding voting stock entitled to vote in the election of directors.

Our directors were elected to and currently serve on the board pursuant to a voting agreement among us and several of our largest stockholders. See "Certain Relationships and Related Party Transactions—Voting Agreement." This agreement will terminate upon the closing of this offering, after which there will be no further contractual obligations regarding the election of our directors.

Board Leadership Structure

Our board of directors is currently chaired by . Our corporate governance guidelines provide that, if the chairman of the board is a member of management or does not otherwise qualify as independent, the independent directors of the board may elect a lead director. The lead director's responsibilities include, but are

not limited to: presiding over all meetings of the board of directors at which the chairman is not present, including any executive sessions of the independent directors; approving board meeting schedules and agendas; and acting as the liaison between the independent directors and the chief executive officer and chairman of the board. Our corporate governance guidelines further provide the flexibility for our board of directors to modify our leadership structure in the future as it deems appropriate.

Role of the Board in Risk Oversight

One of the key functions of our board of directors is informed oversight of our risk management process. Our board of directors does not have a standing risk management committee, but rather administers this oversight function directly through our board of directors as a whole, as well as through various standing committees of our board of directors that address risks inherent in their respective areas of oversight. In particular, our board of directors is responsible for monitoring and assessing strategic risk exposure and our audit committee has the responsibility to consider and discuss our major financial risk exposures and the steps our management has taken to monitor and control these exposures, including guidelines and policies to govern the process by which risk assessment and management is undertaken. Our audit committee also monitors compliance with legal and regulatory requirements. Our nominating and corporate governance committee monitors the effectiveness of our corporate governance practices, including whether they are successful in preventing illegal or improper liability-creating conduct. Our compensation committee assesses and monitors whether any of our compensation policies and programs has the potential to encourage excessive risk-taking. While each committee is responsible for evaluating certain risks and overseeing the management of such risks, our entire board of directors is regularly informed through committee reports about such risks.

Board Committees

Our board of directors has established three standing committees—audit, compensation and nominating and corporate governance—each of which operates under a charter that has been approved by our board of directors. Upon our listing on The Nasdaq Global Market, each committee's charter will be available under the Corporate Governance section of our website at *www.sightsciences.com*. The reference to our website address does not constitute incorporation by reference of the information contained at or available through our website, and you should not consider it to be a part of this prospectus.

Audit Committee

The audit committee's responsibilities include:

- Appointing, approving the compensation of, and assessing the independence of our registered public accounting firm;
- Overseeing the work of our registered public accounting firm, including through the receipt and consideration of reports from such firm;
- Reviewing and discussing with management and the registered public accounting firm our annual and quarterly financial statements and related disclosures;
- Coordinating our board of directors' oversight of our internal control over financial reporting, disclosure controls and procedures and code of business conduct and ethics;
- Discussing our risk management policies;
- Meeting independently with our internal auditing staff, if any, registered public accounting firm and management;
- Reviewing and approving or ratifying any related person transactions; and
- Preparing the audit committee report required by Securities and Exchange Commission, or SEC, rules.

The members of our audit committee are , and . serves as the chairperson of the committee. All members of our audit committee meet the requirements for financial literacy under the Nasdaq Rules. Our board of directors has determined that and meet the independence requirements of Rule 10A-3 under the Exchange Act and the applicable Nasdaq Rules. Our board of directors has determined that is an "audit committee financial expert" as defined by applicable SEC rules and has the requisite financial sophistication as defined under the applicable Nasdaq Rules.

Compensation Committee

The compensation committee's responsibilities include:

- Reviewing and approving, or recommending for approval by the board of directors, the compensation of our CEO and our other executive officers;
- Overseeing and administering our cash and equity incentive plans;
- Reviewing and making recommendations to our board of directors with respect to director compensation;
- Reviewing and discussing annually with management our "Compensation Discussion and Analysis," to the extent required; and
- Preparing the annual compensation committee report required by SEC rules, to the extent required.

The members of our compensation committee are , and . serves as the chairperson of the committee. Our board of directors has determined that each of , and is independent under the applicable Nasdaq Rules, including the Nasdaq Rules specific to membership on the compensation committee, and is a "non-employee director" as defined in Rule 16b-3 promulgated under the Exchange Act.

Nominating and Corporate Governance Committee

The nominating and corporate governance committee's responsibilities include:

- Identifying individuals qualified to become board members;
- Recommending to our board of directors the persons to be nominated for election as directors and to each board committee;
- Developing and recommending to our board of directors corporate governance guidelines, and reviewing and recommending to our board of directors proposed changes to our corporate governance guidelines from time to time; and
- Overseeing a periodic evaluation of our board of directors.

The members of our nominating and corporate governance committee are , and . serves as the chairperson of the committee. Our board of directors has determined that , and are independent under the applicable Nasdaq Rules.

Compensation Committee Interlocks and Insider Participation

No member of our compensation committee is or has been our current or former officer or employee. None of our executive officers served as a director or a member of a compensation committee (or other committee serving an equivalent function) of any other entity, one of whose executive officers served as a director or member of our compensation committee during the fiscal year ended December 31, 2020.

Code of Ethics and Code of Conduct

We have adopted a written code of business conduct and ethics that applies to our directors, officers and employees, including our principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions. Upon our listing on The Nasdaq Global Market, our code of business conduct and ethics will be available under the Corporate Governance section of our website at *www.sightsciences.com*. In addition, we intend to post on our website all disclosures that are required by law or the Nasdaq Rules concerning any amendments to, or waivers from, any provision of the code. The reference to our website address does not constitute incorporation by reference of the information contained at or available through our website, and you should not consider it to be a part of this prospectus.

EXECUTIVE AND DIRECTOR COMPENSATION

This section discusses the material components of the executive compensation program for our named executive officers. We are an "emerging growth company," within the meaning of the JOBS Act, and have elected to comply with the reduced compensation disclosure requirements available to emerging growth companies under the JOBS Act. For 2020, our named executive officers and their positions were:

- Paul Badawi, President and Chief Executive Officer;
- Shawn O'Neil, Chief Commercial Officer; and
- Sam Park, Chief Operating Officer.

This discussion may contain forward-looking statements that are based on our current plans, considerations, expectations and determinations regarding future compensation programs. Actual compensation programs that we adopt following the completion of this offering may differ materially from the currently planned programs summarized in this discussion.

2020 Summary Compensation Table

The following table sets forth all of the compensation awarded to or earned by or paid to our named executive officers during 2020.

Name and Principal Position	Year	Salary ($)	Option Awards ($)(2)	Non-Equity Incentive Plan Compensation ($)(3)	All Other Compensation ($)	Total
Paul Badawi President and Chief Executive Officer	2020	360,000	—	136,710	—	$496,710
Shawn O'Neil Chief Commercial Officer	2020	300,000	143,886	90,628	—	$534,514
Sam Park(1) Chief Operating Officer	2020	332,326	165,406	113,925	—	$611,657

(1) Mr. Park served as a consultant to the Company from January 1, 2020 until March 13, 2020, the date he commenced employment as our Chief Operating Officer. Amounts shown for Mr. Park include $93,672 in consulting fees and $238,654 in base salary earned as an employee.

(2) Amounts reflect the full grant-date fair value of stock options granted during 2020 computed in accordance with ASC Topic 718, rather than the amounts paid to or realized by the named individual. We provide information regarding the assumptions used to calculate the value of the stock option awards made to named executive officers in Note 11 to the audited consolidated financial statements included in this prospectus.

(3) Amounts represent bonuses earned by our named executive officers for 2020 under the Company's annual incentive program. Refer to "—Annual Incentive Compensation" below for additional information regarding the Company's annual incentive program for 2020.

Narrative to Summary Compensation Table

Primary Elements of Our Executive Compensation Program

For 2020, the primary elements of our named executive officers' compensation were base salary, annual cash incentive bonuses and long-term equity incentive compensation.

Base Salaries

The base salaries of our named executive officers are an important part of their total compensation package and are intended to reflect their respective positions, duties and responsibilities. For 2020, the named executive officers' annual base salaries were:

Named Executive Officer	Annual Base Salary
Paul Badawi	$ 360,000
Shawn O'Neil	$ 300,000
Sam Park	$ 300,000

Mr. Park served as a consultant to the Company from January 1, 2020 until March 13, 2020, the date he commenced employment as our Chief Operating Officer. While serving as a consultant, Mr. Park earned consulting fees at the rate of $325.00 per hour.

Annual Incentive Compensation

We maintain an annual bonus program for all employees who are not eligible for commissions, including our named executive officers. Participants in the bonus program may earn a performance-based cash bonus based on our achievement of specified performance goals. Performance goals for the 2020 bonus program generally related to specified commercial (weighted 50%), clinical (weighted 25%), research and development (weighted 10%), regulatory (weighted 7.5%) and financial (weighted 7.5%) objectives. For 2020, the named executive officers had the following target annual bonus amounts, expressed as a percentage of base salary received during the year:

Named Executive Officer	2020 Bonus Target
Paul Badawi	35%
Shawn O'Neil	35%
Sam Park	35%

In February 2021, our board of directors determined the bonus payments with respect to 2020. The actual amounts of the 2020 annual bonuses paid to our named executive officers are included in the "Non-Equity Incentive Plan Compensation" column of the 2020 Summary Compensation Table, above.

Equity Compensation

We generally offer stock options to our employees, including our named executive officers, as the long-term incentive component of our compensation program. Our stock options generally allow employees to purchase shares of our common stock at a price equal to the fair market value of our common stock on the date of grant, as determined by the board of directors. Stock options granted upon an employee's commencing employment generally vest as to 25% of the underlying shares on the first anniversary of the date of grant and in equal monthly installments over the following three years. Subsequent grants to employees generally vest as to 1/48th of the shares underlying the stock option each month for four years following the date of grant. Historically, our stock options have been intended to qualify as "incentive stock options" to the extent permitted under the Internal Revenue Code.

Prior to this offering, we have granted equity awards under our 2011 Stock Incentive Plan, referred to below as the Existing Plan. We intend to adopt a 2021 Incentive Award Plan, referred to below as the 2021 Plan, in order to facilitate the grant of cash and equity incentives to directors, employees (including our named executive officers) and consultants of our company and certain of its affiliates and to enable our company and certain of its affiliates to obtain and retain services of these individuals. We expect that the 2021 Plan will be effective on the day prior to our first public trading date. Once the 2021 Plan becomes effective, we will cease making grants

under the Existing Plan. However, the Existing Plan will continue to govern the terms and conditions of the outstanding awards granted under it. For additional information about the Existing Plan and the 2021 Plan, please see the section titled “Incentive Compensation Plans” below.

Retirement Plans and Other Employee Benefits

Our named executive officers are eligible to participate in our employee benefit plans and programs, including medical and dental benefits and life insurance, to the same extent as our other full-time employees, subject to the terms and eligibility requirements of those plans. We also sponsor a 401(k) defined contribution plan in which our named executive officers may participate, subject to limits imposed by the Code, to the same extent as our other full-time employees. We did not make any employer contributions to the 401(k) plan for 2020. We have not typically provided our executive officers with any perquisites, and none of the named executive officers received perquisites for 2020.

Employment, Severance or Change in Control Agreements

We have entered into employment offer letter agreements with our named executive officers that set forth certain terms and conditions of employment of each named executive officer, including initial base salary, annual bonus opportunity (for Messrs. O’Neil and Park) and equity grants and employee benefits eligibility. None of our named executive officers is currently entitled to any change in control or severance benefits. We expect to enter into new employment agreements with the named executive officers that supersede their existing agreements effective upon the effectiveness of the registration statement relating to this offering. The terms of these new agreements are not yet known.

Outstanding Equity Awards at 2020 Fiscal Year-End

The following table provides information about outstanding equity awards held by each of our named executive officers as of December 31, 2020. All awards were granted under the Existing Plan.

		Option Awards			
Name	Vesting Start Date	Number of Securities Underlying Unexercised Options (#) Exercisable	Number of Securities Underlying Unexercised Options (#) Unexercisable	Option Exercise Price ($)	Option Expiration Date
Paul Badawi(3)	—	—	—	—	—
Shawn O’Neil	9/18/2017	28,437	6,563(1)	$ 0.69	11/28/2027
	3/18/2019	4,375	5,625(2)	$ 1.24	4/16/2029
	7/30.2020	2,604	22,396(2)	$ 3.91	7/29/2030
Sam Park	3/13/2020	0	40,000(1)	$ 3.91	5/11/2030
	7/30/2020	833	7,167(2)	$ 3.91	7/29/2030

(1) The option vests as to 25% of the underlying shares on the first anniversary of the vesting start date and in 36 equal monthly installments thereafter.

(2) The option vests in 48 equal monthly installments following the vesting start date.

(3) Mr. Badawi is a Company founder with significant beneficial ownership of our common stock. See the section titled “Principal Stockholders” in this prospectus for more information regarding Mr. Badawi’s beneficial ownership of our common stock. To date, our board of directors has elected not to grant equity incentive awards to Mr. Badawi, but may approve grants of equity incentive awards in the future.

Director Compensation

We have entered into offer letter agreements with Ms. Rogers and Mr. Zurbay, our non-employee directors who are not affiliated with a significant stockholder, that provide for certain terms and conditions of their service

on our board of directors, including annual retainers and the grant of equity awards. In 2020, we paid Ms. Rogers and Mr. Zurbay annual cash retainers equal to $50,000, prorated in the case or Mr. Zurbay for a partial year of service. In addition, in January 2020 and May 2020, Ms. Rogers received an option to purchase 15,000 shares and 20,000 shares, respectively, of our common stock, and in June 2020, Mr. Zurbay received an option to purchase 30,000 shares of our common stock. Ms. Rogers' January 2020 option has an exercise price of $4.13 per share and the other options granted to Ms. Rogers and Mr. Zurbay have an exercise price of $3.91 per share, each of which our board of directors determined to be the fair market value per share of our common stock on the date of grant. All options granted to Ms. Rogers and Mr. Zurbay vest monthly in 48 equal installments and accelerate upon a Corporate Transaction (as defined in the Existing Plan).

None of our other non-employee directors received compensation for their service on our board of directors during 2020. Mr. Badawi, our Chief Executive Officer, and Dr. Badawi, our Chief Technology Officer, both served on our board of directors during 2020 but have not been included in the 2020 Director Compensation Table below because they did not receive any additional compensation for this service. Information regarding Mr. Badawi's 2020 compensation is included in the 2020 Summary Compensation Table, Outstanding Equity Awards at 2020 Fiscal Year-End table and associated narrative disclosure above.

2020 Director Compensation Table

Name	Fees Earned or Paid in Cash ($)	Option Awards ($)(1)	Total ($)
Staffan Encrantz	—	—	—
Mack Hicks	—	—	—
Carter Meyer(2)	—	—	—
Andrew Offer	—	—	—
Erica Rogers	$ 50,000	$ 102,111	$ 152,111
Valeska Schroeder	—	—	—
Don Zurbay(3)	$ 27,466	$ 111,640	$ 139,106

(1) Amounts reflect the full grant-date fair value of stock options granted during 2020 computed in accordance with ASC Topic 718, rather than the amounts paid to or realized by the named individual. We provide information regarding the assumptions used to calculate the value of the option awards in Note 11 to the consolidated financial statements included in this prospectus.
(2) Mr. Meyer resigned from our board of directors on October 2, 2020.
(3) Mr. Zurbay joined our board of directors on June 16, 2020.

The table below shows the aggregate numbers of option awards (exercisable and unexercisable) held as of December 31, 2020 by each non-employee director who was serving as of December 31, 2020. The non-employee directors did not hold any unvested stock awards as of December 31, 2020.

Name	Options Outstanding at Fiscal Year End
Staffan Encrantz	—
Mack Hicks	—
Andrew Offer	—
Erica Rogers	35,000
Valeska Schroeder	—
Don Zurbay	30,000

We intend to adopt a compensation program for our non-employee directors that consists of annual retainer fees and long-term equity awards and that will become effective upon effectiveness of the registration statement relating to this offering. The terms of the program are not yet known.

Incentive Compensation Plans

The following summarizes the material terms of the 2021 Plan and the 2021 Employee Stock Purchase Plan, which will be the long-term incentive compensation plans in which our directors and named executive officers will be eligible to participate following this offering, and the Existing Plan, under which we have historically made periodic grants of equity and equity-based awards to our directors and named executive officers.

2021 Incentive Award Plan

Effective the day prior to the first public trading date of our common stock, we intend to adopt and ask our stockholders to approve the 2021 Plan under which we may grant cash and equity-based incentive awards to eligible service providers in order to attract, retain and motivate the persons who make important contributions to the company. The material terms of the 2021 Plan, as it is currently contemplated, are summarized below. Our board of directors is still in the process of developing, approving and implementing the 2021 Plan and, accordingly, this summary is subject to change.

Eligibility and Administration. Our employees, consultants and directors, and employees and consultants of our subsidiaries will be eligible to receive awards under the 2021 Plan. The 2021 Plan will be administered by our board of directors with respect to awards to non-employee directors and by our compensation committee with respect to other participants, each of which may delegate its duties and responsibilities to committees of our directors and/or officers (referred to collectively as the plan administrator below), subject to the limitations that may be imposed under the 2021 Plan, Section 16 of the Exchange Act, stock exchange rules and other applicable laws, including Delaware law. The plan administrator will have the authority to take all actions and make all determinations under the 2021 Plan, to interpret the 2021 Plan and award agreements and to adopt, amend and repeal rules for the administration of the 2021 Plan as it deems advisable. The plan administrator will also have the authority to determine which eligible service providers receive awards, grant awards and set the terms and conditions of all awards under the 2021 Plan, including any vesting and vesting acceleration provisions, subject to the conditions and limitations in the 2021 Plan.

Shares Available. An aggregate of shares of our common stock will initially be available for issuance under the 2021 Plan. The number of shares initially available for issuance will be increased by an annual increase on January 1 of each calendar year beginning in 2022 and ending in and including 2031, equal to the lesser of (A) % of the shares outstanding on the final day of the immediately preceding calendar year and (B) a smaller number of shares as determined by our board of directors. No more than shares of common stock may be issued under the 2021 Plan upon the exercise of incentive stock options. Shares available under the 2021 Plan may be authorized but unissued shares, shares purchased on the open market or treasury shares.

If an award under the 2021 Plan or the Existing Plan expires, lapses or is terminated, exchanged for cash, surrendered, repurchased, or canceled without having been fully exercised or forfeited, any unused shares subject to the award will, as applicable, become or again be available for new grants under the 2021 Plan. Awards granted under the 2021 Plan in substitution for any options or other stock or stock-based awards granted by an entity before the entity's merger or consolidation with us or our acquisition of the entity's property or stock will not reduce the shares available for grant under the 2021 Plan, but will count against the maximum number of shares that may be issued upon the exercise of incentive stock options.

Awards. The 2021 Plan provides for the grant of stock options, including incentive stock options, or ISOs, and nonqualified stock options, or NSOs, stock appreciation rights, or SARs, restricted stock, dividend equivalents, restricted stock units, or RSUs, and other stock or cash based awards. Certain awards under the 2021 Plan may constitute or provide for payment of "nonqualified deferred compensation" under Section 409A of the Code. All awards under the 2021 Plan will be set forth in award agreements, which will detail the terms and conditions of awards, including any applicable vesting and payment terms and post-termination exercise limitations. A brief description of each award type follows.

- *Stock Options and SARs.* Stock options provide for the purchase of shares of our common stock in the future at an exercise price set on the grant date. ISOs, by contrast to NSOs, may provide tax deferral beyond exercise and favorable capital gains tax treatment to their holders if certain holding period and other requirements of the Code are satisfied. SARs entitle their holder, upon exercise, to receive from us an amount equal to the appreciation of the shares subject to the award between the grant date and the exercise date. The plan administrator will determine the number of shares covered by each option and SAR, the exercise price of each option and SAR and the conditions and limitations applicable to the exercise of each option and SAR. The exercise price of a stock option or SAR will not be less than 100% of the fair market value of the underlying share on the grant date (or 110% in the case of ISOs granted to certain significant stockholders), except with respect to certain substitute awards granted in connection with a corporate transaction. The term of a stock option or SAR may not be longer than ten years (or five years in the case of ISOs granted to certain significant stockholders).
- *Restricted Stock and RSUs.* Restricted stock is an award of nontransferable shares of our common stock that remain forfeitable unless and until specified conditions are met and which may be subject to a purchase price. RSUs are contractual promises to deliver shares of our common stock in the future, which may also remain forfeitable unless and until specified conditions are met and may be accompanied by the right to receive the equivalent value of dividends paid on shares of our common stock prior to the delivery of the underlying shares. The plan administrator may provide that the delivery of the shares underlying RSUs will be deferred on a mandatory basis or at the election of the participant. The terms and conditions applicable to restricted stock and RSUs will be determined by the plan administrator, subject to the conditions and limitations contained in the 2021 Plan.
- *Other Stock or Cash Based Awards.* Other stock or cash based awards are awards of cash, fully vested shares of our common stock and other awards valued wholly or partially by referring to, or otherwise based on, shares of our common stock or other property. Other stock or cash based awards may be granted to participants and may also be available as a payment form in the settlement of other awards, as standalone payments and as payment in lieu of compensation to which a participant is otherwise entitled. The plan administrator will determine the terms and conditions of other stock or cash based awards, which may include any purchase price, performance goal, transfer restrictions and vesting conditions.

Performance Criteria. The plan administrator may select performance criteria for an award to establish performance goals for a performance period. Performance criteria under the 2021 Plan may include, but are not limited to, the following: net earnings or losses (either before or after one or more of interest, taxes, depreciation, amortization, and non-cash equity-based compensation expense); gross or net sales or revenue or sales or revenue growth; net income (either before or after taxes) or adjusted net income; profits (including but not limited to gross profits, net profits, profit growth, net operation profit or economic profit), profit return ratios or operating margin; budget or operating earnings (either before or after taxes or before or after allocation of corporate overhead and bonus); cash flow (including operating cash flow and free cash flow or cash flow return on capital); return on assets; return on capital or invested capital; cost of capital; return on stockholders' equity; total stockholder return; return on sales; costs, reductions in costs and cost control measures; expenses; working capital; earnings or loss per share; adjusted earnings or loss per share; price per share or dividends per share (or appreciation in or maintenance of such price or dividends); regulatory achievements or compliance; implementation, completion or attainment of objectives relating to research, development, regulatory,

commercial, or strategic milestones or developments; market share; economic value or economic value added models; division, group or corporate financial goals; customer satisfaction/growth; customer service; employee satisfaction; recruitment and maintenance of personnel; human resources management; supervision of litigation and other legal matters; strategic partnerships and transactions; financial ratios (including those measuring liquidity, activity, profitability or leverage); debt levels or reductions; sales-related goals; financing and other capital raising transactions; cash on hand; acquisition activity; investment sourcing activity; and marketing initiatives, any of which may be measured in absolute terms or as compared to any incremental increase or decrease. Such performance goals also may be based solely by reference to the company's performance or the performance of a subsidiary, division, business segment or business unit of the company or a subsidiary, or based upon performance relative to performance of other companies or upon comparisons of any of the indicators of performance relative to performance of other companies. When determining performance goals, the plan administrator may provide for exclusion of the impact of an event or occurrence which the plan administrator determines should appropriately be excluded, including, without limitation, non-recurring charges or events, acquisitions or divestitures, changes in the corporate or capital structure, events unrelated to the business or outside of the control of management, foreign exchange considerations, and legal, regulatory, tax or accounting changes.

Certain Transactions. In connection with certain corporate transactions and events affecting our common stock, including a change in control, or change in any applicable laws or accounting principles, the plan administrator has broad discretion to take action under the 2021 Plan to prevent the dilution or enlargement of intended benefits, facilitate the transaction or event or give effect to the change in applicable laws or accounting principles. This includes canceling awards for cash or property, accelerating the vesting of awards, providing for the assumption or substitution of awards by a successor entity, adjusting the number and type of shares subject to outstanding awards and/or with respect to which awards may be granted under the 2021 Plan and replacing or terminating awards under the 2021 Plan. In addition, in the event of certain non-reciprocal transactions with our stockholders, the plan administrator will make equitable adjustments to the 2021 Plan and outstanding awards as it deems appropriate to reflect the transaction. In the event of a change in control of the company (as defined in the 2021 Plan), to the extent that the surviving entity declines to continue, convert, assume or replace outstanding awards, then all such awards may become fully vested and exercisable in connection with the transaction. Individual award agreements may provide for additional accelerated vesting and payment provisions.

Provisions of the 2021 Plan Relating to Director Compensation. The 2021 Plan provides that the plan administrator may establish compensation for non-employee directors from time to time subject to the 2021 Plan's limitations. Prior to commencing this offering, we intend to approve and implement a compensation program for our non-employee directors. Our board of directors or its authorized committee may modify the non-employee director compensation program from time to time in the exercise of its business judgment, taking into account such factors, circumstances and considerations as it shall deem relevant from time to time, provided that the sum of any cash compensation or other compensation and the grant date fair value of any equity awards granted under the 2021 Plan as compensation for services as a non-employee director during any fiscal year may not exceed $, excluding cash and other compensation awarded prior to the commencement of this offering. The plan administrator may make exceptions to this limit for individual non-employee directors in extraordinary circumstances, as the plan administrator may determine in its discretion, subject to the limitations in the 2021 Plan.

Foreign Participants, Claw-Back Provisions, Transferability, and Participant Payments. The plan administrator may modify awards granted to participants who are foreign nationals or employed outside the United States or establish subplans or procedures to address differences in laws, rules, regulations or customs of such foreign jurisdictions. All awards will be subject to any company claw-back policy as set forth in such claw-back policy or the applicable award agreement. Except as the plan administrator may determine or provide in an award agreement, awards under the 2021 Plan are generally non-transferrable, except by will or the laws of descent and distribution, or, subject to the plan administrator's consent, pursuant to a domestic relations order and are generally exercisable only by the participant. With regard to tax withholding obligations arising in

connection with awards under the 2021 Plan and exercise price obligations arising in connection with the exercise of stock options under the 2021 Plan, the plan administrator may, in its discretion, accept cash, wire transfer or check, shares of our common stock that meet specified conditions, a promissory note, a "market sell order," such other consideration as the plan administrator deems suitable or any combination of the foregoing.

Plan Amendment; Repricing and Termination. Our board of directors may amend or terminate the 2021 Plan at any time; however, no amendment, other than an amendment that increases the number of shares available under the 2021 Plan, may materially and adversely affect an award outstanding under the 2021 Plan without the consent of the affected participant and stockholder approval will be obtained for any amendment to the extent necessary to comply with applicable laws. Further, the plan administrator may, without the approval of our stockholders, amend any outstanding stock option or SAR to reduce its exercise price per share. The 2021 Plan will remain in effect until the tenth anniversary of its effective date, unless earlier terminated by our board of directors. No awards may be granted under the 2021 Plan after its termination.

2021 Employee Stock Purchase Plan

Effective the day prior to the first public trading date of our common stock, we intend to adopt and ask our stockholders to approve the 2021 Employee Stock Purchase Plan, or the 2021 ESPP, the material terms of which are summarized below.

The 2021 ESPP is comprised of two distinct components in order to provide increased flexibility to grant options to purchase shares under the 2021 ESPP to U.S. and to non-U.S. employees. Specifically, the 2021 ESPP authorizes (1) the grant of options to U.S. employees that are intended to qualify for favorable U.S. federal tax treatment under Section 423 of the Code, (the "Section 423 Component"), and (2) the grant of options that are not intended to be tax-qualified under Section 423 of the Code to facilitate participation for employees located outside of the U.S. who do not benefit from favorable U.S. federal tax treatment and to provide flexibility to comply with non-U.S. law and other considerations (the "Non-Section 423 Component"). Where permitted under local law and custom, we expect that the Non-Section 423 Component will generally be operated and administered on terms and conditions similar to the Section 423 Component.

Shares Available for Awards; Administration. A total of shares of our common stock will initially be reserved for issuance under the 2021 ESPP. In addition, the number of shares available for issuance under the 2021 ESPP will be annually increased on January 1 of each calendar year beginning in 2022 and ending in and including 2031, by an amount equal to the lesser of (A) % of the shares outstanding on the final day of the immediately preceding calendar year and (B) such smaller number of shares as is determined by our board of directors, provided that no more than shares of our common stock may be issued under the Section 423 Component. Our board of directors or a committee of our board of directors will administer and will have authority to interpret the terms of the 2021 ESPP and determine eligibility of participants. We expect that the compensation committee will be the initial administrator of the 2021 ESPP.

Eligibility. We expect that all of our employees will be eligible to participate in the 2021 ESPP. However, an employee may not be granted rights to purchase stock under our 2021 ESPP if the employee, immediately after the grant, would own (directly or through attribution) stock possessing 5% or more of the total combined voting power or value of all classes of our stock.

Grant of Rights. Stock will be offered under the 2021 ESPP during offering periods. The length of the offering periods under the 2021 ESPP will be determined by the plan administrator and may be up to twenty-seven months long. Employee payroll deductions will be used to purchase shares on each purchase date during an offering period. The purchase dates for each offering period will be the final trading day in the offering period. Offering periods under the 2021 ESPP will commence when determined by the plan administrator. The plan administrator may, in its discretion, modify the terms of future offering periods. In non-U.S. jurisdictions where participation in the 2021 ESPP through payroll deductions is prohibited, the plan administrator may provide that

an eligible employee may elect to participate through contributions to the participant's account under the 2021 ESPP in a form acceptable to the 2021 ESPP administrator in lieu of or in addition to payroll deductions.

The 2021 ESPP permits participants to purchase common stock through payroll deductions of up to a specified percentage of their eligible compensation. The plan administrator will establish a maximum number of shares that may be purchased by a participant during any offering period. In addition, no employee will be permitted to accrue the right to purchase stock under the Section 423 Component at a rate in excess of $25,000 worth of shares during any calendar year during which such a purchase right is outstanding (based on the fair market value per share of our common stock as of the first day of the offering period).

On the first trading day of each offering period, each participant will automatically be granted an option to purchase shares of our common stock. The option will expire at the end of the applicable offering period, and will be exercised at that time to the extent of the payroll deductions accumulated during the offering period. The purchase price of the shares, in the absence of a contrary designation, will be 85% of the lower of the fair market value of our common stock on the first trading day of the offering period or on the purchase date. Participants may voluntarily end their participation in the 2021 ESPP at any time during a specified period prior to the end of the applicable offering period, and will be paid their accrued payroll deductions that have not yet been used to purchase shares of common stock. Participation ends automatically upon a participant's termination of employment.

A participant may not transfer rights granted under the 2021 ESPP, other than by will or the laws of descent and distribution, and rights granted under the 2021 ESPP are generally exercisable only by the participant.

Certain Transactions. In the event of certain non-reciprocal transactions or events affecting our common stock, the plan administrator will make equitable adjustments to the 2021 ESPP and outstanding rights. In the event of certain unusual or non-recurring events or transactions, including a change in control, the plan administrator may provide for (1) either the replacement of outstanding rights with other rights or property or termination of outstanding rights in exchange for cash, (2) the assumption or substitution of outstanding rights by the successor or survivor corporation or parent or subsidiary thereof, if any, (3) the adjustment in the number and type of shares of stock subject to outstanding rights, (4) the use of participants' accumulated payroll deductions to purchase stock on a new purchase date prior to the next scheduled purchase date and termination of any rights under ongoing offering periods or (5) the termination of all outstanding rights.

Plan Amendment. The plan administrator may amend, suspend or terminate the 2021 ESPP at any time. However, stockholder approval will be obtained for any amendment that increases the aggregate number or changes the type of shares that may be sold pursuant to rights under the 2021 ESPP or changes the corporations or classes of corporations whose employees are eligible to participate in the 2021 ESPP.

Existing Plan

Our board of directors initially adopted, and our stockholders initially approved, the Existing Plan in September 2011. From and after the effective date of the 2021 Plan, no additional awards will be made under the Existing Plan. However, the Existing Plan will continue to govern the terms and conditions of the outstanding awards previously granted thereunder.

Outstanding Awards. As of , stock options covering shares with a weighted-average exercise price of $ per share were outstanding under the Existing Plan. If an option granted under the Existing Plan expires, lapses or is terminated, exchanged for cash, surrendered, repurchased, canceled without having been fully exercised or forfeited, in each case after effectiveness of the 2021 Plan, any unused shares subject to the option will become available for issuance under and in accordance with the terms of the 2021 Plan.

Administration. Our board of directors or a committee delegated by our board of directors administers the Existing Plan. Subject to the terms of the Existing Plan, the administrator has the power to construe and interpret the plan and to take such actions are as the administrator determines are appropriate for the administration of the plan.

Options. Options granted under the Existing Plan are subject to terms and conditions generally similar to those described above with respect to options that may be granted under our 2020 Plan.

Changes to Capital Structure. Certain terms of awards outstanding under the Existing Plan will be proportionately adjusted, as determined appropriate by the administrator, in the event of certain increases or decreases in or transactions affecting our common stock.

Change in Control. In the event of certain corporate transaction or events, the administrator in its discretion may terminate awards that are not assumed in transaction or event or provide for the full or partial vesting and exercisability of awards, which may be conditioned upon a subsequent termination of employment.

Amendment. The Board may at any time amend the Existing Plan, subject to its terms. To the extent necessary to comply with applicable laws, the Company will obtain stockholder approval of any plan amendment in such a manner and to such a degree as required.

CERTAIN RELATIONSHIPS AND RELATED PARTY TRANSACTIONS

The following includes a summary of transactions since January 1, 2018 to which we have been a party in which the amount involved exceeded or will exceed the lessor of (i) $120,000 or (ii) one percent of the average of our total assets at fiscal year end for our last two fiscal years, and in which any of our directors, executive officers or, to our knowledge, beneficial owners of more than 5% of our capital stock or any member of the immediate family of any of the foregoing persons had or will have a direct or indirect material interest, other than equity and other compensation, termination, change in control and other arrangements, which are described under "Executive and Director Compensation." We also describe below certain other transactions with our directors, executive officers and stockholders.

Preferred Stock Financings

Series C Preferred Stock Financing. Between July 2017 and June 2018, we issued and sold to investors in private placements an aggregate of 2,342,857 shares of our Series C preferred stock at a purchase price of $9.4868 per share, for aggregate consideration of approximately $22.23 million.

Series D Preferred Stock Financing. In August 2019, we issued and sold to investors in private placements an aggregate of 2,447,818 shares of our Series D preferred stock at a purchase price of $12.5622 per share, for aggregate consideration of approximately $30.8 million.

Series E Preferred Stock Financing. In March 2020, we issued and sold to investors in private placements an aggregate of 1,899,847 shares of our Series E preferred stock at a purchase price of $15.8697 per share, for aggregate consideration of approximately $30.15 million.

Series F Preferred Stock Financing. In November 2020, we issued and sold to investors in private placements an aggregate of 1,062,716 shares of our Series F preferred stock at a purchase price of $21.8779 per share, for aggregate consideration of approximately $23.25 million.

The following table sets forth the aggregate number of shares of our capital stock acquired by beneficial owners of more than 5% of our capital stock in the financing transactions described above. Each share of our preferred stock identified in the following table will convert into shares of common stock immediately upon the closing of this offering.

Participants	Series C Preferred Stock	Series D Preferred Stock	Series E Preferred Stock	Series F Preferred Stock
5% or Greater Stockholders(1)				
Allegro Investment Fund, L.P.	977,881			
D1 Capital Partners Master LP			1,890,395	685,623
HH Sight Partners, L.P.	264,369			
HH-IOP Partners, L.P.	167,355			
KCK Ltd.		2,388,116		
Sight Sciences Angels, LP	121,725			

(1) Additional details regarding these stockholders and their equity holdings are provided in this prospectus under the caption "Principal Stockholders."

Some of our directors and officers are associated with our principal stockholders as indicated in the table below:

Directors and Officers	Principal Stockholder
Staffan Encrantz	Allegro Investment Fund, L.P.
Mack Hicks	HH Sight Partners, L.P.
	HH-IOP Partners, L.P.
Valeska Schroeder	KCK Ltd.
Jesse Selnick	Sight Sciences Angels, LP

Investors' Rights Agreement

We entered into a Third Amended and Restated Investors' Rights Agreement on November 23, 2020 with the holders of our preferred stock, including entities with which certain of our directors are related. The agreement provides for certain rights relating to the registration of such holders' common stock, including shares issuable upon conversion of preferred stock, and a right of first refusal to purchase future securities sold by us. See "Description of Capital Stock—Registration Rights" for additional information.

Voting Agreement

We entered into a Third Amended and Restated Voting Agreement by and among us and certain of our stockholders, pursuant to which the following directors were initially designated to serve as members on our board of directors: Erica Rogers, Don Zurbay, and David Badawi. Paul Badawi was selected to serve on our board of directors in his capacity as our chief executive officer. Andrew Offer, Mack Hicks, Staffan Encrantz, and Valeska Schroeder were initially selected to serve on our board of directors as representatives of holders of our preferred stock, as designated by entities affiliated with Scientific Health Development II, Ltd., HH Sight Partners, L.P., Allegro Investment Fund, L.P., and KCK Ltd., respectively.

The voting agreement will terminate upon the closing of this offering, and directors previously elected to our board of directors pursuant to this agreement will continue to serve as directors until they resign, are removed or their successors are duly elected. The composition of our board of directors after this offering is described in more detail under "Management—Board Composition and Election of Directors."

Right of First Refusal and Co-Sale Agreement

We entered into a Third Amended and Restated Right of First Refusal and Co-sale Agreement, or the First Refusal and Co-Sale Agreement, with certain holders of our common stock, or the Key Holders, and our redeemable convertible preferred stock, which includes certain of our directors and executive officers, pursuant to which we have a right of first refusal in respect of certain sales of securities by our Key Holders. To the extent we do not exercise such right in full, the holders of our redeemable convertible preferred stock are granted certain rights of first refusal and co-sale in respect of such sale. The First Refusal and Co-Sale Agreement will terminate immediately prior to the consummation of this offering.

Employment Agreements

We have entered into employment agreements with our named executive officers. For more information regarding the agreements with our named executive officers, see "Executive and Director Compensation—Executive Compensation Arrangements."

We have also entered into an employment agreement with Dr. David Badawi, one of our directors and the brother of Paul Badawi, our chief executive officer and a director, to serve as our Chief Technology Officer. In connection with serving as our Chief Technology Officer, we paid Dr. Badawi $162,000 in each of the years ended December 31, 2018, 2019 and 2020.

Indemnification Agreements

We intend to enter into indemnification agreements with each of our directors and executive officers. These agreements, among other things, require us or will require us to indemnify each director (and in certain cases their related venture capital funds) and executive officer to the fullest extent permitted by Delaware law, including indemnification of expenses such as attorneys' fees, judgments, fines and settlement amounts incurred by the director or executive officer in any action or proceeding, including any action or proceeding by or in right of us, arising out of the person's services as a director or executive officer. For further information, see "Executive and Director Compensation—Limitations of Liability and Indemnification."

Stock Option Grants to Executive Officers and Directors

We have granted stock options to our executive officers and certain of our directors as more fully described in the section entitled "Executive and Director Compensation."

Policies and Procedures for Related Person Transactions

Our board of directors has adopted a written related person transaction policy, to be effective upon the closing of this offering, setting forth the policies and procedures for the review and approval or ratification of related person transactions. This policy will cover, with certain exceptions set forth in Item 404 of Regulation S-K under the Securities Act, any transaction, arrangement or relationship, or any series of similar transactions, arrangements or relationships, in which we were or are to be a participant, where the amount involved exceeds $120,000 in any fiscal year and a related person had, has or will have a direct or indirect material interest, including without limitation, purchases of goods or services by or from the related person or entities in which the related person has a material interest, indebtedness, guarantees of indebtedness and employment by us of a related person. In reviewing and approving any such transactions, our audit committee is tasked to consider all relevant facts and circumstances, including, but not limited to, whether the transaction is on terms comparable to those that could be obtained in an arm's length transaction and the extent of the related person's interest in the transaction. All of the transactions described in this section occurred prior to the adoption of this policy.

PRINCIPAL STOCKHOLDERS

The following table sets forth information with respect to the beneficial ownership of our common stock, as of by:

- each person or group of affiliated persons known by us to beneficially own more than 5% of our common stock;
- each of our named executive officers;
- each of our directors; and
- all of our executive officers and directors as a group.

The number of shares beneficially owned by each stockholder is determined under rules issued by the Securities and Exchange Commission. Under these rules, beneficial ownership includes any shares as to which the individual or entity has sole or shared voting power or investment power. Applicable percentage ownership is based on shares of common stock outstanding as of , 2021. In computing the number of shares beneficially owned by an individual or entity and the percentage ownership of that person, shares of common stock subject to options, warrants or other rights held by such person that are currently exercisable or will become exercisable within 60 days of , 2021 are considered outstanding, although these shares are not considered outstanding for purposes of computing the percentage ownership of any other person. Unless noted otherwise, the address of all listed stockholders is 4040 Campbell Ave, Suite 100, Menlo Park, CA 94025. Each of the stockholders listed has sole voting and investment power with respect to the shares beneficially owned by the stockholder unless noted otherwise, subject to community property laws where applicable.

	Shares Beneficially Owned Prior to Offering		Beneficially Owned After Offering	
Name of Beneficial Owner	**Number**	**Percentage**	**Number**	**Percentage**
5% or Greater Stockholders				
Entities associated with Allegro Investment Fund, L.P.(1)		%		%
Entities associated with D1 Capital Partners Master LP(2)				
Entities associated with HH Sight Partners, L.P.(3)				
KCK Ltd.(4)				
Scientific Health Development II, Ltd.(5)				
Sight Sciences Angels, LP(6)				
Named Executive Officers and Directors				
Paul Badawi(7)				
Jesse Selnick(8)				
David Badawi, M.D.(9)				
Shawn O'Neil(10)				
Sam Park(11)				
Jeremy Hayden(12)				
Staffan Encrantz(13)				
Mack Hicks(14)				
Andrew Offer(15)				
Erica Rogers(16)				
Valeska Schroeder, Ph.D.(17)				
Donald Zurbay(18)				
All executive officers and directors (12 persons)				

* Less than 1%.

(1) Consists of (i) shares of common stock issuable upon the conversion of the Series A redeemable convertible preferred stock, (ii) shares of common stock issuable upon the conversion of the Series B redeemable convertible preferred stock and (iii) shares of common stock issuable upon

the conversion of the Series C redeemable convertible preferred stock, held by Allegro Investment Fund, L.P. (Allegro Investment Fund"), and (iv) shares of common stock issuable upon the conversion of the Series C redeemable convertible preferred stock held by Allegro Investors LLC ("Allegro Investors" and, together with Allegro Investment Fund, "Allegro"). Staffan Encrantz, a member of our Board of Directors, is the founder and Chairman of Allegro Investment Fund and a member of Allegro Investors and may be deemed to beneficially own the shares of common stock held by Allegro. The principal address for the entities affiliated with Allegro is 525 Middlefield Road, Suite 220, Menlo Park, California 94025.

(2) Consists of (i) shares of common stock issuable upon the conversion of the Series E redeemable convertible preferred stock held by D1 Capital Partners Master LP and (ii) shares of common stock issuable upon the conversion of the Series F redeemable convertible preferred stock held by D1 Master Holdco I LLC. D1 Capital Partners L.P. is a registered investment adviser and serves as the manager of private investment vehicles and accounts, including D1 Capital Partners Master LP, the sole and managing member of D1 Master Holdco I LLC, and may be deemed to beneficially own the shares of common stock held by D1 Capital Partners Master LP and D1 Master Holdco I LLC. Daniel Sundheim indirectly controls D1 Capital Partners L.P. and may be deemed to beneficially own the shares of common stock held by D1 Capital Partners Master LP and D1 Master Holdco I LLC. The business address of each of D1 Capital Partners Master LP, D1 Master Holdco I LLC, D1 Capital Partners L.P. and Daniel Sundheim is 9 West 57th Street, 36th Floor, New York, New York 10019.

(3) Consists of (i) shares of common stock issuable upon the conversion of the Series A redeemable convertible preferred stock, (ii) shares of common stock issuable upon the conversion of the Series B redeemable convertible preferred stock and (iii) shares of common stock issuable upon the conversion of the Series C redeemable preferred stock, held by HH Sight Partners, L.P. ("HH Sight Partners"), and (iv) shares of common stock issuable upon the conversion of the Series B redeemable convertible preferred stock and (v) shares of common stock issuable upon the conversion of the Series C redeemable convertible preferred stock held by HH-IOP Partners, L.P. ("HHIOP" and, together with HH Sight Partners, "HH"). HEP Partners LLC is the investment manager for HH. Mack Hicks, a member of our Board of Directors, is an Executive Vice President of both HEP Partners LLC and Hicks Holdings LLC and may be deemed to have voting and dispositive power over the shares held by HH. The principal address for the entities affiliated with HH is 2200 Ross Avenue, Suite 5000, Dallas, Texas 75201.

(4) Consists of shares of common stock issuable upon the conversion of the Series D redeemable convertible preferred stock held by KCK Ltd. ("KCK"). The board of directors of KCK Ltd., consisting of Antoine Sacy, Kamal Kassar, and Nael Karim Kassar, has delegated its authority to vote or invest the shares to Nael Karim Kassar. As such, Nael Karim Kassar may also be deemed to have sole voting and investment with respect to the shares. KCK Medical Technologies ("KCK MedTech") is a division of KCK-US Inc. ("KCK-US"), a wholly-owned subsidiary of KCK. Valeska Schroeder, Ph.D. is a Managing Director of KCK MedTech. The principal address for KCK MedTech is 368 E. Campbell Avenue, Suite 200, Campbell, California 95008. The principal address for KCK is Corner House 4th Floor, 20 Parliament Street, Hamilton, HM 12, Bermuda.

(5) Includes (i) shares of common stock, (ii) shares of common stock issuable upon the conversion of the Series A redeemable convertible preferred stock and (iii) shares of common stock issuable upon the conversion of the Series B redeemable convertible preferred stock held by Scientific Health Development II, Ltd. ("SHD II"). Scientific Health Development, LLC is the manager of SHD II. Andrew Offer is a member of our Board of Directors, the Chief Executive Officer of Scientific Health Development, LLC and may be deemed to beneficially own the shares of common stock held by SHD II. The principal address for the entities affiliated with SHD II is 2305 Cedar Springs Road, Suite 240, Dallas, Texas 75201.

(6) Consists of (i) shares of common stock issuable upon the conversion of the Series A redeemable convertible preferred stock, (ii) shares of common stock issuable upon the conversion of the Series B redeemable convertible preferred stock and (iii) shares of common stock issuable upon the conversion of the Series C redeemable convertible preferred stock, held by Sight Sciences Angels, LP ("Sight Sciences Angels"). Jesse Selnick, our Chief Financial Officer, is a Managing Member of the General Partner of Sight Sciences Angels and may be deemed to beneficially own the shares of common stock held

by Sight Sciences Angels. The principal address for Sight Sciences Angels is 4040 Campbell Avenue, Suite 100, Menlo Park, California 94025.

(7) Includes shares of common stock which Mr. Badawi has the right to acquire pursuant to outstanding share options that will be exercisable within 60 days of , 2021.

(8) Includes (i) shares of common stock held by the Jesse and Audrey Selnick 2017 Family Trust, dated June 14, 2017, (ii) shares of common stock issuable upon conversion of shares of convertible preferred stock held by Sight Sciences Angels, LP, which Mr. Selnick may be deemed to beneficially own, and (iii) shares of common stock which Mr. Selnick has the right to acquire pursuant to outstanding share options that will be exercisable within 60 days of , 2021.

(9) Includes shares of common stock which Dr. Badawi has the right to acquire pursuant to outstanding share options that will be exercisable within 60 days of , 2021.

(10) Includes shares of common stock which Mr. O'Neil has the right to acquire pursuant to outstanding share options, including options that will be exercisable within 60 days of , 2021.

(11) Includes shares of common stock which Mr. Park has the right to acquire pursuant to outstanding share options that will be exercisable within 60 days of , 2021.

(12) Includes shares of common stock which Mr. Hayden has the right to acquire pursuant to outstanding share options that will be exercisable within 60 days of , 2021.

(13) Includes shares of common stock issuable upon conversion of shares of convertible preferred stock held by entities associated with Allegro Investment Fund, L.P., which Mr. Encrantz may be deemed to beneficially own.

(14) Includes (i) shares of common stock held by Mack H. Hicks, as Trustee of the MHH 2016 Descendants Trust and (ii) shares of common stock issuable upon conversion of shares of convertible preferred stock held by entities associated with HH Sight Partners, L.P., over which Mr. Hicks may be deemed to have voting and dispositive power.

(15) Includes (i) shares of common stock held by Scientific Health Development II, Ltd. and (ii) shares of common stock issuable upon conversion of shares of convertible preferred stock held by Scientific Health Development II, Ltd., which Mr. Offer may be deemed to beneficially own.

(16) Includes shares of common stock which Ms. Rogers has the right to acquire pursuant to outstanding share options that will be exercisable within 60 days of , 2021.

(17) Includes shares of common stock which Dr. Schroeder has the right to acquire pursuant to outstanding share options that will be exercisable within 60 days of , 2021.

(18) Includes shares of common stock which Mr. Zurbay has the right to acquire pursuant to outstanding share options that will be exercisable within 60 days of , 2021.

DESCRIPTION OF CAPITAL STOCK

General

The following description summarizes some of the terms of our restated certificate of incorporation and restated bylaws, each of which will become effective upon the closing of this offering, the investors' rights agreement and of the Delaware General Corporation Law. Because it is only a summary, it does not contain all the information that may be important to you. For a complete description, you should refer to our restated certificate of incorporation, restated bylaws and amended and restated investors' rights agreement, copies of which have been or will be filed as exhibits to the registration statement of which this prospectus is a part, as well as the relevant provisions of the Delaware General Corporation Law. The description of our common stock and preferred stock reflects changes to our capital structure that will occur upon the closing of this offering.

Following the closing of this offering, our authorized capital stock will consist of shares of common stock, par value $0.001 per share, and shares of preferred stock, par value $0.001 per share.

As of , 2021, there were shares of our common stock outstanding and shares of our common stock issuable upon the automatic conversion of all outstanding shares of our preferred stock in connection with this offering, held of record by stockholders.

Common Stock

Holders of our common stock are entitled to one vote for each share held on all matters submitted to a vote of stockholders and do not have cumulative voting rights. An election of directors by our stockholders shall be determined by a plurality of the votes cast by the stockholders entitled to vote on the election. Subject to the supermajority votes for some matters, other matters shall be decided by the affirmative vote of our stockholders having a majority in voting power of the votes cast by the stockholders present or represented and voting on such matter. Our restated certificate of incorporation and restated bylaws also provide that our directors may be removed only for cause and only by the affirmative vote of the holders of at least two-thirds in voting power of the outstanding shares of capital stock entitled to vote thereon. In addition, the affirmative vote of the holders of at least two-thirds in voting power of the outstanding shares of capital stock entitled to vote thereon is required to amend or repeal, or to adopt any provision inconsistent with, several of the provisions of our restated certificate of incorporation. See below under "—Anti-Takeover Effects of Delaware Law and Our Certificate of Incorporation and Bylaws—Amendment of Charter Provisions." Holders of common stock are entitled to receive proportionately any dividends as may be declared by our board of directors, subject to any preferential dividend rights of any series of preferred stock that we may designate and issue in the future.

In the event of our liquidation or dissolution, the holders of common stock are entitled to receive proportionately our net assets available for distribution to stockholders after the payment of all debts and other liabilities and subject to the prior rights of any outstanding preferred stock. Holders of common stock have no preemptive, subscription, redemption or conversion rights. There are no sinking fund provisions applicable to our common stock. Our outstanding shares of common stock are, and the shares offered by us in this offering will be, when issued and paid for, validly issued, fully paid and nonassessable. The rights, preferences and privileges of holders of common stock are subject to and may be adversely affected by the rights of the holders of shares of any series of preferred stock that we may designate and issue in the future.

Preferred Stock

Under the terms of our restated certificate of incorporation that will become effective upon the closing of this offering, our board of directors is authorized to direct us to issue shares of preferred stock in one or more series without stockholder approval. Our board of directors has the discretion to determine the rights, preferences, privileges and restrictions, including voting rights, dividend rights, conversion rights, redemption privileges and liquidation preferences, of each series of preferred stock.

The purpose of authorizing our board of directors to issue preferred stock and determine its rights and preferences is to eliminate delays associated with a stockholder vote on specific issuances. The issuance of preferred stock, while providing flexibility in connection with possible acquisitions, future financings and other corporate purposes, could have the effect of making it more difficult for a third-party to acquire, or could discourage a third-party from seeking to acquire, a majority of our outstanding voting stock. Upon the closing of this offering, there will be no shares of preferred stock outstanding, and we have no present plans to issue any shares of preferred stock.

Options

As of , 2021, options to purchase shares of our common stock were outstanding under our Existing Plan, of which were exercisable and of which were unvested as of that date.

Warrants

As of , 2021, warrants to purchase an aggregate of shares of our common stock were outstanding, with a weighted average exercise price of $ per share. On January 25, 2019, June 28, 2019 and November 23, 2020, we issued warrants to MidCap Funding XXVIII Trust, in connection with a loan and security agreement between us and Midcap Financial Services. Pursuant to the terms of the warrants, the number of shares for which the warrant is exercisable is determined by the total principal amount of loans made under the loan and security agreement. If unexercised, these warrants will expire on the tenth anniversary of their issuance dates.

The warrants will neither expire nor be automatically exercised upon the closing of this offering. The warrants provide that the holder thereof may elect to exercise the warrant on a net "cashless" basis at any time prior to the expiration thereof. Assuming the closing of this offering occurs, the fair market value of one share of our common stock in connection with any cashless exercise shall be the closing price or last sale price per share of our common stock on the or other public trading market on which our common stock is traded on the business day immediately prior to the date the holder elects to exercise the warrants on a cashless basis.

Registration Rights

Holders of shares of our common stock are entitled to certain rights with respect to the registration of such shares for public resale under the Securities Act, pursuant to an amended and restated investors' rights agreement by and among us and certain of our stockholders, until the rights otherwise terminate pursuant to the terms of the investors' rights agreement. The registration of shares of common stock as a result of the following rights being exercised would enable holders to trade these shares without restriction under the Securities Act when the applicable registration statement is declared effective.

Registration Rights

If at any time beginning 180 days after the closing date of this offering the holders of more than 50% of the registrable securities then outstanding request in writing that we effect a registration with respect to all or part of such registrable securities then outstanding and having an anticipated aggregate offering price of at least $20,000,000, net of expenses, we may be required to register their shares. We are obligated to effect at most two registrations in response to these demand registration rights. If the holders requesting registration intend to distribute their shares by means of an underwriting, the managing underwriter of such offering will have the right to limit the numbers of shares to be underwritten for reasons related to the marketing of the shares.

Piggyback Registration Rights

If at any time after this offering we propose to register any shares of our common stock under the Securities Act, subject to certain exceptions, the holders of registrable securities will be entitled to notice of the registration

and to include their shares of registrable securities in the registration. If our proposed registration involves an underwriting, the managing underwriter of such offering will have the right to limit the number of shares to be underwritten for reasons related to the marketing of the shares.

Expenses and Indemnification

Ordinarily, other than underwriting discounts and commissions, we will be required to pay all expenses incurred by us related to any registration effected pursuant to the exercise of these registration rights. These expenses may include all registration and filing fees, printing expenses, fees and disbursements of our counsel, reasonable fees and disbursements of a counsel for the selling securityholders (not to exceed $25,000) and blue sky fees and expenses. Additionally, we have agreed to indemnify selling stockholders for damages, and any legal or other expenses reasonably incurred, arising from or based upon any untrue statement of a material fact contained in any registration statement, an omission or alleged omission to state a material fact in any registration statement or necessary to make the statements therein not misleading, or any violation or alleged violation by the indemnifying party of securities laws, subject to certain exceptions.

Termination of Registration Rights

Each of the foregoing registration rights terminate upon the earlier of five years after the effective date of the registration statement of which this prospectus is a part, the closing of a deemed liquidation event, as defined in our current certificate of incorporation, or as to any holder at such time as Rule 144 or another similar exemption under the Securities Act is available for the sale of all of such holders registrable securities without limitation during a three-month period without registration.

Anti-Takeover Effects of Delaware Law and Our Certificate of Incorporation and Bylaws

Some provisions of Delaware law, our restated certificate of incorporation and our restated bylaws could make the following transactions more difficult: an acquisition of us by means of a tender offer; an acquisition of us by means of a proxy contest or otherwise; or the removal of our incumbent officers and directors. It is possible that these provisions could make it more difficult to accomplish or could deter transactions that stockholders may otherwise consider to be in their best interest or in our best interests, including transactions which provide for payment of a premium over the market price for our shares.

These provisions, summarized below, are intended to discourage coercive takeover practices and inadequate takeover bids. These provisions are also designed to encourage persons seeking to acquire control of us to first negotiate with our board of directors. We believe that the benefits of the increased protection of our potential ability to negotiate with the proponent of an unfriendly or unsolicited proposal to acquire or restructure us outweigh the disadvantages of discouraging these proposals because negotiation of these proposals could result in an improvement of their terms.

Undesignated Preferred Stock

The ability of our board of directors, without action by the stockholders, to issue up to shares of undesignated preferred stock with voting or other rights or preferences as designated by our board of directors could impede the success of any attempt to change control of us. These and other provisions may have the effect of deferring hostile takeovers or delaying changes in control or management of our company.

Stockholder Meetings

Our restated bylaws provide that a special meeting of stockholders may be called only by our chairman of the board, chief executive officer or president (in the absence of a chief executive officer), or by a resolution adopted by a majority of our board of directors.

Requirements for Advance Notification of Stockholder Nominations and Proposals

Our restated bylaws establish advance notice procedures with respect to stockholder proposals to be brought before a stockholder meeting and the nomination of candidates for election as directors, other than nominations made by or at the direction of the board of directors or a committee of the board of directors.

Elimination of Stockholder Action by Written Consent

Our restated certificate of incorporation eliminates the right of stockholders to act by written consent without a meeting.

Staggered Board

Our board of directors is divided into three classes. The directors in each class will serve for a three-year term, one class being elected each year by our stockholders. For more information on the classified board, see "Management—Board Composition and Election of Directors." This system of electing and removing directors may tend to discourage a third-party from making a tender offer or otherwise attempting to obtain control of us, because it generally makes it more difficult for stockholders to replace a majority of the directors.

Removal of Directors

Our restated certificate of incorporation provides that no member of our board of directors may be removed from office by our stockholders except for cause and, in addition to any other vote required by law, upon the approval of the holders of at least two-thirds in voting power of the outstanding shares of stock entitled to vote in the election of directors.

Stockholders Not Entitled to Cumulative Voting

Our restated certificate of incorporation does not permit stockholders to cumulate their votes in the election of directors. Accordingly, the holders of a majority of the outstanding shares of our common stock entitled to vote in any election of directors can elect all of the directors standing for election, if they choose, other than any directors that holders of our preferred stock may be entitled to elect.

Delaware Anti-Takeover Statute

We are subject to Section 203 of the General Corporation Law of the State of Delaware, which prohibits persons deemed to be "interested stockholders" from engaging in a "business combination" with a publicly held Delaware corporation for three years following the date these persons become interested stockholders unless the business combination is, or the transaction in which the person became an interested stockholder was, approved in a prescribed manner or another prescribed exception applies. Generally, an "interested stockholder" is a person who, together with affiliates and associates, owns, or within three years prior to the determination of interested stockholder status did own, 15% or more of a corporation's voting stock. Generally, a "business combination" includes a merger, asset or stock sale, or other transaction resulting in a financial benefit to the interested stockholder. The existence of this provision may have an anti-takeover effect with respect to transactions not approved in advance by the board of directors.

Choice of Forum

Our restated certificate of incorporation provides that, unless we consent in writing to the selection of an alternative form, the Court of Chancery of the State of Delaware will be the sole and exclusive forum for: (1) any derivative action or proceeding brought on our behalf; (2) any action asserting a claim of breach of a fiduciary duty or other wrongdoing by any of our directors, officers, employees or agents to us or our stockholders; (3) any

action asserting a claim against us arising pursuant to any provision of the General Corporation Law of the State of Delaware or our certificate of incorporation or bylaws; (4) any action to interpret, apply, enforce or determine the validity of our certificate of incorporation or bylaws; or (5) any action asserting a claim governed by the internal affairs doctrine; provided that the exclusive forum provision will not apply to suits brought to enforce any liability or duty created by the Securities Act or the Exchange Act, or to any claim for which the federal courts have exclusive jurisdiction. For instance, the provision would not apply to actions arising under federal securities laws, including suits brought to enforce any liability or duty created by the Securities Act, Exchange Act, or the rules and regulations thereunder. Our restated certificate of incorporation further provides that, unless we consent in writing to the selection of an alternative forum, the federal district courts of the United States of America shall, to the fullest extent permitted by law, be the sole and exclusive forum for the resolution of any complaint asserting a cause of action arising under the Securities Act. Our restated certificate of incorporation also provides that any person or entity purchasing or otherwise acquiring any interest in shares of our capital stock will be deemed to have notice of and to have consented to this choice of forum provision. It is possible that a court of law could rule that the choice of forum provision contained in our restated certificate of incorporation is inapplicable or unenforceable if it is challenged in a proceeding or otherwise.

Amendment of Charter Provisions

The amendment of any of the above provisions, except for the provision making it possible for our board of directors to issue preferred stock and the provision prohibiting cumulative voting, would require approval by holders of at least two-thirds in voting power of the outstanding shares of stock entitled to vote thereon.

The provisions of Delaware law, our restated certificate of incorporation and our restated bylaws could have the effect of discouraging others from attempting hostile takeovers and, as a consequence, they may also inhibit temporary fluctuations in the market price of our common stock that often result from actual or rumored hostile takeover attempts. These provisions may also have the effect of preventing changes in the composition of our board and management. It is possible that these provisions could make it more difficult to accomplish transactions that stockholders may otherwise deem to be in their best interests

Transfer Agent and Registrar

The transfer agent and registrar for our common stock will be .

Stock Exchange Listing

We have applied to have our common stock listed on The Nasdaq Global Market under the symbol “SGHT.”

SHARES ELIGIBLE FOR FUTURE SALE

Immediately prior to this offering, there was no public market for our common stock. Future sales of substantial amounts of common stock in the public market, or the perception that such sales may occur, could adversely affect the market price of our common stock.

Upon the closing of this offering, we will have outstanding an aggregate of shares of common stock, assuming the issuance of shares of common stock offered by us in this offering. Of these shares, all shares sold in this offering will be freely tradable without restriction or further registration under the Securities Act, except for any shares purchased by our "affiliates," as that term is defined in Rule 144 under the Securities Act, whose sales would be subject to the Rule 144 resale restrictions described below, other than the holding period requirement.

The remaining shares of common stock will be "restricted securities," as that term is defined in Rule 144 under the Securities Act. These restricted securities are eligible for public sale only if they are registered under the Securities Act or if they qualify for an exemption from registration under Rules 144 or 701 under the Securities Act, which are summarized below. We expect that substantially all of these shares will be subject to the 180-day lock-up period under the lock-up agreements described below. Upon expiration of the lock-up period, we estimate that approximately shares will be available for sale in the public market, subject in some cases to applicable volume limitations under Rule 144.

In addition, of the shares of our common stock that were subject to stock options outstanding as of , 2021, options to purchase shares of common stock were vested as of , 2021 and, upon exercise, these shares will be eligible for sale subject to the lock-up agreements described below and Rules 144 and 701 under the Securities Act.

Lock-Up Agreements

We and each of our directors and executive officers and holders of substantially all of our outstanding capital stock, have agreed that, without the prior written consent of Morgan Stanley & Co. LLC and BofA Securities, Inc., we and they will not, subject to certain exceptions, during the period ending 180 days after the date of this prospectus, offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, lend, or otherwise transfer or dispose of, directly or indirectly, any shares of our common stock or any securities convertible into or exercisable or exchangeable for common stock; or enter into any swap or other arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of our common stock, whether any transaction described above is to be settled by delivery of our common stock or such other securities, in cash or otherwise.

Upon the expiration of the applicable lock-up period, substantially all of the shares subject to such lock-up restrictions will become eligible for sale, subject to the limitations discussed above. For a further description of these lock-up agreements, please see "Underwriting."

Rule 144

Affiliate Resales of Restricted Securities

In general, beginning 90 days after the effective date of the registration statement of which this prospectus is a part, a person who is an affiliate of ours, or who was an affiliate at any time during the 90 days before a sale, who has beneficially owned shares of our common stock for at least six months would be entitled to sell in "broker's transactions" or certain "riskless principal transactions" or to market makers, a number of shares within any three-month period that does not exceed the greater of:

- 1% of the number of shares of our common stock then outstanding, which will equal approximately shares immediately after this offering; or

- the average weekly trading volume in our common stock on The Nasdaq Global Market during the four calendar weeks preceding the filing of a notice on Form 144 with respect to such sale.

Affiliate resales under Rule 144 are also subject to the availability of current public information about us. In addition, if the number of shares being sold under Rule 144 by an affiliate during any three-month period exceeds 5,000 shares or has an aggregate sale price in excess of $50,000, the seller must file a notice on Form 144 with the Securities and Exchange Commission and The Nasdaq Global Market concurrently with either the placing of a sale order with the broker or the execution directly with a market maker.

Non-Affiliate Resales of Restricted Securities

In general, beginning 90 days after the effective date of the registration statement of which this prospectus is a part, a person who is not an affiliate of ours at the time of sale, and has not been an affiliate at any time during the three months preceding a sale, and who has beneficially owned shares of our common stock for at least six months but less than a year, is entitled to sell such shares subject only to the availability of current public information about us. If such person has held our shares for at least one year, such person can resell under Rule 144(b)(1) without regard to any other Rule 144 restrictions, including the 90-day public company requirement and the current public information requirement.

Non-affiliate resales are not subject to the manner of sale, volume limitation or notice filing provisions of Rule 144.

Rule 701

In general, under Rule 701, any of an issuer's employees, directors, officers, consultants or advisors who purchases shares from the issuer in connection with a compensatory stock or option plan or other written agreement before the effective date of a registration statement under the Securities Act is entitled to sell such shares 90 days after such effective date in reliance on Rule 144. An affiliate of the issuer can resell shares in reliance on Rule 144 without having to comply with the holding period requirement, and non-affiliates of the issuer can resell shares in reliance on Rule 144 without having to comply with the current public information and holding period requirements.

The Securities and Exchange Commission has indicated that Rule 701 will apply to typical stock options granted by an issuer before it becomes subject to the reporting requirements of the Exchange Act, along with the shares acquired upon exercise of such options, including exercises after an issuer becomes subject to the reporting requirements of the Exchange Act.

Equity Plans

We intend to file one or more registration statements on Form S-8 under the Securities Act to register all shares of common stock subject to outstanding stock options and common stock issued or issuable under our stock plans. We expect to file the registration statement covering shares offered pursuant to our stock plans shortly after the date of this prospectus, permitting the resale of such shares by non-affiliates in the public market without restriction under the Securities Act and the sale by affiliates in the public market, subject to compliance with the resale provisions of Rule 144.

Registration Rights

Upon the closing of this offering, the holders of shares of common stock, which includes all of the shares of common stock issuable upon the automatic conversion of our preferred stock upon the closing of this offering, or their transferees will be entitled to various rights with respect to the registration of these shares under the Securities Act. Registration of these shares under the Securities Act would result in these shares becoming fully tradable without restriction under the Securities Act immediately upon the effectiveness of the registration, except for shares purchased by affiliates. See “Description of Capital Stock—Registration Rights” for additional information. Shares covered by a registration statement will be eligible for sale in the public market upon the expiration or release from the terms of the lock-up agreement described above.

MATERIAL U.S. FEDERAL INCOME TAX CONSEQUENCES TO NON-U.S. HOLDERS

The following discussion is a summary of the material U.S. federal income tax consequences to Non-U.S. Holders (as defined below) of the purchase, ownership, and disposition of our common stock issued pursuant to this offering, but does not purport to be a complete analysis of all potential tax effects. The effects of other U.S. federal tax laws, such as estate and gift tax laws, and any applicable state, local, or non-U.S. tax laws are not discussed. This discussion is based on the U.S. Internal Revenue Code of 1986, as amended, or the Code, Treasury Regulations promulgated thereunder, judicial decisions, and published rulings and administrative pronouncements of the U.S. Internal Revenue Service, or the IRS, in each case in effect as of the date hereof.

These authorities may change or be subject to differing interpretations. Any such change or differing interpretation may be applied retroactively in a manner that could adversely affect a Non-U.S. Holder. We have not sought and will not seek any rulings from the IRS regarding the matters discussed below. There can be no assurance the IRS or a court will not take a contrary position to that discussed below regarding the tax consequences of the purchase, ownership, and disposition of our common stock.

This discussion is limited to Non-U.S. Holders that hold our common stock as a "capital asset" within the meaning of Section 1221 of the Code (generally, property held for investment). This discussion does not address all U.S. federal income tax consequences relevant to a Non-U.S. Holder's particular circumstances, including the impact of the Medicare contribution tax on net investment income or the alternative minimum tax. In addition, it does not address consequences relevant to Non-U.S. Holders subject to special rules, including, without limitation:

- U.S. expatriates and former citizens or long-term residents of the United States;
- Persons holding our common stock as part of a hedge, straddle, or other risk reduction strategy or as part of a conversion transaction;
- Banks, insurance companies, and other financial institutions;
- Brokers, dealers, or traders in securities;
- "Controlled foreign corporations," "passive foreign investment companies," and corporations that accumulate earnings to avoid U.S. federal income tax;
- Partnerships or other entities or arrangements treated as partnerships for U.S. federal income tax purposes (and investors therein);
- Tax-exempt organizations or governmental organizations;
- Persons deemed to sell our common stock under the constructive sale provisions of the Code;
- Tax-qualified retirement plans; and
- "Qualified foreign pension funds" as defined in Section 897(l)(2) of the Code and entities all of the interests of which are held by qualified foreign pension funds.

If an entity treated as a partnership for U.S. federal income tax purposes holds our common stock, the tax treatment of a partner in the partnership will depend on the status of the partner, the activities of the partnership, and certain determinations made at the partner level. Accordingly, partnerships holding our common stock and the partners in such partnerships should consult their tax advisors regarding the U.S. federal income tax consequences to them.

THIS DISCUSSION IS NOT TAX ADVICE. INVESTORS SHOULD CONSULT THEIR TAX ADVISORS WITH RESPECT TO THE APPLICATION OF THE U.S. FEDERAL INCOME TAX LAWS TO THEIR PARTICULAR SITUATIONS AS WELL AS ANY TAX CONSEQUENCES OF THE PURCHASE, OWNERSHIP, AND DISPOSITION OF OUR COMMON STOCK ARISING UNDER THE U.S. FEDERAL ESTATE OR GIFT TAX LAWS OR UNDER THE LAWS OF ANY STATE, LOCAL, OR NON-U.S. TAXING JURISDICTION OR UNDER ANY APPLICABLE INCOME TAX TREATY.

Definition of Non-U.S. Holder

For purposes of this discussion, a "Non-U.S. Holder" is any beneficial owner of our common stock that is neither a "U.S. person" nor an entity treated as a partnership for U.S. federal income tax purposes. A U.S. person is any person that, for U.S. federal income tax purposes, is or is treated as any of the following:

- An individual who is a citizen or resident of the United States;
- A corporation created or organized under the laws of the United States, any state thereof, or the District of Columbia;
- An estate, the income of which is subject to U.S. federal income tax regardless of its source; or
- A trust that (1) is subject to the primary supervision of a U.S. court and all substantial decisions of which are subject to the control of one or more "United States persons" (within the meaning of Section 7701(a)(30) of the Code), or (2) has a valid election in effect to be treated as a United States person for U.S. federal income tax purposes.

Distributions

As described in the section of this prospectus titled "Dividend Policy," we have never declared or paid cash dividends on our capital stock, and we do not currently intend to pay any cash dividends on our capital stock in the foreseeable future. However, if we do make distributions of cash or property on our common stock, such distributions will constitute dividends for U.S. federal income tax purposes to the extent paid from our current or accumulated earnings and profits, as determined under U.S. federal income tax principles. Amounts not treated as dividends for U.S. federal income tax purposes will constitute returns of capital and first be applied against and reduce a Non-U.S. Holder's adjusted tax basis in its common stock, but not below zero. Any excess will be treated as capital gain and will be treated as described below under "—Sale or Other Taxable Disposition."

Subject to the discussion below regarding effectively connected income, dividends paid to a Non-U.S. Holder will be subject to U.S. federal withholding tax at a rate of 30% of the gross amount of the dividends (or such lower rate specified by an applicable income tax treaty, provided the Non-U.S. Holder furnishes a valid IRS Form W-8BEN or IRS Form W-8BEN-E (or other applicable documentation) certifying qualification for the lower treaty rate). A Non-U.S. Holder that does not timely furnish the required documentation, but that qualifies for a reduced treaty rate, may obtain a refund of any excess amounts withheld by timely filing an appropriate claim for refund with the IRS. Non-U.S. Holders should consult their tax advisors regarding their entitlement to benefits under any applicable tax treaties.

If dividends paid to a Non-U.S. Holder are effectively connected with the Non-U.S. Holder's conduct of a trade or business within the United States (and, if required by an applicable income tax treaty, the Non-U.S. Holder maintains a permanent establishment in the United States to which such dividends are attributable), the Non-U.S. Holder will be exempt from the U.S. federal withholding tax described above. To claim the exemption, the Non-U.S. Holder must furnish to the applicable withholding agent a valid IRS Form W-8ECI, certifying that the dividends are effectively connected with the Non-U.S. Holder's conduct of a trade or business within the United States. Any such effectively connected dividends will be subject to U.S. federal income tax on a net income basis at the regular rates. A Non-U.S. Holder that is a corporation also may be subject to a branch profits tax at a rate of 30% (or such lower rate specified by an applicable income tax treaty) on such effectively connected dividends, as adjusted for certain items. Non-U.S. Holders should consult their tax advisors regarding any applicable tax treaties that may provide for different rules.

Sale or Other Taxable Disposition

Subject to the discussion below regarding backup withholding, a Non-U.S. Holder will not be subject to U.S. federal income tax on any gain realized upon the sale or other taxable disposition of our common stock unless:

- The gain is effectively connected with the Non-U.S. Holder's conduct of a trade or business within the United States (and, if required by an applicable income tax treaty, the Non-U.S. Holder maintains a permanent establishment in the United States to which such gain is attributable);
- The Non-U.S. Holder is a nonresident alien individual present in the United States for 183 days or more during the taxable year of the disposition and certain other requirements are met; or
- Our common stock constitutes a U.S. real property interest, or USRPI, by reason of our status as a U.S. real property holding corporation, or USRPHC, for U.S. federal income tax purposes.

Gain described in the first bullet point above generally will be subject to U.S. federal income tax on a net income basis at the regular rates. A Non-U.S. Holder that is a corporation also may be subject to a branch profits tax at a rate of 30% (or such lower rate specified by an applicable income tax treaty) on such effectively connected gain, as adjusted for certain items.

A Non-U.S. Holder described in the second bullet point above will be subject to U.S. federal income tax at a rate of 30% (or such lower rate specified by an applicable income tax treaty) on gain realized upon the sale or other taxable disposition of our common stock, which may be offset by certain U.S.-source capital losses of the Non-U.S. Holder (even though the individual is not considered a resident of the United States), provided the Non-U.S. Holder has timely filed U.S. federal income tax returns with respect to such losses.

With respect to the third bullet point above, we believe we currently are not, and do not anticipate becoming, a USRPHC. Because the determination of whether we are a USRPHC depends, however, on the fair market value of our USRPIs relative to the fair market value of our non-U.S. real property interests and our other business assets, there can be no assurance that we currently are not a USRPHC or will not become one in the future. Even if we are or were to become a USRPHC, gain arising from the sale or other taxable disposition of our common stock by a Non-U.S. Holder will not be subject to U.S. federal income tax if our common stock is "regularly traded," as defined by applicable Treasury Regulations, on an established securities market and such Non-U.S. Holder owned, actually and constructively, 5% or less of our common stock throughout the shorter of the five-year period ending on the date of the sale or other taxable disposition or the Non-U.S. Holder's holding period.

Non-U.S. Holders should consult their tax advisors regarding any applicable tax treaties that may provide for different rules.

Information Reporting and Backup Withholding

Payments of dividends on our common stock will not be subject to backup withholding, provided the Non-U.S. Holder certifies its non-U.S. status, such as by furnishing a valid IRS Form W-8BEN, W-8BEN-E or W-8ECI, or otherwise establishes an exemption. However, information returns are required to be filed with the IRS in connection with any distributions on our common stock paid to the Non-U.S. Holder, regardless of whether any tax was actually withheld. In addition, proceeds of the sale or other taxable disposition of our common stock within the United States or conducted through certain U.S.-related brokers generally will not be subject to backup withholding or information reporting if the applicable withholding agent receives the certification described above or the Non-U.S. Holder otherwise establishes an exemption. Proceeds of a disposition of our common stock conducted through a non-U.S. office of a non-U.S. broker that does not have certain enumerated relationships with the United States generally will not be subject to backup withholding or information reporting.

Copies of information returns that are filed with the IRS may also be made available under the provisions of an applicable treaty or agreement to the tax authorities of the country in which the Non-U.S. Holder resides or is established.

Backup withholding is not an additional tax. Any amounts withheld under the backup withholding rules may be allowed as a refund or a credit against a Non-U.S. Holder's U.S. federal income tax liability, provided the required information is timely furnished to the IRS.

Additional Withholding Tax on Payments Made to Foreign Accounts

Withholding taxes may be imposed under Sections 1471 to 1474 of the Code (such Sections commonly referred to as the Foreign Account Tax Compliance Act, or FATCA) on certain types of payments made to non-U.S. financial institutions and certain other non-U.S. entities. Specifically, a 30% withholding tax may be imposed on dividends on, or (subject to the proposed Treasury Regulations discussed below) gross proceeds from the sale or other disposition of, our common stock paid to a "foreign financial institution" or a "non-financial foreign entity" (each as defined in the Code), unless (1) the foreign financial institution undertakes certain diligence and reporting obligations, (2) the non-financial foreign entity either certifies it does not have any "substantial United States owners" (as defined in the Code) or furnishes identifying information regarding each substantial United States owner, or (3) the foreign financial institution or non-financial foreign entity otherwise qualifies for an exemption from these rules. If the payee is a foreign financial institution and is subject to the diligence and reporting requirements in (1) above, it must enter into an agreement with the U.S. Department of the Treasury requiring, among other things, that it undertakes to identify accounts held by certain "specified United States persons" or "United States owned foreign entities" (each as defined in the Code), annually reports certain information about such accounts, and withholds 30% on certain payments to non-compliant foreign financial institutions and certain other account holders. Foreign financial institutions located in jurisdictions that have an intergovernmental agreement with the United States governing FATCA may be subject to different rules.

Under the applicable Treasury Regulations and administrative guidance, withholding under FATCA generally applies to payments of dividends on our common stock. While, beginning on January 1, 2019, withholding under FATCA would have applied also to payments of gross proceeds from the sale or other disposition of our common stock, proposed Treasury Regulations eliminate FATCA withholding on payments of gross proceeds entirely. Taxpayers generally may rely on these proposed Treasury Regulations until final Treasury Regulations are issued.

Prospective investors should consult their tax advisors regarding the potential application of withholding under FATCA to their investment in our common stock.

UNDERWRITERS

Under the terms and subject to the conditions in an underwriting agreement dated the date of this prospectus, the underwriters named below, for whom Morgan Stanley & Co. LLC, BofA Securities, Inc., Citigroup Global Markets, Inc. and Piper Sandler & Co. are acting as representatives, have severally agreed to purchase, and we have agreed to sell to them, severally, the number of shares indicated below:

Name	Number of Shares
Morgan Stanley & Co. LLC	
BofA Securities, Inc.	
Citigroup Global Markets, Inc.	
Piper Sandler & Co.	
Total:	

The underwriters and the representatives are collectively referred to as the "underwriters" and the "representatives," respectively. The underwriters are offering the shares of common stock subject to their acceptance of the shares from us and subject to prior sale. The underwriting agreement provides that the obligations of the several underwriters to pay for and accept delivery of the shares of common stock offered by this prospectus are subject to the approval of certain legal matters by their counsel and to certain other conditions. The underwriters are obligated to take and pay for all of the shares of common stock offered by this prospectus if any such shares are taken. However, the underwriters are not required to take or pay for the shares covered by the underwriters' over-allotment option described below.

The underwriters initially propose to offer part of the shares of common stock directly to the public at the offering price listed on the cover page of this prospectus and part to certain dealers at a price that represents a concession not in excess of $ per share under the public offering price. After the initial offering of the shares of common stock, the offering price and other selling terms may from time to time be varied by the representatives.

We have granted to the underwriters an option, exercisable for 30 days from the date of this prospectus, to purchase up to additional shares of common stock at the public offering price listed on the cover page of this prospectus, less underwriting discounts and commissions. The underwriters may exercise this option solely for the purpose of covering over-allotments, if any, made in connection with the offering of the shares of common stock offered by this prospectus. To the extent the option is exercised, each underwriter will become obligated, subject to certain conditions, to purchase approximately the same percentage of the additional shares of common stock as the number listed next to the underwriter's name in the preceding table bears to the total number of shares of common stock listed next to the names of all underwriters in the preceding table.

The following table shows the per share and total public offering price, underwriting discounts and commissions, and proceeds before expenses to us. These amounts are shown assuming both no exercise and full exercise of the underwriters' option to purchase up to an additional shares of common stock.

	Per Share	Total	
		No Exercise	Full Exercise
Public offering price	$	$	$
Underwriting discounts and commissions to be paid by us:	$	$	$
Proceeds, before expenses, to us	$	$	$

The estimated offering expenses payable by us, exclusive of the underwriting discounts and commissions, are approximately $. We have agreed to reimburse the underwriters for expenses relating to clearance of this offering with the Financial Industry Regulatory Authority up to $.

The underwriters have informed us that they do not intend sales to discretionary accounts to exceed 5% of the total number of shares of common stock offered by them.

We have applied to list our common stock on the Nasdaq Global Market under the trading symbol “SGHT”.

We and all directors and officers and the holders of substantially all of our outstanding stock and stock options have agreed that, without the prior written consent of Morgan Stanley & Co. LLC and BofA Securities, Inc. on behalf of the underwriters, we and they will not, and will not publicly disclose an intention to, during the period ending 180 days after the date of this prospectus (the “restricted period”):

- Offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, lend or otherwise transfer or dispose of, directly or indirectly, any shares of common stock or any securities convertible into or exercisable or exchangeable for shares of common stock;
- File any registration statement with the Securities and Exchange Commission relating to the offering of any shares of common stock or any securities convertible into or exercisable or exchangeable for common stock; or
- Enter into any swap or other arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of the common stock,

whether any such transaction described above is to be settled by delivery of common stock or such other securities, in cash or otherwise. In addition, we and each such person agrees that, without the prior written consent of Morgan Stanley & Co. LLC and BofA Securities, Inc. on behalf of the underwriters, we or such other person will not, during the restricted period, make any demand for, or exercise any right with respect to, the registration of any shares of common stock or any security convertible into or exercisable or exchangeable for common stock.

The restrictions described in the immediately preceding paragraph to do not apply to:

(a) the sale of shares to the underwriters;

(b) the issuance by the Company of shares of common stock upon the exercise of an option or a warrant or the conversion of a security outstanding on the date of this prospectus of which the underwriters have been advised in writing;

(c) transactions by any person other than us relating to shares of common stock or other securities acquired from the underwriters in this offering or open market transactions after the completion of the offering of the shares; provided that no filing under Section 16(a) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), is required or voluntarily made in connection with subsequent sales of the common stock or other securities acquired in this offering or such open market transactions;

(d) transfers by any person other than us of shares of common stock or other securities convertible into or exercisable or exchangeable for common stock as a bona fide gift or for bona fide estate planning purposes;

(e) transfers by any person other than us of shares of common stock or any security convertible into common stock to (i) a partnership, limited liability company or other entity which is controlled or managed by such person or the immediate family of such person or under common control of such person, (ii) to any trust for the direct or indirect benefit of such person or the immediate family of the such person or, if such person is a trust, to a trustor or beneficiary of the trust or to the estate of a beneficiary of such trust or (iii) if such person is a corporation, partnership, limited liability company, trust or other business entity, transfers to another corporation, partnership, limited liability company, trust or other business entity that is an affiliate (as defined in Rule 405 promulgated under the Securities Act of 1933, as amended) of such person, or to any investment fund or other entity

controlling, controlled by, managing or managed by or under common control with such person or affiliates of such person (including, for the avoidance of doubt, where such person is a partnership, to its general partner or a successor partnership or fund, or any other funds managed by such partnership);

(f) distributions of shares of common stock or any security convertible into common stock to limited partners or stockholders of such person;

(g) transfers of shares of common stock or other securities convertible into or exercisable or exchangeable for common stock by operation of law, pursuant to a qualified domestic order, divorce settlement, divorce decree or separation agreement;

(h) transfers to a nominee or a custodian of a person or entity to whom a disposition or transfer would be permissible under clauses (c) through (g) set forth above;

(i) transfers to us by any person other than us of shares of common stock or any security convertible into or exercisable or exchangeable for common stock in connection with the repurchase by the Company from such person of shares of common stock or any security convertible into or exercisable or exchangeable for common stock pursuant to a repurchase right arising in connection with the termination of such person's employment with or provision of services to the Company, provided that (i) any such shares of common stock or any such security are held by such person pursuant to an agreement or equity award granted under a stock incentive plan or other equity award plan, each such agreement or plan which is described in the prospectus and (ii) any public announcement or filing under the Exchange Act shall clearly indicate in the footnotes thereto that such transfer is being made pursuant to the circumstances described in this clause;

(j) transfers to us by any person other than us of shares of common stock or any security convertible into or exercisable or exchangeable for common stock upon a vesting event of the Company's securities, the settlement of restricted stock units, or the exercise of options or warrants to purchase the Company's securities on a "cashless" or "net exercise" basis to the extent permitted by the instruments representing such options, restricted stock units or warrants (and any transfer to the Company necessary to generate such amount of cash needed for the payment of taxes, including estimated taxes, due as a result of such vesting, settlement or exercise whether by means of a "net settlement" or otherwise) so long as such "cashless exercise" or "net exercise" is effected solely by the surrender of outstanding options, warrants or restricted stock units (or the common stock issuable upon the exercise or settlement thereof) to us and our cancellation of all or a portion thereof to pay the exercise price and/or withholding tax and remittance obligations, provided that (i) any such shares of common stock received upon such exercise, vesting or settlement shall be subject to the terms of the lock-up agreement, (ii) any such restricted stock units, options, warrants or rights are held by such person pursuant to an agreement or equity award granted under a stock incentive plan or other equity award plan, each such agreement or plan which is described in this prospectus, and provided further that (iii) any public announcement or filing under the Exchange Act shall clearly indicate in the footnotes thereto that the filing relates to the circumstances described in this clause;

(k) transfers by any person than us of shares of common stock or any security convertible into or exercisable or exchangeable for common stock pursuant to a bona fide third-party tender offer, merger, consolidation or other similar transaction that is approved by the board of directors and made to all holders of our capital stock involving a change of control, provided that in the event that such tender offer, merger, consolidation or other similar transaction is not completed, the common stock or securities convertible into or exercisable or exchangeable for common stock held by such person shall remain subject to the provisions of the lock-up agreement; or

(l) facilitating the establishment of a trading plan on behalf of a shareholder, officer or director of the Company pursuant to Rule 10b5-1 under the Exchange Act for the transfer of shares of common stock, provided that (i) such plan does not provide for the transfer of common stock during the restricted period and (ii) to the extent a public announcement or filing under the Exchange Act, if any, is required

of or voluntarily made by the Company regarding the establishment of such plan, such announcement or filing shall include a statement to the effect that no transfer of common stock may be made under such plan during the restricted period,

provided that in the case of any transfer or distribution pursuant to clauses (d) through (h) above, (i) each donee, distributee or transferee shall sign and deliver a lock-up agreement substantially in the form of the agreement signed by the donor, distributor or transferor, (ii) such transfer or distribution shall not involve a disposition for value and (iii) any filing under the Exchange Act reporting a reduction in beneficial ownership of shares of common stock that is required to be made or shall be voluntarily made during the restricted period shall indicate by footnote disclosure or otherwise the nature of such transfer or disposition.

Morgan Stanley & Co. LLC and BofA Securities, Inc., in their sole discretion, may release the common stock and other securities subject to the lock-up agreements described above in whole or in part at any time.

In order to facilitate the offering of the common stock, the underwriters may engage in transactions that stabilize, maintain or otherwise affect the price of the common stock. Specifically, the underwriters may sell more shares than they are obligated to purchase under the underwriting agreement, creating a short position. A short sale is covered if the short position is no greater than the number of shares available for purchase by the underwriters under the over-allotment option described above. The underwriters can close out a covered short sale by exercising the over-allotment option or purchasing shares in the open market. In determining the source of shares to close out a covered short sale, the underwriters will consider, among other things, the open market price of shares compared to the price available under the over-allotment option. The underwriters may also sell shares in excess of the over-allotment option, creating a naked short position. The underwriters must close out any naked short position by purchasing shares in the open market. A naked short position is more likely to be created if the underwriters are concerned that there may be downward pressure on the price of the common stock in the open market after pricing that could adversely affect investors who purchase in this offering. As an additional means of facilitating this offering, the underwriters may bid for, and purchase, shares of common stock in the open market to stabilize the price of the common stock. These activities may raise or maintain the market price of the common stock above independent market levels or prevent or retard a decline in the market price of the common stock. The underwriters are not required to engage in these activities and may end any of these activities at any time.

We and the underwriters have agreed to indemnify each other against certain liabilities, including liabilities under the Securities Act.

A prospectus in electronic format may be made available on websites maintained by one or more underwriters, or selling group members, if any, participating in this offering. The representatives may agree to allocate a number of shares of common stock to underwriters for sale to their online brokerage account holders. Internet distributions will be allocated by the representatives to underwriters that may make Internet distributions on the same basis as other allocations.

Other Relationships

The underwriters and their respective affiliates are full service financial institutions engaged in various activities, which may include securities trading, commercial and investment banking, financial advisory, investment management, investment research, principal investment, hedging, financing and brokerage activities. Certain of the underwriters and their respective affiliates have, from time to time, performed, and may in the future perform, various financial advisory and investment banking services for us, for which they received or will receive customary fees and expenses.

In addition, in the ordinary course of their various business activities, the underwriters and their respective affiliates may make or hold a broad array of investments and actively trade debt and equity securities (or related

derivative securities) and financial instruments (including bank loans) for their own account and for the accounts of their customers and may at any time hold long and short positions in such securities and instruments. Such investment and securities activities may involve our securities and instruments. The underwriters and their respective affiliates may also make investment recommendations or publish or express independent research views in respect of such securities or instruments and may at any time hold, or recommend to clients that they acquire, long or short positions in such securities and instruments.

Pricing of the Offering

Prior to this offering, there has been no public market for our common stock. The initial public offering price was determined by negotiations between us and the representatives. Among the factors considered in determining the initial public offering price were our future prospects and those of our industry in general, our sales, earnings and certain other financial and operating information in recent periods, and the price-earnings ratios, price-sales ratios, market prices of securities, and certain financial and operating information of companies engaged in activities similar to ours.

Selling Restrictions

Canada

The shares of our common stock may be sold only to purchasers purchasing, or deemed to be purchasing, as principal that are accredited investors, as defined in National Instrument 45-106 Prospectus Exemptions or subsection 73.3(1) of the Securities Act (Ontario), and are permitted clients, as defined in National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations. Any resale of the shares of our common stock must be made in accordance with an exemption from, or in a transaction not subject to, the prospectus requirements of applicable securities laws.

Securities legislation in certain provinces or territories of Canada may provide a purchaser with remedies for rescission or damages if this prospectus (including any amendment thereto) contains a misrepresentation, provided that the remedies for rescission or damages are exercised by the purchaser within the time limit prescribed by the securities legislation of the purchaser's province or territory. The purchaser should refer to any applicable provisions of the securities legislation of the purchaser's province or territory for particulars of these rights or consult with a legal advisor.

Pursuant to section 3A.3 (or, in the case of securities issued or guaranteed by the government of a non-Canadian jurisdiction, section 3A.4) of National Instrument 33-105 Underwriting Conflicts (NI 33-105), the underwriters are not required to comply with the disclosure requirements of NI 33-105 regarding underwriter conflicts of interest in connection with this offering.

European Economic Area

In relation to each Member State of the European Economic Area (each, a "Member State"), no securities have been offered or will be offered pursuant to the offering to the public in that Member State prior to the publication of a prospectus in relation to the securities which has been approved by the competent authority in that Member State or, where appropriate, approved in another Member State and notified to the competent authority in that Member State, all in accordance with the Prospectus Regulation, except that offers of securities may be made to the public in that Member State at any time under the following exemptions under the Prospectus Regulation:

(a) to any legal entity which is a qualified investor as defined in the Prospectus Regulation;

(b) to fewer than 150 natural or legal persons (other than qualified investors as defined in the Prospectus Regulation), subject to obtaining the prior consent of the representatives; or

(c) in any other circumstances falling within Article 1(4) of the Prospectus Regulation,

provided that no such offer of shares shall require us or any of the representatives to publish a prospectus pursuant to Article 3 of the Prospectus Regulation or supplement a prospectus pursuant to Article 23 of the Prospectus Regulation and each person who initially acquires any shares or to whom any offer is made will be deemed to have represented, acknowledged and agreed to and with each of the representatives and us that it is a "qualified investor" as defined in the Prospectus Regulation.

In the case of any shares being offered to a financial intermediary as that term is used in Article 5 of the Prospectus Regulation, each such financial intermediary will be deemed to have represented, acknowledged and agreed that the shares acquired by it in the offer have not been acquired on a nondiscretionary basis on behalf of, nor have they been acquired with a view to their offer or resale to, persons in circumstances which may give rise to an offer of any shares to the public other than their offer or resale in a Member State to qualified investors as so defined or in circumstances in which the prior consent of the representatives has been obtained to each such proposed offer or resale.

For the purposes of this provision, the expression an "offer of shares to the public" in relation to any shares in any Member State means the communication in any form and by means of sufficient information on the terms of the offer and the shares to be offered so as to enable an investor to decide to purchase shares, the expression "Prospectus Regulation" means Regulation (EU) 2017/1129, as amended.

United Kingdom

In relation to the United Kingdom ("UK"), no Shares have been offered or will be offered pursuant to this offering to the public in the UK prior to the publication of a prospectus in relation to the Shares which has been approved by the Financial Conduct Authority in the UK in accordance with the UK Prospectus Regulation and the FSMA, except that offers of Shares may be made to the public in the UK at any time under the following exemptions under the UK Prospectus Regulation and the FSMA:

a. to any legal entity which is a qualified investor as defined under the UK Prospectus Regulation;

b. to fewer than 150 natural or legal persons (other than qualified investors as defined under the UK Prospectus Regulation); or

c. at any time in other circumstances falling within section 86 of the FSMA,

provided that no such offer of Shares shall require the Issuer or any Manager to publish a prospectus pursuant to Section 85 of the FSMA or Article 3 of the UK Prospectus Regulation or supplement a prospectus pursuant to Article 23 of the UK Prospectus Regulation.

Notwithstanding the above, each person in the UK who initially acquires any Shares or to whom any offer is made will be deemed to have represented, acknowledged and agreed to and with the Company and the Managers that it is a qualified investor within the meaning of the UK Prospectus Regulation.

In the case of any Shares being offered to a financial intermediary as that term is used in Article 5(1) of the UK Prospectus Regulation, each such financial intermediary will be deemed to have represented, acknowledged and agreed that the Shares acquired by it in the offer have not been acquired on a non-discretionary basis on behalf of, nor have they been acquired with a view to their offer or resale to, persons in circumstances which may give rise to an offer to the public other than their offer or resale in the UK to qualified investors, in circumstances in which the prior consent of the representatives has been obtained to each such proposed offer or resale.

The Company, the underwriters and their affiliates will rely upon the truth and accuracy of the foregoing representations, acknowledgements and agreements.

For the purposes of this provision, the expression an "offer to the public" in relation to any Shares in the UK means the communication in any form and by any means of sufficient information on the terms of the offer and

any Shares to be offered so as to enable an investor to decide to purchase or subscribe for any Shares, the expression "UK Prospectus Regulation" means Regulation (EU) 2017/1129 as it forms part of domestic law by virtue of the European Union (Withdrawal) Act 2018, and the expression "FSMA" means the Financial Services and Markets Act 2000.

In connection with the offering, the underwriters are not acting for anyone other than the issuer and will not be responsible to anyone other than the issuer for providing the protections afforded to their clients nor for providing advice in relation to the offering.

Notice to Prospective Investors in Singapore

This prospectus has not been registered as a prospectus with the Monetary Authority of Singapore. Accordingly, the common stock was not offered or sold or caused to be made the subject of an invitation for subscription or purchase and will not be offered or sold or caused to be made the subject of an invitation for subscription or purchase, and this prospectus or any other document or material in connection with the offer or sale, or invitation for subscription or purchase, of the common stock, has not been circulated or distributed, nor will it be circulated or distributed, whether directly or indirectly, to any person in Singapore other than (i) to an institutional investor (as defined in Section 4A of the Securities and Futures Act (Chapter 289) of Singapore, as modified or amended from time to time (the "SFA")) pursuant to Section 274 of the SFA, (ii) to a relevant person (as defined in Section 275(2) of the SFA) pursuant to Section 275(1) of the SFA, or any person pursuant to Section 275(1A) of the SFA, and in accordance with the conditions specified in Section 275 of the SFA, or (iii) otherwise pursuant to, and in accordance with the conditions of, any other applicable provision of the SFA.

Where the common stock is subscribed or purchased under Section 275 of the SFA by a relevant person which is:

(a) a corporation (which is not an accredited investor (as defined in Section 4A of the SFA)) the sole business of which is to hold investments and the entire share capital of which is owned by one or more individuals, each of whom is an accredited investor; or

(b) a trust (where the trustee is not an accredited investor) whose sole purpose is to hold investments and each beneficiary of the trust is an individual who is an accredited investor,

securities or securities-based derivatives contracts (each term as defined in Section 2(1) of the SFA) of that corporation or the beneficiaries' rights and interest (howsoever described) in that trust shall not be transferred within six months after that corporation or that trust has acquired the common stock pursuant to an offer made under Section 275 of the SFA except:

(a) to an institutional investor or to a relevant person, or to any person arising from an offer referred to in Section 275(1A) or Section 276(4)(i)(B) of the SFA;

(b) where no consideration is or will be given for the transfer;

(c) where the transfer is by operation of law; or

(d) as specified in Section 276(7) of the SFA.

Notice to Prospective Investors in Switzerland

The shares may not be publicly offered in Switzerland and will not be listed on the SIX Swiss Exchange ("SIX") or on any other stock exchange or regulated trading facility in Switzerland. This document has been prepared without regard to the disclosure standards for issuance prospectuses under art. 652a or art. 1156 of the Swiss Code of Obligations or the disclosure standards for listing prospectuses under art. 27 ff. of the SIX Listing Rules or the listing rules of any other stock exchange or regulated trading facility in Switzerland. Neither this document nor any other offering or marketing material relating to the shares or the offering may be publicly distributed or otherwise made publicly available in Switzerland.

Neither this document nor any other offering or marketing material relating to the offering, the Company, the shares have been or will be filed with or approved by any Swiss regulatory authority. In particular, this document will not be filed with, and the offer of shares will not be supervised by, the Swiss Financial Market Supervisory Authority FINMA (FINMA), and the offer of shares has not been and will not be authorized under the Swiss Federal Act on Collective Investment Schemes ("CISA"). The investor protection afforded to acquirers of interests in collective investment schemes under the CISA does not extend to acquirers of shares.

Notice to Prospective Investors in Australia

No placement document, prospectus, product disclosure statement or other disclosure document has been lodged with the Australian Securities and Investments Commission ("ASIC"), in relation to the offering. This prospectus does not constitute a prospectus, product disclosure statement or other disclosure document under the Corporations Act 2001 (the "Corporations Act"), and does not purport to include the information required for a prospectus, product disclosure statement or other disclosure document under the Corporations Act.

Any offer in Australia of the common stock may only be made to persons (the "Exempt Investors") who are "sophisticated investors" (within the meaning of section 708(8) of the Corporations Act), "professional investors" (within the meaning of section 708(11) of the Corporations Act) or otherwise pursuant to one or more exemptions contained in section 708 of the Corporations Act so that it is lawful to offer the common stock without disclosure to investors under Chapter 6D of the Corporations Act.

The common stock applied for by Exempt Investors in Australia must not be offered for sale in Australia in the period of 12 months after the date of allotment under the offering, except in circumstances where disclosure to investors under Chapter 6D of the Corporations Act would not be required pursuant to an exemption under section 708 of the Corporations Act or otherwise or where the offer is pursuant to a disclosure document which complies with Chapter 6D of the Corporations Act. Any person acquiring the common stock must observe such Australian on-sale restrictions.

This prospectus contains general information only and does not take account of the investment objectives, financial situation or particular needs of any particular person. It does not contain any securities recommendations or financial product advice. Before making an investment decision, investors need to consider whether the information in this prospectus is appropriate to their needs, objectives and circumstances, and, if necessary, seek expert advice on those matters.

Notice to Prospective Investors in the Dubai International Financial Centre

This prospectus relates to an Exempt Offer in accordance with the Offered Securities Rules of the Dubai Financial Services Authority ("DFSA"). This prospectus is intended for distribution only to persons of a type specified in the Offered Securities Rules of the DFSA. It must not be delivered to, or relied on by, any other person. The DFSA has no responsibility for reviewing or verifying any documents in connection with Exempt Offers. The DFSA has not approved this prospectus nor taken steps to verify the information set forth herein and has no responsibility for the prospectus. The common stock to which this prospectus relates may be illiquid and/or subject to restrictions on their resale. Prospective purchasers of the common stock offered should conduct their own due diligence on the common stock. If you do not understand the contents of this prospectus you should consult an authorized financial advisor.

Notice to Prospective Investors in Hong Kong

The common stock has not been offered or sold and will not be offered or sold in Hong Kong, by means of any document, other than (a) to "professional investors" as defined in the Securities and Futures Ordinance (Cap. 571) of Hong Kong and any rules made under that Ordinance; or (b) in other circumstances which do not result in the document being a "prospectus" as defined in the Companies Ordinance (Cap. 32) of Hong Kong or

which do not constitute an offer to the public within the meaning of that Ordinance. No advertisement, invitation or document relating to the common stock has been or may be issued or has been or may be in the possession of any person for the purposes of issue, whether in Hong Kong or elsewhere, which is directed at, or the contents of which are likely to be accessed or read by, the public of Hong Kong (except if permitted to do so under the securities laws of Hong Kong) other than with respect to the common stock which are or are intended to be disposed of only to persons outside Hong Kong or only to "professional investors" as defined in the Securities and Futures Ordinance and any rules made under that Ordinance.

Japan

No registration pursuant to Article 4, paragraph 1 of the Financial Instruments and Exchange Law of Japan (Law No. 25 of 1948, as amended) (the "FIEL") has been made or will be made with respect to the solicitation of the application for the acquisition of the shares of common stock.

Accordingly, the shares of common stock have not been, directly or indirectly, offered or sold and will not be, directly or indirectly, offered or sold in Japan or to, or for the benefit of, any resident of Japan (which term as used herein means any person resident in Japan, including any corporation or other entity organized under the laws of Japan) or to others for re-offering or re-sale, directly or indirectly, in Japan or to, or for the benefit of, any resident of Japan except pursuant to an exemption from the registration requirements, and otherwise in compliance with, the FIEL and the other applicable laws and regulations of Japan.

For Qualified Institutional Investors ("QII")

Please note that the solicitation for newly-issued or secondary securities (each as described in Paragraph 2, Article 4 of the FIEL) in relation to the shares of common stock constitutes either a "QII only private placement" or a "QII only secondary distribution" (each as described in Paragraph 1, Article 23-13 of the FIEL). Disclosure regarding any such solicitation, as is otherwise prescribed in Paragraph 1, Article 4 of the FIEL, has not been made in relation to the shares of common stock. The shares of common stock may only be transferred to QIIs.

For Non-QII Investors

Please note that the solicitation for newly-issued or secondary securities (each as described in Paragraph 2, Article 4 of the FIEL) in relation to the shares of common stock constitutes either a "small number private placement" or a "small number private secondary distribution" (each as described in Paragraph 4, Article 23-13 of the FIEL). Disclosure regarding any such solicitation, as is otherwise prescribed in Paragraph 1, Article 4 of the FIEL, has not been made in relation to the shares of common stock. The shares of common stock may only be transferred en bloc without subdivision to a single investor.

LEGAL MATTERS

The validity of the shares of common stock offered hereby will be passed upon for us by Latham & Watkins LLP. Certain legal matters will be passed upon for the underwriters by Davis, Polk & Wardwell LLP.

EXPERTS

The financial statements as of December 31, 2018, 2019 and 2020, and for each of the three years in the period ended December 31, 2020, included in this Registration Statement have been audited by Deloitte & Touche LLP, an independent registered public accounting firm, as stated in their report appearing herein. Such financial statements are included in reliance upon the report of such firm given upon their authority as experts in accounting and auditing.

WHERE YOU CAN FIND MORE INFORMATION

We have filed with the Securities and Exchange Commission a registration statement on Form S-1 under the Securities Act with respect to the shares of common stock offered hereby. This prospectus, which constitutes a part of the registration statement, does not contain all of the information set forth in the registration statement or the exhibits and schedules filed therewith. For further information about us and the common stock offered hereby, we refer you to the registration statement and the exhibits and schedules filed thereto. Statements contained in this prospectus regarding the contents of any contract or any other document that is filed as an exhibit to the registration statement are not necessarily complete, and each such statement is qualified in all respects by reference to the full text of such contract or other document filed as an exhibit to the registration statement. Upon completion of this offering, we will be required to file periodic reports, proxy statements, and other information with the Securities and Exchange Commission pursuant to the Securities Exchange Act of 1934. The Securities and Exchange Commission maintains an Internet website that contains reports, proxy statements and other information about registrants, like us, that file electronically with the Securities and Exchange Commission. The address of that site is *www.sec.gov*.

SIGHT SCIENCES, INC.

INDEX TO CONSOLIDATED FINANCIAL STATEMENTS

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the shareholders and the Board of Directors of Sight Sciences, Inc.

Opinion on the Financial Statements

We have audited the accompanying consolidated balance sheets of Sight Sciences, Inc. and subsidiary (the "Company") as of December 31, 2020, 2019, and 2018, the related consolidated statements of operations and comprehensive loss, redeemable convertible preferred stock and stockholders' deficit, and cash flows for each of the three years in the period ended December 31, 2020, and the related notes (collectively referred to as the "financial statements"). In our opinion, the financial statements present fairly, in all material respects, the financial position of the Company as of December 31, 2020, 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, 2020, in conformity with accounting principles generally accepted in the United States of America.

Basis for Opinion

These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on the Company's financial statements based on our audits. We are a public accounting firm registered with the Public Company Accounting Oversight Board (United States) (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 and in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether due to error or fraud. The Company is not required to have, nor were we engaged to perform, an audit of its internal control over financial reporting. As part of our audits, we are required to obtain an understanding of internal control over financial reporting but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion.

Our audits included performing procedures to assess the risks of material misstatement of the 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 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 financial statements. We believe that our audits provide a reasonable basis for our opinion.

/s/ Deloitte & Touche LLP

San Jose, California

April 9, 2021

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

SIGHT SCIENCES, INC.

Consolidated Balance Sheets
(In thousands, except share and per share amounts)

	As of December 31,		
	2018	2019	2020
Assets			
Current assets:			
Cash and cash equivalents	$ 4,242	$ 21,237	$ 61,511
Accounts receivable, net	1,815	4,094	5,363
Inventory, net	486	2,244	2,598
Prepaid expenses and other current assets	621	426	1,161
Total current assets	7,164	28,001	70,633
Property and equipment, net	868	1,491	1,269
Operating lease ROU assets	—	1,081	518
Other noncurrent assets	62	168	386
Total assets	$ 8,094	$ 30,741	$ 72,806
Liabilities, redeemable convertible preferred stock, and Stockholders' deficit			
Current liabilities:			
Accounts payable	$ 1,879	$ 2,315	$ 2,158
Accrued compensation	689	2,170	4,070
Accrued and other current liabilities	328	2,851	3,086
Total current liabilities	2,896	7,336	9,314
Long-term debt	—	12,855	31,955
Other noncurrent liabilities	7	977	3,055
Total liabilities	2,903	21,168	44,324
Commitments and contingencies (Note 6)			
Redeemable convertible preferred stock:			
Convertible Preferred Stock, $0.001 par value; 7,413,965, 9,894,056, and 14,241,390 shares authorized as of December 31, 2018, 2019, and 2020, respectively; 7,356,822, 9,804,640, and 12,767,202 shares issued and outstanding as of December 31, 2018, 2019 and 2020, respectively; aggregate liquidation preference of $34.5 million, $65.2 million, and $118.6 million as of December 31, 2018, 2019, and 2020, respectively	34,153	64,256	117,331
Stockholders' deficit:			
Common stock par value of $0.001 per share—16,000,000 shares authorized at December 31, 2018, 17,000,000 shares authorized at December 31, 2019, and 21,831,000 shares authorized at December 31, 2020; 4,596,003 shares issued and outstanding at December 31, 2018, 4,659,733 shares issued and outstanding as of December 31, 2019, and 4,754,591 shares issued and outstanding as of December 31, 2020	5	5	5
Additional paid-in capital	512	660	1,187
Accumulated deficit	(29,479)	(55,348)	(90,041)
Total stockholders' deficit	(28,962)	(54,683)	(88,849)
Total liabilities, redeemable convertible preferred stock, and stockholders' deficit	$ 8,094	$ 30,741	$ 72,806

The accompanying notes are an integral part of these consolidated financial statements.

SIGHT SCIENCES, INC.

Consolidated Statements of Operations and Comprehensive Loss
(In thousands, except share and per share data)

	Years Ended December 31,		
	2018	2019	2020
Revenue	$ 7,530	$ 23,348	$ 27,640
Cost of goods sold	2,338	6,544	9,209
Gross profit	5,192	16,804	18,431
Operating expenses:			
Research and development	5,426	8,124	8,874
Selling, general, and administrative	14,063	32,719	41,745
Total operating expenses	19,489	40,843	50,619
Loss from operations	(14,297)	(24,039)	(32,188)
Interest income	1	174	30
Interest expense	—	(1,961)	(2,403)
Other income (expense), net	—	(35)	(71)
Loss before income taxes	(14,296)	(25,861)	(34,632)
Provision (benefit) for income taxes	(6)	8	61
Net loss and comprehensive loss	$ (14,290)	$ (25,869)	$ (34,693)
Net loss per share outstanding attributable to common stockholders, basic and diluted	$ (3.10)	$ (5.51)	$ (7.41)
Weighted-average common shares outstanding used in computing net loss per share attributable to common stockholders, basic and diluted	4,611,325	4,693,534	4,678,109
Pro forma net loss per share, basic and diluted (unaudited)			
Weighted-average shares outstanding used in computing pro forma net loss per share, basic and diluted (unaudited)			

The accompanying notes are an integral part of these consolidated financial statements.

SIGHT SCIENCES, INC.

Consolidated Statements of Redeemable Convertible Preferred Stock and Stockholders' Deficit
(In thousands, except share amounts)

	Redeemable Convertible Preferred Stock		Common Stock		Additional Paid-In Capital	Accumulated Deficit	Total Stockholders' Deficit
	Shares	Amount	Shares	Amount			
Balances at January 1, 2018	6,068,061	$ 21,973	4,541,754	$ 5	$ 437	$ (15,189)	$ (14,747)
Issuance of Series C redeemable convertible preferred stock, net of issuance costs of $46	1,288,761	12,180	—	—	—	—	—
Issuance of common stock upon exercise of stock options	—	—	54,249	—	23	—	23
Stock-based compensation expense	—	—	—	—	52	—	52
Net loss	—	—	—	—	—	(14,290)	(14,290)
Balances at December 31, 2018	7,356,822	34,153	4,596,003	5	512	(29,479)	(28,962)
Issuance of Series D redeemable convertible preferred stock, net of issuance costs of $647	2,447,818	30,103	—	—	—	—	—
Issuance of common stock upon exercise of stock options	—	—	63,730	—	30	—	30
Stock-based compensation expense	—	—	—	—	118	—	118
Net loss	—	—	—	—	—	(25,869)	(25,869)
Balances at December 31, 2019	9,804,640	64,256	4,659,733	5	660	(55,348)	(54,683)
Issuance of Series E redeemable convertible preferred stock, net of issuance costs of $106	1,899,847	30,044	—	—	—	—	—
Issuance of Series F redeemable convertible preferred stock, net of issuance costs of $219	1,062,715	23,031	—	—	—	—	—
Issuance of common stock upon exercise of common stock warrants	—	—	64,655	—	6	—	6
Issuance of common stock upon exercise of stock options	—	—	30,203	—	24	—	24
Stock-based compensation expense	—	—	—	—	497	—	497
Net loss	—	—	—	—	—	(34,693)	(34,693)
Balances at December 31, 2020	12,767,202	$ 117,331	4,754,591	$ 5	$ 1,187	$ (90,041)	$ (88,849)

The accompanying notes are an integral part of these consolidated financial statements.

SIGHT SCIENCES, INC.

Consolidated Statements of Cash Flows
(In thousands)

	Years Ended December 31,		
	2018	2019	2020
Cash flows from operating activities			
Net loss	$ (14,290)	$ (25,869)	$ (34,693)
Adjustments to reconcile net loss to net cash used in operating activities:			
Depreciation	63	295	554
Accretion of debt discount and amortization of debt issuance costs	—	525	574
Stock-based compensation expense	52	118	497
Provision for doubtful accounts receivable	58	41	209
Provision for excess and obsolete inventories	—	41	1,362
Noncash operating lease expense	—	137	563
Change in fair value of redeemable convertible preferred stock warrant	—	35	64
Loss on disposal of property and equipment	—	21	158
Proceeds from Paycheck Protection Program loan	—	—	(2,246)
Changes in operating assets and liabilities:			
Accounts receivable	(1,415)	(2,320)	(1,477)
Inventory	(184)	(1,799)	(1,716)
Prepaid expenses and other current assets	(560)	196	(735)
Other noncurrent assets	5	(106)	(237)
Accounts payable	1,003	168	448
Accrued compensation	503	1,481	1,900
Accrued and other current liabilities	289	1,826	1,987
Other noncurrent liabilities	1	213	614
Net cash used in operating activities	(14,475)	(24,997)	(32,174)
Cash flows from investing activities			
Purchases of property and equipment	(570)	(672)	(953)
Net cash used in investing activities	(570)	(672)	(953)
Cash flows from financing activities			
Proceeds from the issuance of debt (Term Loan)	—	14,000	20,480
Debt issuance costs	—	(1,469)	(142)
Payments of costs related to initial public offering	—	—	(42)
Proceeds from the issuance of Series C redeemable convertible preferred stock	12,226	—	—
Series C issuance costs	(46)	—	—
Proceeds from the issuance of Series D redeemable convertible preferred stock	—	30,750	—
Series D issuance costs	—	(647)	—
Proceeds from the issuance of Series E redeemable convertible preferred stock	—	—	30,150
Series E issuance costs	—	—	(106)
Proceeds from the issuance of Series F redeemable convertible preferred stock	—	—	23,250
Series F issuance costs	—	—	(219)
Proceeds from exercise of common stock warrants	—	—	6
Proceeds from exercise of stock options	23	30	24
Net cash provided by financing activities	12,203	42,664	73,401
Net change in cash and cash equivalents	(2,842)	16,995	40,274
Cash and cash equivalents			
Beginning of year	7,084	4,242	21,237
End of year	$ 4,242	$ 21,237	$ 61,511
Supplemental disclosure of cash flow information			
Cash paid for interest	$ —	$ 1,149	$ 1,286
Supplemental noncash disclosure			
Acquisition of property and equipment included in accounts payable and accrued liabilities	$ 237	$ 505	$ 41
Unpaid initial public offering costs in accounts payable and accrued liabilities	—	—	325

The accompanying notes are an integral part of these consolidated financial statements.

SIGHT SCIENCES, INC.
Notes to Consolidated Financial Statements

Note 1. Company and Nature of Business

Description of Business

Sight Sciences, Inc. (the "Company") was incorporated in the state of Delaware in 2010. The Company is an ophthalmic medical device company focused on the development and commercialization of surgical and nonsurgical technologies for the treatment of prevalent eye diseases. The Company's surgical glaucoma product portfolio features the OMNI Surgical System, a device that facilitates the performance of both trabeculotomy and canaloplasty with a single device and single corneal incision. The Company's nonsurgical dry eye product portfolio consists of the TearCare system for ophthalmologists and optometrists. TearCare is a wearable eyelid technology that delivers highly targeted and adjustable heat to the meibomian glands of the eyelids.

The Company is located and headquartered in Menlo Park, California. The other office operated by the Company is in Southlake, Texas. All of the Company's current operations are conducted in the United States.

Significant Risks and Uncertainties

Since inception, the Company has incurred losses and negative cash flows from operations. As of December 31, 2020, the Company had an accumulated deficit of $90.0 million and recorded a net loss of $34.7 million for the year then ended and expects to incur future additional losses. If the Company's revenue levels from its products are not sufficient or if the Company is unable to secure additional funding when desired, the Company may need to delay the development of its products and scale back its business and operations.

The Company believes that its existing sources of liquidity will satisfy its working capital and capital requirements for at least 12 months from the issuance of its financial statements. Failure to generate sufficient revenues, achieve planned gross margins, or control operating costs will require the Company to raise additional capital through equity or debt financing. Such additional financing may not be available on acceptable terms, or at all, and could require the Company to modify, delay, or abandon some of its planned future expansion or expenditures or reduce some of its ongoing operating costs, which could harm its business, operating results, financial condition, and ability to achieve its intended business objectives.

On March 11, 2020, the World Health Organization declared the coronavirus disease 2019 ("COVID-19") outbreak a global pandemic recommending containment measures worldwide. On March 16, 2020 the Company implemented alternative work arrangements for its employees and limited its employees' travel activities to protect its employees and to comply with the provisions described within the local shelter in place order. Certain U.S. federal, state and local governmental authorities issued other orders and directives, including restrictions on elective procedures and therapies, aimed at minimizing the spread of COVID-19. As such, the COVID-19 pandemic impacted and is expected to continue to impact demand for the Company's products, which are used in procedures and therapies that are considered elective. Although some of the governmental restrictions have since been lifted or scaled back, recent and future surges of COVID-19 may result in restrictions being re-implemented in response to efforts to reduce the spread of COVID-19.

The ultimate impact of the COVID-19 pandemic on the Company's operations is unknown and will depend on future developments which are highly uncertain and cannot be predicted with confidence, including the duration and severity of the COVID-19 outbreak, the status of health and safety actions taken to contain its spread and any additional preventative and protective actions that governments, or the Company, may direct, any resurgence of COVID-19 that may occur and how quickly and to what extent economic and operating conditions normalize within the markets in which the Company operates. The COVID-19 pandemic could disrupt the operations of the Company's third-party manufacturers and other suppliers. Although the Company has not experienced disruptions in its supply chain to date, it cannot predict how long the pandemic and measures

intended to contain the spread of COVID-19 will continue and what effect COVID-19 and the associated containment measures will have on our suppliers and vendors, in particular for any of the Company's suppliers and vendors that may not qualify as essential businesses and suffer more significant disruptions to their business operations. The Company is working closely with its manufacturing partners and suppliers to help ensure the Company is able to source key components and maintain appropriate inventory levels to meet customer demand.

Note 2. Summary of Significant Accounting Policies

Basis of Presentation

The consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America (US GAAP). The Company's consolidated financial statements include the accounts of the Company and its wholly owned subsidiary, Sight Sciences UK, Ltd. All intercompany balances and transactions have been eliminated in consolidation.

Use of Estimates

The preparation of financial statements in conformity with US GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities, disclosure of contingent assets and liabilities at the date of the financial statements, and the reported amounts of revenues and expense during the reporting period. The most significant estimates related to inventory excess and obsolescence, the selection of useful lives of property and equipment, determination of the fair value of stock option grants, the fair value of the redeemable convertible preferred stock warrants, and provisions for income taxes and contingencies. Management evaluates its estimates and assumptions on an ongoing basis using historical experience and other factors, including the current economic environment, and makes adjustments when facts and circumstances dictate. These estimates are based on information available as of the date of the financial statements. Actual results could differ from these estimates and such differences could be material to the Company's financial position and results of operations.

Unaudited Pro Forma Information

The unaudited pro forma basic and diluted net loss per share data has been computed to give effect to an adjustment to the denominator in the pro forma basic and diluted net loss per share calculation for the conversion of the redeemable convertible preferred stock into shares of common stock as of the beginning of the period or the date of issuance, if later. The numerator in the pro forma basic and diluted net loss per share calculation has been adjusted to remove gains or losses resulting from the remeasurement of the redeemable convertible preferred stock warrant liability.

Fair Value of Financial Instruments

The Company's financial instruments consist of cash and cash equivalents, accounts receivable, accounts payable, accrued liabilities, redeemable convertible preferred stock, short-term and long-term debt and redeemable convertible preferred stock warrant liability. The Company states accounts receivable, accounts payable, and accrued and other current liabilities at their carrying value, which approximates fair value due to the short time to the expected receipt or payment. The carrying amount of the Company's short-term debt approximates its fair value as the effective interest rate approximates market rates currently available to the Company. The redeemable convertible preferred stock warrant liability associated with the Company's redeemable convertible preferred stock is carried at fair value based on unobservable market inputs.

Concentration of Credit Risk

Financial instruments that subject the Company to concentration of credit risk consist of cash and cash equivalents and accounts receivable. The Company's cash and cash equivalents are deposited with a high-quality

financial institution. Deposits at this institution may, at times, exceed federally insured limits. Management believes that this financial institution is financially sound and, accordingly, that minimal credit risk exists. The Company has not experienced any losses on its deposits of cash and cash equivalents.

The Company relies on third-party contract manufacturers for the manufacture of all of our commercial products currently available for sale. Disruption in production would have a negative impact on the Company's financial position, results of operations and cash flows.

The Company provides for uncollectible amounts when specific credit problems are identified. In doing so, the Company analyzes historical bad debt trends, customer creditworthiness, current economic trends, and changes in customer payment patterns when evaluating the adequacy of the allowance for doubtful accounts.

The Company's accounts receivable are due from a variety of health care organizations. At December 31, 2018, 2019 and 2020, no customer represented 10% or more of the Company's accounts receivable. For the years ended December 31, 2018, 2019 and 2020, there were no customers that represented 10% or more of revenue.

Deferred Offering Costs

Deferred offering costs, consisting of legal, accounting and other fees and costs relating to the Company's planned IPO, are capitalized and recorded on the balance sheet. The deferred offering costs will be offset against the proceeds received upon the closing of the planned IPO. In the event that the Company's plans for an IPO are terminated, all of the deferred offering costs will be written off within operating expenses in the Company's statements of operations and comprehensive loss. As of December 31, 2020, deferred offering costs of $0.4 million were capitalized and are included in "Other noncurrent assets". There were no deferred offering costs capitalized as of December 31, 2018 and 2019.

Cash and Cash Equivalents

The Company considers all highly liquid investments with an original maturity of three months or less when purchased to be cash and cash equivalents. Cash and cash equivalents are recorded at cost, which approximate fair value. As of December 31, 2018, 2019 and 2020, cash consists primarily of checking and savings deposits. The Company's cash balances exceed those that are federally insured. To date, the Company has not recognized any losses caused by uninsured balances.

Accounts Receivable and Provision for Doubtful Accounts

Accounts receivable are stated at invoiced amounts, net of estimated provisions for doubtful accounts. The majority of customers are not extended credit and, therefore, time to maturity for receivables is short. The Company makes estimates of the collectability of customer accounts and provisions based primarily on analysis of historical trends and experience and changes in customers' financial condition. The Company uses its judgment, based on the best available facts and circumstances, and records a provision against amounts due to reduce the receivable to the amount that is expected to be collected. These specific provisions are reevaluated and adjusted as additional information is received that impacts the amount reserved. To date, the Company has not experienced material credit-related losses. The provision for doubtful accounts was $0.1 million, $0.1 million and $0.3 million as of December 31, 2018, 2019 and 2020, respectively.

Inventory

Inventory represents finished goods purchased from a third-party manufacturer and is valued at the lower of cost or net realizable value. Cost is determined using actual costs on a first-in, first-out basis for all inventory. Net realizable value is determined as the estimated selling prices in the ordinary course of business, less reasonably predictable costs of completion, disposal, and transportation. The Company regularly reviews

inventory quantities in consideration of actual loss experiences, projected future demand, and remaining shelf life to record a provision for excess and obsolete inventory when appropriate. The Company's policy is to write down inventory that has become obsolete, inventory that has a cost basis in excess of its expected lower of cost or net realizable value, and inventory in excess of expected requirements. The estimate of excess quantities is judgmental and primarily dependent on the Company's estimates of future demand for the particular product.

Property and Equipment, net

Property and equipment are recorded at cost, less accumulated depreciation. Repairs and maintenance costs are expensed as incurred. Depreciation is calculated using the straight-line method over the estimated useful lives of the assets, typically two to five years. When assets are retired or otherwise disposed of, the cost and accumulated depreciation are removed from the balance sheet and any resulting gain or loss is reflected in operations in the period realized.

Construction-in-process assets consist primarily of tools and equipment that have not yet been placed in service. These assets are stated at cost and are not depreciated. Once the assets are placed into service, assets are reclassified to the appropriate asset class based on their nature and depreciated in accordance with the useful lives above.

Impairment of Long-Lived Assets

The Company assesses long-lived assets, including property and equipment, whenever events or changes in business circumstances indicate that the carrying amount of the assets may not be fully recoverable. If indicators of impairment exist, an impairment loss would be recognized when estimated undiscounted future cash flows expected to result from the use of the assets and their eventual disposition are less than their carrying amount. Impairment, if any, is measured as the amount by which the carrying amount of the long-lived assets exceeds their fair value. Fair value is determined through various valuation techniques, including discounted cash flow models, quoted market values, and third-party independent appraisals, as considered necessary. The Company did not record any impairment of long-lived assets for the years ended December 31, 2018, 2019 and 2020.

Leases

Contractual arrangements that meet the definition of a lease are classified as operating or finance leases and are recorded on the balance sheets as both a right-of-use asset ("ROU asset") and lease liability, calculated by discounting fixed lease payments over the lease term at the Company's incremental borrowing rate ("IBR"). Lease ROU assets and lease obligations are recognized based on the present value of the future minimum lease payments over the lease term at commencement date. The Company currently does not have any finance leases.

Operating lease ROU assets are adjusted for (i) payments made at or before the commencement date, (ii) initial direct costs incurred, and (iii) tenant incentives under the lease. As the implicit rates for the operating leases are not determinable, the Company uses an IBR based on the information available at the respective lease commencement dates to determine the present value of future payments. IBR represents the interest rate that the Company would expect to incur at lease commencement to borrow an amount equal to the lease payments on a collateralized basis with similar terms and payments, in an economic environment where the leased asset is located. The Company considers a lease term to be the noncancelable period that it has the right to use the underlying asset, including any periods where it is reasonably certain the Company will exercise any option to extend the contract.

Lease costs for minimum lease payments for operating leases are recognized on a straight-line basis over the lease term. Lease liabilities are increased by interest and reduced by payments each period, and the ROU asset is amortized over the lease term. Variable lease payments that do not depend on an index or rate are recognized as lease costs when incurred. In measuring the ROU assets and lease liabilities, the Company has elected to combine

lease and non-lease components. The Company does not recognize ROU assets or lease liabilities for short-term leases, if any, having initial terms of 12 months or less at lease commencement as an accounting policy election, and recognizes rent expense on a straight-line basis over the lease term for these types of leases.

Redeemable Convertible Preferred Stock Warrants

The Company's redeemable convertible preferred stock warrants require liability classification and accounting as the underlying redeemable convertible preferred stock is considered contingently redeemable and may obligate the Company to transfer assets to the holders at a future date upon occurrence of a deemed liquidation event. The warrants are recorded at fair value upon issuance and are subject to remeasurement to fair value at each balance sheet date, with any changes in fair value recognized as other expense in the statements of operations. The warrants liability is recorded as other noncurrent liabilities in the balance sheets. The Company will continue to adjust the warrant liability for changes in fair value until the earlier of the exercise or expiration of the redeemable convertible preferred stock warrants, occurrence of a deemed liquidation event, or conversion of redeemable convertible preferred stock into common stock. At that time, the liability associated with the redeemable convertible preferred stock warrants that are converted into warrants to purchase common stock will be reclassified to additional paid-in capital, while the liability associated with any expired warrants will be recognized as a gain within the statements of operations and comprehensive loss. As a result, the redeemable convertible preferred stock warrant liability will be settled and will no longer be subject to remeasurement.

Redeemable Convertible Preferred Stock

The Company records its redeemable convertible preferred stock at fair value on the dates of issuance, net of issuance costs. A redemption event will only occur upon the liquidation or winding-up of the Company, a greater than 50% change in control, or sale of substantially all of the assets of the Company. In the event of a change of control of the Company, proceeds received from the sale of such shares will be distributed in accordance with the liquidation preferences set forth in the Company's amended and restated certificate of incorporation, unless the holders of redeemable convertible preferred stock otherwise agree or have converted their shares into shares of common stock. Therefore, redeemable convertible preferred stock is classified outside of stockholders' equity in the balance sheets as events triggering the liquidation preferences are not solely within the Company's control. The Company is not required to adjust the carrying values of the redeemable convertible preferred stock to the redemption value of such shares since it is uncertain whether or when a redemption event will occur. Subsequent adjustments to increase the carrying values to the redemption values will be made only when it becomes probable that such redemption will occur.

Common Stock Warrant

The Company's common stock warrant is classified in equity as it meets all criteria for equity classification. The fair value of the common stock warrant was calculated using the BackSolve Method and is recorded at fair value upon issuance in additional paid-in capital in the consolidated balance sheets. The common stock warrant is not remeasured after the issuance date.

Revenue Recognition

The Company applies the following five steps in order to determine the appropriate amount of revenue to be recognized as it fulfills its obligations under each of its arrangements:

- Identify the contract with a customer,
- Identify the performance obligations in the contract,
- Determine the transaction price,
- Allocate the transaction price to performance obligations in the contract, and
- Recognize revenue as the performance obligations are satisfied.

The Company's revenue is generated from the sale of its products from its surgical glaucoma product portfolio and its nonsurgical dry eye product portfolio to hospitals and medical centers in the United States and elsewhere through sales representatives and distributors. The Company's contracts are in the form of a combination of signed agreements and/or purchase orders. The Company accounts for a contract with a customer when there is approval and commitment from both parties, the rights and obligations of the parties are identified, payment terms are identified, the contract has commercial substance, and it is probable that the Company will collect substantially all of the consideration to which it will be entitled.

Each of the Company's surgical glaucoma and dry eye products specified in the contract represents a distinct good and is accounted for as separate performance obligation. Revenue is recognized when control of promised goods is transferred to a customer in amount that reflects the consideration that the Company expects to receive in exchange for those goods. Control of the Company's products are transferred to its customers at a point in time, either upon shipment or delivery of the product to the customer under the Company's standard terms and conditions. The customer is able to direct the use of, and obtain substantially all of the benefits from, the product at the time the product shipped or delivered. The Company considers control to have transferred upon shipment or delivery because the Company has a present right to payment at that time, the customer has legal title to the asset, the Company has transferred physical possession of the asset, the customer has accepted the asset, and the customer has significant risks and rewards of ownership of the asset.

Payment for the Company's contracts are typically due within 30 days of transfer of control of the Company's products to its customers. The Company excludes taxes assessed by governmental authorities on revenue-producing transactions from the measurement of the transaction price.

In the normal course of business, the Company does not accept product returns, unless the item is defective as manufactured. The Company establishes provisions for estimated returns and warranties. In addition, the Company does not typically provide customers with the right to a refund.

Practical Expedients and Exemptions

The Company's contracts all have an original duration of one year or less. As a practical expedient, the Company does not consider the time value of money for such contracts. Further, because of the short duration of these contracts, the Company does not disclose the transaction price for the remaining performance obligations as of the end of each reporting period or the when the Company expects to recognize this revenue.

The Company expenses shipping and handling costs as incurred and includes them in the cost of goods sold. In those cases where the Company bills shipping and handling costs to customers, it will classify the amounts billed as a component of revenue.

As a practical expedient, the Company recognizes the incremental costs of obtaining contracts, such as sales commissions, as an expense when incurred since the amortization period of the asset the Company otherwise would have recognized is one year or less. Sales commissions are recorded within selling, general, and administrative expenses in the statements of operations.

Cost of Goods Sold

The Company purchases its products from third-party manufacturers. Cost of goods sold consists primarily of costs related to materials, manufacturing overhead costs, reserves for excess, and obsolete and non-sellable inventories. Cost of goods sold also includes depreciation expense for production equipment and certain direct costs, such as shipping and handling costs.

Research and Development

The Company expenses research and development costs as incurred. Research and development expenses consist primarily of product development, clinical studies to develop and support the Company's products,

regulatory expenses, medical affairs, and other costs associated with products and technologies that are in development. Research and development expenses include employee compensation, including stock-based compensation, supplies, consulting, prototyping, testing, materials, travel expenses, depreciation, and an allocation of facility overhead expenses.

Selling, General and Administrative

Selling, general and administrative expenses include compensation, employee benefits, and stock-based compensation for executive management, finance administration, and human resources; facility costs (including rent); bad debt costs; professional service fees; and other general overhead costs, including depreciation to support the Company's operations.

Advertising Expense

The Company expenses advertising costs as incurred. Advertising expenses for fiscal years 2018, 2019 and 2020 were $1.0 million, $1.8 million and $0.8 million, respectively, included in selling, general, and administrative expenses in the statements of operations and comprehensive loss.

Accounting for Payroll Protection Program

In March 2020, Congress established the Paycheck Protection Program ("PPP") to provide relief to small businesses during COVID-19 as part of the Coronavirus Aid, Relief, and Economic Security ("CARES") Act. The legislation authorized the U.S. Treasury to use the Small Business Association's ("SBA's") small business lending program to fund forgivable loans that qualifying businesses could spend to cover payroll, mortgage interest, rent, and utilities during the "Covered Period" defined as the 8-week period starting on the date the PPP loan proceeds are received. Upon meeting certain criteria as specified in the PPP program, the loans are eligible for partial or total forgiveness. In May 2020, the Company applied for and received a PPP loan for the amount $2.2 million from SBA. We believe we have satisfied all of the terms and conditions of the PPP loan and applied for loan forgiveness in September 2020. We expect a decision from the SBA on loan forgiveness in the second quarter of 2021.

U.S. GAAP does not contain authoritative accounting standards for forgivable loans provided by governmental entities to a for-profit entity. Absent authoritative accounting standards, interpretative guidance issued and commonly applied by financial statement preparers allows for the selection of accounting policies amongst acceptable alternatives. The Company determined it most appropriate to account for the PPP loan proceeds as an in-substance government grant by analogy to International Accounting Standards 20 ("IAS 20") *Accounting for Government Grants and Disclosure of Government Assistance*. Under this guidance, a forgivable loan from government is treated as a government grant when there is reasonable assurance that the entity will meet the terms for forgiveness of the loan. While IAS 20 does not define "reasonable assurance", this concept in practice is analogous to "probable" as defined in Financial Accounting Standards Board ("FASB") ASC 450-20-20 under U.S. GAAP, which is the definition the Company has applied to its expectations of PPP loan forgiveness. Under IAS 20, government grants are recognized in earnings on a systematic basis over the periods in which the Company recognizes costs for which the grant is intended to compensate (i.e. qualified expenses). Further, IAS 20 permits for the recognition in earnings either separately under a general heading such as other income, or as a reduction of the related expenses.

The Company has elected to recognize this government grant income as a reduction of the related expenses, and recognized $0.1 million, $0.3 million and $1.8 million as a reduction of cost of revenue, research and development and selling, general and administrative expenses, respectively for the year ended December 31, 2020.

Stock-Based Compensation

The Company measures and records the expense related to stock-based payment awards based on the fair value of those awards as determined on the date of grant. The Company recognizes stock-based compensation

expense over the requisite service period of the individual grant, generally equal to the vesting period and uses the straight-line method to recognize stock-based compensation, and accounts for forfeitures as they occur. The Company selected the Black-Scholes-Merton ("Black-Scholes") option-pricing model as the method for determining the estimated fair value for stock options. The Black-Scholes option-pricing model requires the use of highly subjective and complex assumptions, which determine the fair value of share-based awards, including the option's expected term, expected volatility of the underlying stock, risk-free interest rate and expected dividend yield.

Fair Value of Common Stock

The fair value of the Company's common stock is determined by the board of directors with assistance from management and, in part, on input from an independent third-party valuation firm. The board of directors determines the fair value of common stock by considering a number of objective and subjective factors, including valuations of comparable companies, sales of redeemable convertible preferred stock, operating and financial performance, the lack of liquidity of the Company's common stock and the general and industry-specific economic outlook.

Currency Remeasurement

Foreign currency transaction gains and losses are recorded in other expense, net in the Company's statements of operations and such amounts have not been material for all periods presented.

Income Taxes

The Company uses the asset and liability method under ASC 740, *Income Taxes*, in accounting for income taxes. Deferred tax assets and liabilities are recognized for the estimated future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax bases. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in the years in which those temporary differences are expected to be recovered or settled. Deferred tax expenses or benefits are the result of changes in the deferred tax assets and liabilities. Valuation allowances are established when necessary to reduce deferred tax assets to their net realizable value where it is more likely than not that the deferred tax assets will not be realized.

ASC 740 clarifies the accounting for uncertainty in income taxes recognized in the financial statements. ASC 740 provides 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 audit, including resolutions of any related appeals or litigation processes, based on the technical merits of the position.

The Company recognizes interest and penalties related to unrecognized tax benefits within the benefit for income taxes line in the accompanying statements of operations and comprehensive loss. Accrued interest and penalties are included within the related liability line in the balance sheets.

Comprehensive Loss

Comprehensive loss represents all changes in stockholders' deficit except those resulting from distributions to stockholders. There have been no items qualifying as other comprehensive income (loss) and, therefore, for all periods presented, there was no difference between comprehensive loss and the Company's reported net loss.

Net loss per share attributable to common stockholders

Basic and diluted net loss per share attributable to common stockholders is presented in conformity with the two-class method required for participating securities. The Company considers all series of its redeemable

convertible preferred stock and restricted stock awards to be participating securities as the holders are entitled to receive dividends on a pari passu basis in the event that a dividend is paid on common stock. Under the two-class method, the net loss attributable to common stockholders is not allocated to the redeemable convertible preferred stock or restricted stock awards as the holders of the Company's redeemable convertible preferred stock and restricted stock awards do not have a contractual obligation to share in losses.

Basic and diluted net loss per share attributable to common stockholders is computed by dividing the net loss attributable to common stockholders by the weighted-average number of common shares outstanding for the period without consideration of potentially dilutive securities. The Company's potentially dilutive shares, which consist of outstanding common stock options, restricted stock awards, common stock warrants, redeemable convertible preferred stock and redeemable convertible preferred stock warrants were excluded in the computation of diluted net loss per share for the period as the result would be anti-dilutive.

Emerging growth company

The Company is an "emerging growth company" as defined in the Jumpstart Our Business Startups Act of 2012. As such the Company is eligible for exemptions from various reporting requirements applicable to other public companies that are not emerging growth companies, including reduced reporting and extended transition periods to comply with new or revised accounting standards for public business entities. The Company has elected to avail themselves of this exemption and, therefore, will not be subject to the timeline for adopting new or revised accounting standards for public business entities that are not emerging growth companies, and will follow the transition guidance applicable to private companies.

Recently Adopted Accounting Pronouncements

In May 2014, the FASB issued ASU No. 2014-09. Subsequently, the FASB also issued ASU No. 2015-14, *Revenue from Contracts with Customers (Topic 606): Deferral of the Effective Date*, which adjusted the effective date of ASU No. 2014-09; ASU No. 2016-08, *Revenue from Contracts with Customers (Topic 606): Principal versus Agent Considerations (Reporting Revenue Gross versus Net)*, which amends the principal versus agent implementation guidance and illustrations in ASU No. 2014-09; ASU No. 2016-10, *Revenue from Contracts with Customers (Topic 606): Identifying Performance Obligations and Licensing*, which clarifies identifying performance obligation and licensing implementation guidance and illustrations in ASU No. 2014-09; and ASU No. 2016-12, *Revenue from Contracts with Customers (Topic 606): Narrow-Scope Improvements and Practical Expedients*, which addresses implementation issues and is intended to reduce the cost and complexity of applying the new revenue standard in ASU No. 2014-09 (collectively, the "Revenue ASUs").

The Revenue ASUs provide an accounting standard for a single comprehensive model for use in accounting for revenue arising from contracts with customers and supersedes most current revenue recognition guidance. The accounting standard is effective for interim and annual periods beginning after December 15, 2019. The guidance permits two methods of adoption: retrospectively to each prior reporting period presented (the full retrospective method) or retrospectively with the cumulative effect of initially applying the guidance recognized at the date of initial application (the modified retrospective method). The Company performed a detailed review of its revenue agreements and assessed the differences in accounting for such contracts under this guidance compared with previous revenue accounting standards. On January 1, 2018, the Company early adopted ASU No. 2014-09 using the full retrospective method. The adoption of this standard did not have a material impact on the Company's financial statements. Results for all periods presented are under ASC 606.

In March 2016, the FASB issued an ASU No. 2016-09, *Compensation—Stock Compensation (Topic 718): Improvements to Employee Share-Based Payment Accounting*, to simplify several areas of accounting for share-based compensation arrangements, including the income tax impact and classification on the statements of cash flows. The Company adopted this update on January 1, 2018 and elected to record forfeitures as they occur. The adoption of this update was immaterial to the financial statements.

In June 2018, the FASB issued an ASU No. 2018-07, *Compensation—Stock Compensation (Topic 718): Improvements to Nonemployee Share-Based Payment Accounting*, that expands the scope to include share-based payment transactions for acquiring goods and services from nonemployees. ASU No. 2018-07 simplifies the accounting for share-based payments to nonemployees by aligning it with the accounting for share-based payments to employees, with certain exceptions. This update is required to be applied through a cumulative effect adjustment to retained earnings as of the beginning of the fiscal year of adoption. This guidance is effective for fiscal years beginning after December 15, 2018, including interim periods within that fiscal year. Early adoption is permitted for any entity in any interim or annual period for which financial statements have not been issued or made available for issuance, but not before an entity adopts ASC 606. The Company early adopted the standard on January 1, 2018, which did not result in a material impact on its financial statements and related disclosures.

In February 2016, the FASB issued ASU No. 2016-02, *Leases (Topic 842)*. In July 2018, the FASB issued ASU No. 2018-10, *Codification Improvements to Topic 842, Leases*, which provides clarification to ASU No. 2016-02. These ASUs require an entity to recognize a lease liability and a ROU asset in the balance sheets for leases with lease terms of more than 12 months. Lessor accounting is largely unchanged, while lessees will no longer be provided with a source of off-balance-sheet financing. This guidance is effective for fiscal years beginning after December 15, 2021, and for interim periods within fiscal years beginning after December 15, 2022. In July 2018, the FASB issued ASU No. 2018-11, *Leases (Topic 842): Targeted Improvements*, which allows entities to elect a modified retrospective transition method where entities may continue to apply the existing lease guidance during the comparative periods and apply the new lease requirements through a cumulative effect adjustment in the period of adoptions rather than in the earliest period presented.

On January 1, 2019, the Company early adopted ASU No. 2016-02 and its associated amendments using the modified retrospective transition method by applying the new update to all leases existing at the date of initial application and not restating comparative periods. There was no cumulative effect adjustment recorded to retained earnings upon adoption. Under the update, a lessee is required to recognize a lease liability and ROU asset for all leases. The new guidance also modified the classification criteria and requires additional disclosures to enable users of financial statements to understand the amount, timing, and uncertainty of cash flows arising from leases. Consistent with current guidance, a lessee's recognition, measurement, and presentation of expenses and cash flows arising from a lease continues to depend primarily on its classification. The Company elected the package of practical expedients permitted under the transition guidance, which allowed the Company to carry forward its historical lease classification, its assessment on whether a contract was or contains a lease, and its initial direct costs for any leases that existed prior to January 1, 2019. In addition, the Company elected the short-term lease exception and combined lease and non-lease components as practical expedients.

The adoption of this guidance did not materially impact the Company's consolidated financial statements.

In August 2018, the FASB issued ASU No. 2018-13, *Fair Value Measurement (Topic 820): Disclosure Framework—Changes to the Disclosure Requirements for Fair Value Measurement*, which changed the disclosure requirements for fair value measurements by removing, adding, and modifying certain disclosures. The Company adopted this ASU beginning on January 1, 2020 which did not result in a material impact on the disclosures related to fair value measurements.

New Accounting Pronouncements Not Yet Adopted

In June 2016, the FASB issued ASU No. 2016-13, *Financial Instruments—Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments*, which amends the impairment model by requiring entities to use a forward-looking approach based on expected losses to estimate credit losses on certain types of financial instruments, including trade receivables and available-for-sale debt securities. The guidance is effective for the Company beginning in the first quarter of 2023. The Company is evaluating the impact of adopting this guidance and does not expect to have a material impact on the Company's financial statements and related disclosures.

In December 2019, the FASB issued ASU No. 2019-12, *Income Taxes (Topic 740): Simplifying the Accounting for Income Taxes*, that simplifies the accounting for income taxes by eliminating certain exceptions related to the approach for intra-period tax allocation and modified the methodology for calculating income taxes in an interim period. It also clarifies and simplifies other aspects of the accounting for income taxes. The guidance is effective for the Company for fiscal years beginning after December 15, 2021, and interim periods within fiscal years beginning after December 15, 2022 with early adoption permitted. The Company is evaluating the effect this new guidance and does not expect it to have material impact on the Company's financial statements.

In March 2020, the FASB issued ASU No. 2020-04, *Reference Rate Reform (Topic 848): Facilitation of the Effects of Reference Rate Reform on Financial Reporting*. The new guidance provides optional expedients and exceptions for applying generally accepted accounting principles to contract modifications and hedging relationships, subject to meeting certain criteria, that reference LIBOR or another reference rate expected to be discontinued. The guidance also establishes (1) a general contract modification principle that entities can apply in other areas that may be affected by reference rate reform and (2) certain elective hedge accounting expedients. The amendment is effective for all entities through December 31, 2022. LIBOR is used to calculate the interest on borrowings under the Company's term loan and revolving line of credit with MidCap Financial Services. The Company is evaluating the effect this new guidance and does not expect it to have material impact on the Company's financial statements.

Note 3. Fair Value Measurements

The Company reports all financial assets and liabilities and nonfinancial assets and liabilities that are recognized or disclosed at fair value in the financial statements on a recurring basis. Valuation techniques used to measure fair value must maximize the use of observable inputs and minimize the use of unobservable inputs. The authoritative guidance establishes a fair value hierarchy that prioritizes the inputs to valuation techniques used to measure fair value. The hierarchy gives the highest priority to unadjusted quoted prices in active markets for identical assets or liabilities (Level 1 measurements) and the lowest priority to measurements involving significant unobservable inputs (Level 3 measurements). The three levels of the fair value hierarchy are as follows:

Level 1—Inputs are quoted prices (unadjusted) in active markets for identical assets or liabilities that the Company has the ability to access at the measurement date.

Level 2—Inputs are observable, unadjusted quoted prices in active markets for similar assets or liabilities, unadjusted quoted prices for identical or similar assets or liabilities in markets that are not active, or other inputs that are observable or can be corroborated by observable market data for substantially the full term of the related assets or liabilities.

Level 3—Inputs are unobservable inputs for the asset or liability. The level in the fair value hierarchy within which a fair value measurement in its entirety is based on the lowest-level input that is significant to the fair value measurement in its entirety.

The financial statements as of and for the years ended December 31, 2018, 2019 and 2020, do not include any nonrecurring fair value measurements relating to assets or liabilities.

The Company does not have any assets and liabilities that are measured at fair value on a recurring basis at December 31, 2018.

The fair value measurements of liabilities that are measured at fair value on a recurring basis at December 31, 2019 and 2020, are as follows (in thousands):

	As of December 31, 2019			
	(Level 1)	(Level 2)	(Level 3)	Total
Liabilities				
Redeemable convertible preferred stock warrants liabilities	$ —	$ —	$ 236	$ 236
Total liabilities measured at fair value	$ —	$ —	$ 236	$ 236

	As of December 31, 2020			
	(Level 1)	(Level 2)	(Level 3)	Total
Liabilities				
Redeemable convertible preferred stock warrants liabilities	$ —	$ —	$ 2,112	$ 2,112
Total liabilities measured at fair value	$ —	$ —	$ 2,112	$ 2,112

The Company measures the redeemable convertible preferred stock warrants using Level 3 unobservable inputs within the Black-Scholes option-pricing model. The key assumptions include the fair value of redeemable convertible preferred stock, volatility, the risk-free interest rate, expected term (remaining contractual term of the warrants) and dividend yield. The Company has limited historical volatility information available, and the expected volatility was based on actual volatility for comparable public companies projected over the expected terms of the warrants. The Company did not apply a forfeiture rate to the warrants as there is not enough historical information available to estimate such a rate. The risk-free interest rate was based on the U.S. Treasury yield curve at the time of the grant over the expected term of the warrants. Refer to Note 9 for the assumptions used.

The Company measures the fair value of outstanding debt for disclosure purposes on a recurring basis. As of December 31, 2019 and 2020, total debt of $12.9 million and $31.9 million is reported at amortized cost, respectively. This outstanding debt is classified as Level 2 as it is not actively traded. The amortized cost of the outstanding debt approximates the fair value.

The Company determines the fair value of the redeemable convertible preferred stock warrants annually, with subsequent gains and losses from remeasurement of Level 3 financial liabilities recorded through the other expense, net in statements of operations and other comprehensive loss.

A summary of the changes in the fair value of the Company's Level 3 financial instruments at December 31, 2019 and 2020, is as follows (in thousands):

	Redeemable convertible preferred stock warrant liability
Balance—December 31, 2018	$ —
Issuance of redeemable convertible preferred stock warrants	201
Change in fair value	35
Balance—December 31, 2019	236
Issuance of redeemable convertible preferred stock warrants	1,812
Change in fair value	136
Expiration of redeemable convertible preferred stock warrants	(72)
Balance—December 31, 2020	$ 2,112

Note 4. Balance Sheet Components

Property and Equipment, Net

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

	As of December 31,		
	2018	2019	2020
Tools and equipment	$ 255	$ 1,498	$ 1,523
Computer equipment and software	67	109	118
Furniture and fixtures	6	43	43
Leasehold improvements	—	29	30
Construction in process	630	162	298
	958	1,841	2,012
Less: Accumulated depreciation	(90)	(350)	(743)
Property and equipment, net	$ 868	$ 1,491	$ 1,269

Depreciation expense for fiscal years 2018, 2019 and 2020 was $0.06 million, $0.3 million and $0.5 million, respectively.

Accrued and Other Current Liabilities

Accrued and other current liabilities consist of the following (in thousands):

	As of December 31,		
	2018	2019	2020
Accrued expenses	$ 161	$ 1,767	$ 1,971
Current portion of lease liabilities	—	557	395
Short term interest payable	—	119	274
Other accrued liabilities	167	408	446
Total accrued and other current liabilities	$ 328	$ 2,851	$ 3,086

Other Noncurrent Liabilities

Other noncurrent liabilities consist of the following (in thousands):

	As of December 31,		
	2018	2019	2020
Noncurrent portion of lease liabilities	$ —	$ 528	$ 134
Redeemable preferred stock warrants liabilities	—	236	2,112
Long term interest payable	—	213	465
Other noncurrent liabilities	7	—	344
Total other noncurrent liabilities	$ 7	$ 977	$ 3,055

Note 5. Debt

In January 2019, the Company entered into a loan and security agreement with MidCap Financial Services, which provided a maximum of $25.0 million credit facility consisting of a $20.0 million senior secured 2019 Term Loan and a $5.0 million 2019 Revolver (collectively, the “2019 MidCap Credit Facility”). In November 2020, the Company entered into a loan and security agreement with the same institution, which replaced the 2019 MidCap Credit Facility, and provided for a maximum of $40.0 million credit facility consisting of a $35.0 million senior secured 2020 Term Loan and a $5.0 million 2020 Revolver (collectively, the “2020 MidCap Credit Facility”).

2019 Term Loan

The 2019 Term Loan had a four-year term and had a stated floating interest rate which equates to reserve-adjusted LIBOR + 6.75%. The 2019 Term Loan was split into three tranches as follows: (i) the Tranche One Loans provided for $12.0 million in term loans, (ii) the Tranche Two Loans provided for up to $2.0 million in term loans, and (iii) the Tranche Three Loans provided for up to $6.0 million in term loans. The Company borrowed $14.0 million under the Tranche One Loans and Tranche Two Loans. While the conditions necessary to draw the Tranche Three Loans had been met as of December 31, 2019, the Company did not elect to draw the Tranche Three Term Loans. The 2019 Term Loan required 18 monthly interest-only payments, which began on January 31, 2019, followed by 30 equal monthly installments of principal, plus interest. The interest-only period was extended by an additional six months upon achievement of the Tranche Three Milestone.

The 2019 Term Loan had an effective interest rate of 14.52% per year. The 2019 Term Loan interest expense for the year ended December 31, 2019 and 2020 was $1.9 million and $2.0 million, respectively.

In conjunction with the funding of Tranche 1 and Tranche 2 under the 2019 Term Loan, the Company issued a 10-year warrant to the Lender to purchase 29,514 shares of the Company’s Series C redeemable convertible preferred stock (the “2019 Initial Warrant”) at an exercise price of $9.49 per share (the “Exercise Price”). Further, depending on the funding of the Term Loan Tranche 3, the Company was obligated to issue an additional Warrant to the Lender to purchase up to 12,649 shares of Series C redeemable convertible preferred stock at the Exercise Price (the “2019 Additional Warrant” and together with “2019 Initial Warrant” the “2019 Warrants”) (see Note 9).

The estimated fair value of the 2019 Warrants of $0.2 million upon draw down was based on the Black-Scholes option-pricing model and probability of future draw downs. The 2019 Warrants were recorded at the fair value as a debt discount and as a warrant liability. The debt discount is being accreted using the effective interest method as interest expense over the contractual period of four years for the Term Loan.

The Company incurred $1.5 million of issuance costs in conjunction with the 2019 Term Loan. The issuance costs have been netted against the borrowed funds in the consolidated balance sheet and is being accreted using the effective interest method as interest expense over the contractual period of four years for the 2019 Term Loan.

The Company could voluntarily prepay the borrowings in full, with a prepayment premium beginning at 3% in the first year from tranche funding and declining to 2% in the second year from tranche funding, to 1% in the third year from tranche funding thereafter. In addition, a final payment fee of 5% of the amounts borrowed is payable at the end of the term or when the borrowings are repaid in full. A long-term liability was being accreted using the effective interest method for the final payment fee over the term of the loan agreement. The borrowings were collateralized by a security interest in substantially all of the Company's assets.

The Company accrued $0.2 million as of December 31, 2019, related to accretion of final payment due at maturity per agreement using the effective interest rate method.

The Company was subject to financial covenants related to minimum trailing revenue targets that began on January 1, 2019, and are tested on a monthly basis. If only Tranche One Loans were funded, the Company had to achieve minimum net revenue of $7 million over a trailing 12-month period increasing to a maximum net revenue covenant of $35 million for the trailing 12-month period ending December 31, 2022, and thereafter. If only Tranche One Loans and Tranche Two Loans had been funded, the Company had to achieve minimum net revenue of $7 million over a trailing 12-month period increasing to a maximum net revenue covenant of $37.3 million for the 12-month period ending December 31, 2022, and thereafter. If Tranche Three Loans had been funded regardless of whether Tranche Two Loans have been funded, the Company had to achieve minimum net revenue of $15 million over a trailing 12-month period increasing to a maximum net revenue covenant of $46.7 million for the 12-month period ending December 31, 2022, and thereafter. As of December 31, 2019, the Company was in compliance with the applicable financial covenant.

On November 23, 2020, the 2019 Term Loan was replaced with 2020 Term Loan (see below).

2019 Revolver

The 2019 Revolver had a four-year term and has a stated floating interest rate which equates to reserve-adjusted LIBOR plus 4.25%. An unused line fee of 0.5% was payable monthly based on the average unused balance and a collateral management fee of 0.5% is payable monthly based on the outstanding balance of the Revolver. The Company can request to increase the 2019 Revolver commitment amount to $10.0 million under the term of the agreement. As of December 31, 2019, $4.0 million was available to be drawn under the 2019 Revolver.

The Company may voluntarily prepay the borrowings in full, with a prepayment premium equal to an amount determined by multiplying the Revolver commitment amount by 3.0% in the first year, 2.0% in year 2, and 1.0% thereafter.

The 2019 Revolver has not been drawn upon as of December 31, 2019. On November 23, 2020, the 2019 Revolver was replaced with the 2020 Revolver (see below).

2020 Term Loan

The 2020 Term Loan has a five-year term and has a stated floating interest rate which equates to reserve-adjusted LIBOR + 7.00%. The 2020 Term Loan is split into three tranches as follows: (i) the Tranche One Loans provide for $12.0 million in term loans which are deemed to have been converted from Tranche One Loans that were drawn and outstanding under the 2019 Term Loan immediately prior to entering into 2020 MidCap Credit Facility, (ii) the Tranche Two Loans provided for up to $2.0 million in term loans which are deemed to have been converted from Tranche Two Loans that were drawn and outstanding under the 2019 Term Loan immediately prior to entering into 2020 MidCap Credit Facility, and (iii) the Tranche Three Loans provided for up to $21.0 million in new term loans. The Company borrowed $21.0 million under the Tranche Three Loans in November 2020.

The 2020 Term Loan requires 24 monthly interest-only payments, which began on December 1, 2020, followed by 36 equal monthly installments of principal, plus interest. The interest-only period can be extended by an additional 12 months provided that the Company is in compliance with the minimum trailing revenue targets (as described below), and has unrestricted cash and cash equivalents of at least 12 times of the amortization monthly cash burn amount, measured as defined in the 2020 Term Loan agreement ("First IO Extension"). If the First IO Extension conditions are satisfied, the interest-only period can be further extended by an additional 12 months, provided that the Company is in compliance with the minimum trailing revenue targets (as described below), has unrestricted cash and cash equivalents of at least 12 times of the amortization monthly cash burn amount, and has consummated an IPO in which the Company has received cash proceeds of at least $60.0 million.

The 2020 Term Loan has an effective interest rate of 13.59% per year. The 2020 Term Loan interest expense for the year ended December 31, 2020 was $0.4 million.

In conjunction with the entering the 2020 MidCap Credit Facility, the Company issued a 10-year warrant to the Lender to purchase 300,000 shares of the Company's Series F redeemable convertible preferred stock (the "2020 Warrant") at an exercise price of $21.88 per share (see Note 9). The estimated fair value at issuance of the 2020 Warrant of $1.8 million was based on the Option-Pricing Method with Discounts for Lack of Marketability for each class of security. In addition, the Company incurred $0.5 million of issuance costs paid to the Lender in conjunction with the 2020 Term Loan which represents a debt discount. The Company concluded that the 2020 Term Loan represented a modification of the 2019 Term Loan and accounted for the 2020 Term Loan as debt modification. The 2020 Warrants were recorded at the fair value as a debt discount and as a warrant liability. At each balance sheet date, the 2020 Warrants are remeasured to fair value with any changes in fair value recognized as other expense in the statements of operations. The debt discount is being amortized using the effective interest method as interest expense over the contractual period of five years for the 2020 Term Loan.

The Company can voluntarily prepay the borrowings in full, with a prepayment premium beginning at 3% in the first year from entering into the 2020 MidCap Credit facility and declining to 2% in the second year to 1% in the third year thereafter. In addition, a final payment fee of 6% of the amounts borrowed is payable at the end of the term or when the borrowings are repaid in full. A long-term liability is being accreted using the effective interest method for the final payment fee over the term of the loan agreement. The borrowings are collateralized by a security interest in substantially all of the Company's assets.

The Company accrued $0.5 million as of December 31, 2020, related to accretion of final payment due at maturity per the agreement using the effective interest rate method. The final payment accrual is recorded in "Other noncurrent liabilities" on the balance sheets.

The Company is subject to financial covenants related to minimum trailing revenue targets that began on September 30, 2020 and are tested on a monthly basis. The Company has to achieve minimum net revenue of $20.0 million over a trailing 12-month period increasing to a maximum net revenue covenant of $84.8 million for the trailing 12-month period ending October 31, 2025. As of December 31, 2020, the Company was in compliance with the applicable financial covenant.

2020 Revolver

The 2020 Revolver has a four-year term and has a stated floating interest rate which equates to reserve-adjusted LIBOR plus 4.50%. An unused line fee of 0.5% is payable monthly based on the average unused balance and a collateral management fee of 0.5% is payable monthly based on the outstanding balance of the 2020 Revolver. The Company can request to increase the 2020 Revolver commitment amount to $15.0 million under the term of the agreement. As of December 31, 2020, $4.8 million was available to be drawn under the 2020 Revolver.

The 2020 Revolver has not been drawn upon as of December 31, 2020.

Long-term and short-term debt was as follows (in thousands):

	As of December 31,		
	2018	2019	2020
Term Loan	$ —	$14,000	$35,000
Total principal payments due	—	14,000	35,000
Less: debt discount related to warrant liability and issuance costs	—	(1,145)	(3,045)
Total amount outstanding	—	12,855	31,955
Less: Current portion	—	—	—
Long-term portion	$ —	$12,855	$31,955

The repayment schedule relating to the Company's debt as of December 31, 2020, is as follows (in thousands):

	Amount
2021	$ —
2022	1,944
2023	11,667
2024	11,667
2025	9,722
Total repayments	$ 35,000

Note 6. Commitments and Contingencies

Operating Lease Obligations

The Company's leases mainly include facility leases and storage leases. In September 2019, the Company entered into a noncancelable operating lease for approximately 10,823 square feet of primary office space, which expires on July 31, 2021, without the option to extend.

The Company recognizes rent expense on a straight-line basis over the noncancelable lease term. The Company's rent expense was $0.2 million, $0.3 million and $0.7 million for the years ended December 31, 2018, 2019 and 2020, respectively.

The Company adopted Topic 842 as of January 1, 2019. In determining the present value of lease payments, the Company uses its incremental borrowing rate based on the information available at the lease commencement date if the rate implicit in the lease is not readily determinable. At the date of adoption of Topic 842, the Company determined the amounts of lease liability using a discount rate of 16.4%, which represents the Company's incremental borrowing rate, which is based on the Company's current borrowing rate adjusted for various factors including level of collateralization and term. As of December 31, 2020, the remaining lease term for the lease was 3.4 years.

Operating lease expense recognized and supplemental cash flow information related to operating leases for the year ended December 31, 2019 and 2020 were as follows (in thousands):

	Year Ended December 31,	
	2019	2020
Operating lease expense	$ 197	$ 663
Cash paid for operating leases	193	694
New operating lease assets obtained in exchange for operating lease liabilities	1,218	—

During the year ended December 31, 2019 and 2020, the Company's costs related to short-term lease arrangements and non-lease variable payments were immaterial.

Future minimum lease payments at December 31, 2018, under the noncancelable operating lease were as follows (in thousands):

	Amount
2019	$ 238
2020	41
2021	7
Total future minimum lease payments	$ 286

Aggregate future minimum lease payments at December 31, 2019 and 2020, under these noncancelable operating leases were as follows (in thousands):

	As of December 31,	
	2019	2020
2020	$ 694	$ —
2021	440	440
2022	66	66
2023	68	68
2024	29	29
Total future minimum lease payments	1,297	603
Less: imputed interest	(212)	(74)
Present value of future minimum lease payments	1,085	529
Less: current portion of operating lease liability	(557)	(395)
Operating lease liabilities—noncurrent	$ 528	$ 134

Legal Proceedings

The Company is subject to claims and assessments from time to time in the ordinary course of business. Accruals for litigation and contingencies are reflected in the financial statements based on management's assessment, including the advice of legal counsel, of the expected outcome of litigation or other dispute resolution proceedings, and/or the expected resolution of contingencies. Liabilities for estimated losses are accrued if the potential losses from any claims or legal proceedings are considered probable and the amounts can be reasonably estimated. Significant judgment is required in both the determination of probability of loss and the determination as to whether the amount can be reasonably estimated. Accruals are based only on information available at the time of the assessment due to the uncertain nature of such matters. As additional information becomes available, management reassesses potential liabilities related to pending claims and litigation and may revise its previous estimates, which could materially affect the Company's results of operations in a given period. As of December 31, 2018, 2019 and 2020, the Company was not involved in any material legal proceedings.

Indemnification

In the normal course of business, the Company enters into contracts and agreements that contain a variety of representations and warranties and provide for general indemnifications. The Company's exposure under these agreements is unknown because it involves claims that may be made against the Company in the future, but that have not yet been made. To date, the Company has not paid any claims or been required to defend any action related to its indemnification obligations. However, the Company may record charges in the future as a result of these indemnification obligations.

The Company indemnifies each of its directors and officers for certain events or occurrences, subject to certain limits, while the director is or was serving at the Company's request in such capacity, as permitted under Delaware law and in accordance with its certificate of incorporation and bylaws. The term of the indemnification period lasts as long as a director may be subject to any proceeding arising out of acts or omissions of such director in such capacity. The maximum amount of potential future indemnification is unlimited; however, the Company currently holds director liability insurance. This insurance allows the transfer of risk associated with the Company's exposure and may enable it to recover a portion of any future amounts paid. The Company believes that the fair value of these indemnification obligations is minimal. Accordingly, the Company has not recognized any liabilities relating to these obligations as of December 31, 2018, 2019, and 2020.

Note 7. Redeemable Convertible Preferred Stock

The Company has the following redeemable convertible preferred stock issued and outstanding at December 31, 2018 (in thousands, except share and per share data):

Series	Shares Authorized	Shares Issued and Outstanding	Original Issuance Price	Liquidation Amount	Issuance Costs	Carrying Value
Series A	3,804,344	3,804,344	$ 1.38	$ 5,250	$ 9	$ 5,241
Series B	1,209,621	1,209,621	5.79	7,000	106	6,894
Series C	2,400,000	2,342,857	9.49	22,226	208	22,018
	7,413,965	7,356,822		$ 34,476	$ 323	$ 34,153

The Company has the following redeemable convertible preferred stock issued and outstanding at December 31, 2019 (in thousands, except share and per share data):

Series	Shares Authorized	Shares Issued and Outstanding	Original Issuance Price	Liquidation Amount	Issuance Costs	Carrying Value
Series A	3,804,344	3,804,344	$ 1.38	$ 5,250	$ 9	$ 5,241
Series B	1,209,621	1,209,621	5.79	7,000	106	6,894
Series C	2,372,371	2,342,857	9.49	22,226	208	22,018
Series D	2,507,720	2,447,818	12.56	30,750	647	30,103
	9,894,056	9,804,640		$ 65,226	$ 970	$ 64,256

The Company has the following redeemable convertible preferred stock issued and outstanding at December 31, 2020 (in thousands, except share and per share data):

Series	Shares Authorized	Shares Issued and Outstanding	Original Issuance Price	Liquidation Amount	Issuance Costs	Carrying Value
Series A	3,804,344	3,804,344	$ 1.38	$ 5,250	$ 9	$ 5,241
Series B	1,209,621	1,209,621	5.79	7,000	106	6,894
Series C	2,372,371	2,342,857	9.49	22,226	208	22,018
Series D	2,507,720	2,447,818	12.56	30,750	647	30,103
Series E	1,921,902	1,899,847	15.87	30,150	106	30,044
Series F	2,425,432	1,062,715	21.88	23,250	219	23,031
	14,241,390	12,767,202		$ 118,626	$ 1,295	$ 117,331

The rights and preferences of holders of the redeemable convertible preferred stock are as follows:

Voting Rights

The holder of each share of redeemable convertible preferred stock has the voting rights equal to an equivalent number of shares of common stock into which it is convertible and votes together as a single class with common stock.

Election of Directors

The holders of a majority of the Shares of Series A, Series B, Series C and Series D redeemable convertible preferred stock, voting separately as a single class, are entitled to each elect one director of the Company. The holders of a majority of the shares of Series E and Series F redeemable convertible preferred stock, voting together as a single class, are entitled to elect one director of the Company.

Dividends

The holders of Series A, Series B, Series C, Series D, Series E and Series F redeemable convertible preferred stock are entitled to receive dividends declared by the board of directors in proportion to the numbers of shares of common stock, which are held by each holder if all shares of such series of redeemable convertible preferred stock were converted to common stock at the then-effective conversion rate of each series of redeemable convertible preferred stock. No dividends shall be paid on any common stock (other than dividends on shares of common stock payable in shares of common stock) until dividends to the holders of the redeemable convertible preferred stock have been paid. As of December 31, 2020, no dividends have been declared to date.

Liquidation Rights

In the event of any liquidation, dissolution, or winding-up of the Company, either voluntary or involuntary, the holders of Series F, Series E and Series D redeemable convertible preferred stock shall be entitled to receive on a pari passu basis among each other, prior to and in preference to any distribution of any of the assets to the holders of Series C redeemable convertible preferred stock, Series B redeemable convertible preferred stock, Series A redeemable convertible preferred stock, and the common stock of the Company, an amount per share equal to the sum of the original issue price of the redeemable convertible preferred stock and all declared and unpaid dividends on such shares of redeemable convertible preferred stock.

After the payment of all preferential amounts required to be paid to the holders of Series D redeemable convertible preferred stock, the holders of Series C redeemable convertible preferred stock shall be entitled to receive, prior to and in preference to any distribution of any of the assets to the holders of Series B redeemable convertible preferred stock, Series A redeemable convertible preferred stock, and the common stock of the Company, an amount per share equal to the sum of the original issue price of the redeemable convertible preferred stock and all declared and unpaid dividends on such shares of redeemable convertible preferred stock.

After the payment of all preferential amounts required to be paid to the holders of Series C redeemable convertible preferred stock, the holders of Series B shall be entitled to receive, prior to and in preference to any distribution of any of the assets to the holders of Series A redeemable convertible preferred stock and the common stock of the Company, an amount per share equal to the sum of the original issue price of the redeemable convertible preferred stock and all declared and unpaid dividends on such shares of redeemable convertible preferred stock.

After the payment of all preferential amounts required to be paid to the holders of Series B redeemable convertible preferred stock, the holders of Series A shall be entitled to receive, prior to and in preference to any distribution of any of the assets to the holders of common stock of the Company, an amount per share equal to the sum of the original issue price of the redeemable convertible preferred stock and all declared and unpaid dividends on such shares of redeemable convertible preferred stock.

If upon the occurrence of such an event, the assets and funds distributed among the holders of the redeemable convertible preferred stock are insufficient to permit the payment to such holders of the redeemable convertible preferred stock, then the entire assets and funds of the Company legally available for distribution shall be distributed ratably among the holders of the redeemable convertible preferred stock in proportion to the full preferential amount each such holders are otherwise entitled to have received pursuant to the entitlement as noted above.

After the payment in full to holders of the redeemable convertible preferred stock as noted above, the remaining assets, if any, shall be distributed to the holders of the common and redeemable convertible preferred stock on a pro-rata as-if-converted basis.

Conversion rights

Each share of redeemable convertible preferred stock is convertible, at the option of the holder, at any time after the date of issuance of such share for such redeemable convertible preferred stock. Each share of redeemable convertible preferred stock shall be convertible into the number of shares of common stock determined by dividing the original issuance price by the conversion price. The initial conversion price for each share of redeemable convertible preferred stock is the original issuance price for such share of redeemable convertible preferred stock.

Each share of redeemable convertible preferred stock automatically converts into the number of shares of common stock at the conversion price on the earlier of (i) immediately prior to the closing of a firmly underwritten public offering in the aggregate gross proceeds received by the Company are not less than $75,000,000 and the Company's valuation, represented by fair market value of the issued and outstanding shares of common stock (assuming conversion of all redeemable convertible preferred stock into common stock) immediately prior to giving effect to the issuance of any shares pursuant to such public offering, calculated based on the price per share at which the underwriters propose to sell such common stock to the public, is at least $425,000,000 on or before the 12-month anniversary of the initial purchase date of the Series F redeemable convertible preferred stock, and at least $475,000,000 after the twelve 12-month anniversary of the initial purchase date of the Series F redeemable convertible preferred stock (a "Qualified IPO") or (ii) the date specified in a written request by the holders of a majority of the then outstanding shares of the Series E redeemable convertible preferred stock and the Series F redeemable convertible preferred stock, voting together as a separate class on an as-if converted basis.

As of December 31, 2020, the conversion ratio for each series of redeemable convertible preferred stock was one-for-one.

Redemption

The redeemable convertible preferred stock is recorded in mezzanine equity because, while it is not mandatorily redeemable, it will become redeemable at the option of the stockholders upon the occurrence of certain deemed liquidation events that are considered not solely within the Company's control.

Note 8. Common Stock Warrants

In connection with the issuance of the Company's Series A redeemable convertible preferred stock issuances in September 2011, the Company issued a warrant to purchase 64,655 shares of common stock to an investor who purchased Series A redeemable convertible preferred stock at an exercise price of $0.10 per share. The common stock warrant was exercised in December 2020 and is no longer outstanding.

Note 9. Redeemable Convertible Preferred Stock Warrants

2019 Warrants

In conjunction with the funding of Tranche 1 and Tranche 2 under the 2019 Term Loan, the Company issued the 2019 Initial Warrant to purchase 29,514 shares of its Series C redeemable convertible preferred stock (see Note 5). The 2019 Initial Warrant is immediately exercisable, at an exercise price per share of $9.49, and expires 10 years from their date of issuance. The 2019 Initial Warrant will be automatically exercised upon the consummation or effective date of a change of control of the Company. Further, depending on the funding of the 2019 Term Loan Tranche 3, the Company was obligated to issue the 2019 Additional Warrant (together with the 2019 Initial Warrant to "2019 Warrants") to the Lender to purchase up to 12,649 shares of Series C redeemable convertible preferred stock at the respective exercise price.

The estimated fair value of the 2019 Warrants on the date of issuance was $0.2 million. As of the issuance date, the fair value of the 2019 Warrants was calculated using the Black-Scholes option-pricing model and was based on a term of 10 years, a risk-free interest rate of 2.99%, expected volatility of 50.95%, and 0% expected dividend yield.

At initial recognition, the 2019 Warrants were recorded at their estimated fair values and were subject to remeasurement at each balance sheet date, with changes in fair value recognized as a component of net income. As of December 31, 2019 and 2020, the estimated fair values of the 2019 Warrants were $0.2 million and $0.3 million, respectively. The fair value of the 2019 Warrants as of December 31, 2019 and 2020 was calculated using the Black-Scholes option-pricing model with the following assumptions as of each reporting date:

	December 31,	
	2019	2020
Expected term (in years)	9.1–10.0	8.1–8.5
Expected volatility	50.63%–50.95%	42.18%–42.63%
Risk-free interest rate	2.33%–2.49%	2.33%–2.49%
Dividend yield	—	—

As of December 31, 2020, the 2019 Initial Warrant remained outstanding and the remaining term was 8.3 years. The 2019 Additional Warrant of 12,649 shares of series C redeemable convertible preferred stock was not legally issued and expired upon modification of the 2019 Term Loan.

2020 Warrants

In conjunction with entering the 2020 Term Loan agreement, the Company issued the 2020 Warrant to purchase 300,000 shares of its Series F redeemable convertible preferred stock (see Note 5). The 2020 Warrant is immediately exercisable, at an exercise price per share of $21.88, and expire 10 years from their date of issuance. The warrant will be automatically exercised upon the consummation or effective date of a change of control of the Company.

The estimated fair value of the 2020 Warrant on the date of issuance was $1.8 million. As of the issuance date, the fair value of the 2020 Warrant was calculated using an Option-Pricing Method with Discounts for Lack of Marketability for each class of security.

At initial recognition, the 2020 Warrant was recorded at its estimated fair values and was subject to remeasurement at each balance sheet date, with changes in fair value recognized as a component of net income. As of December 31, 2020, the estimated fair values of the 2020 Warrant was $1.8 million. The fair value of the 2020 Warrant as of December 31, 2020 was calculated using the Black-Scholes option-pricing model and was based on an Option-Pricing Method with Discounts for Lack of Marketability for each class of security.

As of December 31, 2020, the 2020 Warrant remained outstanding and the remaining term was 9.9 years.

Note 10. Common Stock

At December 31, 2020, the Company's certificate of incorporation, as amended and restated, authorizes the Company to issue up to 21,831,000 shares of common stock with $0.001 par value per share, of which 4,754,591 shares were issued and outstanding. The holders of common stock are also entitled to receive dividends whenever funds are legally available, when and if declared by the board of directors. As of December 31, 2020, no dividends have been declared to date. Each share of common stock is entitled to one vote.

At December 31, 2018, 2019 and 2020, the Company had reserved common stock for future issuances as follows:

	December 31,		
	2018	2019	2020
Conversion of Series A redeemable convertible preferred stock and warrants	3,868,999	3,868,999	3,804,344
Conversion of Series B redeemable convertible preferred stock	1,209,621	1,209,621	1,209,621
Conversion of Series C redeemable convertible preferred stock and warrants	2,342,857	2,372,371	2,372,371
Conversion of Series D redeemable convertible preferred stock	—	2,447,818	2,447,818
Conversion of Series E redeemable convertible preferred stock	—	—	1,899,847
Conversion of Series F redeemable convertible preferred stock	—	—	1,362,715
Exercise of options under stock plan	4,596,003	4,659,733	4,754,591
Issuance of options under plan	921,468	993,988	1,568,888
	12,938,948	15,552,530	19,420,195

Note 11. Stock Option Plan

In 2011, the Company established its 2011 stock option plan (the "2011 Plan") that provides for the granting of stock options to employees and nonemployees of the Company. Under the 2011 Plan, the Company has the ability to issue incentive stock options (ISOs), nonqualified stock options (NSOs), stock appreciation rights, dividend equivalent rights, restricted stock awards, and restricted stock unit awards. Options under the 2011 Plan may be granted for periods of up to 10 years. For incentive stock option granted to a grantee who, at the time the option is granted, owns stock representing more than 10% of the voting power of all classes of stock of the Company or any parent or subsidiary of the Company, the term of the incentive stock option may be granted for periods of up to five years. The ISOs and NSOs will be granted at a price per share not less than the fair value at the date of grant. The exercise price of an ISO granted to a 10% stockholder shall not be less than 110% of the estimated fair value of the shares on the date of grant, as determined by the board of directors. Options granted to new hires generally vest over a four-year period, with 25% vesting at the end of one year and the remaining vesting monthly thereafter; options granted as merit awards generally vest monthly over a four-year period. At December 31, 2018, 2019 and 2020, there were 25,377 shares, 830,938 shares and 225,835 shares, respectively, of common stock available for issuance under the 2011 Plan.

The following table summarizes the Company's stock option activity for the years ended December 31, 2018, 2019 and 2020:

	Shares Available for Grant	Options Outstanding			
		Number of Options	Weighted-Average Exercise Price	Weighted-Average Remaining Contractual Term (In years)	Aggregate Intrinsic Value (in thousands)
Balances as of December 31, 2017	92,676	827,967	$ 0.37	7.2	$ 262
Additional shares reserved	80,451				
Options granted	(164,500)	164,500	$ 0.69		
Options forfeited/canceled	16,750	(16,750)	$ 0.61		
Options exercised	—	(54,249)	$ 0.41		
Balances as of December 31, 2018	25,377	921,468	$ 0.42	6.6	$ 245
Additional shares reserved	941,811				
Options granted	(154,000)	154,000	$ 1.24		
Options forfeited/canceled	17,750	(17,750)	$ 0.66		
Options exercised	—	(63,730)	$ 0.46		
Balances as of December 31, 2019	830,938	993,988	$ 0.54	6.1	$ 5,106
Options granted	(624,950)	624,950	$ 3.94		
Options forfeited/canceled	19,847	(19,847)	$ 2.45		
Options exercised	—	(30,203)	$ 0.80		
Balances as of December 31, 2020	225,835	1,568,888	$ 1.87	6.8	$ 18,656
Vested and exercisable as of December 31, 2020		854,065	$ 0.74	4.9	$ 11,120
Expected to vest as of December 31, 2020		714,823	$ 3.22	8.9	$ 7,536

The weighted-average grant-date fair values of options granted in the years ended December 31, 2018, 2019 and 2020, were $0.1 million, $0.2 million and $2.9 million, respectively. The aggregate intrinsic value of options exercised were $0.1 million, $0.2 million and $0.2 million during the years ended December 31, 2018, 2019 and 2020, respectively. The aggregate intrinsic value was calculated as the difference between the exercise prices of the underlying options and the estimated fair value of the common stock on the date of exercise. As of December 31, 2020, the unrecognized stock-based compensation of unvested options was $2.6 million, which is expected to be recognized over a weighted-average period of 3.4 years.

The Company estimated the fair value of stock options using the Black-Scholes option-pricing model. The fair value of stock options is recognized on a straight-line basis over the requisite service periods of the awards. The fair value of stock options was estimated using the following weighted-average assumptions:

	December 31,		
	2018	2019	2020
Expected term (in years)	6.08	5.00–6.08	5.85–6.08
Expected volatility	55.13%–55.98%	50.63%–51.00%	48.27%–55.64%
Risk-free interest rate	2.80%–2.85%	2.30%–2.49%	0.33%–1.77%
Dividend yield	—	—	—

Expected Term

The expected term is calculated using the simplified method, which is available if there is insufficient historical data about exercise patterns and post vesting employment termination behavior. The simplified method

is based on the vesting period and the contractual term for each grant or for each vesting tranche for awards with graded vesting. The midpoint of the vesting date and the maximum contractual expiration date is used as the expected term under this method. For awards with multiple vesting tranches, the time from grant until the midpoints for each of the tranches may be averaged to provide an overall expected term.

Expected Volatility

The Company used an average historical stock price volatility of a peer group of publicly traded companies to be representative of its expected future stock price volatility, as the Company did not have any trading history for its common stock. For purposes of identifying these peer companies, the Company considered the industry, stage of development, size, and financial leverage of potential comparable companies. For each grant, the Company measured historical volatility over a period equivalent to the expected term.

Risk-Free Interest Rate

The risk-free interest rate is based on the implied yield currently available on US Treasury zero-coupon issues with remaining terms equivalent to the expected term of a stock award.

Expected Dividend Rate

The Company has not paid, and does not anticipate paying, any dividends in the near future. Accordingly, the Company has estimated the dividend yield to be 0%.

The following is a summary of stock-based compensation expense by function (in thousands):

	Years Ended December 31,		
	2018	2019	2020
Cost of goods sold	$ 2	$ 3	$ 20
Research and development	22	42	84
Selling, general and administrative	28	73	393
Total stock-based compensation expense	$ 52	$118	$497

Note 12. Income Taxes

Deferred Tax Assets and Liabilities

Deferred tax assets and liabilities reflect the net tax effect of temporary differences between carrying value of assets and liabilities for financial reporting purposes and the tax basis of these assets and liabilities as measured by income tax law. The income tax effect of temporary differences that give rise to deferred tax assets and (liabilities) consist of the following (in thousands):

	Years Ended December 31,		
	2018	2019	2020
Deferred tax assets:			
Net operating loss carryforwards	$ 7,229	$ 13,469	$ 22,208
Research and development credits	505	775	1,071
Operating lease liability	—	270	138
Deferred compensation	84	362	899
Provision for excess and obsolete inventories	—	—	282
Other	21	44	94
Total gross deferred tax assets	7,839	14,920	24,692
Less: Valuation allowance	(7,797)	(14,365)	(24,543)
Total net deferred tax assets	42	555	149
Deferred tax liabilities:			
Operating lease right-of-use assets	—	(270)	(135)
Fixed assets	(42)	(285)	(14)
Total deferred tax liabilities	(42)	(555)	(149)
Total net deferred taxes	$ —	$ —	$ —

The Company will continue to closely monitor the need for a valuation allowance against its existing deferred tax assets (“DTAs”) and any additional DTAs that are generated in each subsequent reporting period. The need for a valuation allowance can be affected by actual operating results, forecasted financial performance, variances between the two, and the rate at which future DTAs are generated.

Internal Revenue Code (IRC) Section 382 limits the use of federal net operating losses and income tax credit carryforwards in certain situations where changes occur in stock ownership of a company. If the Company should have an ownership change of more than 50% of the value of the Company’s capital stock, utilization of the carryforwards could be restricted.

The Company’s income tax provision for the years ended December 31, 2018, 2019 and 2020, consists of the following (in thousands):

	Years Ended December 31,		
	2018	2019	2020
Current:			
Federal	$ (6)	$—	$ 6
State	—	8	41
Total current	(6)	8	47
Provision (benefit) for income taxes	$ (6)	$ 8	$ 47

The reconciliation of the statutory federal income tax rate to the Company's effective tax rate is as follows (in thousands):

	Years Ended December 31,		
	2018	2019	2020
Tax at statutory federal rate	21%	21%	21%
State tax, net of federal benefit	4%	4%	5%
Research and development credit	—	1%	1%
Change in valuation allowance	(25)%	(25)%	(27)%
Other	—	(1)%	—
Effective tax rate	—	—	—

A valuation allowance is recorded when it is more likely than not that some portion of the deferred tax assets will not be realized. As of each reporting date, the Company's management considers all evidence, both positive and negative, that could affect management's view with regard to future realization of deferred tax assets. As of December 31, 2020, a full valuation allowance for deferred tax assets was recorded as management believes it is not more likely than not that all of the deferred tax assets will be realized. At December 31, 2018, 2019 and 2020, the Company has a net operating loss carryforward for federal income tax purposes of approximately $28.9 million, $54.1 million and $85.3 million, respectively. At December 31, 2018, 2019 and 2020, the Company has a net operating loss carryforward for state income tax purposes of approximately $29.1 million, $53.4 million and $ 83.5 million, respectively. Net operating losses prior to 2018 of $14.8 million will expire, if not utilized, beginning in 2032 for federal and state income tax purposes.

As of December 31, 2018, 2019 and 2020, the Company has federal and state research and development income tax credit carryforwards of approximately $0.3 million, $0.6 million and $0.8 million, respectively. As of December 31, 2018, 2019 and 2020, the Company has state research and development income tax credit carryforwards of approximately $0.5 million, $0.6 million and $0.9 million, respectively. The Federal income tax credits begin to expire in 2032. The Company has provided a valuation allowance of $0.4 million as of December 31, 2020 for deferred tax assets related to research and development income tax credits that are not expected to be utilized. The Company does not expect any significant change to the UTP balances in the next 12 months.

The following table summarizes the activity related to the unrecognized tax benefits (in thousands):

	Years Ended December 31,		
	2018	2019	2020
Unrecognized tax benefits at the beginning of the year	$ —	$200,089	$303,665
Additions based on tax positions related to the current year	76,568	103,576	113,333
Additions for tax positions of prior years	123,521	—	—
Unrecognized tax benefits at the end of the year	$200,089	$303,665	$416,998

The Company does not have any material uncertain tax positions as of December 31, 2020 and does not expect any significant change to such balances in the next twelve months.

The Company currently has no federal or state tax examinations in progress nor has it had any federal or state tax examinations since its inception. Due to the history of net operating losses, the Company's federal and state tax returns remain open to examination by the tax authorities.

Note 13. Net loss per share attributable to common stockholders

Basic net loss per share is computed by dividing the net loss by the weighted-average number of common shares outstanding for the period. As the Company reported a net loss for 2018, 2019 and 2020, basic net loss per share is the same as diluted net loss per share as the inclusion of potentially dilutive shares would have been antidilutive if included in the calculation.

The following table sets forth the computation of basic and diluted net loss per share attributable to common stockholders (in thousands, except share and per share data):

	Years Ended December 31,		
	2018	2019	2020
Numerator:			
Net loss attributable to common stockholders	$ (14,290)	$ (25,869)	$ (34,693)
Denominator:			
Weighted-average shares of common stock outstanding—basic and diluted	4,611,325	4,693,534	4,678,109
Net loss per share attributable to common stockholders—basic and diluted	$ (3.10)	$ (5.51)	$ (7.41)

The following outstanding shares of potentially dilutive securities were excluded from the computation of diluted net loss per share attributable to common stockholders for the period presented because including them would have been antidilutive:

	Years Ended December 31,		
	2018	2019	2020
Series A Redeemable Convertible Preferred Stock	3,804,344	3,804,344	3,804,344
Series B Redeemable Convertible Preferred Stock	1,209,621	1,209,621	1,209,621
Series C Redeemable Convertible Preferred Stock	2,342,857	2,342,857	2,342,857
Series D Redeemable Convertible Preferred Stock	—	2,447,818	2,447,818
Series E Redeemable Convertible Preferred Stock	—	—	1,899,847
Series F Redeemable Convertible Preferred Stock	—	—	1,062,715
Options to purchase common stock	921,468	993,988	1,568,888
Redeemable Convertible Preferred Stock Warrants	—	42,163	329,514
Total	8,278,290	10,840,791	14,665,604

Unaudited Pro Forma Net Loss per Share

Unaudited pro forma basic and diluted net loss per share were computed to give effect to the one-for-one conversion of all outstanding shares of the Company's redeemable convertible preferred stock into shares of common stock in connection with the IPO, using the as-converted method as though the conversion had occurred as of the beginning of the period presented or the date of issuance, if later. Refer to Note 2 for further discussion.

Unaudited pro forma basic and diluted loss per share is computed as follows (in thousands, except share and per share data):

	Year Ended December 31, 2020
Numerator:	
Net loss attributable to common stockholders	$ ( )
Adjust: change in fair value of redeemable convertible preferred stock warrants	
Pro forma net loss	
Denominator:	
Weighted-average shares of common stock outstanding used in computing net loss per share attributable to common stockholder—basic and diluted	
Adjust: conversion of redeemable convertible preferred stock	
Adjust: conversion of common stock warrants	
Weighted-average shares outstanding used in computing pro forma net loss per share—basic and diluted	
Net loss per share attributable to common stockholders—basic and diluted	$ ( )

Note 14. Defined Contribution Plan

The Company sponsors a defined contribution plan under Section 401(k) of the IRC of 1986, as amended, covering substantially all of its full-time US employees. Participating employees may contribute up to 100% of their eligible compensation up to the annual Internal Revenue Service's contribution limit. For fiscal years 2018, 2019 and 2020, the Company did not match employee contributions.

Note 15. Segment Information

The Company has two reportable operating segments which are determined on the basis of product portfolio: Surgical Glaucoma and Dry Eye. The operating and reportable segments were determined based on how the Company's Chief Executive Officer, its Chief Operating Decision Maker ("CODM"), views and evaluates the Company's operations. The CODM allocates resources to and evaluates the financial performance of each operating segment primarily based on gross profit and gross profit margin.

Surgical Glaucoma segment includes sales of the Company's OMNI® Surgical System and its predicate devices for use in minimally invasive glaucoma procedures. Dry Eye segment includes sales of the Company's TearCare® System and related components.

The following table summarizes select operating results information for each reportable segment (dollars in thousands):

	Years Ended December 31,		
	2018	2019	2020
Revenue			
Surgical Glaucoma	$ 7,530	$ 22,304	$ 26,000
Dry Eye	—	1,044	1,640
Total	7,530	23,348	27,640
Cost of goods sold			
Surgical Glaucoma	2,338	5,132	7,069
Dry Eye	—	1,412	2,140
Total	2,338	6,544	9,209
Gross profit			
Surgical Glaucoma	5,192	17,172	18,931
Dry Eye	—	(368)	(500)
Total	5,192	16,804	18,431
Operating expenses	19,489	40,843	50,619
Loss from operations	(14,297)	(24,039)	(32,188)
Interest income	1	174	30
Interest expense	—	(1,961)	(2,403)
Other income (expense), net	—	(35)	(71)
Loss before income tax	$(14,296)	$(25,861)	$(34,632)

The Company does not allocate any income and expenses beyond revenue and cost of goods sold to the reportable operating segments in its reporting to the CODM. No asset information is provided for reportable operating segments because they are not reviewed by the CODM on segment basis. Substantially all of the Company's revenue is generated from sales in the United States, and none of its property and equipment is located outside the United States.

Note 16. Subsequent Events

The Company evaluated subsequent events through April 9, 2021, the date on which the consolidated financial statements were available for issuance.

Lease renewal

On February 5, 2021, the Company entered into a lease to renew the corporate headquarters in Menlo Park, California. The lease commenced on August 1, 2021 and is for a term of 37 months from the commencement date. Total base rent is approximately $1.6 million under the lease agreement.

SIGHT SCIENCES, INC.

Condensed Consolidated Balance Sheets
(In thousands, except share and per share amounts)

	As of December 31, 2020	As of March 31, 2021
		(unaudited)
Assets		
Current assets:		
Cash and cash equivalents	$ 61,511	$ 48,327
Accounts receivable, net	5,363	5,637
Inventory, net	2,598	2,533
Prepaid expenses and other current assets	1,161	1,040
Total current assets	70,633	57,537
Property and equipment, net	1,269	1,224
Operating lease ROU assets	518	362
Other noncurrent assets	386	1,410
Total assets	$ 72,806	$ 60,533
Liabilities, redeemable convertible preferred stock, and Stockholders' deficit		
Current liabilities:		
Accounts payable	$ 2,158	$ 3,010
Accrued compensation	4,070	2,225
Accrued and other current liabilities	3,086	4,063
Total current liabilities	9,314	9,298
Long-term debt	31,955	32,124
Other noncurrent liabilities	3,055	2,581
Total liabilities	44,324	44,003
Commitments and contingencies (Note 6)		
Redeemable convertible preferred stock:		
Convertible Preferred Stock, $0.001 par value; 14,241,390 shares authorized as of December 31, 2020 and March 31, 2021; 12,767,202 shares issued and outstanding as of December 31, 2020 and March 31, 2021, respectively; aggregate liquidation preference of $118.6 million as of December 31, 2020 and March 31, 2021, respectively	117,331	117,331
Stockholders' deficit:		
Common stock par value of $0.001 per share—21,831,000 shares authorized at December 31, 2020 and March 31, 2021; 4,754,591 shares issued and outstanding as of December 31, 2020, and 4,763,022 shares issued and outstanding at March 31, 2021	5	5
Additional paid-in capital	1,187	1,475
Accumulated deficit	(90,041)	(102,281)
Total stockholders' deficit	(88,849)	(100,801)
Total liabilities, redeemable convertible preferred stock, and stockholders' deficit	$ 72,806	$ 60,533

The accompanying notes are an integral part of these condensed consolidated financial statements.

SIGHT SCIENCES, INC.

Condensed Consolidated Statements of Operations and Comprehensive Loss
(In thousands, except share and per share data)

	Three Months Ended March 31,	
	2020	2021
	(unaudited)	
Revenue	$ 6,496	$ 8,635
Cost of goods sold	2,128	2,301
Gross profit	4,368	6,334
Operating expenses:		
Research and development	2,400	3,440
Selling, general, and administrative	10,678	14,550
Total operating expenses	13,078	17,990
Loss from operations	(8,710)	(11,656)
Interest income	27	—
Interest expense	(552)	(1,084)
Other income (expense), net	91	552
Loss before income taxes	(9,144)	(12,188)
Provision for income taxes	31	52
Net loss and comprehensive loss	$ (9,175)	$ (12,240)
Net loss per share outstanding attributable to common stockholders, basic and diluted	$ (1.94)	$ (2.57)
Weighted-average common shares outstanding used in computing net loss per share attributable to common stockholders, basic and diluted	4,724,693	4,758,635
Pro forma net loss per share, basic and diluted (unaudited)		
Weighted-average shares outstanding used in computing pro forma net loss per share, basic and diluted (unaudited)		

The accompanying notes are an integral part of these condensed consolidated financial statements.

SIGHT SCIENCES, INC.

Condensed Consolidated Statements of Redeemable Convertible Preferred Stock and Stockholders' Deficit
(In thousands, except share amounts, unaudited)

	Redeemable Convertible Preferred Stock		Common Stock		Additional Paid-In Capital	Accumulated Deficit	Total Stockholders' Deficit
	Shares	Amount	Shares	Amount			
Balances at December 31, 2019	9,804,640	$64,256	4,659,733	$ 5	$ 660	$ (55,348)	$ (54,683)
Issuance of Series E redeemable convertible preferred stock, net of issuance costs of $94	1,899,847	30,055	—	—	—	—	—
Issuance of common stock upon exercise of stock options	—	—	750	—	1	—	1
Stock-based compensation expense	—	—	—	—	61	—	61
Net loss	—	—	—	—		(9,175)	(9,175)
Balances at March 31, 2020	11,704,487	$94,311	4,660,483	$ 5	$ 722	$ (64,523)	$ (63,796)

	Redeemable Convertible Preferred Stock		Common Stock		Additional Paid-In Capital	Accumulated Deficit	Total Stockholders' Deficit
	Shares	Amount	Shares	Amount			
Balances at December 31, 2020	12,767,202	$ 117,331	4,754,591	$ 5	$ 1,187	$ (90,041)	$ (88,849)
Issuance of common stock upon exercise of stock options	—	—	8,431	—	11	—	11
Stock-based compensation expense	—	—	—	—	277	—	277
Net loss			—	—	—	(12,240)	(12,240)
Balances at March 31, 2021	12,767,202	$ 117,331	4,763,022	$ 5	$ 1,475	$ (102,281)	$ (100,801)

The accompanying notes are an integral part of these condensed consolidated financial statements.

SIGHT SCIENCES, INC.

Condensed Consolidated Statements of Cash Flows
(In thousands)

	Three Months Ended March 31,	
	2020	2021
Cash flows from operating activities		
Net loss	$ (9,175)	$ (12,240)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation	143	135
Accretion of debt discount and amortization of debt issuance costs	140	170
Stock-based compensation expense	61	277
Provision for doubtful accounts receivable	127	27
Provision for excess and obsolete inventories	382	211
Noncash operating lease expense	132	156
Change in fair value of redeemable convertible preferred stock warrant	(91)	(555)
Loss on disposal of property and equipment	5	4
Changes in operating assets and liabilities:		
Accounts receivable	188	(301)
Inventory	(210)	(146)
Prepaid expenses and other current assets	(176)	122
Other noncurrent assets	—	(1,024)
Accounts payable	278	1,071
Accrued compensation	(1,149)	(1,845)
Accrued and other current liabilities	(329)	977
Other noncurrent liabilities	113	91
Net cash used in operating activities	(9,561)	(12,870)
Cash flows from investing activities		
Purchases of property and equipment	(513)	(104)
Net cash used in investing activities	(513)	(104)
Cash flows from financing activities		
Payments of costs related to initial public offering	—	(223)
Proceeds from the issuance of Series E redeemable convertible preferred stock	30,152	—
Series E issuance costs	(97)	—
Proceeds from exercise of stock options	1	13
Net cash (used) and provided by financing activities	30,056	(210)
Net change in cash and cash equivalents	19,982	(13,184)
Cash and cash equivalents		
Beginning of period	21,237	61,511
End of period	$41,219	$ 48,327
Supplemental disclosure of cash flow information		
Cash paid for interest	$ 310	$ 766
Supplemental noncash disclosure		
Acquisition of property and equipment included in accounts payable and accrued liabilities	$ 55	$ 35
Unpaid initial public offering costs in accounts payable and accrued liabilities	$ —	1,017

The accompanying notes are an integral part of these condensed consolidated financial statements.

SIGHT SCIENCES, INC.
Notes to Condensed Consolidated Financial Statements (Unaudited)

Note 1. Company and Nature of Business

Description of Business

Sight Sciences, Inc. (the "Company") was incorporated in the state of Delaware in 2010. The Company is an ophthalmic medical device company focused on the development and commercialization of surgical and nonsurgical technologies for the treatment of prevalent eye diseases. The Company's surgical glaucoma product portfolio features the OMNI Surgical System, a device that facilitates the performance of both trabeculotomy and canaloplasty with a single device and single corneal incision. The Company's nonsurgical dry eye product portfolio consists of the TearCare system for ophthalmologists and optometrists. TearCare is a wearable eyelid technology that delivers highly targeted and adjustable heat to the meibomian glands of the eyelids.

The Company is located and headquartered in Menlo Park, California. The other office operated by the Company is in Southlake, Texas.

Significant Risks and Uncertainties

Since inception, the Company has incurred losses and negative cash flows from operations. As of March 31, 2021, the Company had an accumulated deficit of $102.3 million and recorded a net loss of $12.2 million for the three months then ended and expects to incur future additional losses. If the Company's revenue levels from its products are not sufficient or if the Company is unable to secure additional funding when desired, the Company may need to delay the development of its products and scale back its business and operations.

The Company believes that its existing sources of liquidity will satisfy its working capital and capital requirements for at least 12 months from the issuance of its financial statements. Failure to generate sufficient revenues, achieve planned gross margins, or control operating costs will require the Company to raise additional capital through equity or debt financing. Such additional financing may not be available on acceptable terms, or at all, and could require the Company to modify, delay, or abandon some of its planned future expansion or expenditures or reduce some of its ongoing operating costs, which could harm its business, operating results, financial condition, and ability to achieve its intended business objectives.

On March 11, 2020, the World Health Organization declared the coronavirus disease 2019 ("COVID-19") outbreak a global pandemic recommending containment measures worldwide. On March 16, 2020 the Company implemented alternative work arrangements for its employees and limited its employees' travel activities to protect its employees and to comply with the provisions described within the local shelter in place order. Certain U.S. federal, state and local governmental authorities issued other orders and directives, including restrictions on elective procedures and therapies, aimed at minimizing the spread of COVID-19. As such, the COVID-19 pandemic impacted and is expected to continue to impact demand for the Company's products, which are used in procedures and therapies that are considered elective. Although some of the governmental restrictions have since been lifted or scaled back, recent and future surges of COVID-19 may result in restrictions being re-implemented in response to efforts to reduce the spread of COVID-19.

The ultimate impact of the COVID-19 pandemic on the Company's operations is unknown and will depend on future developments which are highly uncertain and cannot be predicted with confidence, including the duration and severity of the COVID-19 outbreak, the status of health and safety actions taken to contain its spread and any additional preventative and protective actions that governments, or the Company, may direct, any resurgence of COVID-19 that may occur and how quickly and to what extent economic and operating conditions normalize within the markets in which the Company operates. The COVID-19 pandemic could disrupt the operations of the Company's third-party manufacturers and other suppliers. Although the Company has not experienced disruptions in its supply chain to date, it cannot predict how long the pandemic and measures

intended to contain the spread of COVID-19 will continue and what effect COVID-19 and the associated containment measures will have on our suppliers and vendors, in particular for any of the Company's suppliers and vendors that may not qualify as essential businesses and suffer more significant disruptions to their business operations. The Company is working closely with its manufacturing partners and suppliers to help ensure the Company is able to source key components and maintain appropriate inventory levels to meet customer demand.

Note 2. Summary of Significant Accounting Policies

Basis of Presentation

The accompanying condensed consolidated financial statements are unaudited and have been prepared in accordance with accounting principles generally accepted in the United States ("GAAP") applicable to interim periods. The condensed consolidated financial statements, in the opinion of management, include all normal and recurring adjustments necessary to present fairly the Company's financial position and results of operations for the reported periods. These condensed consolidated financial statements have been prepared on a basis substantially consistent with, and should be read in conjunction with the audited financial statements for the year ended December 31, 2020 and notes thereto, the Company's Annual Report on Form S-1 filed with the Securities and Exchange Commission ("SEC") on April 9, 2021. Certain information and note disclosures normally included in the audited financial statements prepared in accordance with GAAP have been condensed or omitted from this report. The results of operations for any interim period are not necessarily indicative of the results for the year ending December 31, 2021, or for any future period.

The accompanying condensed consolidated financial statements reflect the operations of the Company and its wholly-owned subsidiaries. All intercompany accounts and transactions have been eliminated.

Use of Estimates

The preparation of financial statements in conformity with US GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities, disclosure of contingent assets and liabilities at the date of the financial statements, and the reported amounts of revenues and expense during the reporting period. The most significant estimates related to inventory excess and obsolescence, the selection of useful lives of property and equipment, determination of the fair value of stock option grants, the fair value of the redeemable convertible preferred stock warrants, and provisions for income taxes and contingencies. Management evaluates its estimates and assumptions on an ongoing basis using historical experience and other factors, including the current economic environment, and makes adjustments when facts and circumstances dictate. These estimates are based on information available as of the date of the financial statements. Actual results could differ from these estimates and such differences could be material to the Company's financial position and results of operations.

Unaudited Pro Forma Information

The unaudited pro forma basic and diluted net loss per share data has been computed to give effect to an adjustment to the denominator in the pro forma basic and diluted net loss per share calculation for the conversion of the redeemable convertible preferred stock into shares of common stock as of the beginning of the period or the date of issuance, if later. The numerator in the pro forma basic and diluted net loss per share calculation has been adjusted to remove gains or losses resulting from the remeasurement of the redeemable convertible preferred stock warrant liability.

Fair Value of Financial Instruments

The Company's financial instruments consist of cash and cash equivalents, accounts receivable, accounts payable, accrued liabilities, redeemable convertible preferred stock, short-term and long-term debt and

redeemable convertible preferred stock warrant liability. The Company states accounts receivable, accounts payable, and accrued and other current liabilities at their carrying value, which approximates fair value due to the short time to the expected receipt or payment. The carrying amount of the Company's short-term debt approximates its fair value as the effective interest rate approximates market rates currently available to the Company. The redeemable convertible preferred stock warrant liability associated with the Company's redeemable convertible preferred stock is carried at fair value based on unobservable market inputs.

Deferred Offering Costs

Deferred offering costs, consisting of legal, accounting and other fees and costs relating to the Company's planned IPO, are capitalized and recorded on the balance sheet. The deferred offering costs will be offset against the proceeds received upon the closing of the planned IPO. In the event that the Company's plans for an IPO are terminated, all of the deferred offering costs will be written off within operating expenses in the Company's statements of operations and comprehensive loss. As of December 31, 2020 and March 31, 20201 deferred offering costs of $0.4 million and $1.3 million, respectively, were capitalized and are included in "Other noncurrent assets.

Accounting for Payroll Protection Program

In March 2020, Congress established the Paycheck Protection Program ("PPP") to provide relief to small businesses during COVID-19 as part of the Coronavirus Aid, Relief, and Economic Security ("CARES") Act. The legislation authorized the U.S. Treasury to use the Small Business Association's ("SBA's") small business lending program to fund forgivable loans that qualifying businesses could spend to cover payroll, mortgage interest, rent, and utilities during the "Covered Period" defined as the 8-week period starting on the date the PPP loan proceeds are received. Upon meeting certain criteria as specified in the PPP program, the loans are eligible for partial or total forgiveness. In May 2020, the Company applied for and received a PPP loan for the amount $2.2 million from SBA. We believe we have satisfied all of the terms and conditions of the PPP loan and applied for loan forgiveness in September 2020. We expect a decision from the SBA on loan forgiveness in the second quarter of 2021.

U.S. GAAP does not contain authoritative accounting standards for forgivable loans provided by governmental entities to a for-profit entity. Absent authoritative accounting standards, interpretative guidance issued and commonly applied by financial statement preparers allows for the selection of accounting policies amongst acceptable alternatives. The Company determined it most appropriate to account for the PPP loan proceeds as an in-substance government grant by analogy to International Accounting Standards 20 ("IAS 20") *Accounting for Government Grants and Disclosure of Government Assistance*. Under this guidance, a forgivable loan from government is treated as a government grant when there is reasonable assurance that the entity will meet the terms for forgiveness of the loan. While IAS 20 does not define "reasonable assurance", this concept in practice is analogous to "probable" as defined in Financial Accounting Standards Board ("FASB") ASC 450-20-20 under U.S. GAAP, which is the definition the Company has applied to its expectations of PPP loan forgiveness. Under IAS 20, government grants are recognized in earnings on a systematic basis over the periods in which the Company recognizes costs for which the grant is intended to compensate (i.e. qualified expenses). Further, IAS 20 permits for the recognition in earnings either separately under a general heading such as other income, or as a reduction of the related expenses.

New Accounting Pronouncements Not Yet Adopted

In June 2016, the FASB issued ASU No. 2016-13, *Financial Instruments—Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments*, which amends the impairment model by requiring entities to use a forward-looking approach based on expected losses to estimate credit losses on certain types of financial instruments, including trade receivables and available-for-sale debt securities. The guidance is effective for the Company beginning in the first quarter of 2023. The Company is evaluating the impact of adopting this guidance and does not expect to have a material impact on the Company's financial statements and related disclosures.

In December 2019, the FASB issued ASU No. 2019-12, *Income Taxes (Topic 740): Simplifying the Accounting for Income Taxes*, that simplifies the accounting for income taxes by eliminating certain exceptions related to the approach for intra-period tax allocation and modified the methodology for calculating income taxes in an interim period. It also clarifies and simplifies other aspects of the accounting for income taxes. The guidance is effective for the Company for fiscal years beginning after December 15, 2021, and interim periods within fiscal years beginning after December 15, 2022 with early adoption permitted. The Company is evaluating the effect this new guidance and does not expect it to have material impact on the Company's financial statements.

In March 2020, the FASB issued ASU No. 2020-04, *Reference Rate Reform (Topic 848): Facilitation of the Effects of Reference Rate Reform on Financial Reporting*. The new guidance provides optional expedients and exceptions for applying generally accepted accounting principles to contract modifications and hedging relationships, subject to meeting certain criteria, that reference LIBOR or another reference rate expected to be discontinued. The guidance also establishes (1) a general contract modification principle that entities can apply in other areas that may be affected by reference rate reform and (2) certain elective hedge accounting expedients. The amendment is effective for all entities through December 31, 2022. LIBOR is used to calculate the interest on borrowings under the Company's term loan and revolving line of credit with MidCap Financial Services. The Company is evaluating the effect this new guidance and does not expect it to have material impact on the Company's financial statements.

Note 3. Fair Value Measurements

The Company reports all financial assets and liabilities and nonfinancial assets and liabilities that are recognized or disclosed at fair value in the financial statements on a recurring basis. Valuation techniques used to measure fair value must maximize the use of observable inputs and minimize the use of unobservable inputs. The authoritative guidance establishes a fair value hierarchy that prioritizes the inputs to valuation techniques used to measure fair value. The hierarchy gives the highest priority to unadjusted quoted prices in active markets for identical assets or liabilities (Level 1 measurements) and the lowest priority to measurements involving significant unobservable inputs (Level 3 measurements). The three levels of the fair value hierarchy are as follows:

Level 1—Inputs are quoted prices (unadjusted) in active markets for identical assets or liabilities that the Company has the ability to access at the measurement date.

Level 2—Inputs are observable, unadjusted quoted prices in active markets for similar assets or liabilities, unadjusted quoted prices for identical or similar assets or liabilities in markets that are not active, or other inputs that are observable or can be corroborated by observable market data for substantially the full term of the related assets or liabilities.

Level 3—Inputs are unobservable inputs for the asset or liability. The level in the fair value hierarchy within which a fair value measurement in its entirety is based on the lowest-level input that is significant to the fair value measurement in its entirety.

The financial statements as of December 31, 2020 and March 31, 2021, do not include any nonrecurring fair value measurements relating to assets or liabilities.

The fair value measurements of liabilities that are measured at fair value on a recurring basis at December 31, 2020 and March 31, 2021, are as follows (in thousands):

	As of December 31, 2020			
	(Level 1)	(Level 2)	(Level 3)	Total
Liabilities				
Redeemable convertible preferred stock warrants liabilities	$ —	$ —	$ 2,112	$2,112
Total liabilities measured at fair value	$ —	$ —	$ 2,112	$2,112

	As of March 31, 2021			
	(Level 1)	(Level 2)	(Level 3)	Total
Liabilities				
Redeemable convertible preferred stock warrants liabilities	$ —	$ —	$ 1,557	$1,557
Total liabilities measured at fair value	$ —	$ —	$ 1,557	$1,557

The Company measures the redeemable convertible preferred stock warrants using Level 3 unobservable inputs within the Black-Scholes option-pricing model. The key assumptions include the fair value of redeemable convertible preferred stock, volatility, the risk-free interest rate, expected term (remaining contractual term of the warrants) and dividend yield. The Company has limited historical volatility information available, and the expected volatility was based on actual volatility for comparable public companies projected over the expected terms of the warrants. The Company did not apply a forfeiture rate to the warrants as there is not enough historical information available to estimate such a rate. The risk-free interest rate was based on the U.S. Treasury yield curve at the time of the grant over the expected term of the warrants. Refer to Note 9 for the assumptions used.

The Company measures the fair value of outstanding debt for disclosure purposes on a recurring basis. As of December 31, 2020 and March 31, 2021, total debt of $31.9 million $32.1 million is reported at amortized cost, respectively. This outstanding debt is classified as Level 2 as it is not actively traded. The amortized cost of the outstanding debt approximates the fair value.

The Company determines the fair value of the redeemable convertible preferred stock warrants annually, with subsequent gains and losses from remeasurement of Level 3 financial liabilities recorded through the other expense, net in statements of operations and other comprehensive loss.

A summary of the changes in the fair value of the Company’s Level 3 financial instruments for the three months ended March 31, 2020 and 2021, is as follows (in thousands):

	Redeemable convertible preferred stock warrant liability
Balance—December 31, 2019	236
Issuance of redeemable convertible preferred stock warrants	—
Change in fair value	(92)
Balance—March 31, 2020	$ 144

	Redeemable convertible preferred stock warrant liability
Balance—December 31, 2020	2,112
Issuance of redeemable convertible preferred stock warrants	—
Change in fair value	(555)
Balance—March 31, 2021	$ 1,557

Note 4. Balance Sheet Components

Property and Equipment, Net

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

	As of December 31, 2020	As of March 31, 2021
Tools and equipment	$ 1,523	$ 1,582
Computer equipment and software	118	116
Furniture and fixtures	43	43
Leasehold improvements	30	29
Construction in process	298	329
	2,012	2,099
Less: Accumulated depreciation	(743)	(875)
Property and equipment, net	$ 1,269	$ 1,224

Depreciation expense for the three months ended March 31, 2020 and 2021 was approximately $0.1 million each period.

Accrued and Other Current Liabilities

Accrued and other current liabilities consist of the following (in thousands):

	As of December 31, 2020	As of March 31, 2021
Accrued expenses	$ 1,971	$ 3,143
Current portion of lease liabilities	395	248
Short term interest payable	274	274
Other accrued liabilities	446	398
Total accrued and other current liabilities	$ 3,086	$ 4,063

Other Noncurrent Liabilities

Other noncurrent liabilities consist of the following (in thousands):

	As of December 31, 2020	As of March 31, 2021
Noncurrent portion of lease liabilities	$ 134	$ 123
Redeemable preferred stock warrants liabilities	2,112	1,557
Long term interest payable	465	556
Other noncurrent liabilities	344	345
Total other noncurrent liabilities	$ 3,055	$ 2,581

Note 5. Debt

In January 2019, the Company entered into a loan and security agreement with MidCap Financial Services, which provided a maximum of $25.0 million credit facility consisting of a $20.0 million senior secured 2019 Term Loan and a $5.0 million 2019 Revolver (collectively, the “2019 MidCap Credit Facility”). In November 2020, the Company entered into a loan and security agreement with the same institution, which replaced the 2019 MidCap Credit Facility, and provided for a maximum of $40.0 million credit facility consisting of a $35.0 million senior secured 2020 Term Loan and a $5.0 million 2020 Revolver (collectively, the “2020 MidCap Credit Facility”).

2019 Term Loan

The 2019 Term Loan had a four-year term and had a stated floating interest rate which equates to reserve-adjusted LIBOR + 6.75%. The 2019 Term Loan was split into three tranches as follows: (i) the Tranche One Loans provided for $12.0 million in term loans, (ii) the Tranche Two Loans provided for up to $2.0 million in term loans, and (iii) the Tranche Three Loans provided for up to $6.0 million in term loans. The Company borrowed $14.0 million under the Tranche One Loans and Tranche Two Loans. While the conditions necessary to draw the Tranche Three Loans had been met as of December 31, 2019, the Company did not elect to draw the Tranche Three Term Loans. The 2019 Term Loan required 18 monthly interest-only payments, which began on January 31, 2019, followed by 30 equal monthly installments of principal, plus interest. The interest-only period was extended by an additional six months upon achievement of the Tranche Three Milestone.

The 2019 Term Loan had an effective interest rate of 14.52% per year. The 2019 Term Loan interest expense for the three months ended March 31, 2020 and 2021 was $0.6 million and nil, respectively.

In conjunction with the funding of Tranche 1 and Tranche 2 under the 2019 Term Loan, the Company issued a 10-year warrant to the Lender to purchase 29,514 shares of the Company’s Series C redeemable convertible preferred stock (the “2019 Initial Warrant”) at an exercise price of $9.49 per share (the “Exercise Price”). Further, depending on the funding of the Term Loan Tranche 3, the Company was obligated to issue an additional Warrant to the Lender to purchase up to 12,649 shares of Series C redeemable convertible preferred stock at the Exercise Price (the “2019 Additional Warrant” and together with “2019 Initial Warrant” the “2019 Warrants”) (see Note 9).

The estimated fair value of the 2019 Warrants of $0.2 million upon draw down was based on the Black-Scholes option-pricing model and probability of future draw downs. The 2019 Warrants were recorded at the fair value as a debt discount and as a warrant liability. The debt discount is being accreted using the effective interest method as interest expense over the contractual period of four years for the Term Loan.

The Company incurred $1.5 million of issuance costs in conjunction with the 2019 Term Loan. The issuance costs have been netted against the borrowed funds in the condensed consolidated balance sheet and was accreted using the effective interest method as interest expense over the contractual period of four years for the 2019 Term Loan.

The Company could voluntarily prepay the borrowings in full, with a prepayment premium beginning at 3% in the first year from tranche funding, to 2% in the second year from tranche funding, to 1% in the third year from tranche funding thereafter. In addition, a final payment fee of 5% of the amounts borrowed is payable at the end of the term or when the borrowings are repaid in full. A long-term liability was being accreted using the effective interest method for the final payment fee over the term of the loan agreement. The borrowings were collateralized by a security interest in substantially all of the Company's assets.

The Company was subject to financial covenants related to minimum trailing revenue targets that began on January 1, 2019, and are tested on a monthly basis. If only Tranche One Loans were funded, the Company had to achieve minimum net revenue of $7 million over a trailing 12-month period increasing to a maximum net revenue covenant of $35 million for the trailing 12-month period ending December 31, 2022, and thereafter. If only Tranche One Loans and Tranche Two Loans had been funded, the Company had to achieve minimum net revenue of $7 million over a trailing 12-month period increasing to a maximum net revenue covenant of $37.3 million for the 12-month period ending December 31, 2022, and thereafter. If Tranche Three Loans had been funded regardless of whether Tranche Two Loans have been funded, the Company had to achieve minimum net revenue of $15 million over a trailing 12-month period increasing to a maximum net revenue covenant of $46.7 million for the 12-month period ending December 31, 2022, and thereafter. As of December 31, 2019, the Company was in compliance with the applicable financial covenant.

On November 23, 2020, the 2019 Term Loan was replaced with 2020 Term Loan (see below).

2019 Revolver

The 2019 Revolver had a four-year term and has a stated floating interest rate which equates to reserve-adjusted LIBOR plus 4.25%. An unused line fee of 0.5% was payable monthly based on the average unused balance and a collateral management fee of 0.5% is payable monthly based on the outstanding balance of the Revolver. The Company could request to increase the 2019 Revolver commitment amount to $10.0 million under the term of the agreement. On November 23, 2020, the 2019 Revolver was replaced with the 2020 Revolver (see below).

2020 Term Loan

The 2020 Term Loan has a five-year term and has a stated floating interest rate which equates to reserve-adjusted LIBOR + 7.00%. The 2020 Term Loan is split into three tranches as follows: (i) the Tranche One Loans provide for $12.0 million in term loans which are deemed to have been converted from Tranche One Loans that were drawn and outstanding under the 2019 Term Loan immediately prior to entering into 2020 MidCap Credit Facility, (ii) the Tranche Two Loans provided for up to $2.0 million in term loans which are deemed to have been converted from Tranche Two Loans that were drawn and outstanding under the 2019 Term Loan immediately prior to entering into 2020 MidCap Credit Facility, and (iii) the Tranche Three Loans provided for up to $21.0 million in new term loans. The Company borrowed $21.0 million under the Tranche Three Loans in November 2020.

The 2020 Term Loan requires 24 monthly interest-only payments, which began on December 1, 2020, followed by 36 equal monthly installments of principal, plus interest. The interest-only period can be extended by an additional 12 months provided that the Company is in compliance with the minimum trailing revenue targets (as described below), and has unrestricted cash and cash equivalents of at least 12 times of the amortization monthly cash burn amount, measured as defined in the 2020 Term Loan agreement ("First IO Extension"). If the First IO Extension conditions are satisfied, the interest-only period can be further extended by an additional 12 months, provided that the Company is in compliance with the minimum trailing revenue targets (as described

below), has unrestricted cash and cash equivalents of at least 12 times of the amortization monthly cash burn amount, and has consummated an IPO in which the Company has received cash proceeds of at least $60.0 million.

The 2020 Term Loan has an effective interest rate of 13.59% per year. The 2020 Term Loan interest expense for the three months ended March 31, 2020 and 2021 was nil and $1.1 million, respectively.

In conjunction with the entering the 2020 MidCap Credit Facility, the Company issued a 10-year warrant to the Lender to purchase 300,000 shares of the Company's Series F redeemable convertible preferred stock (the "2020 Warrant") at an exercise price of $21.88 per share (see Note 9). The estimated fair value at issuance of the 2020 Warrant of $1.8 million was based on the Option-Pricing Method with Discounts for Lack of Marketability for each class of security. In addition, the Company incurred $0.5 million of issuance costs paid to the Lender in conjunction with the 2020 Term Loan which represents a debt discount. The Company concluded that the 2020 Term Loan represented a modification of the 2019 Term Loan and accounted for the 2020 Term Loan as debt modification. The 2020 Warrants were recorded at the fair value as a debt discount and as a warrant liability. At each balance sheet date, the 2020 Warrants are remeasured to fair value with any changes in fair value recognized as other expense in the statements of operations. The debt discount is being amortized using the effective interest method as interest expense over the contractual period of five years for the 2020 Term Loan.

The Company can voluntarily prepay the borrowings in full, with a prepayment premium beginning at 3% in the first year from entering into the 2020 MidCap Credit facility and declining to 2% in the second year to 1% in the third year thereafter. In addition, a final payment fee of 6% of the amounts borrowed is payable at the end of the term or when the borrowings are repaid in full. A long-term liability is being accreted using the effective interest method for the final payment fee over the term of the loan agreement. The borrowings are collateralized by a security interest in substantially all of the Company's assets.

The Company accrued $0.5 million and $0.6 million as of December 31, 2020 and March 31, 2021, respectively, related to accretion of final payment due at maturity per the agreement using the effective interest rate method. The final payment accrual is recorded in "Other noncurrent liabilities" on the balance sheets.

The Company is subject to financial covenants related to minimum trailing revenue targets that began on September 30, 2020 and are tested on a monthly basis. The Company has to achieve minimum net revenue of $20.0 million over a trailing 12-month period increasing to a maximum net revenue covenant of $84.8 million for the trailing 12-month period ending October 31, 2025. As of March 31, 2021, the Company was in compliance with the applicable financial covenant.

2020 Revolver

The 2020 Revolver has a four-year term and has a stated floating interest rate which equates to reserve-adjusted LIBOR plus 4.50%. An unused line fee of 0.5% is payable monthly based on the average unused balance and a collateral management fee of 0.5% is payable monthly based on the outstanding balance of the 2020 Revolver. The Company can request to increase the 2020 Revolver commitment amount to $15.0 million under the term of the agreement. As of March 31, 2021, $4.9 million was available to be drawn under the 2020 Revolver.

The 2020 Revolver has not been drawn upon as of March 31, 2021.

Long-term and short-term debt was as follows (in thousands):

	As of December 31, 2020	As of March, 31 2021
Term Loan	$ 35,000	$ 35,000
Total principal payments due	35,000	35,000
Less: debt discount related to warrant liability and issuance costs	(3,045)	(2,876)
Total amount outstanding	31,955	32,124
Less: Current portion	—	—
Long-term portion	$ 31,955	$ 32,124

The repayment schedule relating to the Company's debt as of March 31, 2021, is as follows (in thousands):

	Amount
2021 (remainder)	$ —
2022	1,944
2023	11,667
2024	11,667
2025	9,722
Total repayments	$35,000

Note 6. Commitments and Contingencies

Operating Lease Obligations

The Company's leases mainly include facility leases and storage leases. In September 2019, the Company entered into a noncancelable operating lease for approximately 10,823 square feet of primary office space, which expires on July 31, 2021, without the option to extend.

The Company recognizes rent expense on a straight-line basis over the noncancelable lease term. The Company's rent expense was $0.2 million for the three months ended March 31, 2020 and 2021.

In determining the present value of lease payments, the Company uses its incremental borrowing rate based on the information available at the lease commencement date if the rate implicit in the lease is not readily determinable. At the date of adoption of Topic 842, the Company determined the amounts of lease liability using a discount rate of 16.4%, which represents the Company's incremental borrowing rate, which was based on the Company's current borrowing rate adjusted for various factors including level of collateralization and term. As of March 31, 2021, the remaining lease term for the lease was 3.2 years.

Operating lease expense recognized and supplemental cash flow information related to operating leases for the three months ended March 31, 2020 and 2021 were as follows (in thousands):

	Three Months Ended March 31,	
	2020	2021
Operating lease expense	$ 175	$ 175
Cash paid for operating leases	172	177
New operating lease assets obtained in exchange for operating lease liabilities	—	—

During the three months ended March 31, 2020 and 2021, the Company's costs related to short-term lease arrangements and non-lease variable payments were immaterial.

Aggregate future minimum lease payments at December 31, 2020 and March 31, 2021, under these noncancelable operating leases were as follows (in thousands):

	As of December 31, 2020	As of March 31, 2021
2021	$ 440	$ 263
2022	66	66
2023	68	68
2024	29	29
Total future minimum lease payments	603	426
Less: imputed interest	(74)	(55)
Present value of future minimum lease payments	529	371
Less: current portion of operating lease liability	(395)	(248)
Operating lease liabilities—noncurrent	$ 134	$ 123

Legal Proceedings

The Company is subject to claims and assessments from time to time in the ordinary course of business. Accruals for litigation and contingencies are reflected in the financial statements based on management's assessment, including the advice of legal counsel, of the expected outcome of litigation or other dispute resolution proceedings, and/or the expected resolution of contingencies. Liabilities for estimated losses are accrued if the potential losses from any claims or legal proceedings are considered probable and the amounts can be reasonably estimated. Significant judgment is required in both the determination of probability of loss and the determination as to whether the amount can be reasonably estimated. Accruals are based only on information available at the time of the assessment due to the uncertain nature of such matters. As additional information becomes available, management reassesses potential liabilities related to pending claims and litigation and may revise its previous estimates, which could materially affect the Company's results of operations in a given period. As of December 31, 2020 and March 31, 2021, the Company was not involved in any material legal proceedings.

Indemnification

In the normal course of business, the Company enters into contracts and agreements that contain a variety of representations and warranties and provide for general indemnifications. The Company's exposure under these agreements is unknown because it involves claims that may be made against the Company in the future, but that have not yet been made. To date, the Company has not paid any claims or been required to defend any action related to its indemnification obligations. However, the Company may record charges in the future as a result of these indemnification obligations.

The Company indemnifies each of its directors and officers for certain events or occurrences, subject to certain limits, while the director is or was serving at the Company's request in such capacity, as permitted under Delaware law and in accordance with its certificate of incorporation and bylaws. The term of the indemnification period lasts as long as a director may be subject to any proceeding arising out of acts or omissions of such director in such capacity. The maximum amount of potential future indemnification is unlimited; however, the Company currently holds director liability insurance. This insurance allows the transfer of risk associated with the Company's exposure and may enable it to recover a portion of any future amounts paid. The Company believes that the fair value of these indemnification obligations is minimal. Accordingly, the Company has not recognized any liabilities relating to these obligations as of December 31, 2020 and March 31, 2021.

Note 7. Redeemable Convertible Preferred Stock

The Company has the following redeemable convertible preferred stock issued and outstanding at March 31, 2021 and December 31, 2020 (in thousands, except share and per share data):

Series	Shares Authorized	Shares Issued and Outstanding	Original Issuance Price	Liquidation Amount	Issuance Costs	Carrying Value
Series A	3,804,344	3,804,344	$ 1.38	$ 5,250	$ 9	$ 5,241
Series B	1,209,621	1,209,621	5.79	7,000	106	6,894
Series C	2,372,371	2,342,857	9.49	22,226	208	22,018
Series D	2,507,720	2,447,818	12.56	30,750	647	30,103
Series E	1,921,902	1,899,847	15.87	30,150	106	30,044
Series F	2,425,432	1,062,715	21.88	23,250	219	23,031
	14,241,390	12,767,202		$ 118,626	$ 1,295	$ 117,331

The rights and preferences of holders of the redeemable convertible preferred stock are as follows:

Voting Rights

The holder of each share of redeemable convertible preferred stock has the voting rights equal to an equivalent number of shares of common stock into which it is convertible and votes together as a single class with common stock.

Election of Directors

The holders of a majority of the Shares of Series A, Series B, Series C and Series D redeemable convertible preferred stock, voting separately as a single class, are entitled to each elect one director of the Company. The holders of a majority of the shares of Series E and Series F redeemable convertible preferred stock, voting together as a single class, are entitled to elect one director of the Company.

Dividends

The holders of Series A, Series B, Series C, Series D, Series E and Series F redeemable convertible preferred stock are entitled to receive dividends declared by the board of directors in proportion to the numbers of shares of common stock, which are held by each holder if all shares of such series of redeemable convertible preferred stock were converted to common stock at the then-effective conversion rate of each series of redeemable convertible preferred stock. No dividends shall be paid on any common stock (other than dividends on shares of common stock payable in shares of common stock) until dividends to the holders of the redeemable convertible preferred stock have been paid. As of March 31, 2021, no dividends have been declared to date.

Liquidation Rights

In the event of any liquidation, dissolution, or winding-up of the Company, either voluntary or involuntary, the holders of Series F, Series E and Series D redeemable convertible preferred stock shall be entitled to receive on a pari passu basis among each other, prior to and in preference to any distribution of any of the assets to the holders of Series C redeemable convertible preferred stock, Series B redeemable convertible preferred stock, Series A redeemable convertible preferred stock, and the common stock of the Company, an amount per share equal to the sum of the original issue price of the redeemable convertible preferred stock and all declared and unpaid dividends on such shares of redeemable convertible preferred stock.

After the payment of all preferential amounts required to be paid to the holders of Series D redeemable convertible preferred stock, the holders of Series C redeemable convertible preferred stock shall be entitled to

receive, prior to and in preference to any distribution of any of the assets to the holders of Series B redeemable convertible preferred stock, Series A redeemable convertible preferred stock, and the common stock of the Company, an amount per share equal to the sum of the original issue price of the redeemable convertible preferred stock and all declared and unpaid dividends on such shares of redeemable convertible preferred stock.

After the payment of all preferential amounts required to be paid to the holders of Series C redeemable convertible preferred stock, the holders of Series B shall be entitled to receive, prior to and in preference to any distribution of any of the assets to the holders of Series A redeemable convertible preferred stock and the common stock of the Company, an amount per share equal to the sum of the original issue price of the redeemable convertible preferred stock and all declared and unpaid dividends on such shares of redeemable convertible preferred stock.

After the payment of all preferential amounts required to be paid to the holders of Series B redeemable convertible preferred stock, the holders of Series A shall be entitled to receive, prior to and in preference to any distribution of any of the assets to the holders of common stock of the Company, an amount per share equal to the sum of the original issue price of the redeemable convertible preferred stock and all declared and unpaid dividends on such shares of redeemable convertible preferred stock.

If upon the occurrence of such an event, the assets and funds distributed among the holders of the redeemable convertible preferred stock are insufficient to permit the payment to such holders of the redeemable convertible preferred stock, then the entire assets and funds of the Company legally available for distribution shall be distributed ratably among the holders of the redeemable convertible preferred stock in proportion to the full preferential amount each such holders are otherwise entitled to have received pursuant to the entitlement as noted above.

After the payment in full to holders of the redeemable convertible preferred stock as noted above, the remaining assets, if any, shall be distributed to the holders of the common and redeemable convertible preferred stock on a pro-rata as-if-converted basis.

Conversion rights

Each share of redeemable convertible preferred stock is convertible, at the option of the holder, at any time after the date of issuance of such share for such redeemable convertible preferred stock. Each share of redeemable convertible preferred stock shall be convertible into the number of shares of common stock determined by dividing the original issuance price by the conversion price. The initial conversion price for each share of redeemable convertible preferred stock is the original issuance price for such share of redeemable convertible preferred stock.

Each share of redeemable convertible preferred stock automatically converts into the number of shares of common stock at the conversion price on the earlier of (i) immediately prior to the closing of a firmly underwritten public offering in the aggregate gross proceeds received by the Company are not less than $75,000,000 and the Company’s valuation, represented by fair market value of the issued and outstanding shares of common stock (assuming conversion of all redeemable convertible preferred stock into common stock) immediately prior to giving effect to the issuance of any shares pursuant to such public offering, calculated based on the price per share at which the underwriters propose to sell such common stock to the public, is at least $425,000,000 on or before the 12-month anniversary of the initial purchase date of the Series F redeemable convertible preferred stock, and at least $475,000,000 after the twelve 12-month anniversary of the initial purchase date of the Series F redeemable convertible preferred stock (a “Qualified IPO”) or (ii) the date specified in a written request by the holders of a majority of the then outstanding shares of the Series E redeemable convertible preferred stock and the Series F redeemable convertible preferred stock, voting together as a separate class on an as-if converted basis.

As of March 31, 2021, the conversion ratio for each series of redeemable convertible preferred stock was one-for-one.

Redemption

The redeemable convertible preferred stock is recorded in mezzanine equity because, while it is not mandatorily redeemable, it will become redeemable at the option of the stockholders upon the occurrence of certain deemed liquidation events that are considered not solely within the Company's control.

Note 8. Common Stock Warrants

In connection with the issuance of the Company's Series A redeemable convertible preferred stock issuances in September 2011, the Company issued a warrant to purchase 64,655 shares of common stock to an investor who purchased Series A redeemable convertible preferred stock at an exercise price of $0.10 per share. The common stock warrant was exercised in December 2020 and is no longer outstanding.

Note 9. Redeemable Convertible Preferred Stock Warrants

2019 Warrants

In conjunction with the funding of Tranche 1 and Tranche 2 under the 2019 Term Loan, the Company issued the 2019 Initial Warrant to purchase 29,514 shares of its Series C redeemable convertible preferred stock (see Note 5). The 2019 Initial Warrant is immediately exercisable, at an exercise price per share of $9.49, and expires 10 years from their date of issuance. The 2019 Initial Warrant will be automatically exercised upon the consummation or effective date of a change of control of the Company. Further, depending on the funding of the 2019 Term Loan Tranche 3, the Company was obligated to issue the 2019 Additional Warrant (together with the 2019 Initial Warrant to "2019 Warrants") to the Lender to purchase up to 12,649 shares of Series C redeemable convertible preferred stock at the respective exercise price.

The estimated fair value of the 2019 Warrants on the date of issuance was $0.2 million. As of the issuance date, the fair value of the 2019 Warrants was calculated using the Black-Scholes option-pricing model and was based on a term of 10 years, a risk-free interest rate of 2.99%, expected volatility of 50.95%, and 0% expected dividend yield.

At initial recognition, the 2019 Warrants were recorded at their estimated fair values and were subject to remeasurement at each balance sheet date, with changes in fair value recognized as a component of net income. As of December 31, 2020 and March 31, 2021, the estimated fair values of the 2019 Warrants were $0.3 million and $0.4 million, respectively. The fair value of the 2019 Warrants as of December 31, 2020 was calculated using the Black-Scholes option-pricing model with the following assumptions:

	December 31, 2020
Expected term (in years)	8.1–8.5
Expected volatility	42.18%–42.63%
Risk-free interest rate	2.33%–2.49%
Dividend yield	—

The fair value of the 2019 Warrants as of March 31, 2021 was calculated using a multi-scenario Option-Pricing Method with Discounts for Lack of Marketability for each class of security.

As of March 31, 2021, the 2019 Initial Warrant remained outstanding and the remaining term was 8.1 years. The 2019 Additional Warrant of 12,649 shares of series C redeemable convertible preferred stock was not legally issued and expired upon modification of the 2019 Term Loan.

2020 Warrants

In conjunction with entering the 2020 Term Loan agreement, the Company issued the 2020 Warrant to purchase 300,000 shares of its Series F redeemable convertible preferred stock (see Note 5). The 2020 Warrant is immediately exercisable, at an exercise price per share of $21.88, and expires 10 years from its date of issuance. The warrant will be automatically exercised upon the consummation or effective date of a change of control of the Company.

The estimated fair value of the 2020 Warrant on the date of issuance was $1.8 million. As of the issuance date, the fair value of the 2020 Warrant was calculated using a multi-scenario Method with Discounts for Lack of Marketability for each class of security.

At initial recognition, the 2020 Warrant was recorded at its estimated fair values and was subject to remeasurement at each balance sheet date, with changes in fair value recognized as a component of net income. As of December 31, 2020 and March 31, 2021, the estimated fair values of the 2020 Warrant was $1.8 million and $1.2 million, respectively. The fair value of the 2020 Warrant as of December 31, 2020 and March 31, 2021 was calculated using a multi-scenario Method with Discounts for Lack of Marketability for each class of security.

As of March 31, 2021, the 2020 Warrant remained outstanding and the remaining term was 9.7 years.

The fair value of the redeemable convertible preferred stock warrants was determined using the following assumption as of each report date:

	December 31, 2020	March 31, 2021
Term (in years)	0.58-2.58	0.25-2.25
Expected volatility	55.9%-65.6%	46.8%-60.7%
Risk-free interest rate	0.08%-0.18%	0.03%-0.21%

Note 10. Common Stock

At March 31, 2021, the Company’s certificate of incorporation, as amended and restated, authorizes the Company to issue up to 21,831,000 shares of common stock with $0.001 par value per share, of which 4,763,022 shares were issued and outstanding. The holders of common stock are also entitled to receive dividends whenever funds are legally available, when and if declared by the board of directors. As of March 31, 2021, no dividends have been declared to date. Each share of common stock is entitled to one vote.

At December 31, 2020 and March 31, 2021, the Company had reserved common stock for future issuances as follows:

	December 31, 2020	March 31, 2021
Conversion of Series A redeemable convertible preferred stock	3,804,344	3,804,344
Conversion of Series B redeemable convertible preferred stock	1,209,621	1,209,621
Conversion of Series C redeemable convertible preferred stock and warrants	2,372,371	2,372,371
Conversion of Series D redeemable convertible preferred stock	2,447,818	2,447,818
Conversion of Series E redeemable convertible preferred stock	1,899,847	1,899,847
Conversion of Series F redeemable convertible preferred stock	1,362,715	1,362,715
Exercise of options under stock plan	4,754,591	4,763,022
Issuance of options under plan	1,568,888	1,655,878
	19,420,195	**19,515,616**

Note 11. Stock Option Plan

In 2011, the Company established its 2011 stock option plan (the “2011 Plan”) that provides for the granting of stock options to employees and nonemployees of the Company. Under the 2011 Plan, the Company has the ability to issue incentive stock options (ISOs), nonqualified stock options (NSOs), stock appreciation rights, dividend equivalent rights, restricted stock awards, and restricted stock unit awards. Options under the 2011 Plan may be granted for periods of up to 10 years. For incentive stock option granted to a grantee who, at the time the option is granted, owns stock representing more than 10% of the voting power of all classes of stock of the Company or any parent or subsidiary of the Company, the term of the incentive stock option may be granted for periods of up to five years. The ISOs and NSOs will be granted at a price per share not less than the fair value at the date of grant. The exercise price of an ISO granted to a 10% stockholder shall not be less than 110% of the estimated fair value of the shares on the date of grant, as determined by the board of directors. Options granted to new hires generally vest over a four-year period, with 25% vesting at the end of one year and the remaining vesting monthly thereafter; options granted as merit awards generally vest monthly over a four-year period. At December 31, 2020 and March 31, 2021, there were 225,835 shares and 130,414 shares, respectively, of common stock available for issuance under the 2011 Plan.

The following tables summarize the Company's stock option activity for the three months ended March 31, 2021:

	Shares Available for Grant	Options Outstanding			
		Number of Options	Weighted-Average Exercise Price	Weighted-Average Remaining Contractual Term (In years)	Aggregate Intrinsic Value (in thousands)
Balances as of December 31, 2020	225,835	1,568,888	$ 1.87	6.8	$ 18,656
Options granted	(113,250)	113,250	$ 13.76		
Options forfeited/canceled	17,829	(17,829)	$ 3.31		
Options exercised	—	(8,431)	$ 1.60		
Balances as of March 31, 2021	130,414	1,655,878	$ 2.67	6.7	$ 28,121
Vested and exercisable as of March 31, 2021	—	929,354	$ 0.97	5.0	$ 17,359
Expected to vest as of March 31, 2021	—	726,524	$ 4.84	8.9	$ 10,762

The weighted-average grant-date fair values of options granted during the three months ended March 31, 2020 and 2021 was $4.13 and $13.76 per share, respectively. The aggregate intrinsic value of options exercised were $0.1 million during the three months ended March 31 2021. The aggregate intrinsic value was calculated as the difference between the exercise prices of the underlying options and the estimated fair value of the common stock on the date of exercise. As of March 31, 2021, the unrecognized stock-based compensation of unvested options was $3.4 million, which is expected to be recognized over a weighted-average period of 3.3 years.

The Company estimated the fair value of stock options using the Black-Scholes option-pricing model. The fair value of stock options is recognized on a straight-line basis over the requisite service periods of the awards. The fair value of stock options was estimated using the following weighted-average assumptions:

	March 31, 2021
Expected term (in years)	5.00-6.07
Expected volatility	56.75%-57.69%
Risk-free interest rate	0.48%-0.81%
Dividend yield	—

Expected Term

The expected term is calculated using the simplified method, which is available if there is insufficient historical data about exercise patterns and post vesting employment termination behavior. The simplified method is based on the vesting period and the contractual term for each grant or for each vesting tranche for awards with graded vesting. The midpoint of the vesting date and the maximum contractual expiration date is used as the expected term under this method. For awards with multiple vesting tranches, the time from grant until the midpoints for each of the tranches may be averaged to provide an overall expected term.

Expected Volatility

The Company used an average historical stock price volatility of a peer group of publicly traded companies to be representative of its expected future stock price volatility, as the Company did not have any trading history for its common stock. For purposes of identifying these peer companies, the Company considered the industry, stage of development, size, and financial leverage of potential comparable companies. For each grant, the Company measured historical volatility over a period equivalent to the expected term.

Risk-Free Interest Rate

The risk-free interest rate is based on the implied yield currently available on US Treasury zero-coupon issues with remaining terms equivalent to the expected term of a stock award.

Expected Dividend Rate

The Company has not paid, and does not anticipate paying, any dividends in the near future. Accordingly, the Company has estimated the dividend yield to be 0%.

The following is a summary of stock-based compensation expense by function (in thousands):

	Three Months Ended March 31,	
	2020	2021
Cost of goods sold	$ 1	$ 7
Research and development	9	37
Selling, general and administrative	51	233
Total stock-based compensation expense	$ 61	$ 277

Note 12. Net loss per share attributable to common stockholders

Basic net loss per share is computed by dividing the net loss by the weighted-average number of common shares outstanding for the period. As the Company reported a net loss for the three months ended March 31, 2020 and 2021, basic net loss per share is the same as diluted net loss per share as the inclusion of potentially dilutive shares would have been antidilutive if included in the calculation.

The following table sets forth the computation of basic and diluted net loss per share attributable to common stockholders (in thousands, except share and per share data):

	Three Months Ended March 31,	
	2020	2021
Numerator:		
Net loss attributable to common stockholders	$ (9,175)	$ (12,240)
Denominator:		
Weighted-average shares of common stock outstanding—basic and diluted	4,724,693	4,758,635
Net loss per share attributable to common stockholders—basic and diluted	$ (1.94)	$ (2.57)

The following outstanding shares of potentially dilutive securities were excluded from the computation of diluted net loss per share attributable to common stockholders for the period presented because including them would have been antidilutive:

	March 31,	
	2020	2021
Series A Redeemable Convertible Preferred Stock	3,804,344	3,804,344
Series B Redeemable Convertible Preferred Stock	1,209,621	1,209,621
Series C Redeemable Convertible Preferred Stock	2,342,857	2,342,857
Series D Redeemable Convertible Preferred Stock	2,447,818	2,447,818
Series E Redeemable Convertible Preferred Stock	1,899,847	1,899,847
Series F Redeemable Convertible Preferred Stock	—	1,062,715
Options to purchase common stock	1,082,488	1,655,878
Redeemable Convertible Preferred Stock Warrants	42,163	329,514
Total	12,829,138	14,752,594

Unaudited Pro Forma Net Loss per Share

Unaudited pro forma basic and diluted net loss per share were computed to give effect to the one-for-one conversion of all outstanding shares of the Company's redeemable convertible preferred stock into shares of common stock in connection with the IPO, using the as-converted method as though the conversion had occurred as of the beginning of the period presented or the date of issuance, if later. Refer to Note 2 for further discussion.

Unaudited pro forma basic and diluted loss per share is computed as follows (in thousands, except share and per share data):

	Three Months Ended March 31, 2021
Numerator:	
Net loss attributable to common stockholders	$ ( )
Adjust: change in fair value of redeemable convertible preferred stock warrants	
Pro forma net loss	
Denominator:	
Weighted-average shares of common stock outstanding used in computing net loss per share attributable to common stockholder—basic and diluted	
Adjust: conversion of redeemable convertible preferred stock	
Adjust: conversion of common stock warrants	
Weighted-average shares outstanding used in computing pro forma net loss per share—basic and diluted	
Net loss per share attributable to common stockholders—basic and diluted	$ ( )

Note 13. Defined Contribution Plan

The Company sponsors a defined contribution plan under Section 401(k) of the IRC of 1986, as amended, covering substantially all of its full-time US employees. Participating employees may contribute up to 100% of their eligible compensation up to the annual Internal Revenue Service's contribution limit. For the three months ended March 31, 2020 and 2021, the Company did not match employee contributions.

Note 14. Segment Information

The Company has two reportable operating segments which are determined on the basis of product portfolio: Surgical Glaucoma and Dry Eye. The operating and reportable segments were determined based on how the Company's Chief Executive Officer, its Chief Operating Decision Maker ("CODM"), views and evaluates the Company's operations. The CODM allocates resources to and evaluates the financial performance of each operating segment primarily based on gross profit and gross profit margin.

Surgical Glaucoma segment includes sales of the Company's OMNI® Surgical System for use in minimally invasive glaucoma procedures. Dry Eye segment includes sales of the Company's TearCare® System and related components.

The following table summarizes select operating results information for each reportable segment (dollars in thousands):

	Three Months Ended March 31,	
	2020	2021
Revenue		
Surgical Glaucoma	$ 6,100	$ 8,139
Dry Eye	396	496
Total	6,496	8,635
Cost of goods sold		
Surgical Glaucoma	1,514	1,858
Dry Eye	614	443
Total	2,128	2,301
Gross profit		
Surgical Glaucoma	4,586	6,281
Dry Eye	(218)	53
Total	4,368	6,334
Operating expenses	13,078	17,990
Loss from operations	(8,710)	(11,656)
Interest income	27	—
Interest expense	(552)	(1,084)
Other income (expense), net	91	552
Loss before income tax	$ (9,144)	$ (12,188)

The Company does not allocate any income and expenses beyond revenue and cost of goods sold to the reportable operating segments in its reporting to the CODM. No asset information is provided for reportable operating segments because they are not reviewed by the CODM on segment basis. Substantially all of the Company's revenue is generated from sales in the United States, and none of its property and equipment is located outside the United States.

Note 16. Subsequent Events

The Company evaluated subsequent events through May 24, 2021, the date on which the condensed consolidated financial statements were available for issuance.

Shares

Common Stock

P R O S P E C T U S

Morgan Stanley **BofA Securities**

Citigroup **Piper Sandler**

, 2021

Part II

INFORMATION NOT REQUIRED IN PROSPECTUS

Item 13. Other Expenses of Issuance and Distribution.

The following table indicates the expenses to be incurred in connection with the offering described in this registration statement, other than underwriting discounts and commissions, all of which will be paid by us. All amounts are estimated except the Securities and Exchange Commission registration fee, the Financial Industry Regulatory Authority, Inc., or FINRA, filing fee and the Nasdaq listing fee.

	Amount
Securities and Exchange Commission registration fee	$ *
FINRA filing fee	*
Initial listing fee	*
Accountants' fees and expenses	*
Legal fees and expenses	*
Blue Sky fees and expenses	*
Transfer Agent's fees and expenses	*
Printing expenses	*
Miscellaneous	*
Total expenses	$ *

* To be filed by amendment.

Item 14. Indemnification of Directors and Officers.

Section 102 of the General Corporation Law of the State of Delaware permits a corporation to eliminate the personal liability of directors of a corporation to the corporation or its stockholders for monetary damages for a breach of fiduciary duty as a director, except where the director breached his duty of loyalty, failed to act in good faith, engaged in intentional misconduct or knowingly violated a law, authorized the payment of a dividend or approved a stock repurchase in violation of Delaware corporate law or obtained an improper personal benefit. Our restated certificate of incorporation provides that no director of the Registrant shall be personally liable to it or its stockholders for monetary damages for any breach of fiduciary duty as a director, notwithstanding any provision of law imposing such liability, except to the extent that the General Corporation Law of the State of Delaware prohibits the elimination or limitation of liability of directors for breaches of fiduciary duty.

Section 145 of the General Corporation Law of the State of Delaware provides that a corporation has the power to indemnify a director, officer, employee, or agent of the corporation, or a person serving at the request of the corporation for another corporation, partnership, joint venture, trust or other enterprise in related capacities against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by the person in connection with an action, suit or proceeding to which he was or is a party or is threatened to be made a party to any threatened, ending or completed action, suit or proceeding by reason of such position, if such person acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the corporation, and, in any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful, except that, in the case of actions brought by or in the right of the corporation, no indemnification shall be made with respect to any claim, issue or matter as to which such person shall have been adjudged to be liable to the corporation unless and only to the extent that the Court of Chancery or other adjudicating court determines that, despite the adjudication of liability but in view of all of the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery or such other court shall deem proper.

Our restated certificate of incorporation provides that we will indemnify each person who was or is a party or threatened to be made a party to any threatened, pending or completed action, suit or proceeding (other than an

action by or in the right of us) by reason of the fact that he or she is or was, or has agreed to become, a director or officer, or is or was serving, or has agreed to serve, at our request as a director, officer, partner, employee or trustee of, or in a similar capacity with, another corporation, partnership, joint venture, trust or other enterprise (all such persons being referred to as an "Indemnitee"), or by reason of any action alleged to have been taken or omitted in such capacity, against all expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred in connection with such action, suit or proceeding and any appeal therefrom, if such Indemnitee acted in good faith and in a manner he or she reasonably believed to be in, or not opposed to, our best interests, and, with respect to any criminal action or proceeding, he or she had no reasonable cause to believe his or her conduct was unlawful. Our restated certificate of incorporation provides that we will indemnify any Indemnitee who was or is a party to an action or suit by or in the right of us to procure a judgment in our favour by reason of the fact that the Indemnitee is or was, or has agreed to become, a director or officer, or is or was serving, or has agreed to serve, at our request as a director, officer, partner, employee or trustee of, or in a similar capacity with, another corporation, partnership, joint venture, trust or other enterprise, or by reason of any action alleged to have been taken or omitted in such capacity, against all expenses (including attorneys' fees) and, to the extent permitted by law, amounts paid in settlement actually and reasonably incurred in connection with such action, suit or proceeding, and any appeal therefrom, if the Indemnitee acted in good faith and in a manner he or she reasonably believed to be in, or not opposed to, our best interests, except that no indemnification shall be made with respect to any claim, issue or matter as to which such person shall have been adjudged to be liable to us, unless a court determines that, despite such adjudication but in view of all of the circumstances, he or she is entitled to indemnification of such expenses. Notwithstanding the foregoing, to the extent that any Indemnitee has been successful, on the merits or otherwise, he or she will be indemnified by us against all expenses (including attorneys' fees) actually and reasonably incurred in connection therewith. Expenses must be advanced to an Indemnitee under certain circumstances.

We intend to enter into indemnification agreements with each of our directors and officers. These indemnification agreements may require us, among other things, to indemnify our directors and officers for some expenses, including attorneys' fees, judgments, fines and settlement amounts incurred by a director or officer in any action or proceeding arising out of his or her service as one of our directors or officers, or any of our subsidiaries or any other company or enterprise to which the person provides services at our request.

We maintain a general liability insurance policy that covers certain liabilities of directors and officers of our corporation arising out of claims based on acts or omissions in their capacities as directors or officers.

In any underwriting agreement we enter into in connection with the sale of common stock being registered hereby, the underwriters will agree to indemnify, under certain conditions, us, our directors, our officers and persons who control us within the meaning of the Securities Act of 1933, as amended, or the Securities Act, against certain liabilities.

Item 15. Recent Sales of Unregistered Securities.

Set forth below is information regarding shares of capital stock issued by us within the past three years. Also included is the consideration received by us for such shares and information relating to the section of the Securities Act, or rule of the Securities and Exchange Commission, under which exemption from registration was claimed.

(a) Issuance of Capital Stock.

Since January 1, 2018, the registrant issued an aggregate of (i) 1,288,761 shares of Series C preferred stock for an aggregate consideration of approximately $12.23 million to accredited investors, (ii) 2,447,818 shares of Series D preferred stock at for an aggregate consideration of approximately $30.8 million to accredited investors, (iii) 1,899,847 shares of Series E preferred stock at for an aggregate consideration of approximately $30.15 million to accredited investors and (vi) 1,062,716 shares of Series F preferred stock at for an aggregate consideration of approximately $23.25 million to accredited investors.

In December 2020, the registrant issued 64,655 shares of common stock in connection with the exercise of a warrant to an accredited investor at an exercise price of $0.10 per share.

Each issuance was made pursuant to Section 4(a)(2) of the Securities Act and/or Rule 506 as a transaction not involving a public offering.

(b) Equity Grants.

Since January 1, 2018, the registrant granted stock options to purchase an aggregate of 2,809,807 shares of its common stock with exercise prices ranging between $0.69 and $4.13 per share to employees, non-employees, and directors in connection with services provided to the registrant by such parties.

The issuances of such stock options and the shares of common stock issuable upon the exercise of such options were issued pursuant to written compensatory plans or arrangements with the registrant's employees, directors and consultants, in reliance on the exemption provided by Rule 701 promulgated under the Securities Act, or pursuant to Section 4(a)(2) under the Securities Act, relative to transactions by an issuer not involving any public offering, to the extent an exemption from such registration was required.

(c) Warrants.

On January 25, 2019, June 28, 2019 and November 23, 2020, the registrant issued (i) a warrant to purchase up to an aggregate of 25,298 shares of Series C preferred stock at an exercise price of $9.4868 per share; (ii) two warrants to purchase up to an aggregate of 4,216 shares of Series C preferred stock at an exercise price of $9.4868 per share; and (iii) a warrant to purchase up to an aggregate of 300,000 shares of Series F preferred stock at an exercise price of $21.8779 per share, respectively, to MidCap Funding XXVIII Trust, or its affiliates, pursuant to Section 4(a)(2) of the Securities Act or Rule 506 as a transaction not involving a public offering.

Item 16. Exhibits and Financial Statement Schedules.

(a) Exhibits.

Exhibit Number	Description of Exhibit
1.1*	Underwriting Agreement
3.1	Certificate of Incorporation of the Registrant, as amended (currently in effect)
3.2	Bylaws of the Registrant (currently in effect)
3.3*	Form of Restated Certificate of Incorporation of the Registrant (to be effective upon the closing of this offering)
3.4*	Form of Restated Bylaws of the Registrant (to be effective upon the closing of this offering)
4.1	Third Amended and Restated Investors' Rights Agreement, dated as of November 23, 2020
4.2*	Specimen Stock Certificate evidencing the shares of common stock
4.3	Form of Warrant to Purchase Stock
5.1*	Opinion of Latham & Watkins LLP
10.1*	2011 Stock Incentive Plan, as amended, and form of option agreements thereunder
10.2*	2021 Incentive Award Plan and form of option agreements thereunder
10.3*	Non-Employee Director Compensation Program
10.4*	2021 Employee Stock Purchase Plan
10.5*	Form of Indemnification Agreement for Directors and Officers

Exhibit Number	Description of Exhibit
10.6	Sublease, dated as of September 17, 2019, between the Registrant and Cellular Research, Inc.
10.7	Multi-Tenant Space Lease, dated as of February 5, 2021, between the Registrant and Deerfield Campbell LLC
10.8	Amended and Restated Credit and Security Agreement (Term Loan Loan), dated as of November 23, 2020, among the Registrant, Midcap Funding IV Trust
10.9	Amended and Restated Credit and Security Agreement (Revolving Loan), dated as of November 23, 2020, among the Registrant, Midcap Funding IV Trust
10.10	Supply Agreement, dated as of January 14, 2021, between the Registrant and Peter's Technology (Suzhou) CO., LTD
10.11*	Employment Agreement between the Registrant and Paul Badawi, dated , 2021
10.12*	Employment Agreement between the Registrant and Shawn O'Neil, dated , 2021
10.13*	Employment Agreement between the Registrant and Sam Park, dated , 2021
21.1	Subsidiaries of the Registrant
23.1*	Consent of Deloitte & Touche LLP, independent registered public accounting firm.
23.2*	Consent of Latham & Watkins LLP (included in Exhibit 5.1)
24.1*	Power of Attorney (included on signature page)

* To be filed by amendment.

(b) Financial Statement Schedules. Schedules not listed above have been omitted because the information required to be set forth therein is not applicable or is shown in the financial statements or notes thereto.

Item 17. Undertakings.

The undersigned registrant hereby undertakes to provide to the underwriter, at the closing specified in the underwriting agreement, certificates in such denominations and registered in such names as required by the underwriter to permit prompt delivery to each purchaser.

Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

The undersigned hereby undertakes that:

(1) For purposes of determining any liability under the Securities Act of 1933, the information omitted from the form of prospectus filed as part of this registration statement in reliance upon Rule 430A and contained in a form of prospectus filed by the registrant pursuant to Rule 424(b)(1) or (4) or 497(h) under the Securities Act shall be deemed to be part of this registration statement as of the time it was declared effective.

(2) For the purpose of determining any liability under the Securities Act of 1933, each post-effective amendment that contains a form of prospectus shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

SIGNATURES

Pursuant to the requirements of the Securities Act, the registrant has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Menlo Park, State of California, on this day of , 2021.

SIGHT SCIENCES, INC.

By: _____
Paul Badawi
President and Chief Executive Officer

SIGNATURES AND POWER OF ATTORNEY

We, the undersigned officers and directors of Sight Sciences, Inc., hereby severally constitute and appoint Paul Badawi and Jesse Selnick and each of them singly (with full power to each of them to act alone), our true and lawful attorneys-in-fact and agents, with full power of substitution and resubstitution in each of them for him and in his name, place and stead, and in any and all capacities, to sign any and all amendments (including post-effective amendments) to this registration statement (or any other registration statement for the same offering that is to be effective upon filing pursuant to Rule 462(b) under the Securities Act of 1933), and to file the same, with all exhibits thereto and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite or necessary to be done in and about the premises, as full to all intents and purposes as he might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents or any of them, or their or his substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed by the following persons in the capacities held on the dates indicated.

Signature	Title	Date
_____ Paul Badawi	President, Chief Executive Officer and Director (principal executive officer)	, 2021
_____ Jesse Selnick	Chief Financial Officer (principal financial officer and principal accounting officer)	, 2021
_____ Staffan Encrantz	Chairman of the Board of Directors	, 2021
_____ David Badawi, M.D.	Director	, 2021
_____ Mack Hicks	Director	, 2021
_____ Andrew Offer	Director	, 2021
_____ Erica Rogers	Director	, 2021
_____ Valeska Schroeder, Ph.D.	Director	, 2021
_____ Donald Zurbay	Director	, 2021

State of Delaware
Secretary of State
Division of Corporations
Delivered 08:08 AM 11/23/2020
FILED 08:08 AM 11/23/2020
SR 20208466111 - File Number 4787587

AMENDED AND RESTATED CERTIFICATE OF INCORPORATION

OF

SIGHT SCIENCES, INC.

Sight Sciences, Inc., a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware (the "Corporation"),

DOES HEREBY CERTIFY THAT:

FIRST: The name of the Corporation is Sight Sciences, Inc.

SECOND: The original Certificate of Incorporation of the Corporation was filed with the Secretary of State of the State of Delaware on February 10, 2010.

THIRD: This Amended and Restated Certificate of Incorporation was duly adopted in accordance with the provisions of Sections 242 and 245 of the General Corporation Law of the State of Delaware, and amends and restates the provisions of the Certificate of Incorporation of the Corporation.

FOURTH: The text of the Certificate of Incorporation is hereby restated and further amended to read in its entirety as set forth in Exhibit A attached hereto.

IN WITNESS WHEREOF, the Corporation has caused this Amended and Restated Certificate of Incorporation to be signed by its duly authorized officer, this 23rd day of November, 2020.

Sight Sciences, Inc.

By: /s/ Paul Badawi
Paul Badawi, President

EXHIBIT A

AMENDED AND RESTATED CERTIFICATE OF INCORPORATION

OF

SIGHT SCIENCES, INC.

ARTICLE I.

The name of this corporation is Sight Sciences, Inc. (the "Corporation").

ARTICLE II.

The address of the registered office of this Corporation in the State of Delaware is 850 New Burton Road, Suite 201, in the City of Dover, 19904, Kent County. The name of its registered agent at such address is Cogency Global Inc.

ARTICLE III.

The nature of the business of the Corporation and the objects or purposes to be transacted, promoted or carried on by it are to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware (the "General Corporation Law").

ARTICLE IV.

A. Classes of Stock. This Corporation is authorized to issue two (2) classes of stock to be designated, respectively, "Common Stock" and "Preferred Stock." The total number of shares that this Corporation is authorized to issue is 36,072,390 shares. 21,831,000 shares shall be Common Stock, each with a par value of $0.001 per share, and 14,241,390 shares shall be Preferred Stock, each with a par value of $0.001 per share.

B. Rights, Preferences and Restrictions of Preferred Stock. 3,804,344 shares of Preferred Stock are hereby designated "Series A Preferred Stock," 1,209,621 shares of Preferred Stock are hereby designated "Series B Preferred Stock," 2,372,371 shares of Preferred Stock are hereby designated "Series C Preferred Stock," 2,507,720 shares of Preferred Stock are hereby designated "Series D Preferred Stock," 1,921 ,902 shares of Preferred Stock are hereby designated "Series E Preferred Stock," and 2,425,432 shares of Preferred Stock are hereby designated "Series F Preferred Stock." The rights, preferences, privileges, and restrictions granted to and imposed on the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock, and Series F Preferred Stock are as set forth below in this Section IV(B). "Preferred Stock" shall mean the Series A Preferred Stock, the Series B Preferred Stock, the Series C Preferred Stock, the Series D Preferred Stock, the Series E Preferred Stock, and the Series F Preferred Stock.

1. Dividend Provisions.

(a) The Corporation shall not declare, pay or set aside any dividends on shares of any other class or series of capital stock of the Corporation (other than dividends on shares of Common Stock payable in shares of Common Stock) unless (in addition to the obtaining of any consents required elsewhere in this Amended and Restated Certificate of Incorporation) the holders of the Preferred Stock then outstanding shall first receive, or simultaneously receive, only out of funds that are legally available therefor, cash dividends on each outstanding share of Preferred Stock in an amount at least equal to (i) in the case of a dividend on Common Stock or any class or series that is convertible into Common Stock, that dividend per share of Preferred Stock as would equal the product of (A) the dividend payable on each share of such class or series determined, if applicable, as if all shares of such class or series had been converted into Common Stock and (B) the number of shares of Common Stock issuable upon conversion of a share of Preferred Stock, in each case calculated on the record date for determination of holders entitled to receive such dividend, or (ii) in the case of a dividend on any class or series that is not convertible into Common Stock, at a rate per share of Preferred Stock determined by (A) dividing the amount of the dividend payable on each share of such class or series of capital stock by the original issuance price of such class or series of capital stock (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to such class or series) and (B) multiplying such fraction by an amount equal to the Series F Original Issue Price, Series E Original Issue Price, Series D Original Price, Series C Original Price, Series B Original Price or Series A Original Issue Price (each as defined below), as applicable, for such series of Preferred Stock; provided that, if this Corporation declares, pays or sets aside, on the same date, a dividend on shares of more than one class or series of capital stock of this Corporation, the dividend payable to the holders of Preferred Stock pursuant to this Section 1 shall be calculated based upon the dividend on the class or series of capital stock that would result in the highest Preferred Stock dividend.

(b) As authorized by Section 402.5(c) of the California General Corporation Law ("CGCL"), if Section 500 of the CGCL is applicable to a payment made by the Corporation then payments can be made by this Corporation without regard to the preferential dividends arrears amount, or any preferential rights amount in connection with (i) repurchases of Common Stock issued to or held by employees, officers, directors or consultants of this Corporation or its subsidiaries upon termination of their employment or services pursuant to agreements providing for the right of said repurchase and (ii) repurchases of Common Stock issued to or held by employees, officers, directors or consultants of this Corporation or its subsidiaries pursuant to rights of first refusal contained in bylaw provisions or agreements providing for such rights.

2. Liquidation Preference.

(a) In the event of any liquidation, dissolution or winding up of this Corporation, either voluntary or involuntary, the holders of Series F Preferred Stock, the holders of Series E Preferred Stock and the holders of Series D Preferred Stock shall be entitled to receive on a *pari passu* basis among each other, prior and in preference to any distribution of any of the assets of this Corporation to the holders of Series C Preferred Stock, the holders of Series B Preferred Stock, the holders of Series A Preferred Stock and the holders of Common Stock by

reason of their ownership thereof, for the Series F Preferred Stock, Series E Preferred Stock and Series D Preferred Stock an amount per share for each share of Series F Preferred Stock, Series E Preferred Stock, and Series D Preferred Stock held by them equal to the sum of, (A) in the case of the Series F Preferred Stock, $21.8779 (the "Original Series F Issue Price"), in the case of the Series E Preferred Stock, $15.8697 (the "Original Series E Issue Price"), and in the case of the Series D Preferred Stock, $12.5622 (the "Original Series D Issue Price") and (B) an amount equal to all declared but unpaid dividends on such share (such sum subject to adjustment for any stock splits, stock dividends, combinations, reorganizations, reclassifications, recapitalizations or the like (collectively, "Recapitalizations")). If, upon the occurrence of such event, the assets and funds thus distributed among the holders of the Series F Preferred Stock, the Series E Preferred Stock and the Series D Preferred Stock shall be insufficient to permit the payment to such holders of the full aforesaid preferential amounts, then the entire assets and funds of this Corporation legally available for distribution to stockholders shall be distributed ratably among the holders of the Series F Preferred Stock, the Series E Preferred Stock and the Series D Preferred Stock in proportion to the full preferential amount each such holder is otherwise entitled to receive under this Section IV(B)(2)(a).

(b) In the event of any liquidation, dissolution or winding up of this Corporation, either voluntary or involuntary, upon completion of the distributions of the full amount required by Section IV(B)(2)(a), the holders of Series C Preferred Stock shall be entitled to receive, prior and in preference to any distribution of any of the assets of this Corporation to the holders of Series B Preferred Stock, the holders of Series A Preferred Stock and the holders of Common Stock by reason of their ownership thereof, for the Series C Preferred Stock an amount per share for each share of Series C Preferred Stock held by them equal to the sum of (A) $9.4868 (the "Original Series C Issue Price") and (B) an amount equal to all declared but unpaid dividends on such share (such sum subject to adjustment for any Recapitalizations). If, upon the occurrence of such event, the assets and funds thus distributed among the holders of the Series C Preferred Stock shall be insufficient to permit the payment to such holders of the full aforesaid preferential amounts, then the entire assets and funds of this Corporation legally available for distribution to stockholders, after completion of the distributions of the full amount required by Section IV(B)(2)(a), shall be distributed ratably among the holders of the Series C Preferred Stock in proportion to the full preferential amount each such holder is otherwise entitled to receive under this Section IV(B)(2)(b) .

(c) In the event of any liquidation, dissolution or winding up of this Corporation, either voluntary or involuntary, upon completion of the distributions of the full amounts required by Section IV(B)(2)(a) and Section IV(B)(2)(b), the holders of Series B Preferred Stock shall be entitled to receive, prior and in preference to any distribution of any of the assets of this Corporation to the holders of Series A Preferred Stock and holders of Common Stock by reason of their ownership thereof, for the Series B Preferred Stock an amount per share for each share of Series B Preferred Stock held by them equal to the sum of (A) $5.7869 (the "Original Series B Issue Price") and (B) an amount equal to all declared but unpaid dividends on such share (such sum subject to adjustment for any Recapitalizations). If, upon the occurrence of such event, the assets and funds thus distributed among the holders of the Series B Preferred Stock shall be insufficient to permit the payment to such holders of the full aforesaid preferential amounts, then the entire assets and funds of this Corporation legally available for distribution to stockholders, after completion of the distributions of the full amounts required by Section IV(B)(2)(a) and Section IV(B)(2)(b), shall be distributed ratably among the holders of the Series B Preferred Stock in proportion to the full preferential amount each such holder is otherwise entitled to receive under this Section IV(B)(2)(c).

(d) In the event of any liquidation, dissolution or winding up of this Corporation, either voluntary or involuntary, upon completion of the distributions of the full amounts required by Sections IV(B)(2)(a) through (c) above, the holders of Series A Preferred Stock shall be entitled to receive, prior and in preference to any distribution of any of the assets of this Corporation to the holders of Common Stock by reason of their ownership thereof, for the Series A Preferred Stock an amount per share for each share of Series A Preferred Stock held by them equal to the sum of (A) $1.3 8 (the "Original Series A Issue Price") and (B) an amount equal to all declared but unpaid dividends on such share (such sum subject to adjustment for any Recapitalizations). If, upon the occurrence of such event, the assets and funds thus distributed among the holders of the Series A Preferred Stock shall be insufficient to permit the payment to such holders of the full aforesaid preferential amounts, then the entire assets and funds of this Corporation legally available for distribution to stockholders, after completion of the distributions of the full amounts required by Sections IV(B)(2)(a) through (c), shall be distributed ratably among the holders of the Series A Preferred Stock in proportion to the full preferential amount each such holder is otherwise entitled to receive under this Section IV(B)(2)(d).

(e) In the event of any liquidation, dissolution or winding up of this Corporation, either voluntary or involuntary, upon completion of the distributions required by Section IV(B)(2)(a) through (d) above, all of the remaining assets of this Corporation legally available for distribution to stockholders ("Available Proceeds") shall be distributed among the holders of Series A Preferred Stock, the holders of Series B Preferred Stock, the holders of Series C Preferred Stock, the holders of Series D Preferred Stock, the holders of Series E Preferred Stock, the holders of Series F Preferred Stock, and the holders of Common Stock pro rata based on the number of shares of Common Stock held by each (treating the shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock, and Series F Preferred Stock for this purpose as if they had been converted to shares of Common Stock at the then-effective Conversion Price (as defined below) for such shares); provided, however, that (i) the holders of Series B Preferred Stock shall not be entitled to further participate in any distribution of the remaining assets of the Corporation pursuant to this Section IV(B)(2)(e) following receipt by such holders of Series B Preferred Stock of aggregate distributions pursuant to this Section IV(B)(2) equal to $11.5738 per share of Series B Preferred Stock (subject to adjustment for Recapitalizations); (ii) the holders of Series C Preferred Stock shall not be entitled to further participate in any distribution of the remaining assets of the Corporation pursuant to this Section IV(B)(2)(e) following receipt by such holders of Series C Preferred Stock of aggregate distributions pursuant to this Section IV(B)(2) equal to $18.9736 per share of Series C Preferred Stock (subject to adjustment for Recapitalizations); (iii) the holders of Series D Preferred Stock shall not be entitled to further participate in any distribution of the remaining assets of the Corporation pursuant to this Section IV(B)(2)(e) following receipt by such holders of Series D Preferred Stock of aggregate distributions pursuant to this Section IV(B)(2) equal to $25.1244 per share of Series D Preferred Stock (subject to

adjustment for Recapitalizations); (iv) the holders of Series E Preferred Stock shall not be entitled to further participate in any distribution of the remaining assets of the Corporation pursuant to this Section IV(B)(2)(e) following receipt by such holders of Series E Preferred Stock of aggregate distributions pursuant to this Section IV(B)(2) equal to $31.7394 per share of Series E Preferred Stock (subject to adjustment for Recapitalizations); and (v) the holders of Series F Preferred Stock shall not be entitled to further participate in any distribution of the remaining assets of the Corporation pursuant to this Section IV(B)(2)(e) following receipt by such holders of Series F Preferred Stock of aggregate distributions pursuant to this Section IV(B)(2) equal to $43.7558 per share of Series F Preferred Stock (subject to adjustment for Recapitalizations); provided, further, that the amount payable to the holders of Prior Preferred Stock will be adjusted by the Prior Preferred Per Share Liquidation Adjustment Amount.

(i) The term "Prior Preferred Stock" shall mean the then-outstanding shares of Series A Preferred Stock, Series B Preferred Stock, and Series C Preferred Stock (excluding any shares deemed converted to Common Stock pursuant to Section IV(B)(2)(f)(iv)).

(ii) The term "Putative Distributions" shall mean the aggregate consideration that the holders of the Prior Preferred Stock would be entitled to receive upon completion of the distributions required by Section IV(B)(2)(b) through (e), without consideration of the Prior Preferred Stock Per Share Liquidation Adjustment Amount.

(iii) The term "Prior Preferred Per Share Liquidation Adjustment Amount" shall mean an amount per share of Prior Preferred Stock equal to (A) (i) the aggregate consideration that the holders of the Prior Preferred Stock would have received upon completion of the Putative Distributions if the participation of the holders of Series A Preferred Stock pursuant to Section IV(B)(2)(e) were subject to a maximum aggregate per share amount of $2.76 (subject to adjustment for Recapitalizations) *minus* (ii) the aggregate consideration that the holders of the Prior Preferred Stock would have been entitled to receive upon completion of the Putative Distributions *divided by* (B) the Prior Preferred Stock.

(f) (i) For purposes of this Section IV(B)(2), a liquidation, dissolution or winding up of this Corporation shall be deemed to be occasioned by, or to include (unless the holders of a majority of the shares of Preferred Stock then outstanding, which must include the Specified Investor (as defined in the Amended and Restated Investors' Rights Agreement among the Company and the other parties thereto, dated as of the date on which the first share of Series F Preferred Stock was issued ("Series F Original Issue Date")) for so long as it holds shares of Series E Preferred Stock or shares of Series F Preferred Stock (the "Requisite Preferred Majority") shall determine otherwise), (A) the acquisition of this Corporation by another entity by means of any reorganization, stock acquisition, merger or consolidation (but excluding any reorganization, merger or consolidation effected exclusively for the purpose of changing the domicile of the Corporation), or any transaction or series of related transactions in which the Corporation's stockholders of record as constituted immediately prior to such transaction or series of related transactions will, immediately after such transaction or series of related transactions (by virtue of securities issued in such transaction or series of related transactions), fail to hold at least fifty percent (50%) of the voting power of the resulting surviving corporation (or if the Corporation or such surviving entity or resulting entity is a wholly-owned subsidiary

immediately following such transaction, its parent) following such transaction or series of related transactions; (B) a merger or consolidation in which capital stock of this Corporation outstanding immediately prior thereto is exchanged for or converted into securities of a class of securities of the surviving or acquiring entity registered under Section 12 of the Securities Exchange Act of 1934, as amended; (C) a sale or exclusive license of all or substantially all of the assets of this Corporation; or (D) the liquidation, dissolution, or winding up of the Corporation; provided, however, that the issuance and sale of equity securities for bona fide capital raising purposes shall not be deemed to be a liquidation, dissolution or winding up of this Corporation.

(ii) In any of such events, if the consideration received by this Corporation is other than cash, its value will be deemed its fair market value as determined reasonably and in good faith by the Board of Directors, except that any securities to be distributed to stockholders in any such events shall be valued as follows:

(A) The value of securities not subject to investment letter or other similar restrictions on free marketability (other than restrictions arising solely by virtue of a stockholder's status as an affiliate or former affiliate) shall be:

(1) if traded on a national securities exchange, the value shall be deemed to be the average of the closing prices of the securities on such exchange or system in the time period set forth in the definitive agreement with respect to such transaction;

(2) if actively traded over-the-counter, the value shall be deemed to be the average of the closing bid or sale prices (whichever is applicable) in the time period set forth in the definitive agreement with respect to such transaction; and

(3) if there is no active public market, the value shall be the fair market value thereof, as determined reasonably and in good faith by the Board of Directors.

(B) The method of valuation of securities subject to investment letter or other restrictions on free marketability (other than restrictions arising solely by virtue of a stockholder's status as an affiliate or former affiliate) shall be to make an appropriate discount from the value determined as above in Section IV(B)(2)(f)(ii)(A) to reflect the approximate fair market value thereof, as determined reasonably and in good faith by the Board of Directors.

(iii) In the event the requirements of this Section IV(B)(2)(f) are not complied with, this Corporation shall forthwith either:

(A) cause such closing to be postponed until such time as the requirements of this Section IV(B)(2)(f) have been complied with; or

(B) cancel such transaction, in which event the rights, preferences and privileges of the holders of the Preferred Stock shall revert to and be the same as such rights, preferences and privileges existing immediately prior to the date of the first notice referred to in Section IV(B)(2)(f)(v) hereof.

(iv) Notwithstanding anything to the contrary contained in Sections IV(B)(2)(a) through (e) above, in the event of any liquidation, dissolution or winding up of this Corporation, either voluntary or involuntary, or any Deemed Liquidation Event (as defined below), each holder of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock and/or Series F Preferred Stock shall be entitled to receive, for each share of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock, and/or Series F Preferred Stock, as applicable, then held of record by such holder, out of the proceeds of such liquidation, dissolution or winding up of this Corporation or Deemed Liquidation Event, the greater of (i) the amount of cash, securities or other property which such holder would be entitled to receive in such liquidation, dissolution or winding up of this Corporation or Deemed Liquidation Event pursuant to Sections IV(B)(2)(a) through (e) above, or (ii) the amount of cash, securities or other property which such holder would be entitled to receive in such liquidation, dissolution or winding up of this Corporation or Deemed Liquidation Event, with respect to such shares if such shares had been converted to Common Stock immediately prior to such liquidation, dissolution or winding up of this Corporation or Deemed Liquidation Event, at the then-effective Conversion Price for such shares, provided that the shares of Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock for which the proceeds are greater under this clause (ii) shall be deemed to have been so converted to Common Stock for purposes of calculating and applying the Prior Preferred Per Share Liquidation Adjustment Amount.

(v) In the event of a Deemed Liquidation Event of the type referred to in Section IV(B)(2)(f)(i)(C) above, if this Corporation does not effect a dissolution under the General Corporation Law within sixty (60) days after such liquidation, dissolution or winding up, then (A) this Corporation shall send a written notice to each holder of record of Preferred Stock no later than the 60th day after such Deemed Liquidation Event advising such holders of their right (and the requirements to be met to secure such right) pursuant to the terms of the following clause (B) to require the redemption of such shares of Preferred Stock and (B) unless waived by the Requisite Preferred Majority, in a written instrument delivered to this Corporation not later than ninety (90) days after such Deemed Liquidation Event (the "Redemption Request"), this Corporation shall use the consideration received by this Corporation from such Deemed Liquidation Event (net of any retained liabilities associated with the assets sold or technology licensed, as determined in good faith by the board of directors of this Corporation (the "Board")), together with any other Available Proceeds, on the 120th day after such Deemed Liquidation Event (the "Redemption Date"), to redeem all outstanding shares of Preferred Stock, at a price per share equal to the amount determined in accordance with Section IV(B)(2)(f)(iv) (the "Liquidation Amount"). Notwithstanding the foregoing, in the event of a redemption pursuant to the preceding sentence, if the Available Proceeds are not sufficient to redeem all outstanding shares of Preferred Stock, this Corporation shall redeem a pro rata portion of each holder's shares of Preferred Stock to the fullest extent of such Available Proceeds, based on the respective amounts which would otherwise be payable in respect of the shares to be redeemed if the Available Proceeds were sufficient to redeem all such shares, and shall redeem the remaining shares as soon as it may lawfully do so under Delaware law

governing distributions to stockholders. Prior to the distribution or redemption provided for in this Section IV(B)(2)(f)(iii), this Corporation shall not expend or dissipate the consideration received for such Deemed Liquidation Event, except to discharge expenses incurred in connection with such Deemed Liquidation Event or in the ordinary course of business. On or before the Redemption Date, each holder of shares of Preferred Stock in certificated form that are to be redeemed on the Redemption Date, unless such holder has exercised his, her, or its right to convert such shares as provided in Section 4, shall surrender the certificate or certificates for such shares (or, if such holder alleges that such certificate has been lost, stolen, or destroyed, a lost certificate affidavit and agreement reasonably acceptable to this Corporation to indemnify this Corporation against any claim that may be made against this Corporation on account of the alleged loss, theft, or destruction of such certificate) to this Corporation, in the manner and at the place designated in this Corporation Redemption Notice, and thereupon the Liquidation Amount for such shares shall be payable to the order of the person or entity whose name appears on such certificate or certificates as the owner thereof, and each surrendered certificate shall be cancelled. If less than all of the shares of Preferred Stock represented by a certificate are redeemed, a new certificate, instrument, or book entry representing the unredeemed shares of Preferred Stock shall promptly be issued to such holder. No transfers of Preferred Stock shall be permitted during the five-day period prior to and including the Redemption Date, and this Corporation shall not recognize any such prohibited transfer on its books and records. If any shares of Series A Preferred Stock are not redeemed for any reason on the Redemption Date, all such unredeemed shares that should have been redeemed on the Redemption Date shall remain outstanding and entitled to all of the rights and preferences provided in this Amended and Restated Certificate of Incorporation.

(vi) In the event of a deemed liquidation, dissolution or winding up of this Corporation pursuant to Section IV(B)(2)(f)(i)(A) through Section IV(B)(2)(f)(i)(C) above (a "Deemed Liquidation Event"), if any portion of the consideration payable to the stockholders of the Corporation is payable only upon satisfaction of contingencies (the "Additional Consideration"), the applicable transaction agreement shall provide that (A) the portion of such consideration that is not Additional Consideration (such portion, the "Initial Consideration") shall be allocated among the holders of capital stock of the Corporation in accordance with Sections IV(B)(2)(a) through (e) above or, as applicable, Section IV(B)(2)(f)(iv) above, as if the Initial Consideration were the only consideration payable in connection with such Deemed Liquidation Event; and (B) any Additional Consideration which becomes payable to the stockholders of the Corporation upon satisfaction of such contingencies shall be allocated among the holders of capital stock of the Corporation in accordance with Sections IV(B)(2)(a) through (e) above or, as applicable, Section IV(B)(2)(f)(iv) above, after taking into account the previous payment of the Initial Consideration as part of the same transaction. For the purposes of this Section IV(B)(2)(f)(vi), consideration placed into escrow or retained as holdback to be available for satisfaction of indemnification or similar obligations in connection with such Deemed Liquidation Event shall be deemed to be Additional Consideration.

(vii) This Corporation shall give each holder of record of Preferred Stock written notice of such impending transaction not later than ten (10) days prior to the stockholders' meeting called to approve such transaction, or ten (10) days prior to the closing of such transaction, whichever is earlier, and shall also notify such holders in writing of the final

approval of such transaction. The first of such notices shall describe the material terms and conditions of the impending transaction, and this Corporation shall thereafter give such holders prompt notice of any material changes. The transaction shall in no event take place sooner than ten (10) days after this Corporation has given the first notice provided for herein or sooner than ten (10) days after this Corporation has given notice of any material changes provided for herein; provided, however, that such periods may be shortened upon the written consent of the holders of the Requisite Preferred Majority.

3. Redemption. Except as provided in Section IV(B)(2)(f)(v), neither the Corporation nor the holders of Preferred Stock shall have the unilateral right to call or redeem or cause to have called or redeemed any shares of the Preferred Stock.

4. Conversion. The holders of the Preferred Stock shall have conversion rights as follows (the "Conversion Rights"):

(a) Right to Convert. Each share of Preferred Stock shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share at the office of this Corporation or any transfer agent for such stock, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing the Original Issue Price for each such series of Preferred Stock by the Conversion Price applicable to such share (as defined below), determined as hereafter provided, in effect on the date the certificate is surrendered for conversion. The initial Conversion Price per share for shares of Series F Preferred Stock shall be equal to the Original Series F Issue Price, the initial Conversion Price per share for shares of Series E Preferred Stock shall be equal to the Original Series E Issue Price, the initial Conversion Price per share for shares of Series D Preferred Stock shall be equal to the Original Series D Issue Price, the initial Conversion Price per share for shares of Series C Preferred Stock shall be equal to the Original Series C Issue Price, the initial Conversion Price per share for shares of Series B Preferred Stock shall be equal to the Original Series B Issue Price and the initial Conversion Price per share for shares of Series A Preferred Stock shall be equal to the Original Series A Issue Price; provided, however, that the Conversion Price for each series of Preferred Stock shall be subject to adjustment as set forth in Section IV(B)(4)(d).

(b) Automatic Conversion. Each share of Preferred Stock shall automatically be converted into shares of Common Stock at the Conversion Price at the time in effect for such series of Preferred Stock immediately upon the earlier of (i) this Corporation's sale of its Common Stock in a firm commitment underwritten public offering pursuant to a registration statement under the Securities Act of 1933, as amended (the "Act"), the aggregate gross proceeds of which are not less than $75,000,000 and the Company's Enterprise Valuation, as defined below, is at least $425,000,000 on or before the twelve (12) month anniversary of the initial Purchase Date (as defined below) of the Series F Preferred Stock, and at least $475,000,000 after the twelve (12) month anniversary of the initial Purchase Date of the Series F Preferred Stock (a "Qualified IPO"), or (iii) the date specified by written consent or agreement of the holders of a majority of the then outstanding shares of the Series E Preferred Stock and the Series F Preferred Stock, voting together as a separate class on an as-if converted basis. For the purposes of this Section IV(B)(4)(b), the "Enterprise Valuation" shall refer to the fair market value of the issued and outstanding shares of Common Stock (assuming conversion of all Preferred Stock into Common Stock) immediately prior to giving effect to the issuance of any shares pursuant to the initial public offering, calculated based on the price per share at which the underwriters propose to sell such Common Stock to the public, as reflected in the final prospectus to be filed pursuant to Rule 424(b), or other applicable rule, of the Act.

(c) Mechanics of Conversion. Before any holder of Preferred Stock shall be entitled to convert the same into shares of Common Stock, he, she or it shall surrender the certificate or certificates therefor, duly endorsed, at the office of this Corporation or of any transfer agent for the Preferred Stock, and shall give written notice to this Corporation at its principal corporate office, of the election to convert the same and shall state therein the name or names in which the certificate or certificates for shares of Common Stock are to be issued. This Corporation shall, as soon as practicable thereafter, issue and deliver at such office to such holder of Preferred Stock, or to the nominee or nominees of such holder, a certificate or certificates for the number of shares of Common Stock to which such holder shall be entitled as aforesaid. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of such surrender of the shares of Preferred Stock to be converted, and the person or persons entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Common Stock as of such date. If the conversion is in connection with an underwritten offering of securities registered pursuant to the Act, the conversion may, at the option of any holder tendering Preferred Stock for conversion, be conditioned upon the closing with the underwriters of the sale of securities pursuant to such offering, in which event the persons entitled to receive the Common Stock upon conversion of the Preferred Stock shall not be deemed to have converted such Preferred Stock until immediately prior to the closing of such sale of securities.

(d) Conversion Price Adjustments of Preferred Stock. The Conversion Price of each series of Preferred Stock shall be subject to adjustment from time to time as follows:

(i) If this Corporation shall issue, after the date upon which any shares of Preferred Stock were first issued (the "Purchase Date" with respect to such series), any Additional Stock (as defined below) without consideration or for a consideration per share less than the Conversion Price applicable to a series of Preferred Stock in effect immediately prior to the issuance of such Additional Stock, the Conversion Price for such series in effect immediately prior to each such issuance shall (except as otherwise provided in this Section IV(B)(4)(d)(i)) be reduced concurrently with such issuance to a price determined by multiplying such Conversion Price by a fraction, the numerator of which shall be the number of shares of Common Stock outstanding and deemed issued pursuant to Section IV(B)(4)(d)(i)(D) immediately prior to such issuance plus the number of shares of Common Stock that the aggregate consideration received by this Corporation for such issuance would purchase at such Conversion Price; and the denominator of which shall be the number of shares of Common Stock outstanding and deemed issued pursuant to Section IV(B)(4)(d)(i)(D) immediately prior to such issuance plus the number of shares of such Additional Stock.

(A) No adjustment of the Conversion Price for any series of Preferred Stock shall be made in an amount less than one ten-thousandth of one cent ($0.0001) per share. Except to the limited extent provided for in Sections IV(B)(4)(d)(i)(D)(3) and IV(B)(4)(d)(i)(D)(4), no adjustment of such Conversion Price pursuant to this Section IV(B)(4)(d)(i) shall have the effect of increasing the Conversion Price above the Conversion Price in effect immediately prior to such adjustment.

(B) In the case of the issuance of Additional Stock for cash, the consideration shall be deemed to be the amount of cash paid therefor after deducting any reasonable discounts, commissions or other expenses allowed, paid or incurred by this Corporation for any underwriting or otherwise in connection with the issuance and sale thereof.

(C) In the case of the issuance of the Additional Stock for a consideration in whole or in part other than cash, the consideration other than cash shall be deemed to be the fair value thereof as determined reasonably and in good faith by the Board of Directors, irrespective of any accounting treatment.

(D) In the case of the issuance (whether before, on or after the applicable Purchase Date) of options to purchase or rights to subscribe for Common Stock, securities by their terms convertible into or exchangeable for Common Stock or options to purchase or rights to subscribe for such convertible or exchangeable securities, the following provisions shall apply for all purposes of this Section IV(B)(4)(d)(i) and Section IV(B)(4)(d)(ii):

(1) The aggregate maximum number of shares of Common Stock deliverable upon exercise (assuming the satisfaction of any conditions to exercisability, including, without limitation, the passage of time, of such options to purchase or rights to subscribe for Common Stock) shall be deemed to have been issued at the time such options or rights were issued and for a consideration equal to the consideration (determined in the manner provided in Sections IV(B)(3)(d)(i)(B) and IV(B)(3)(d)(i)(C)), if any, received by this Corporation upon the issuance of such options or rights plus the minimum exercise price provided in such options or rights for the Common Stock covered thereby.

(2) The aggregate maximum number of shares of Common Stock deliverable upon conversion of, or in exchange (assuming the satisfaction of any conditions to convertibility or exchangeability, including, without limitation, the passage of time, for any such convertible or exchangeable securities or upon the exercise of options to purchase or rights to subscribe for such convertible or exchangeable securities and subsequent conversion or exchange thereof) shall be deemed to have been issued at the time such securities were issued or such options or rights were issued and for a consideration equal to the consideration, if any, received by this Corporation for any such securities and related options or rights (excluding any cash received on account of accrued interest or accrued dividends), plus the minimum additional consideration, if any, to be received by this Corporation upon the conversion or exchange of such securities or the exercise of any related options or rights (the consideration in each case to be determined in the manner provided in Sections IV(B)(3)(d)(i)(B) and IV(B)(3)(d)(i)(C)).

(3) In the event of any change in the number of shares of Common Stock deliverable or in the consideration payable to this Corporation upon exercise of such options or rights or upon conversion of or in exchange for such convertible or exchangeable securities, including, but not limited to, a change resulting from the antidilution provisions thereof, the Conversion Price of each series of Preferred Stock, to the extent in any

way affected by or computed using such options, rights or securities, shall be recomputed to reflect such change, but no further adjustment shall be made for the actual issuance of Common Stock or any payment of such consideration upon the exercise of any such options or rights or the conversion or exchange of such securities.

(4) Upon the expiration of any such options or rights, the termination of any such rights to convert or exchange or the expiration of any options or rights related to such convertible or exchangeable securities, the Conversion Price of each series of Preferred Stock, to the extent in any way affected by or computed using such options, rights or securities or options or rights related to such securities, shall be recomputed to reflect the issuance of only the number of shares of Common Stock (and convertible or exchangeable securities that remain in effect) actually issued upon the exercise of such options or rights, upon the conversion or exchange of such securities or upon the exercise of the options or rights related to such securities.

(5) The number of shares of Common Stock deemed issued and the consideration deemed paid therefor pursuant to Sections IV(B)(4)(d)(i)(D)(l) and IV(B)(4)(d)(i)(D)(2) shall be appropriately adjusted to reflect any change, termination or expiration of the type described in either Section IV(B)(4)(d)(i)(D)(3) or IV(B)(4)(d)(i)(D)(4).

(ii) "Additional Stock" shall mean any shares of Common Stock issued (or deemed to have been issued pursuant to Section IV(B)(4)(d)(i)(D)) by this Corporation after the applicable Purchase Date other than:

(A) shares of Common Stock issued pursuant to a transaction described in Section IV(B)(4)(d)(iii) hereof;

(B) shares of Common Stock issued or deemed issued for bona fide compensatory purposes to employees, consultants, officers or directors of this Corporation directly or pursuant to a stock option plan or restricted stock purchase plan approved by the Board of Directors including at least two (2) Preferred Directors (as defined below) (a "Board Vote");

(C) shares of Common Stock issued or issuable (I) in a bona fide, firmly underwritten public offering under the Act before which or in connection with which all outstanding shares of Preferred Stock will be automatically converted to Common Stock, or (II) upon exercise of warrants or rights granted to underwriters in connection with such a public offering;

(D) shares of Common Stock issued upon conversion of any shares of the Corporation's Preferred Stock;

(E) shares of Common Stock issued pursuant to the conversion or exercise of convertible or exercisable securities outstanding as of the date of the filing of this Amended and Restated Certificate of Incorporation;

(F) shares of Common Stock issued or issuable in connection with a bona fide business acquisition by this Corporation) whether by merger) consolidation, sale of assets, sale or exchange of stock or otherwise, each as approved by a Board Vote;

(G) shares of Common Stock issued or issuable, for other than primarily equity financing purposes, as approved by a Board Vote, to entities with which this Corporation has any of the following bona fide business relationships: (1) joint venture, technology licensing or development activities, or (2) distribution) supply or manufacture of the Corporation's products or services;

(H) shares of Common Stock issued or issuable in connection with commercial credit arrangements, equipment financings) commercial property lease transactions or similar transactions, each as approved by a Board Vote; or

(I) shares of Common Stock issued or issuable in connection with any transaction, approved by the Board of Directors, where such securities so issued are excepted from the definition of "Additional Stock" by the affirmative vote of the Requisite Preferred Majority, with such affirmative vote expressly stating that such Common Stock issued or issuable is not to be considered "Additional Stock."

(iii) In the event this Corporation should at any time or from time to time after the applicable Purchase Date fix a record date for the effectuation of a split or subdivision of the outstanding shares of Common Stock or the determination of holders of Common Stock entitled to receive a dividend or other distribution payable in additional shares of Common Stock or other securities or rights convertible into, or entitling the holder thereof to receive directly or indirectly, additional shares of Common Stock (hereinafter referred to as "Common Stock Equivalents") without payment of any consideration by such holder for the additional shares of Common Stock or the Common Stock Equivalents (including the additional shares of Common Stock issuable upon conversion or exercise thereof)) then, as of such record date (or the date of such dividend distribution, split or subdivision if no record date is fixed)) the Conversion Prices of each series of Preferred Stock shall be appropriately decreased so that the number of shares of Common Stock issuable on conversion of each share of such series shall be increased in proportion to such increase in the aggregate number of shares of Common Stock outstanding and those issuable with respect to such Common Stock Equivalents.

(iv) If the number of shares of Common Stock outstanding at any time after the applicable Purchase Date is decreased by a combination of the outstanding shares of Common Stock) then, following the record date of such combination, the Conversion Prices for each series of Preferred Stock shall be appropriately increased so that the number of shares of Common Stock issuable on conversion of each share of such series shall be decreased in proportion to such decrease in outstanding shares.

(e) Other Distributions. In the event this Corporation shall declare a distribution payable in securities of other persons, evidences of indebtedness issued by this Corporation or other persons, assets (excluding cash dividends) or options or rights not referred to in Section IV(B)(4)(d)(iii), then, in each such case for the purpose of this Section IV(B)(3)(e),

the holders of each series of Preferred Stock shall be entitled to a proportionate share of any such distribution as though they were the holders of the number of shares of Common Stock of this Corporation into which their shares of such series of Preferred Stock are convertible as of the record date fixed for the determination of the holders of Common Stock of this Corporation entitled to receive such distribution.

(f) Recapitalizations. If at any time or from time to time there shall be a recapitalization of the Common Stock (other than a subdivision, combination or merger or sale of assets transaction provided for elsewhere in Section IV(B)(2) or this Section IV(B)(4)) provision shall be made so that the holders of each series of Preferred Stock shall thereafter be entitled to receive upon conversion of such series of Preferred Stock the number of shares of stock or other securities or property of this Corporation or otherwise, to which a holder of the number of shares of Common Stock deliverable upon conversion of the Preferred Stock held by such holder would have been entitled on such recapitalization. In any such case, appropriate adjustment shall be made in the application of the provisions of this Section IV(B)(4) with respect to the rights of the holders of each series of Preferred Stock after the recapitalization to the end that the provisions of this Section IV(B)(4) (including adjustment of the Conversion Price then in effect and the number of shares purchasable upon conversion of each such series of Preferred Stock) shall be applicable after that event as nearly equivalent as may be practicable.

(g) No Fractional Shares and Certificate as to Adjustments.

(i) No fractional shares shall be issued upon the conversion of any share or shares of Preferred Stock. In lieu of any fractional shares to which the holder would otherwise be entitled, the Corporation shall pay cash equal to such fraction multiplied by the then fair market value of a share of Common Stock as determined reasonably and in good faith by the Board of Directors. The number of shares of Common Stock to be issued upon such conversion shall be determined on the basis of the total number of shares of Preferred Stock the holder is at the time converting into Common Stock and the number of shares of Common Stock issuable upon such aggregate conversion.

(ii) Upon the occurrence of each adjustment or readjustment of the Conversion Price of any series of Preferred Stock pursuant to this Section IV (B)(4), this Corporation, at its expense, shall promptly compute such adjustment or readjustment in accordance with the terms hereof and prepare and furnish to each holder of such series of Preferred Stock a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. This Corporation shall, upon the written request at any time of any holder of Preferred Stock, furnish or cause to be furnished to such holder a like certificate setting forth (A) such adjustment and readjustment, (B) the Conversion Price for such series of Preferred Stock at the time in effect, and (C) the number of shares of Common Stock and the amount, if any, of other property that at the time would be received upon the conversion of a share of such series of Preferred Stock.

(h) Notices of Record Date. In the event of any taking by this Corporation of a record of the holders of any class of securities for the purpose of determining the holders thereof who are entitled to receive any dividend (other than a cash dividend) or other distribution, any right to subscribe for, purchase or otherwise acquire any shares of stock of any

class or any other securities or property, or to receive any other right, this Corporation shall mail to each holder of Preferred Stock, at least twenty (20) days prior to the date specified therein, a notice specifying the date on which any such record is to be taken for the purpose of such dividend, distribution or right, and the amount and character of such dividend, distribution or right.

(i) Reservation of Stock Issuable Upon Conversion. This Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock, solely for the purpose of effecting the conversion of the shares of Preferred Stock, such number of its shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of Preferred Stock; 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 then outstanding shares of Preferred Stock, in addition to such other remedies as shall be available to the holder of such Preferred Stock, this Corporation will take such corporate action as may, in the opinion of its counsel, 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 best efforts to obtain the requisite stockholder approval of any necessary amendment to this Amended and Restated Certificate of Incorporation.

(j) Notices. Any notice required by the provisions of this Section IV(B)(4) to be given to the holders of shares of Preferred Stock shall be deemed given if deposited in the United States mail, postage prepaid, and addressed to each holder of record at his, her or its address appearing on the books of this Corporation.

(k) Waiver of Adjustment to Conversion Prices. Notwithstanding anything herein to the contrary, any downward adjustment of the Conversion Price of any series of Preferred Stock may be waived in advance of a dilutive issuance, by the vote or written consent of the holders of a majority of the outstanding shares of the applicable series of Preferred Stock. Any such waiver shall be binding upon all current and future holders of such series of Preferred Stock.

(l) Adjustment to Conversion Price Applicable to Series F Preferred Stock. In the event that (i) eighty percent (80%) of the public offering price per share of the Common Stock in a Qualified IPO (the "Qualified IPO Price") is less than the Original Series F Issue Price (subject to adjustment for any Recapitalization), (ii) the Company effects a Deemed Liquidation Event whereby such Deemed Liquidation Event reflects an enterprise value for the Company of less than $500,000,000, or (iii) eighty percent (80%) of the price per share of the new series of Preferred Stock issued to institutional investors in the first bona fide transaction with the principal purpose of raising capital following the Series F Original Issue Date (the "Next Equity Price") is less than the Original Series F Issue Price, then the Conversion Price applicable to the Series F Preferred Stock shall be adjusted to (A) in the case of clause (i), eighty percent (80%) of the Qualified IPO Price, (B) in the case of clause (ii), eighty percent (80%) of the Original Series F Issue Price, and (C) in the case of clause (iii), eighty percent (80%) of the Next Equity Price; provided, however, such an adjustment in each such instance shall be made if and only if such adjustment is greater than that as calculated pursuant to Section IV(B)(4)(d).

5. Voting Rights.

(a) General. The holder of each share of Preferred Stock shall have the right to one vote for each share of Common Stock into which such share of Preferred Stock could then be converted. With respect to such vote and except as otherwise expressly provided herein or as required by applicable law, such holder shall have full voting rights and powers equal to the voting rights and powers of the holders of Common Stock, and shall be entitled, notwithstanding any provision hereof, to notice of any stockholders' meeting in accordance with the Bylaws of this Corporation, and shall be entitled to vote, together with holders of Common Stock as a single class, with respect to any matter upon which holders of Common Stock have the right to vote. Fractional votes shall not, however, be permitted and any fractional voting rights available on an as-converted basis (after aggregating all shares into which shares of Preferred Stock held by each holder could be converted) shall be rounded to the nearest whole number (with one-half being rounded upward).

(b) Election of Directors. At any time in which at least 500,000 shares of Preferred Stock are outstanding (as adjusted for Recapitalizations),

(i) The holders of a majority of the shares of Series A Preferred Stock shall be entitled, voting separately as a single class, to elect one (1) director of the Corporation (the "Series A Director") at or pursuant to each meeting or consent of the Corporation's stockholders for the election of directors, to remove from office such director, to fill any vacancy caused by the resignation or death of such director and to fill any vacancy (in writing or at a meeting) caused by the removal of such director;

(ii) The holders of a majority of the shares of Series B Preferred Stock shall be entitled, voting separately as a single class, to elect one (1) director of the Corporation (the "Series B Director") at or pursuant to each meeting or consent of the Corporation's stockholders for the election of directors, to remove from office such director, to fill any vacancy caused by the resignation or death of such director and to fill any vacancy (in writing or at a meeting) caused by the removal of such director;

(iii) The holders of a majority of the shares of Series C Preferred Stock shall be entitled, voting separately as a single class, to elect one (1) director of the Corporation (the "Series C Director") at or pursuant to each meeting or consent of the Corporation's stockholders for the election of directors, to remove from office such director, to fill any vacancy caused by the resignation or death of such director and to fill any vacancy (in writing or at a meeting) caused by the removal of such director;

(iv) The holders of a majority of the shares of Series D Preferred Stock shall be entitled, voting separately as a single class, to elect one (1) director of the Corporation (the "Series D Director") at or pursuant to each meeting or consent of the Corporation's stockholders for the election of directors, to remove from office such director, to fill any vacancy caused by the resignation or death of such director and to fill any vacancy (in writing or at a meeting) caused by the removal of such director;

(v) The holders of a majority of the shares of Series E Preferred Stock and Series F Preferred Stock shall be entitled, voting together as a single class, to elect one (1) director of the Corporation (the "Series E/F Director," and together with the Series

A Director, the Series B Director, the Series C Director, and the Series D Director, the "Preferred Directors") at or pursuant to each meeting or consent of the Corporation's stockholders for the election of directors, to remove from office such director, to fill any vacancy caused by the resignation or death of such director and to fill any vacancy (in writing or at a meeting) caused by the removal of such director;

(vi) The holders of a majority of shares of Common Stock, voting as a separate class, shall be entitled to elect two (2) directors of the Corporation (the "Common Directors") at or pursuant to each meeting or consent of the Corporation's stockholders for the election of directors, to remove from office such directors, to fill the vacancy caused by the resignation or death of such directors and to fill any vacancy (in writing or at a meeting) caused by the removal of such director; and

(vii) The holders of a majority of shares of Common Stock and Preferred Stock, voting together as a single class, shall be entitled to elect any remaining directors (the "Other Directors," and each such Other Director, each Common Director, and each Preferred Director, a "Director") at or pursuant to each meeting or consent of the Corporation's stockholders for the election of directors, to remove from office such director, to fill the vacancy caused by the resignation or death of such directors and to fill any vacancy (in writing or at a meeting) caused by the removal of such director.

(c) Director Votes. With respect to any vote of the Board of Directors at a meeting or by written consent, each Director shall represent one (1) vote.

(d) Cumulative Voting. No person entitled to vote at an election for directors may cumulate votes to which such person is entitled, unless, at the time of such election, Section 2115 of the CGCL purports to apply to the Corporation. During such time or times that Section 2115(b) of the CGCL purports to apply to the Corporation, every stockholder entitled to vote at an election for directors may cumulate such stockholder's votes and give one candidate a number of votes equal to the number of directors to be elected multiplied by the number of votes to which such stockholder's shares are otherwise entitled, or distribute the stockholder's votes on the same principle among as many candidates as such stockholder desires. No stockholder, however, shall be entitled to so cumulate such stockholder's votes unless (i) the names of such candidate or candidates have been placed in nomination prior to the voting and (ii) the stockholder has given notice at the meeting, prior to the voting, of such stockholder's intention to cumulate such stockholder's votes. If any stockholder has given proper notice to cumulate votes, all stockholders may cumulate their votes for any candidates who have been properly placed in nomination. Under cumulative voting, the candidates receiving the highest number of votes, up to the number of directors to be elected, are elected.

(e) Removal of Directors. During such time or times that Section 2115(b) of the CGCL purports to apply to the Corporation, one or more directors may be removed from office at any time without cause by the affirmative vote of the holders of a majority of the outstanding shares entitled to vote for that director as provided above; provided, however, that unless the entire Board is removed, no individual director may be removed when the votes cast against such director's removal, or not consenting in writing to such removal, would be sufficient to elect that director if voted cumulatively at an election at which the same total number of votes were cast (or, if such action is taken by written consent, all shares entitled to vote were voted) and the entire number of directors authorized at the time of such director's most recent election were then being elected.

6. Protective Provisions.

(a) At any time in which at least 500,000 shares of Preferred Stock are outstanding (as adjusted for Recapitalizations), this Corporation shall not (by merger, amendment, consolidation or otherwise) without first obtaining the approval (by vote or written consent, as provided by law) of the Requisite Preferred Majority:

(i) alter or change the rights, preferences or privileges of the shares of Preferred Stock;

(ii) increase or decrease (other than by redemption or a decrease resulting from conversion of the Preferred Stock) the total number of authorized shares of Preferred Stock or the total number of authorized shares of Common Stock;

(iii) authorize, create or issue, or obligate itself to issue, whether by merger, consolidation or otherwise, any equity security, including any other security convertible into or exercisable for any equity security, having rights, privileges or preferences senior to or *pari passu* with, the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock, or Series F Preferred Stock with respect to dividends, liquidation or redemption or having voting rights other than those granted to the Preferred Stock generally;

(iv) declare or pay dividends or make other distributions on the capital stock or other securities of the Corporation;

(v) redeem, purchase or otherwise acquire any share or shares of Preferred Stock or Common Stock other than the repurchase of shares of Common Stock from employees, officers, directors, consultants or other persons performing services for this Corporation or any subsidiary pursuant to agreements under which this Corporation has the option to repurchase such shares at cost upon the termination of employment or other provision of services to the Corporation approved by the Board of Directors;

(vi) amend, repeal or waive any provision of this Amended and Restated Certificate of Incorporation or the Bylaws of the Corporation in a manner adverse to the holders of Preferred Stock, provided that any amendment of this Amended and Restated Certificate of Incorporation to decrease the voting percentages in Sections 2(e) or 4(b) of this Article IV(B) or amend this Section 6 shall require the approval (by vote or written consent, as provided by law) of the Requisite Preferred Majority, voting separately as a single class;

(vii) increase or decrease the authorized number of directors on the Board of Directors;

(viii) enter into any material related party transactions, except as approved by the Board of Directors, including at least two of the Preferred Directors;

(ix) incur any indebtedness in excess of $750,000 individually, or in the event of indebtedness individually less than $750,000, in excess of $1,500,000 in the aggregate;

(x) increase the aggregate number of shares of Common Stock reserved for issuance pursuant to stock option plans or restricted stock purchase plans;

(xi) liquidate, dissolve or wind-up the business and affairs of the Corporation, effect any merger or consolidation or any other Deemed Liquidation Event, or agree to any of the foregoing; or

(xii) create, or hold capital stock in, any subsidiary that is not wholly owned (either directly or through one or more subsidiaries) by the Corporation, or sell, transfer or otherwise dispose of any capital stock of any direct or indirect subsidiary of the Corporation, or permit any direct or indirect subsidiary to sell, lease, transfer, exclusively license or otherwise dispose (in a single transaction or series of related transactions) of all or substantially all of the assets of such subsidiary;

provided, however, that, at any time in which at least 125,000 shares of Series B Preferred Stock are outstanding (as adjusted for Recapitalizations), the approval (by vote or written consent, as provided by law) of the holders of at least a majority of the then outstanding shares of Series B Preferred Stock, voting separately as a single class, shall also be required for the Corporation to take any of the following actions (by merger, amendment, consolidation or otherwise):

(i) alter or change the rights, preferences or privileges of the shares of Series B Preferred Stock in a manner different than the Series A Preferred Stock, the Series C Preferred Stock, the Series D Preferred Stock, the Series E Preferred Stock, and the Series F Preferred Stock;

(ii) amend, repeal or waive any provision of this Amended and Restated Certificate of Incorporation or the Bylaws of the Corporation in a manner adverse to the holders of Series B Preferred Stock and in a manner different than the Series A Preferred Stock, the Series C Preferred Stock, the Series D Preferred Stock, the Series E Preferred Stock, and the Series F Preferred Stock; or

(iii) liquidate, dissolve or wind-up the business and affairs of the Corporation, effect any merger or consolidation or any other Deemed Liquidation Event, or agree to any of the foregoing, if such transaction or series of related transactions reflects a valuation of the Corporation less than $61,000,000 or consideration per share of Series B Preferred Stock less than the Conversion Price then in effect for the Series B Preferred Stock;

provided further, however, that, at any time in which at least 125,000 shares of Series C Preferred Stock are outstanding (as adjusted for Recapitalizations), the approval (by vote or written consent, as provided by law) of the holders of at least a majority of the then outstanding shares of Series C Preferred Stock, voting separately as a single class, shall also be required for the Corporation to take any of the following actions (by merger, amendment, consolidation or otherwise):

(i) alter or change the rights, preferences or privileges of the shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock, or Series F Preferred Stock in a manner adverse to the holders of the Series C Preferred Stock;

(ii) reclassify, alter or amend any existing security of the Corporation that is junior to the Series C Preferred Stock in respect of the distribution of assets on the liquidation, dissolution or winding up of the Corporation, the payment of dividends or rights of redemption, if such reclassification, alteration or amendment would render such other security *pari passu* with or senior to the Series C Preferred Stock, as applicable, in respect of any such right, preference or privilege;

(iii) redeem, purchase or otherwise acquire any share or shares of Preferred Stock or Common Stock other than the repurchase of shares of Common Stock from employees, officers, directors, consultants or other persons performing services for this Corporation or any subsidiary pursuant to agreements under which this Corporation has the option to repurchase such shares at cost upon the termination of employment or other provision of services to the Corporation approved by the Board of Directors;

(iv) amend, repeal or waive any provision of this Amended and Restated Certificate of Incorporation or the Bylaws of the Corporation in a manner adverse to the holders of Series C Preferred Stock and in a manner different than the Series A Preferred Stock, the Series B Preferred Stock, the Series D Preferred Stock, the Series E Preferred Stock, and the Series F Preferred Stock; or

(v) liquidate, dissolve or wind-up the business and affairs of the Corporation, effect any merger or consolidation or any other Deemed Liquidation Event, or agree to any of the foregoing, if such transaction or series of related transactions reflects a valuation of the Corporation less than $110,000,000 or consideration per share of Series C Preferred Stock less than the Conversion Price then in effect for the Series C Preferred Stock;

provided further, however, that, at any time in which at least 125,000 shares of Series D Preferred Stock are outstanding (as adjusted for Recapitalizations), the approval (by vote or written consent, as provided by law) of the holders of at least a majority of the then outstanding shares of Series D Preferred Stock, voting separately as a single class, shall also be required for the Corporation to take any of the following actions (by merger, amendment, consolidation or otherwise):

(i) alter or change the rights, preferences or privileges of the shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock, or Series F Preferred Stock in a manner adverse to the holders of the Series D Preferred Stock;

(ii) increase or decrease the number of shares of authorized Series D Preferred Stock; or

(iii) liquidate, dissolve or wind-up the business and affairs of the Corporation, effect any merger or consolidation or any other Deemed Liquidation Event, or agree to any of the foregoing, if such transaction or series of related transaction will result in proceeds distributable to the holders of Series D Preferred Stock, excluding any proceeds subject to an escrow, holdback, or other contingencies, of (i) less than two (2) times the Original Series D Issue Price and definitive agreements for such transaction are executed on or before the two (2) year anniversary of the initial Purchase Date of the Series D Preferred Stock; (ii) less than two and a half (2.5) times the Original Series D Issue Price and definitive agreements for such transaction are executed after the two (2) year anniversary of the initial Purchase Date of the Series D Preferred Stock, but on or before the three (3) year anniversary of the initial Purchase Date of the Series D Preferred Stock; or (iii) less than three (3) times the Original Series D Issue Price and definitive agreements for such transaction are executed after the three (3) year anniversary of the initial Purchase Date of the Series D Preferred Stock;

provided further, however, that, at any time in which at least one (1) share of Series E Preferred Stock is outstanding (as adjusted for Recapitalizations), the approval (by vote or written consent, as provided by law) of the holders of a majority of the then outstanding Series E Preferred Stock, which must include the Specified Investor for so long as it owns shares of Series E Preferred Stock (the "Series E Majority"), voting separately as a single class, shall also be required for the Corporation to take any of the following actions (by merger, amendment, consolidation or otherwise):

(i) alter or change the rights, preferences or privileges of the shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, or Series F Preferred Stock in a manner adverse to the holders of the Series E Preferred Stock;

(ii) alter or change the rights, preferences or privileges of the shares of Series E Preferred Stock in a manner adverse to the holders of the Series E Preferred Stock;

(iii) increase or decrease the number of shares of authorized Series E Preferred Stock;

(iv) amend, repeal or waive any provision of this Amended and Restated Certificate of Incorporation or the Bylaws of the Corporation in a manner adverse to the holders of Series E Preferred Stock and in a manner different than the Series A Preferred Stock, the Series B Preferred Stock, the Series C Preferred Stock, the Series D Preferred Stock, and Series F Preferred Stock; or

(v) liquidate, dissolve or wind-up the business and affairs of the Corporation, effect any merger or consolidation or any other Deemed Liquidation Event, or agree to any of the foregoing, if such transaction or series of related transaction will result in proceeds distributable to the holders of Series E Preferred Stock, excluding any proceeds subject to an escrow, holdback, or other contingencies, of less than two (2) times the Original Series E Issue Price; and

provided further, however, that, at any time in which at least any shares of Series F Preferred Stock are outstanding (as adjusted for Recapitalizations), the approval (by vote or written consent, as provided by law) of the holders of at least a majority of the then outstanding Series F Preferred Stock, which must include the Specified Investor for so long as such entity and its affiliates collectively hold at least 342,811 shares of Series F Preferred Stock (the "Series F Majority"), voting separately as a single class, shall also be required for the Corporation to take any of the following actions (by merger, amendment, consolidation or otherwise):

(i) alter or change the rights, preferences or privileges of the shares of Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, or Series E Preferred Stock in a manner adverse to the holders of the Series F Preferred Stock;

(ii) alter or change the rights, preferences or privileges of the shares of Series F Preferred Stock in a manner adverse to the holders of the Series F Preferred Stock;

(iii) increase or decrease the number of shares of authorized Series F Preferred Stock;

(iv) amend, repeal or waive any provision of this Amended and Restated Certificate of Incorporation or the Bylaws of the Corporation in a manner adverse to the holders of Series F Preferred Stock and in a manner different than the Series A Preferred Stock, the Series B Preferred Stock, the Series C Preferred Stock, the Series D Preferred Stock, and the Series E Preferred Stock; or

(v) liquidate, dissolve or wind-up the business and affairs of the Corporation, effect any merger or consolidation or any other Deemed Liquidation Event, or agree to any of the foregoing, if such transaction or series of related transaction will result in proceeds distributable to the holders of Series F Preferred Stock, excluding any proceeds subject to an escrow, holdback, or other contingencies, of less than two (2) times the Original Series F Issue Price.

7. Status of Redeemed or Converted Stock. In the event any shares of Preferred Stock shall be redeemed or converted pursuant to Section IV(B)(4), the shares so redeemed or converted shall be cancelled and shall not be issuable by this Corporation. This Amended and Restated Certificate of Incorporation shall be appropriately amended to effect the corresponding reduction in this Corporation's authorized capital stock.

C. Common Stock. The rights, preferences, privileges and restrictions granted to and imposed on the Common Stock are as set forth below in this Section IV(C).

1. Dividend Rights. Subject to the prior rights of holders of all classes of stock at the time outstanding having prior rights as to dividends, the holders of the Common Stock shall be entitled to receive, when and as declared by the Board of Directors, out of any assets of this Corporation legally available therefor, such dividends as may be declared from time to time by the Board of Directors.

2. Liquidation Rights. Upon the liquidation, dissolution or winding of this Corporation, the assets of this Corporation shall be distributed as provided in Section IV(B)(2).

3. Redemption. The Common Stock is not redeemable.

4. Voting Rights. The holder of each share of Common Stock shall have the right to one vote for each such share, and shall be entitled to notice of any stockholders' meeting in accordance with the Bylaws of this Corporation, and shall be entitled to vote upon such matters and in such manner as may be provided by law. The number of authorized shares of Common Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of the holders of shares of stock of the Corporation representing a majority of the votes represented by all of the outstanding shares of stock of the Corporation entitled to vote, irrespective of the provisions of Section 242(b)(2) of the Delaware General Corporation Law.

ARTICLE V.

Except as otherwise provided in this Amended and Restated Certificate of Incorporation, in furtherance and not in limitation of the powers conferred by statute, the Board of Directors is expressly authorized to make, alter or repeal the Bylaws of the Corporation.

ARTICLE VI.

For the management of the business and for the conduct of the affairs of the Corporation, and in further definition, limitation, and regulation of the powers of the Corporation and of its directors and of its stockholders or any class thereof, as the case may be, it is further provided:

1. The management of the business and the conduct of the affairs of the Corporation shall be vested in its Board of Directors. Subject to any additional vote required by this Amended and Restated Certificate of Incorporation, the number of directors which shall constitute the whole Board of Directors shall be fixed by, or in the manner provided in, the Bylaws. The phrase "whole Board" and the phrase "total number of directors" shall be deemed to have the same meaning, to wit, the total number of directors which the Corporation would have if there were no vacancies. Elections of directors need not be by written ballot unless the Bylaws of the Corporation shall so provide.

2. The power to adopt, amend, or repeal the Bylaws of the Corporation may be exercised by the Board of Directors.

ARTICLE VII.

Whenever a compromise or arrangement is proposed between this Corporation and its creditors or any class of them and/ or between this Corporation and its stockholders or any class of them, any court of equitable jurisdiction within the State of Delaware may, on the application in a summary way of this Corporation or of any creditor or stockholder thereof, or on the application of any receiver or receivers appointed for this Corporation under the provisions of Section 291 of Title 8 of the Delaware Code or on the application of trustees in dissolution or of any receiver or receivers appointed for this Corporation under the provisions of Section 279 of Title 8 of the

Delaware Code order a meeting of the creditors or class of creditors, and/or of the stockholders or class of stockholders of this Corporation, as the case may be, to be summoned in such manner as the said court directs. If a majority in number representing three-fourths in value of the creditors or class of creditors, and/or of the stockholders or class of stockholders of this Corporation, as the case may be, agree to any compromise or arrangement and to any reorganization of this Corporation as a consequence of such compromise or arrangement, the said compromise or arrangement and the said reorganization shall, if sanctioned by the court to which the said application has been made, be binding on all the creditors or class of creditors, and/or on all the stockholders or class of stockholders, of this Corporation, as the case may be, and also on this Corporation.

ARTICLE VIII.

A director of this Corporation shall, to the fullest extent permitted by the General Corporation Law as it now exists or as it may hereafter be amended, not be personally liable to this Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except for liability (i) for any breach of the director's duty of loyalty to this Corporation or its stockholders, (ii) for acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the General Corporation Law, or (iv) for any transaction from which the director derived any improper personal benefit. If the General Corporation Law is amended, after approval by the stockholders of this Article, to authorize any action by the Corporation which further eliminates or limits the personal liability of directors, then the liability of a director of this Corporation shall be eliminated or limited to the fullest extent permitted by the General Corporation Law, as so amended.

Any amendment, repeal or modification of this Article VIII, or the adoption of any provision of this Amended and Restated Certificate of Incorporation inconsistent with this Article VIII, shall not adversely affect any right or protection of a director of this Corporation existing at the time of such amendment, repeal, modification or adoption.

ARTICLE IX.

The Corporation shall, to the fullest extent permitted by the provisions of Section 145 of the General Corporation Law, as the same may be amended and supplemented, indemnify any and all persons whom it shall have power to indemnify under said section from and against any and all of the expenses, liabilities, or other matters referred to in or covered by said section, and the indemnification provided for herein shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any Bylaw, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in his or her official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a director, officer, employee, or agent and shall inure to the benefit of the heirs, executors, and administrators of such person.

Any amendment, repeal or modification of this Article IX, or the adoption of any provision of this Amended and Restated Certificate of Incorporation inconsistent with this Article IX, shall not adversely affect any right or protection existing at the time of such amendment, repeal, modification or adoption.

ARTICLE X.

Meetings of stockholders may be held within or without the State of Delaware, as the Bylaws may provide. The books of this Corporation may be kept (subject to any provision contained in the statutes) outside the State of Delaware at such place or places as may be designated from time to time by the Board of Directors or in the Bylaws of this Corporation.

ARTICLE XI.

The Corporation renounces, to the fullest extent permitted by law, any interest or expectancy of the Corporation in, or in being offered an opportunity to participate in, any Excluded Opportunity. An "Excluded Opportunity', is any matter, transaction or interest related to the Company's business or actual or demonstrably anticipated research and development that is presented to, or acquired, created or developed by, or which otherwise comes into the possession of (i) any director of the Corporation who is not an employee of the Corporation or any of its subsidiaries, or (ii) any holder of Preferred Stock or any partner, member, director, stockholder, employee, affiliate or agent of any such holder, other than someone who is an employee of the Corporation or any of its subsidiaries (collectively, "Covered Persons"), unless such matter, transaction or interest is presented to, or acquired, created or developed by, or otherwise comes into the possession of, a Covered Person expressly and solely in such Covered Person's capacity as a director of the Corporation while such Covered Person is performing services in such capacity. Any repeal or modification of this Article XI will only be prospective and will not affect the rights under this Article XI in effect at the time of the occurrence of any actions or omissions to act giving rise to liability. Notwithstanding anything to the contrary contained elsewhere in this Amended and Restated Certificate of Incorporation, the affirmative vote of the holders of at least a majority of the then outstanding shares of Preferred Stock, voting separately as a single class, will be required to amend or repeal, or to adopt any provisions inconsistent with this Article XI.

ARTICLE XII.

The Corporation reserves the right to amend, alter, change or repeal any provision contained in this Amended and Restated Certificate of Incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred upon stockholders herein are granted subject to this reservation.

* * *

BYLAWS

OF

SIGHT SCIENCES, INC.

a Delaware corporation

TABLE OF CONTENTS

BYLAWS

OF

SIGHT SCIENCES, INC.

ARTICLE 1

OFFICES

Section 1.1 Registered Office.

The registered office of the corporation in the State of Delaware shall be in the City of Wilmington, County of New Castle.

Section 1.2 Other Offices.

The corporation shall also have and maintain an office or principal place of business within or without the State of Delaware as the Board of Directors may from time to time determine or the business of the corporation may require.

ARTICLE 2

STOCKHOLDERS' MEETINGS

Section 2.1 Place of Meetings.

(a) Meetings of stockholders may be held at such place, either within or without this State, as may be designated by or in the manner provided in these Bylaws or, if not so designated, as determined by the Board of Directors. The Board of Directors may, in its sole discretion, determine that the meeting shall not be held at any place, but may instead be held solely by means of remote communication as authorized by paragraph (b) of this Section 2.1.

(b) If authorized by the Board of Directors in its sole discretion, and subject to such guidelines and procedures as the Board of Directors may adopt, stockholders and proxyholders not physically present at a meeting of stockholders may, by means of remote communication:

(1) Participate in a meeting of stockholders; and

(2) Be deemed present in person and vote at a meeting of stockholders whether such meeting is to be held at a designated place or solely by means of remote communication, provided that (A) the corporation shall implement reasonable measures to verify that each person deemed present and permitted to vote at the meeting by means of remote communication is a stockholder or proxyholder, (B) the corporation shall implement reasonable measures to provide such stockholders and proxyholders a reasonable opportunity to participate

in the meeting and to vote on matters submitted to the stockholders, including an opportunity to read or hear the proceedings of the meeting substantially concurrently with such proceedings, and (C) if any stockholder or proxyholder votes or takes other action at the meeting by means of remote communication, a record of such vote or other action shall be maintained by the corporation.

(c) For purposes of this Section 2.1, “remote communication” shall include (1) telephone or other voice communications and (2) electronic mail or other form of written or visual electronic communications satisfying the requirements of Section 2.11(b).

Section 2.2 Annual Meetings.

The annual meetings of the stockholders of the corporation, for the purpose of election of directors and for such other business as may lawfully come before it, shall be held on such date and at such time as may be designated from time to time by the Board of Directors.

Section 2.3 Special Meetings.

Special Meetings of the stockholders of the corporation may be called, for any purpose or purposes, by the Chairman of the Board or the President or the Board of Directors at any time. Upon written request of any stockholder or stockholders holding in the aggregate ten percent (10%) of the voting power of all stockholders delivered in person or sent by registered mail to the Chairman of the Board, President or Secretary of the Corporation, the Secretary shall call a special meeting of stockholders to be held as provided in Section 2.1 at such time as the Secretary may fix, such meeting to be held not less than 10 nor more than 60 days after the receipt of such request, and if the Secretary shall neglect or refuse to call such meeting within seven days after the receipt of such request, the stockholder making such request may do so.

Section 2.4 Notice of Meetings.

(a) Except as otherwise provided by law or the Certificate of Incorporation, written notice of each meeting of stockholders, specifying the place, if any, date and hour and purpose or purposes of the meeting, and the means of remote communication, if any, by which stockholders and proxyholders may be deemed to be present in person and vote at such meeting, shall be given not less than 10 nor more than 60 days before the date of the meeting to each stockholder entitled to vote thereat, directed to his address as it appears upon the books of the corporation; except that where the matter to be acted on is a merger or consolidation of the Corporation or a sale, lease or exchange of all or substantially all of its assets, such notice shall be given not less than 20 nor more than 60 days prior to such meeting.

(b) If at any meeting action is proposed to be taken which, if taken, would entitle shareholders fulfilling the requirements of section 262(d) of the Delaware General Corporation Law to an appraisal of the fair value of their shares, the notice of such meeting shall contain a statement of that purpose and to that effect and shall be accompanied by a copy of that statutory section.

(c) When a meeting is adjourned to another time or place, notice need not be given of the adjourned meeting if the time, place, if any, thereof, and the means of remote

communication, if any, by which stockholders and proxyholders may be deemed to be present in person and vote at such adjourned meeting, are announced at the meeting at which the adjournment is taken unless the adjournment is for more than thirty days, or unless after the adjournment a new record date is fixed for the adjourned meeting, in which event a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting.

(d) Notice of the time, place and purpose of any meeting of stockholders may be waived in writing, either before or after such meeting, and, to the extent permitted by law, will be waived by any stockholder by his attendance thereat, in person or by proxy. Any stockholder so waiving notice of such meeting shall be bound by the proceedings of any such meeting in all respects as if due notice thereof had been given.

(e) Without limiting the manner by which notice otherwise may be given effectively to stockholders, any notice to stockholders given by the corporation under any provision of Delaware General Corporation Law, the certificate of incorporation, or these Bylaws shall be effective if given by a form of electronic transmission consented to by the stockholder to whom the notice is given. Any such consent shall be revocable by the stockholder by written notice to the corporation. Any such consent shall be deemed revoked if (i) the corporation is unable to deliver by electronic transmission two consecutive notices given by the corporation in accordance with such consent, and (ii) such inability becomes known to the secretary or an assistant secretary of the corporation or to the transfer agent or other person responsible for the giving of notice; provided, however, the inadvertent failure to treat such inability as a revocation shall not invalidate any meeting or other action. Notice given pursuant to this subparagraph (e) shall be deemed given: (1) if by facsimile telecommunication, when directed to a number at which the stockholder has consented to receive notice; (2) if by electronic mail, when directed to an electronic mail address at which the stockholder has consented to receive notice; (3) if by a posting on an electronic network together with separate notice to the stockholder of such specific posting, upon the later of (A) such posting and (B) the giving of such separate notice; and (4) if by any other form of electronic transmission, when directed to the stockholder. An affidavit of the secretary or an assistant secretary or of the transfer agent or other agent of the corporation that the notice has been given by a form of electronic transmission shall, in the absence of fraud, be prima facie evidence of the facts stated therein. For purposes of these Bylaws, “electronic transmission” means any form of communication, not directly involving the physical transmission of paper, that creates a record that may be retained, retrieved and reviewed by a recipient thereof, and that may be directly reproduced in paper form by such a recipient through an automated process.

Section 2.5 Quorum and Voting.

(a) At all meetings of stockholders except where otherwise provided by law, the Certificate of Incorporation or these Bylaws, the presence, in person or by proxy duly authorized, of the holders of a majority of the outstanding shares of stock entitled to vote shall constitute a quorum for the transaction of business. Shares, the voting of which at said meeting have been enjoined, or which for any reason cannot be lawfully voted at such meeting, shall not be counted to determine a quorum at said meeting. In the absence of a quorum, any meeting of stockholders may be adjourned, from time to time, by vote of the holders of a majority of the shares represented thereat, but no other business shall be transacted at such meeting. At such adjourned

meeting at which a quorum is present or represented, any business may be transacted which might have been transacted at the original meeting. The stockholders present at a duly called or convened meeting at which a quorum is present may continue to transact business until adjournment, notwithstanding the withdrawal of enough stockholders to leave less than a quorum.

(b) Except as otherwise provided by law, the Certificate of Incorporation or these Bylaws, all action taken by the holders of a majority of the voting power represented at any meeting at which a quorum is present shall be valid and binding upon the corporation.

(c) Where a separate vote by a class or classes is required, a majority of the outstanding shares of such class or classes present in person or represented by proxy shall constitute a quorum entitled to take action with respect to that vote on that matter, and the affirmative vote of the majority of shares of such class or classes present in person or represented by proxy at the meeting shall be the act of such class.

Section 2.6 Voting Rights.

(a) Except as otherwise provided by law, only persons in whose names shares entitled to vote stand on the stock records of the corporation on the record date for determining the stockholders entitled to vote at said meeting shall be entitled to vote at such meeting. Shares standing in the names of two or more persons shall be voted or represented in accordance with the determination of the majority of such persons, or, if only one of such persons is present in person or represented by proxy, such person shall have the right to vote such shares and such shares shall be deemed to be represented for the purpose of determining a quorum.

(b) Every person entitled to vote or to execute consents shall have the right to do so either in person or by an agent or agents authorized by a written proxy executed by such person or his duly authorized agent, which proxy shall be filed with the Secretary of the corporation at or before the meeting at which it is to be used. Said proxy so appointed need not be a stockholder. No proxy shall be voted on after three (3) years from its date unless the proxy provides for a longer period. Unless and until voted, every proxy shall be revocable at the pleasure of the person who executed it or of his legal representatives or assigns, except in those cases where an irrevocable proxy permitted by statute has been given.

(c) Without limiting the manner in which a stockholder may authorize another person or persons to act for him as proxy pursuant to subsection (b) of this section, the following shall constitute a valid means by which a stockholder may grant such authority:

(1) A stockholder may execute a writing authorizing another person or persons to act for him as proxy. Execution may be accomplished by the stockholder or his authorized officer, director, employee or agent signing such writing or causing his or her signature to be affixed to such writing by any reasonable means including, but not limited to, by facsimile signature.

(2) A stockholder may authorize another person or persons to act for him as proxy by transmitting or authorizing the transmission of a telephone, telegram, cablegram or other means of electronic transmission to the person who will be the holder of the proxy or to a

proxy solicitation firm, proxy support service organization or like agent duly authorized by the person who will be the holder of the proxy to receive such transmission, provided that any such telephone, telegram, cablegram or other means of electronic transmission must either set forth or be submitted with information from which it can be determined that the telephone, telegram, cablegram or other electronic transmission was authorized by the stockholder. Such authorization can be established by the signature of the stockholder on the proxy, either in writing or by a signature stamp or facsimile signature, or by a number or symbol from which the identity of the stockholder can be determined, or by any other procedure deemed appropriate by the inspectors or other persons making the determination as to due authorization.

If it is determined that such telegrams, cablegrams or other electronic transmissions are valid, the inspectors or, if there are no inspectors, such other persons making that determination shall specify the information upon which they relied.

(d) Any copy, facsimile telecommunication or other reliable reproduction of the writing or transmission created pursuant to subsection (c) of this section may be substituted or used in lieu of the original writing or transmission for any and all purposes for which the original writing or transmission could be used, provided that such copy, facsimile telecommunication or other reproduction shall be a complete reproduction of the entire original writing or transmission.

Section 2.7 Voting Procedures and Inspectors of Elections.

(a) The corporation shall, in advance of any meeting of stockholders, appoint one or more inspectors to act at the meeting and make a written report thereof. The corporation may designate one or more persons as alternate inspectors to replace any inspector who fails to act. If no inspector or alternate is able to act at a meeting of stockholders, the person presiding at the meeting shall appoint one or more inspectors to act at the meeting. Each inspector, before entering upon the discharge of his duties, shall take and sign an oath faithfully to execute the duties of inspector with strict impartiality and according to the best of his ability.

(b) The inspectors shall (i) ascertain the number of shares outstanding and the voting power of each, (ii) determine the shares represented at a meeting and the validity of proxies and ballots, (iii) count all votes and ballots, (iv) determine and retain for a reasonable period a record of the disposition of any challenges made to any determination by the inspectors, and (v) certify their determination of the number of shares represented at the meeting and their count of all votes and ballots. The inspectors may appoint or retain other persons or entities to assist the inspectors in the performance of the duties of the inspectors.

(c) The date and time of the opening and the closing of the polls for each matter upon which the stockholders will vote at a meeting shall be announced at the meeting. No ballot, proxies or votes, nor any revocations thereof or changes thereto, shall be accepted by the inspectors after the closing of the polls unless the Court of Chancery upon application by a stockholder shall determine otherwise.

(d) In determining the validity and counting of proxies and ballots, the inspectors shall be limited to an examination of the proxies, any envelopes submitted with those proxies, any information provided in accordance with Sections 211(e) or 212(c)(2) of the Delaware

General Corporation Law, or any information provided pursuant to Section 211(a)(2)(B)(i) or (iii) thereof, ballots and the regular books and records of the corporation, except that the inspectors may consider other reliable information for the limited purpose of reconciling proxies and ballots submitted by or on behalf of banks, brokers, their nominees or similar persons which represent more votes than the holder of a proxy is authorized by the record owner to cast or more votes than the stockholder holds of record. If the inspectors consider other reliable information for the limited purpose permitted herein, the inspectors at the time they make their certification pursuant to subsection (b)(v) of this section shall specify the precise information considered by them including the person or persons from whom they obtained the information, when the information was obtained, the means by which the information was obtained and the basis for the inspectors' belief that such information is accurate and reliable.

Section 2.8 List of Stockholders.

The officer who has charge of the stock ledger of the corporation shall prepare and make, at least ten days before every meeting of stockholders, a complete list of the stockholders entitled to vote at said meeting, arranged in alphabetical order, showing the address of and the number of shares registered in the name of each stockholder. The corporation need not include electronic mail addresses or other electronic contact information on such list. Such list shall be open to the examination of any stockholder for any purpose germane to the meeting for a period of at least 10 days prior to the meeting: (i) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of the meeting, or (ii) during ordinary business hours at the principal place of business of the corporation. In the event that the corporation determines to make the list available on an electronic network, the corporation may take reasonable steps to ensure that such information is available only to stockholders of the corporation. If the meeting is to be held at a place, then the list shall be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any stockholder who is present. If the meeting is to be held solely by means of remote communication, then the list shall also be open to the examination of any stockholder during the whole time of the meeting on a reasonably accessible electronic network, and the information required to access such list shall be provided with the notice of the meeting.

Section 2.9 Stockholder Proposals at Annual Meetings.

At an annual meeting of the stockholders, only such business shall be conducted as shall have been properly brought before the meeting. To be properly brought before an annual meeting, business must be specified in the notice of meeting (or any supplement thereto) given by or at the direction of the Board of Directors, otherwise properly brought before the meeting by or at the direction of the Board of Directors, or otherwise properly brought before the meeting by a stockholder. In addition to any other applicable requirements for business to be properly brought before an annual meeting by a stockholder, the stockholder must have given timely notice thereof in writing to the Secretary of the corporation. To be timely a stockholder's notice must be delivered to or mailed and received at the principal executive offices of the corporation not less than 45 days nor more than 75 days prior to the date on which the corporation first mailed its proxy materials for the previous year's annual meeting of stockholders (or the date on which the corporation mails its proxy materials for the current year if during the prior year the corporation did not hold an annual meeting or if the date of the annual meeting was changed

more than 30 days from the prior year). A stockholder's notice to the Secretary shall set forth as to each matter the stockholder proposes to bring before the annual meeting (i) a brief description of the business desired to be brought before the annual meeting and the reasons for conducting such business at the annual meeting, (ii) the name and record address of the stockholder proposing such business, (iii) the class and number of shares of the corporation which are beneficially owned by the stockholder, and (iv) any material interest of the stockholder in such business.

Notwithstanding anything in the Bylaws to the contrary, no business shall be conducted at the annual meeting except in accordance with the procedures set forth in Section 2.1 and this Section 2.9, provided, however, that nothing in this Section 2.9 shall be deemed to preclude discussion by any stockholder of any business properly brought before the annual meeting in accordance with said procedure.

The Chairman of an annual meeting shall, if the facts warrant, determine and declare to the meeting that business was not properly brought before the meeting in accordance with the provisions of Section 2.1 and this Section 2.9, and if he should so determine he shall so declare to the meeting, and any such business not properly brought before the meeting shall not be transacted.

Nothing in this Section 2.9 shall affect the right of a stockholder to request inclusion of a proposal in the corporation's proxy statement to the extent that such right is provided by an applicable rule of the Securities and Exchange Commission.

Section 2.10 Nominations of Persons for Election to the Board of Directors.

In addition to any other applicable requirements, only persons who are nominated in accordance with the following procedures shall be eligible for election as directors. Nominations of persons for election to the Board of Directors of the corporation may be made at a meeting of stockholders by or at the direction of the Board of Directors, by any nominating committee or person appointed by the Board of Directors or by any stockholder of the corporation entitled to vote for the election of directors at the meeting who complies with the notice procedures set forth in this Section 2.10. Such nominations, other than those made by or at the direction of the Board of Directors, shall be made pursuant to timely notice in writing to the Secretary of the corporation. To be timely, a stockholder's notice must be delivered to or mailed and received at the principal executive offices of the corporation, not less than 45 days nor more than 75 days prior to the date on which the corporation first mailed its proxy materials for the previous year's annual meeting of shareholders (or the date on which the corporation mails its proxy materials for the current year if during the prior year the corporation did not hold an annual meeting or if the date of the annual meeting was changed more than 30 days from the prior year). Such stockholder's notice shall set forth (a) as to each person whom the stockholder proposes to nominate for election or re-election as a director, (i) the name, age, business address and residence address of the person, (ii) the principal occupation or employment of the person, (iii) the class and number of shares of the corporation which are beneficially owned by the person, and (iv) any other information relating to the person that is required to be disclosed in solicitations for proxies for election of directors pursuant to Rule 14a under the Securities Exchange Act of 1934; and (b) as to the stockholder giving the notice, (i) the name and record

address of the stockholder, and (ii) the class and number of shares of the corporation which are beneficially owned by the stockholder. The corporation may require any proposed nominee to furnish such other information as may reasonably be required by the corporation to determine the eligibility of such proposed nominee to serve as a director of the corporation. No person shall be eligible for election as a director of the corporation unless nominated in accordance with the procedures set forth herein. These provisions shall not apply to nomination of any persons entitled to be separately elected by holders of preferred stock.

The Chairman of the meeting shall, if the facts warrant, determine and declare to the meeting that a nomination was not made in accordance with the foregoing procedure, and if he should so determine, he shall so declare to the meeting and the defective nomination shall be disregarded.

Section 2.11 Action Without Meeting.

(a) Unless otherwise provided in the Certificate of Incorporation, any action required by statute to be taken at any annual or special meeting of stockholders of the corporation, or any action which may be taken at any annual or special meeting of such stockholders, may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing setting forth the action so taken are signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted. To be effective, a written consent must be delivered to the corporation by delivery to its registered office in Delaware, its principal place of business, or an officer or agent of the corporation having custody of the book in which proceedings of meetings of stockholders are recorded. Delivery made to a corporation's registered office shall be by hand or by certified or registered mail, return receipt requested. Every written consent shall bear the date of signature of each stockholder who signs the consent, and no written consent shall be effective to take the corporate action referred to therein unless, within 60 days of the earliest dated consent delivered in the manner required by this Section to the corporation, written consents signed by a sufficient number of holders to take action are delivered to the corporation in accordance with this Section. Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall be given to those stockholders who have not consented in writing.

(b) A telegram, cablegram or other electronic transmission consent to an action to be taken and transmitted by a stockholder or proxyholder, or by a person or persons authorized to act for a stockholder or proxyholder, shall be deemed to be written, signed and dated for the purposes of this section, provided that any such telegram, cablegram or other electronic transmission sets forth or is delivered with information from which the corporation can determine (i) that the telegram, cablegram or other electronic transmission was transmitted by the stockholder or proxyholder or by a person or persons authorized to act for the stockholder or proxyholder, and (ii) the date on which such stockholder or proxyholder or authorized person or persons transmitted such telegram, cablegram or electronic transmission. The date on which such telegram, cablegram or electronic transmission is transmitted shall be deemed to be the date on which such consent was signed. No consent given by telegram, cablegram or other electronic transmission shall be deemed to have been delivered until such consent is reproduced in paper form and until such paper form shall be delivered to the corporation by delivery to its registered

office in this State, its principal place of business or an officer or agent of the corporation having custody of the book in which proceedings of meetings of stockholders are recorded. Delivery made to a corporation's registered office shall be made by hand or by certified or registered mail, return receipt requested. Notwithstanding the foregoing limitations on delivery, consents given by telegram, cablegram or other electronic transmission may be otherwise delivered to the principal place of business of the corporation or to an officer or agent of the corporation having custody of the book in which proceedings of meetings of stockholders are recorded if to the extent and in the manner provided by resolution of the Board of Directors of the corporation.

(c) Any copy, facsimile or other reliable reproduction of a consent in writing may be substituted or used in lieu of the original writing for any and all purposes for which the original writing could be used, provided that such copy, facsimile or other reproduction shall be a complete reproduction of the entire original writing.

ARTICLE 3

DIRECTORS

Section 3.1 Number and Term of Office.

The number of directors shall be determined from time to time by resolution of the Board of Directors, provided that the Board of Directors shall consist of at least one member. With the exception of the first Board of Directors, which shall be elected by the incorporators, and except as provided in Section 3.3 of this Article III, the directors shall be elected by a plurality vote of the shares represented in person or by proxy at the stockholders annual meeting in each year and entitled to vote on the election of directors. Elected directors shall hold office until the next annual meeting and until their successors shall be duly elected and qualified. Directors need not be stockholders. If, for any cause, the Board of Directors shall not have been elected at an annual meeting, they may be elected as soon thereafter as convenient at a special meeting of the stockholders called for that purpose in the manner provided in these Bylaws.

Section 3.2 Powers.

The powers of the corporation shall be exercised, its business conducted and its property controlled by or under the direction of the Board of Directors.

Section 3.3 Vacancies.

Vacancies and newly created directorships resulting from any increase in the authorized number of directors may be filled by a majority of the directors then in office, although less than a quorum, or by a sole remaining director, and each director so elected shall hold office for the unexpired portion of the term of the director whose place shall be vacant and until his successor shall have been duly elected and qualified. A vacancy in the Board of Directors shall be deemed to exist under this section in the case of the death, removal or resignation of any director, or if the stockholders fail at any meeting of stockholders at which directors are to be elected (including any meeting referred to in Section 3.4 below) to elect the number of directors then constituting the whole Board.

Section 3.4 Resignations and Removals.

(a) Any director may resign at any time by delivering his resignation to the Secretary in writing or by electronic transmission, such resignation to specify whether it will be effective at a particular time, upon receipt by the Secretary or at the pleasure of the Board of Directors. If no such specification is made it shall be deemed effective at the pleasure of the Board of Directors. When one or more directors shall resign from the Board effective at a future date, a majority of the directors then in office, including those who have so resigned, shall have power to fill such vacancy or vacancies, the vote thereon to take effect when such resignation or resignations shall become effective, and each director so chosen shall hold office for the unexpired portion of the term of the director whose place shall be vacated and until his successor shall have been duly elected and qualified.

(b) At a special meeting of stockholders called for the purpose in the manner hereinabove provided, the Board of Directors or any individual director may be removed from office, with or without cause, and a new director or directors elected by a vote of stockholders holding a majority of the outstanding shares entitled to vote at an election of directors.

Section 3.5 Meetings.

(a) The annual meeting of the Board of Directors shall be held immediately after the annual stockholders' meeting and at the place where such meeting is held or at the place announced by the Chairman at such meeting. No notice of an annual meeting of the Board of Directors shall be necessary, and such meeting shall be held for the purpose of electing officers and transacting such other business as may lawfully come before it.

(b) Except as hereinafter otherwise provided, regular meetings of the Board of Directors shall be held in the office of the corporation required to be maintained pursuant to Section 1.2 of Article I hereof. Regular meetings of the Board of Directors may also be held at any place, within or without the State of Delaware, which has been designated by resolutions of the Board of Directors or the written consent of all directors.

(c) Special meetings of the Board of Directors may be held at any time and place within or without the State of Delaware whenever called by the Chairman of the Board or, if there is no Chairman of the Board, by the President, or by any of the directors.

(d) Written notice of the time and place of all regular and special meetings of the Board of Directors shall be delivered personally to each director or sent by telegram or facsimile transmission or other form of electronic transmission at least 48 hours before the start of the meeting, or sent by first class mail at least 120 hours before the start of the meeting. Notice of any meeting may be waived in writing at any time before or after the meeting and will be waived by any director by attendance thereat.

Section 3.6 Quorum and Voting.

(a) A quorum of the Board of Directors shall consist of a majority of the exact number of directors fixed from time to time in accordance with Section 3.1 of Article III of these Bylaws, but not less than one; provided, however, at any meeting whether a quorum be present or otherwise, a majority of the directors present may adjourn from time to time until the time fixed for the next regular meeting of the Board of Directors, without notice other than by announcement at the meeting.

(b) At each meeting of the Board at which a quorum is present, all questions and business shall be determined by a vote of a majority of the directors present, unless a different vote be required by law, the Certificate of Incorporation, or these Bylaws.

(c) Any member of the Board of Directors, or of any committee thereof, may participate in a meeting by means of conference telephone or other communication equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting by such means shall constitute presence in person at such meeting.

(d) The transactions of any meeting of the Board of Directors, or any committee thereof, however called or noticed, or wherever held, shall be as valid as though had at a meeting duly held after regular call and notice if a quorum be present and if, either before or after the meeting, each of the directors not present shall sign a written waiver of notice, or a consent to holding such meeting, or an approval of the minutes thereof. All such waivers, consents or approvals shall be filed with the corporate records or made a part of the minutes of the meeting.

Section 3.7 Action Without Meeting.

Unless otherwise restricted by the Certificate of Incorporation or these Bylaws, any action required or permitted to be taken at any meeting of the Board of Directors or of any committee thereof may be taken without a meeting, if all members of the Board or of such committee, as the case may be, consent thereto in writing or by electronic transmission, and such writing or writings or electronic transmission or transmissions are filed with the minutes of proceedings of the Board or committee. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form.

Section 3.8 Fees and Compensation.

Directors and members of committees may receive such compensation, if any, for their services, and such reimbursement for expenses, as may be fixed or determined by resolution of the Board of Directors.

Section 3.9 Committees.

(a) **Executive Committee:** The Board of Directors may appoint an Executive Committee of not less than one member, each of whom shall be a director. The Executive Committee, to the extent permitted by law, shall have and may exercise when the Board of Directors is not in session all powers of the Board in the management of the business and affairs of the corporation, except such committee shall not have the power or authority to amend these Bylaws or to approve or recommend to the stockholders any action which must be submitted to stockholders for approval under the General Corporation Law.

(a) **Other Committees**: The Board of Directors may from time to time appoint such other committees as may be permitted by law. Such other committees appointed by the Board of Directors shall have such powers and perform such duties as may be prescribed by the resolution or resolutions creating such committee, but in no event shall any such committee have the powers denied to the Executive Committee in these Bylaws.

(b) **Term**: The terms of members of all committees of the Board of Directors shall expire on the date of the next annual meeting of the Board of Directors following their appointment; provided that they shall continue in office until their successors are appointed. The Board, subject to the provisions of subsections (a) or (b) of this Section 3.9, may at any time increase or decrease the number of members of a committee or terminate the existence of a committee; provided that no committee shall consist of less than one member. The membership of a committee member shall terminate on the date of his death or voluntary resignation, but the Board may at any time for any reason remove any individual committee member and the Board may fill any committee vacancy created by death, resignation, removal or increase in the number of members of the committee. The Board of Directors may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee, and, in addition, in the absence or disqualification of any member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not he or they constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of any such absent or disqualified member.

(c) **Meetings**: Unless the Board of Directors shall otherwise provide, regular meetings of the Executive Committee or any other committee appointed pursuant to this Section 3.9 shall be held at such times and places as are determined by the Board of Directors, or by any such committee, and when notice thereof has been given to each member of such committee, no further notice of such regular meetings need be given thereafter; special meetings of any such committee may be held at the principal office of the corporation required to be maintained pursuant to Section 1.2 of Article I hereof; or at any place which has been designated from time to time by resolution of such committee or by written consent of all members thereof, and may be called by any director who is a member of such committee upon written notice to the members of such committee of the time and place of such special meeting given in the manner provided for the giving of written notice to members of the Board of Directors of the time and place of special meetings of the Board of Directors. Notice of any special meeting of any committee may be waived in writing at any time after the meeting and will be waived by any director by attendance thereat. A majority of the authorized number of members of any such committee shall constitute a quorum for the transaction of business, and the act of a majority of those present at any meeting at which a quorum is present shall be the act of such committee.

ARTICLE 4

OFFICERS

Section 4.1 Officers Designated.

The officers of the corporation shall be a President, a Secretary and a Treasurer. The Board of Directors or the President may also appoint a Chairman of the Board, one or more Vice-Presidents, assistant secretaries, assistant treasurers, and such other officers and agents with such powers and duties as it or he shall deem necessary. The order of the seniority of the Vice- Presidents shall be in the order of their nomination unless otherwise determined by the Board of Directors. The Board of Directors may assign such additional titles to one or more of the officers as they shall deem appropriate. Any one person may hold any number of offices of the corporation at any one time unless specifically prohibited therefrom by law. The salaries and other compensation of the officers of the corporation shall be fixed by or in the manner designated by the Board of Directors.

Section 4.2 Tenure and Duties of Officers.

(a) **General:** All officers shall hold office at the pleasure of the Board of Directors and until their successors shall have been duly elected and qualified, unless sooner removed. Any officer elected or appointed by the Board of Directors may be removed at any time by the Board of Directors. If the office of any officer becomes vacant for any reason, the vacancy may be filled by the Board of Directors. Nothing in these Bylaws shall be construed as creating any kind of contractual right to employment with the corporation.

(b) **Duties of the Chairman of the Board of Directors:** The Chairman of the Board of Directors (if there be such an officer appointed) when present shall preside at all meetings of the stockholders and the Board of Directors. The Chairman of the Board of Directors shall perform such other duties and have such other powers as the Board of Directors shall designate from time to time.

(c) **Duties of President:** The President shall be the chief executive officer of the corporation and shall preside at all meetings of the stockholders and at all meetings of the Board of Directors, unless the Chairman of the Board of Directors has been appointed and is present. The President shall perform such other duties and have such other powers as the Board of Directors shall designate from time to time.

(d) **Duties of Vice-Presidents:** The Vice-Presidents, in the order of their seniority, may assume and perform the duties of the President in the absence or disability of the President or whenever the office of the President is vacant. The Vice-President shall perform such other duties and have such other powers as the Board of Directors or the President shall designate from time to time.

(e) **Duties of Secretary:** The Secretary shall attend all meetings of the stockholders and of the Board of Directors and any committee thereof, and shall record all acts and proceedings thereof in the minute book of the corporation, which may be maintained in either paper or electronic form. The Secretary shall give notice, in conformity with these Bylaws, of all

meetings of the stockholders and of all meetings of the Board of Directors and any Committee thereof requiring notice. The Secretary shall perform such other duties and have such other powers as the Board of Directors shall designate from time to time. The President may direct any assistant secretary to assume and perform the duties of the Secretary in the absence or disability of the Secretary, and each assistant secretary shall perform such other duties and have such other powers as the Board of Directors or the President shall designate from time to time.

(f) **Duties of Treasurer:** The Treasurer shall keep or cause to be kept the books of account of the corporation in a thorough and proper manner, and shall render statements of the financial affairs of the corporation in such form and as often as required by the Board of Directors or the President. The Treasurer, subject to the order of the Board of Directors, shall have the custody of all funds and securities of the corporation. The Treasurer shall perform all other duties commonly incident to his office and shall perform such other duties and have such other powers as the Board of Directors or the President shall designate from time to time. The President may direct any assistant treasurer to assume and perform the duties of the Treasurer in the absence or disability of the Treasurer, and each assistant treasurer shall perform such other duties and have such other powers as the Board of Directors or the President shall designate from time to time.

ARTICLE 5

EXECUTION OF CORPORATE INSTRUMENTS, AND VOTING OF SECURITIES OWNED BY THE CORPORATION

Section 5.1 Execution of Corporate Instruments.

(a) The Board of Directors may in its discretion determine the method and designate the signatory officer or officers, or other person or persons, to execute any corporate instrument or document, or to sign the corporate name without limitation, except where otherwise provided by law, and such execution or signature shall be binding upon the corporation.

(b) Unless otherwise specifically determined by the Board of Directors or otherwise required by law, formal contracts of the corporation, promissory notes, deeds of trust, mortgages and other evidences of indebtedness of the corporation, and other corporate instruments or documents requiring the corporate seal, and certificates of shares of stock owned by the corporation, shall be executed, signed or endorsed by the Chairman of the Board (if there be such an officer appointed) or by the President; such documents may also be executed by any Vice-President and by the Secretary or Treasurer or any assistant secretary or assistant treasurer. All other instruments and documents requiring the corporate signature but not requiring the corporate seal may be executed as aforesaid or in such other manner as may be directed by the Board of Directors.

(c) All checks and drafts drawn on banks or other depositaries on funds to the credit of the corporation or in special accounts of the corporation shall be signed by such person or persons as the Board of Directors shall authorize so to do.

(d) Execution of any corporate instrument may be effected in such form, either manual, facsimile or electronic signature, as may be authorized by the Board of Directors.

Section 5.2 Voting of Securities Owned by Corporation.

All stock and other securities of other corporations owned or held by the corporation for itself or for other parties in any capacity shall be voted, and all proxies with respect thereto shall be executed, by the person authorized so to do by resolution of the Board of Directors or, in the absence of such authorization, by the Chairman of the Board (if there be such an officer appointed), or by the President, or by any Vice-President.

ARTICLE 6

SHARES OF STOCK

Section 6.1 Form and Execution of Certificates.

The shares of the corporation shall be represented by certificates, provided that the Board of Directors may provide by resolution or resolutions that some or all of any or all classes or series of its stock shall be uncertificated shares. Any such resolution shall not apply to shares represented by a certificate until such certificate is surrendered to the corporation. Certificates for the shares of stock of the corporation shall be in such form as is consistent with the Certificate of Incorporation and applicable law. Every holder of stock in the corporation shall be entitled to have a certificate signed by, or in the name of the corporation by, the Chairman of the Board (if there be such an officer appointed), or by the President or any Vice-President and by the Treasurer or assistant treasurer or the Secretary or assistant secretary, certifying the number of shares owned by him in the corporation. Any or all of the signatures on the certificate may be a facsimile. In case any officer, transfer agent, or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent, or registrar before such certificate is issued, it may be issued with the same effect as if he were such officer, transfer agent, or registrar at the date of issue. If the corporation shall be authorized to issue more than one class of stock or more than one series of any class, the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights shall be set forth in full or summarized on the face or back of the certificate which the corporation shall issue to represent such class or series of stock, provided that, except as otherwise provided in section 202 of the Delaware General Corporation Law, in lieu of the foregoing requirements, there may be set forth on the face or back of the certificate which the corporation shall issue to represent such class or series of stock, a statement that the corporation will furnish without charge to each stockholder who so requests the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights.

Section 6.2 Lost Certificates.

The Board of Directors may direct a new certificate or certificates (or uncertificated shares in lieu of a new certificate) to be issued in place of any certificate or certificates

theretofore issued by the corporation alleged to have been lost or destroyed, upon the making of an affidavit of that fact by the person claiming the certificate of stock to be lost or destroyed. When authorizing such issue of a new certificate or certificates (or uncertificated shares in lieu of a new certificate), the Board of Directors may, in its discretion and as a condition precedent to the issuance thereof, require the owner of such lost or destroyed certificate or certificates, or his legal representative, to indemnify the corporation in such manner as it shall require and/or to give the corporation a surety bond in such form and amount as it may direct as indemnity against any claim that may be made against the corporation with respect to the certificate alleged to have been lost or destroyed.

Section 6.3 Transfers.

Transfers of record of shares of stock of the corporation shall be made only upon its books by the holders thereof, in person or by attorney duly authorized, who shall furnish proper evidence of authority to transfer, and in the case of stock represented by a certificate, upon the surrender of a certificate or certificates for a like number of shares, properly endorsed.

Section 6.4 Fixing Record Dates.

(a) In order that the corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which record date shall not be more than 60 nor less than 10 days before the date of such meeting. If no record date is fixed by the Board of Directors, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the date on which the meeting is held. A determination of stockholders of record entitled notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board of Directors may fix a new record date for the adjourned meeting.

(b) In order that the corporation may determine the stockholders entitled to consent to corporate action in writing or by electronic transmission without a meeting, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which date shall not be more than 10 days after the date upon which the resolution fixing the record date is adopted by the Board of Directors. If no record date has been fixed by the Board of Directors, the record date for determining stockholders entitled to consent to corporate action in writing or by electronic transmission without a meeting, when no prior action by the Board of Directors is required by the Delaware General Corporation Law, shall be the first date on which a signed written consent or electronic transmission setting forth the action taken or proposed to be taken is delivered to the corporation by delivery to its registered office in Delaware, its principal place of business, or an officer or agent of the corporation having custody of the book in which proceedings of meetings of stockholders are recorded; provided that any such electronic transmission shall satisfy the requirements of Section 2.11(b) and, unless the Board of Directors otherwise provides by resolution, no such consent by electronic transmission shall be deemed to

have been delivered until such consent is reproduced in paper form and until such paper form shall be delivered to the corporation by delivery to its registered office in Delaware, its principal place of business or an officer or agent of the corporation having custody of the book in which proceedings of meetings of stockholders are recorded. Delivery made to a corporation's registered office shall be by hand or by certified or registered mail, return receipt requested. If no record date has been fixed by the Board of Directors and prior action by the Board of Directors is required by law, the record date for determining stockholders entitled to consent to corporate action in writing or by electronic transmission without a meeting shall be at the close of business on the day on which the Board of Directors adopts the resolution taking such prior action.

(c) In order that the corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights or the stockholders entitled to exercise any rights in respect of any change, conversion or exchange of stock, or for the purpose of any other lawful action, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted, and which record date shall be not more than 60 days prior to such action. If no record date is fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto.

Section 6.5 Registered Stockholders.

The corporation shall be entitled to recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends and to vote as such owner, and shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person, whether or not it shall have express or other notice thereof, except as otherwise provided by the laws of Delaware.

ARTICLE 7

OTHER SECURITIES OF THE CORPORATION

All bonds, debentures and other corporate securities of the corporation, other than stock certificates, may be signed by the Chairman of the Board (if there be such an officer appointed), or the President or any Vice-President or such other person as may be authorized by the Board of Directors and the corporate seal impressed thereon or a facsimile of such seal imprinted thereon and attested by the signature of the Secretary or an assistant secretary, or the Treasurer or an assistant treasurer; provided, however, that where any such bond, debenture or other corporate security shall be authenticated by the manual signature of a trustee under an indenture pursuant to which such bond, debenture or other corporate security shall be issued, the signature of the persons signing and attesting the corporate seal on such bond, debenture or other corporate security may be the imprinted facsimile of the signatures of such persons. Interest coupons appertaining to any such bond, debenture or other corporate security, authenticated by a trustee as aforesaid, shall be signed by the Treasurer or an assistant treasurer of the corporation, or such other person as may be authorized by the Board of Directors, or bear imprinted thereon the facsimile signature of such person. In case any officer who shall have signed or attested any bond, debenture or other corporate security, or whose facsimile signature shall appear thereon

has ceased to be an officer of the corporation before the bond, debenture or other corporate security so signed or attested shall have been delivered, such bond, debenture or other corporate security nevertheless may be adopted by the corporation and issued and delivered as though the person who signed the same or whose facsimile signature shall have been used thereon had not ceased to be such officer of the corporation.

ARTICLE 8

CORPORATE SEAL

The corporate seal shall consist of a die bearing the name of the corporation and the state and date of its incorporation. Said seal may be used by causing it or a facsimile thereof to be impressed or affixed or reproduced or otherwise.

ARTICLE 9

INDEMNIFICATION OF OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS

Section 9.1 Right to Indemnification.

Each person who was or is a party or is threatened to be made a party to or is involved (as a party, witness, or otherwise), in any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative (hereinafter a "Proceeding"), by reason of the fact that he, or a person of whom he is the legal representative, is or was a director, officer, employee, or agent of the corporation or is or was serving at the request of the corporation as a director, officer, employee, or agent of another corporation or of a partnership, joint venture, trust, or other enterprise, including service with respect to employee benefit plans, whether the basis of the Proceeding is alleged action in an official capacity as a director, officer, employee, or agent or in any other capacity while serving as a director, officer, employee, or agent (hereafter an "Agent"), shall be indemnified and held harmless by the corporation to the fullest extent authorized by the Delaware General Corporation Law, as the same exists or may hereafter be amended or interpreted (but, in the case of any such amendment or interpretation, only to the extent that such amendment or interpretation permits the corporation to provide broader indemnification rights than were permitted prior thereto) against all expenses, liability, and loss (including attorneys' fees, judgments, fines, ERISA excise taxes or penalties, and amounts paid or to be paid in settlement, and any interest, assessments, or other charges imposed thereon, and any federal, state, local, or foreign taxes imposed on any Agent as a result of the actual or deemed receipt of any payments under this Article) reasonably incurred or suffered by such person in connection with investigating, defending, being a witness in, or participating in (including on appeal), or preparing for any of the foregoing in, any Proceeding (hereinafter "Expenses"); *provided*, *however*, that except as to actions to enforce indemnification rights pursuant to Section 9.3 of this Article, the corporation shall indemnify any Agent seeking indemnification in connection with a Proceeding (or part thereof) initiated by such person only if the Proceeding (or part thereof) was authorized by the Board of Directors of the corporation. The right to indemnification conferred in this Article shall be a contract right.

Section 9.2 Authority to Advance Expenses.

Expenses incurred by an officer or director (acting in his capacity as such) in defending a Proceeding shall be paid by the corporation in advance of the final disposition of such Proceeding, provided, however, that if required by the Delaware General Corporation Law, as amended, such Expenses shall be advanced only upon delivery to the corporation of an undertaking by or on behalf of such director or officer to repay such amount if it shall ultimately be determined that he is not entitled to be indemnified by the corporation as authorized in this Article or otherwise. Expenses incurred by other Agents of the corporation (or by the directors or officers not acting in their capacity as such, including service with respect to employee benefit plans) may be advanced upon such terms and conditions as the Board of Directors deems appropriate. Any obligation to reimburse the corporation for Expense advances shall be unsecured and no interest shall be charged thereon.

Section 9.3 Right of Claimant to Bring Suit.

If a claim under Section 9.1 or 9.2 of this Article is not paid in full by the corporation within 30 days after a written claim has been received by the corporation, the claimant may at any time thereafter bring suit against the corporation to recover the unpaid amount of the claim and, if successful in whole or in part, the claimant shall be entitled to be paid also the expense (including attorneys' fees) of prosecuting such claim. It shall be a defense to any such action (other than an action brought to enforce a claim for expenses incurred in defending a Proceeding in advance of its final disposition where the required undertaking has been tendered to the corporation) that the claimant has not met the standards of conduct that make it permissible under the Delaware General Corporation Law for the corporation to indemnify the claimant for the amount claimed. The burden of proving such a defense shall be on the corporation. Neither the failure of the corporation (including its Board of Directors, independent legal counsel, or its stockholders) to have made a determination prior to the commencement of such action that indemnification of the claimant is proper under the circumstances because he has met the applicable standard of conduct set forth in the Delaware General Corporation Law, nor an actual determination by the corporation (including its Board of Directors, independent legal counsel, or its stockholders) that the claimant had not met such applicable standard of conduct, shall be a defense to the action or create a presumption that claimant has not met the applicable standard of conduct.

Section 9.4 Provisions Nonexclusive.

The rights conferred on any person by this Article shall not be exclusive of any other rights that such person may have or hereafter acquire under any statute, provision of the Certificate of Incorporation, agreement, vote of stockholders or disinterested directors, or otherwise, both as to action in an official capacity and as to action in another capacity while holding such office. To the extent that any provision of the Certificate, agreement, or vote of the stockholders or disinterested directors is inconsistent with these Bylaws, the provision, agreement, or vote shall take precedence.

Section 9.5 Authority to Insure.

The corporation may purchase and maintain insurance to protect itself and any Agent against any Expense, whether or not the corporation would have the power to indemnify the Agent against such Expense under applicable law or the provisions of this Article.

Section 9.6 Enforcement of Rights.

Without the necessity of entering into an express contract, all rights provided under this Article shall be deemed to be contractual rights and be effective to the same extent and as if provided for in a contract between the corporation and such Agent. Any rights granted by this Article to an Agent shall be enforceable by or on behalf of the person holding such right in any court of competent jurisdiction.

Section 9.7 Survival of Rights.

The rights provided by this Article shall continue as to a person who has ceased to be an Agent and shall inure to the benefit of the heirs, executors, and administrators of such a person.

Section 9.8 Settlement of Claims.

The corporation shall not be liable to indemnify any Agent under this Article (a) for any amounts paid in settlement of any action or claim effected without the corporation's written consent, which consent shall not be unreasonably withheld; or (b) for any judicial award if the corporation was not given a reasonable and timely opportunity, at its expense, to participate in the defense of such action.

Section 9.9 Effect of Amendment.

Any amendment, repeal, or modification of this Article that adversely affects any rights provided in this Article to an Agent shall only be effective upon the prior written consent of such Agent.

Section 9.10 Primacy of Indemnification.

Notwithstanding that an Agent may have certain rights to indemnification, advancement of expenses and/or insurance provided by other persons (collectively, the "Other Indemnitors"), the corporation: (i) shall be the indemnitor of first resort (i.e., its obligations to an Agent are primary and any obligation of the Other Indemnitors to advance expenses or to provide indemnification for the same expenses or liabilities incurred by such Agent are secondary); and (ii) shall be required to advance the full amount of expenses incurred by an Agent and shall be liable for the full amount of all Expenses, without regard to any rights such Agent may have against any of the Other Indemnitors. No advancement or payment by the Other Indemnitors on behalf of an Agent with respect to any claim for which such Agent has sought indemnification from the corporation shall affect the immediately preceding sentence, and the Other 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 Agent against the corporation.

Section 9.11 Subrogation.

In the event of payment under this Article, the corporation shall be subrogated to the extent of such payment to all of the rights of recovery of the Agent, who shall execute all papers required and shall do everything that may be necessary to secure such rights, including the execution of such documents necessary to enable the corporation effectively to bring suit to enforce such rights.

Section 9.12 No Duplication of Payments.

The corporation shall not be liable under this Article to make any payment in connection with any claim made against the Agent to the extent the Agent has otherwise actually received payment (under any insurance policy, agreement, vote, or otherwise) of the amounts otherwise indemnifiable hereunder.

Section 9.13 Saving Clause.

If this Article or any portion hereof shall be invalidated on any ground by any court of competent jurisdiction, then the corporation shall nevertheless indemnify each Agent to the fullest extent not prohibited by any applicable portion of this Article that shall not have been invalidated, or by any other applicable law.

ARTICLE 10

NOTICES

Whenever, under any provisions of these Bylaws, notice is required to be given to any stockholder, the same shall be given either (1) in writing, timely and duly deposited in the United States Mail, postage prepaid, and addressed to his last known post office address as shown by the stock record of the corporation or its transfer agent, or (2) by a means of electronic transmission that satisfies the requirements of Section 2.4(e) of these Bylaws, and has been consented to by the stockholder to whom the notice is given. Any notice required to be given to any director may be given by either of the methods hereinabove stated, except that such notice other than one which is delivered personally, shall be sent to such address or (in the case of electronic communication) such e-mail address, facsimile telephone number or other form of electronic address as such director shall have filed in writing or by electronic communication with the Secretary of the corporation, or, in the absence of such filing, to the last known post office address of such director. If no address of a stockholder or director be known, such notice may be sent to the office of the corporation required to be maintained pursuant to Section 1.2 of Article I hereof. An affidavit of mailing, executed by a duly authorized and competent employee of the corporation or its transfer agent appointed with respect to the class of stock affected, specifying the name and address or the names and addresses of the stockholder or stockholders, director or directors, to whom any such notice or notices was or were given, and the time and method of giving the same, shall be conclusive evidence of the statements therein contained. All notices given by mail, as above provided, shall be deemed to have been given as at the time of mailing and all notices given by means of electronic transmission shall be deemed to have been given as at the sending time recorded by the electronic transmission equipment operator

transmitting the same. It shall not be necessary that the same method of giving notice be employed in respect of all directors, but one permissible method may be employed in respect of any one or more, and any other permissible method or methods may be employed in respect of any other or others. The period or limitation of time within which any stockholder may exercise any option or right, or enjoy any privilege or benefit, or be required to act, or within which any director may exercise any power or right, or enjoy any privilege, pursuant to any notice sent him in the manner above provided, shall not be affected or extended in any manner by the failure of such a stockholder or such director to receive such notice. Whenever any notice is required to be given under the provisions of the statutes or of the Certificate of Incorporation, or of these Bylaws, a waiver thereof in writing signed by the person or persons entitled to said notice, or a waiver by electronic transmission by the person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent thereto. Whenever notice is required to be given, under any provision of law or of the Certificate of Incorporation or Bylaws of the corporation, to any person with whom communication is unlawful, the giving of such notice to such person shall not be required and there shall be no duty to apply to any governmental authority or agency for a license or permit to give such notice to such person. Any action or meeting which shall be taken or held without notice to any such person with whom communication is unlawful shall have the same force and effect as if such notice had been duly given. In the event that the action taken by the corporation is such as to require the filing of a certificate under any provision of the Delaware General Corporation Law, the certificate shall state, if such is the fact and if notice is required, that notice was given to all persons entitled to receive notice except such persons with whom communication is unlawful.

ARTICLE 11

AMENDMENTS

These Bylaws may be repealed, altered or amended or new Bylaws adopted by written consent of stockholders in the manner authorized by Section 2.11 of Article II, or at any meeting of the stockholders, either annual or special, by the affirmative vote of a majority of the stock entitled to vote at such meeting, unless a larger vote is required by these Bylaws or the Certificate of Incorporation. The Board of Directors shall also have the authority to repeal, alter or amend these Bylaws or adopt new Bylaws (including, without limitation, the amendment of any Bylaws setting forth the number of directors who shall constitute the whole Board of Directors) by unanimous written consent or at any annual, regular, or special meeting by the affirmative vote of a majority of the whole number of directors, subject to the power of the stockholders to change or repeal such Bylaws and provided that the Board of Directors shall not make or alter any Bylaws fixing the qualifications, classifications, or term of office of directors.

ARTICLE 12

ANNUAL AND OTHER REPORTS

Section 12.1 Reports to Stockholders.

The Board of Directors of the corporation shall cause an annual report to be sent to the stockholders not later than 120 days after the close of the fiscal year, and at least fifteen (15)

days (or, if sent by third-class mail, thirty-five (35) days) prior to the annual meeting of stockholders to be held during the next fiscal year. If approved by the Board of Directors, the report and any accompanying material may be sent by electronic transmission by the corporation (as defined in Section 2.4 hereof). This report shall contain a balance sheet as of the end of that fiscal year and an income statement and statement of changes in financial position for that fiscal year, accompanied by any report thereon of independent accountants or, if there is no such report, the certificate of an authorized officer of the corporation that the statements were prepared without audit from the books and records of the corporation. This report shall also contain such other matters as required by Section 1501(b) of the California General Corporation Law, unless the corporation is subject to the reporting requirements of Section 13 of the Securities Exchange Act of 1934, and is not exempted therefrom under Section 12(g)(2) thereof. As long as the corporation has less than 100 holders of record of its shares (determined as provided in Section 605 of the California General Corporation Law), the foregoing requirement of an annual report is hereby waived.

If no annual report for the last fiscal year has been sent to stockholders, the corporation shall, upon the written request of any stockholder made more than 120 days after the close of such fiscal year, deliver (including by electronic transmission by the corporation (as defined in Section 2.4 hereof) or mail to the person making the request within thirty (30) days thereafter the financial statements for such year as required by Section 1501(a) of the California General Corporation Law. A stockholder or stockholders holding at least five percent (5%) of the outstanding shares of any class of the corporation may make a written request to the corporation for an income statement of the corporation for the three-month, six-month or nine-month period of the current fiscal year ended more than thirty (30) days prior to the date of the request and a balance sheet of the corporation as of the end of such period and, in addition, if no annual report for the last fiscal year has been sent to stockholders, the annual report for the last fiscal year, unless such report has been waived under these Bylaws. The statements shall be delivered (including by electronic transmission by the corporation (as defined in Section 2.4 hereof) if such transmission is permitted to such stockholder pursuant to such definition) or mailed to the person making the request within thirty (30) days thereafter. A copy of any such statements shall be kept on file in the principal executive office of the corporation for twelve (12) months, and they shall be exhibited at all reasonable times to any stockholder demanding an examination of the statements, or a copy shall be mailed to the stockholder.

The quarterly income statements and balance sheets referred to in this section shall be accompanied by the report thereon, if any, of any independent accountants engaged by the corporation or the certificate of an authorized officer of the corporation that the financial statements were prepared without audit from the books and records of the corporation.

Section 12.2 Reports to the Secretary of State.

(a) Except as otherwise required by the Secretary of State of the State of California, every year, during the applicable filing period, the corporation shall file a certified statement with the Secretary of State of the State of California on the prescribed form, setting forth the names and complete business or residence addresses of all incumbent directors; the number of vacancies on the Board of Directors, if any; the names and complete business or residence addresses of the chief executive officer, the secretary, and the chief financial officer; the street

address of the corporation's principal executive office or principal business office in California; a statement of the general type of business constituting the principal business activity of the corporation; and a designation of the agent of the corporation for the purpose of service of process, all in compliance with Section 2117 of the California General Corporation Law.

(b) Notwithstanding the provisions of paragraph (a) of this section, if there has been no change in the information contained in the corporation's last annual statement on file in the Secretary of State of the State of California's office, the corporation may in lieu of filing the annual statement described in paragraph (a) of this section, advise the Secretary of State of the State of California, on the appropriate form, that no changes in the required information have occurred during the applicable period, as permitted by Section 2117 of the California General Corporation Law.

(c) In addition to the statement required pursuant to paragraph (a) of this section, except as otherwise required by the Secretary of State of the State of California, if and as long as the corporation is a publicly traded corporation, within 150 days after the end of its fiscal year, each year it shall file a certified statement on the appropriate form setting forth (i) the name of the independent auditor that prepared the most recent auditor's report on the corporation's annual financial statements; (ii) a description of other services, if any, performed by the independent auditor, its parent, subsidiary or affiliate corporation, during the two most recent fiscal years; (iii) the name of the independent auditor employed by the corporation on the date of the statement; (iv) the compensation paid for the most recent fiscal year to each member of the Board of Directors, to each of the five most highly compensated executive officers of the corporation who are not members of the Board of Directors, and to the chief executive officer if not otherwise disclosed, including equity-based compensation; (v) a description of any loan and the terms thereof made to any member of the Board of Directors by the corporation during the corporation's two most recent fiscal years at an interest rate lower than that available from unaffiliated commercial lenders to a similarly-situated borrower; (vi) a statement indicating whether an order of relief has within the preceding ten-year period been entered in a bankruptcy case with respect to the corporation, its executive officers or members of the Board of Directors; (vii) a statement indicating whether any member of the Board of Directors or executive officer of the corporation was convicted of fraud during the preceding ten-year period, as long as the conviction has not been overturned or expunged; and (viii) a description of any material pending legal proceedings, other than routine litigation incidental to the business, to which the corporation or any of its subsidiaries is a party, and a description of any material legal proceeding within the preceding five-year period resulting in a final judgment or final order where the corporation was found liable.

Section 12.3 Effectiveness of Article 12.

If at any time following the adoption of these Bylaws the corporation is no longer subject to Section 2115 of the California General Corporation Law, this Article 12 shall cease to apply to the corporation and it shall have no further obligation to deliver any of the reports to its stockholders or to the Secretary of State of California as herein described.

ARTICLE 13

RIGHT OF FIRST REFUSAL

Section 13.1 Right of First Refusal.

No stockholder shall sell, assign, pledge, or in any manner transfer any of the shares of common stock of the corporation or any right or interest therein, whether voluntarily or by operation of law, or by gift or otherwise, except by a transfer which meets the requirements hereinafter set forth in this bylaw:

(a) (i) In the event a stockholder receives from anyone a bona fide offer acceptable to the stockholder to purchase any of his shares of common stock or (ii) in the event of a restricted transfer (as defined below) by a stockholder, such stockholder shall give written notice thereof to the corporation. The notice shall name the proposed transferee and state the number of shares, right or interest to be transferred, the price per share and all other terms and conditions of the offer or restricted transfer, as applicable. As used herein, "restricted transfer" shall mean: (v) the filing of a petition in bankruptcy by or against a stockholder; (w) an adjudication that a stockholder is an insane or incompetent person; (x) any assignment by a stockholder for the benefit of his, her or its creditors; (y) any transfer, award, or confirmation of any common stock to a stockholder's spouse pursuant to a decree of divorce, dissolution, or separate maintenance, or pursuant to a property settlement or separation agreement; and (z) any testamentary or other similar disposition of any interest in any common stock upon a stockholder's death to any person other than an immediate family member (as defined in Section 13.1(e)(1) below).

(b) For thirty (30) days following receipt of such notice, the corporation or its assigns shall have the option to purchase all or any lesser part of the shares specified in the notice at the price and upon the terms set forth in such bona fide offer; provided, however, that in the event of a restricted transfer, the purchase price per share shall equal the net book value per share of the common stock of the corporation determined on a fully diluted, fully converted basis as of the last day of the preceding fiscal year, as determined by the independent accountants of the corporation (or, in the event that the corporation has not engaged an independent accountant, the Board of Directors of the corporation) based on their review, but not necessarily an audit, of the corporation's financial statements. Net book value shall be calculated using the historical cost of the corporation's assets as reflected on its financial statements decreased by any depreciation, amortization or other cost recover method consistently applied for financial accounting purposes. Net book value shall not include any unrealized gain or loss on the corporation's assets or the value, if any, of the corporation's goodwill or other assets that are not reflected on the corporation's financial statements.

(c) In the event the corporation elects to purchase all or any part of the shares, the Secretary of the corporation shall give written notice to the selling stockholder of such election and the corporation shall, within thirty (30) days after the Secretary of the corporation mails such notice, deliver to the selling stockholder the consideration set forth in the selling stockholder's notice of sale.

(d) In the event that all of the shares are not purchased by the corporation, the selling stockholder may, within the sixty (60) day period following the expiration of the option rights granted to the corporation, sell elsewhere the shares specified in said selling stockholder's notice which were not acquired by the corporation in accordance with the provisions of paragraph (e) of this bylaw, provided that said sale shall not be on terms and conditions more favorable to the purchaser than those contained in the bona fide offer set forth in said selling stockholder's notice. All shares so sold by said selling stockholder shall continue to be subject to the provisions of this bylaw in the same manner as before said transfer.

(e) Anything to the contrary contained herein notwithstanding, the following transactions shall be exempt from the provisions of this bylaw:

(1) A stockholder's transfer of any or all shares held either during such stockholder's lifetime or on death by will or intestacy to such stockholder's immediate family or a trust for the sole benefit of such stockholder and/or his or her immediate family. "Immediate family" as used herein shall mean spouse (subject to limitations in the event of a restricted transfer), lineal descendent, father, mother, brother, or sister of the stockholder making such transfer.

(2) A stockholder's bona fide pledge or mortgage of any shares of common stock with a commercial lending institution, provided that any subsequent transfer of said shares by said institution shall be conducted in the manner set forth in this bylaw.

(3) A stockholder's transfer of any or all of such stockholder's shares of common stock to any other stockholder of the corporation.

(4) A stockholder's transfer of any or all of such stockholders shares of common stock to a person who, at the time of such transfer, is an officer or director of the corporation.

(5) A corporate stockholder's transfer of any or all of its shares of common stock pursuant to and in accordance with the terms of any merger, consolidation, reclassification of shares or capital reorganization of the corporate stockholder, or pursuant to a sale of all or substantially all of the stock or assets of a corporate stockholder.

(6) A corporate stockholder's transfer of any or all of its shares of common stock to any or all of its stockholders.

(7) A transfer by a stockholder which is a limited or general partnership to any or all of its partners.

In any such case, the transferee, assignee, or other recipient shall receive and hold such stock subject to the provisions of this bylaw, and there shall be no further transfer of such stock except in accord with this bylaw.

(f) The provisions of this bylaw may be waived with respect to any transfer either by the corporation, upon duly authorized action of its Board of Directors, or by the stockholders, upon the express written consent of the owners of a majority of the voting power of the corporation (excluding the votes represented by those shares to be sold by the selling stockholder). This bylaw may be amended or repealed either by a duly authorized action of the Board of Directors or by the stockholders, upon the express written consent of the owners of a majority of the voting power of the corporation.

(g) Any sale or transfer, or purported sale or transfer, of securities of the corporation by stockholders shall be null and void unless the terms, conditions, and provisions of this bylaw are strictly observed and followed.

(h) The foregoing right of first refusal shall terminate upon the date securities of the corporation are first offered to the public pursuant to a registration statement filed with, and declared effective by, the Securities and Exchange Commission under the Securities Act of 1933, as amended.

(i) The certificates representing shares of common stock of the corporation shall bear on their face the following legend so long as the foregoing right of first refusal remains in effect:

“THE SHARES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO A RIGHT OF FIRST REFUSAL OPTION, AS PROVIDED IN THE BYLAWS OF THE CORPORATION.”

(j) Whenever the corporation shall have the right to purchase common stock under this right of first refusal, the corporation may designate and assign to one or more employees, officers, directors or stockholders of the corporation or other persons or organizations, to exercise all or a part of the corporation’s right of first refusal.

SIGHT SCIENCES, INC.

THIRD AMENDED AND RESTATED INVESTORS' RIGHTS AGREEMENT

Dated as of November 23, 2020

TABLE OF CONTENTS

Exhibit 4.1

SIGHT SCIENCES, INC.

THIRD AMENDED AND RESTATED INVESTORS' RIGHTS AGREEMENT

THIS THIRD AMENDED AND RESTATED INVESTORS' RIGHTS AGREEMENT (this "Agreement") is made as of November 23, 2020 by and among Sight Sciences, Inc., a Delaware corporation (the "Company") and the investors listed on Schedule A hereto (each an "Investor" and collectively the "Investors").

RECITALS

Certain of the Investors (the "Prior Investors") holding shares of Series A Preferred Stock of the Company (the "Series A Preferred Stock"), shares of Series B Preferred Stock of the Company (the "Series B Preferred Stock"), shares of Series C Preferred Stock of the Company (the "Series C Preferred Stock"), shares of Series D Preferred Stock of the Company (the "Series D Preferred Stock"), shares of Series E Preferred Stock of the Company (the "Series E Preferred Stock"), and/or shares of Common Stock issued upon conversion thereof, are parties to that certain Second Amended and Restated Investors' Rights Agreement dated as of March 17, 2020 by and among the Company and such Prior Investors (the "Prior Agreement") and are the holders of a majority of the Registrable Securities (as defined therein) subject to or enjoying the rights under the Prior Agreement.

Certain of the Investors and the Company are parties to that certain Series F Preferred Stock Purchase Agreement dated as of the date hereof (the "Series F Purchase Agreement") relating to the issue and sale of shares of Series F Preferred Stock of the Company (the "Series F Preferred Stock," and together with the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, and Series E Preferred Stock, the "Preferred Stock").

The obligations of the Company and the Investors under the Series F Purchase Agreement are conditioned, among other things, upon the execution and delivery of this Agreement by the Investors and the Company.

NOW, THEREFORE, in consideration of the mutual premises and covenants set forth herein, the parties hereto agree that the Prior Agreement is hereby amended and restated in its entirety to read as follows:

1. Registration Rights. The Company covenants and agrees as follows:

1.1 Definitions. For purposes of this Agreement:

(a) The term "1934 Act" means the Securities Exchange Act of 1934, as amended.

(b) The term "Act" means the Securities Act of 1933, as amended.

(c) The term "Affiliate" means, with respect to any specified person, any other person who or which, directly or indirectly, controls, is controlled by, or is under common control with such specified person, including, without limitation, any general partner,

officer, director or manager of such person and any venture capital fund, registered investment company or other investment fund now or hereafter existing that is controlled by one or more general partners or managing members or investment advisor of, or shares the same management company or investment advisor (or member thereof) with, such person. Notwithstanding anything to the contrary contained herein, (i) Allegro Investors LLC and Allegro Investment Fund, L.P. shall be deemed an Affiliate of each other, (ii) D1 Master Holdco I LLC, D1 Master Holdco II LLC, D1 Master Holdco III LLC and D1 Capital Partners Master LP shall all be deemed Affiliates of each other, and (iii) (a) each Janus Investor shall be deemed to be an "Affiliate" of each other Janus Investor, and (b) an entity that is an "Affiliate" of a Janus Investor (other than pursuant to the foregoing subpart (a)) shall not be deemed to be an "Affiliate" of any other Janus Investor unless such entity is a Janus Investor (and, for the avoidance of doubt, an "Affiliate" of such entity shall not be deemed an "Affiliate" of any Janus Investor solely by virtue of being an "Affiliate" of such entity).

(d) The term "D1" means D1 Master Holdco I LLC, together with its Affiliates.

(e) The term "Free Writing Prospectus" means a free-writing prospectus, as defined in Rule 405.

(f) The term "Form S-3" means such form under the Act as in effect on the date hereof or any registration form under the Act subsequently adopted by the SEC that permits inclusion or incorporation of substantial information by reference to other documents filed by the Company with the SEC.

(g) The term "GAAP" means generally accepted accounting principles for financial reporting in the United States as in effect from time to time applied consistently throughout the periods involved.

(h) The term "Holder" means any person owning or having the right to acquire Registrable Securities or any assignee thereof in accordance with Section 1.10 hereof.

(i) The term "Initial Offering" means the Company's first firm commitment underwritten public offering of its Common Stock under the Act.

(j) The term "Janus Investors" shall mean Investors, or permitted transferees of Registrable Securities held by Janus Investors, that are advisory or subadvisory clients of Janus Capital Management LLC, including, but not limited to, Janus Henderson Venture Fund and Janus Henderson Capital Funds plc -Janus Henderson US Venture Fund..

(k) The terms "register," "registered," and "registration" refer to a registration effected by preparing and filing a registration statement or similar document in compliance with the Act, and the declaration or ordering of effectiveness of such registration statement or document.

(l) The term "Registrable Securities" means (i) the Common Stock issuable or issued upon conversion of the Preferred Stock, and (ii) any Common Stock of the

Company issued as (or issuable upon the conversion or exercise of any warrant, right or other security that is issued as) a dividend or other distribution with respect to, or in exchange for, or in replacement of, the shares referenced in (i) above, excluding in all cases, however, any Registrable Securities sold by a person in a transaction in which his rights under this Section 1 are not assigned.

(m) The number of shares of "Registrable Securities" outstanding shall be determined by the number of shares of Common Stock outstanding that are, and the number of shares of Common Stock issuable pursuant to then exercisable or convertible securities that are, Registrable Securities.

(n) The term "Restated Certificate" shall mean the Company's Amended and Restated Certificate of Incorporation, as amended and/or restated from time to time.

(o) The term "Rule 144" shall mean Rule 144 under the Act.

(p) The term "Rule 145" shall mean Rule 145 under the Act.

(q) The term "SEC" shall mean the Securities and Exchange

(r) The term "Specified Investor" shall mean D1.

Commission.

1.2 Request for Registration.

(a) Subject to the conditions of this Section 1.2, if the Company shall receive at any time after the earlier of (i) five (5) years after the date of this Agreement, and (ii) six (6) months after the effective date of the Initial Offering, a written request from the Holders of at least a majority of the Registrable Securities outstanding (for purposes of this Section 1.2, the "Initiating Holders") that the Company file a registration statement under the Act covering the registration of Registrable Securities with an anticipated aggregate offering price of at least $20,000,000, then the Company shall, within twenty (20) days of the receipt thereof, give written notice of such request to all Holders, and subject to the limitations of this Section 1.2, use its reasonable best efforts to, as soon as practicable, file a registration statement under the Act with respect to all of the Registrable Securities that the Holders request to be registered in a written request received by the Company within twenty (20) days of the mailing of the Company's notice pursuant to this Section 1.2(a), and use reasonable best efforts to cause such registration statement to be declared effective by the SEC as soon as practicable.

(b) If the Initiating Holders intend to distribute the Registrable Securities covered by their request by means of an underwriting, they shall so advise the Company as a part of their request made pursuant to this Section 1.2 and the Company shall include such information in the written notice referred to in Section 1.2(a). In such event the right of any Holder to include its Registrable Securities in such registration shall be conditioned upon such Holder's participation in such underwriting and the inclusion of such Holder's Registrable Securities in the underwriting (unless otherwise mutually agreed by a majority in interest of the Initiating Holders and such Holder) to the extent provided herein. All Holders proposing to distribute their securities through such underwriting shall enter into an underwriting agreement in customary form with the

underwriter or underwriters selected for such underwriting by the Company (which underwriter or underwriters shall be reasonably acceptable to a majority in interest of the Initiating Holders). Notwithstanding any other provision of this Section 1.2, if the underwriter advises the Company that marketing factors require a limitation on the number of securities underwritten (including Registrable Securities), then the Company shall so advise all Holders of Registrable Securities that would otherwise be underwritten pursuant hereto, and the number of shares that may be included in the underwriting shall be allocated to the Holders of such Registrable Securities pro rata based on the number of Registrable Securities held by all such Holders (including the Initiating Holders). In no event shall any Registrable Securities be excluded from such underwriting unless all other securities are first excluded. Any Registrable Securities excluded or withdrawn from such underwriting shall be withdrawn from the registration.

(c) Notwithstanding the foregoing, the Company shall not be required to effect a registration pursuant to this Section 1.2:

(i) in any particular jurisdiction in which the Company would be required to execute a general consent to service of process in effecting such registration, unless the Company is already subject to service in such jurisdiction and except as may be required under the Act; or

(ii) after the Company has effected two (2) registrations pursuant to this Section 1.2, and such registrations have been declared or ordered effective; provided, however, that a registration shall not be considered "effected" if, as a result of the underwriter's right in Section 1.2(b) to limit the number of securities underwritten, fewer than fifty percent (50%) of the total number of Registrable Securities that Holders have requested to be included in such registration statement are actually included; or

(iii) during the period starting with the date of the filing of and ending on a date one hundred eighty (180) days following the effective date of a Company-initiated registration subject to Section 1.3 below, provided that the Company is actively employing in good faith reasonable best efforts to cause such registration statement to become effective; or

(iv) if the Company shall furnish to Holders requesting a registration statement pursuant to this Section 1.2 a certificate signed by the Company's Chief Executive Officer or Chairman of the Board stating (A) that the Company intends to file a registration statement for its Initial Offering within one hundred twenty (120) days following the date of the initial request for registration made by the Initiating Holders pursuant to this Section 1.2 or (B) that in the good faith judgment of the Board of Directors of the Company, it would be seriously detrimental to the Company and its stockholders for such registration statement to be effected at such time, in which event the Company shall have the right to defer such filing for a period of not more than one hundred twenty (120) days after receipt of the request of the Initiating Holders, provided that such right shall be exercised by the Company not more than once in any twelve (12)-month period and provided, further, that the Company shall not register any securities for the account of itself or any other stockholder during such one hundred twenty (120) day period (other than a registration relating solely to the sale of securities of participants in a Company stock plan, a registration relating to a corporate reorganization or transaction under Rule 145, a registration on any form that does not include substantially the same information as would be

required to be included in a registration statement covering the sale of the Registrable Securities, or a registration in which the only Common Stock being registered is Common Stock issuable upon conversion of debt securities that are also being registered).

1.3 Company Registration.

(a) If (but without any obligation to do so) the Company proposes to register (including for this purpose a registration effected by the Company for stockholders other than the Holders that has been expressly approved by the Holders pursuant to Section 1.11) any of its stock or other securities under the Act in connection with the public offering of such securities (other than a registration relating solely to the sale of securities of participants in a Company stock plan, a registration relating to a corporate reorganization or transaction under Rule 145, a registration on any form that does not include substantially the same information as would be required to be included in a registration statement covering the sale of the Registrable Securities, a registration relating to the Initial Offering, or a registration in which the only Common Stock being registered is Common Stock issuable upon conversion of debt securities that are also being registered), the Company shall, at such time, promptly give each Holder written notice of such registration. Upon the written request of each Holder given within twenty (20) days after mailing of such notice by the Company in accordance with Section 1.3(c), the Company shall, subject to the provisions of Section 1.3(c), use reasonable best efforts to cause to be registered under the Act all of the Registrable Securities that each such Holder requests to be registered.

(b) Right to Terminate Registration. The Company shall have the right to terminate or withdraw any registration initiated by it under this Section 1.3 prior to the effectiveness of such registration whether or not any Holder has elected to include securities in such registration. The expenses of such withdrawn registration shall be borne by the Company in accordance with Section 1.6 hereof.

(c) Underwriting Requirements. In connection with any offering involving an underwriting of shares of the Company's capital stock, the Company shall not be required under this Section 1.3 to include any of the Holders' securities in such underwriting unless they accept the terms of the underwriting as agreed upon between the Company and the underwriters selected by the Company (or by other persons entitled to select the underwriters) and enter into an underwriting agreement in customary form with such underwriters, and then only in such quantity as the underwriters determine in their sole discretion will not jeopardize the success of the offering by the Company. If the total amount of securities, including Registrable Securities, requested by stockholders to be included in such offering exceeds the amount of securities sold other than by the Company that the underwriters determine in their sole discretion is compatible with the success of the offering, then the Company shall be required to include in the offering only that number of such securities, including Registrable Securities, that the underwriters determine in their sole discretion will not jeopardize the success of the offering. The Company shall not, without the prior written consent of the holders of at least a majority of the Registrable Securities then held by the Investors exclude any Registrable Securities from such offering unless all other stockholders' securities have been first excluded. In the event that the underwriters determine that less than all of the Registrable Securities requested to be registered can be included in such offering, then the Registrable Securities that are included in such offering shall be apportioned

first, to the Company; second, to the Investors on a pro rata basis based on the total number of Registrable Securities held by such Investors; and third, to any stockholder of the Company (other than a Holder) on a pro rata basis so long as the number of Registrable Securities held by the Holders is not reduced. Notwithstanding the foregoing, in no event shall the amount of securities of the selling Investors included in the offering be reduced below thirty percent (30%) of the total amount of securities included in such offering, unless such offering is the Initial Offering, in which case the selling Holders may be excluded if the underwriters make the determination described above and no other stockholder's securities are included in such offering. For purposes of the preceding sentence concerning apportionment, for any selling stockholder that is a Holder of Registrable Securities and that is a venture capital fund, partnership or corporation, the affiliated venture capital funds, partners, retired partners and stockholders of such Holder, or the estates and family members of any such partners and retired partners and any trusts for the benefit of any of the foregoing persons shall be deemed to be a single "selling Holder," and any pro rata reduction with respect to such "selling Holder" shall be based upon the aggregate amount of Registrable Securities owned by all such related entities and individuals.

1.4 Obligations of the Company. Whenever required under this Section 1 to effect the registration of any Registrable Securities, the Company shall, as expeditiously as reasonably possible:

(a) prepare and file with the SEC a registration statement with respect to such Registrable Securities and use reasonable best efforts to cause such registration statement to become effective, and, upon the request of the Holders of a majority of the Registrable Securities registered thereunder, keep such registration statement effective for a period of up to ninety (90) days or, if earlier, until the distribution contemplated in the Registration Statement has been completed;

(b) prepare and file with the SEC such amendments and supplements to such registration statement and the prospectus used in connection with such registration statement as may be necessary to comply with the provisions of the Act with respect to the disposition of all securities covered by such registration statement;

(c) furnish to the Holders such number of copies of a prospectus, including a preliminary prospectus and any Free Writing Prospectus, in conformity with the requirements of the Act, and such other documents as they may reasonably request in order to facilitate the disposition of Registrable Securities owned by them;

(d) use reasonable best efforts to register and qualify the securities covered by such registration statement under such other securities or Blue Sky laws of such jurisdictions as shall be reasonably requested by the Holders, provided that the Company shall not be required in connection therewith or as a condition thereto to qualify to do business or to file a general consent to service of process in any such states or jurisdictions;

(e) in the event of any underwritten public offering, enter into and perform its obligations under an underwriting agreement, in usual and customary form, with the managing underwriter of such offering;

(f) notify each Holder of Registrable Securities covered by such registration statement at any time when a prospectus or Free Writing Prospectus (to the extent prepared by or on behalf of the Company) relating thereto is required to be delivered under the Act of the happening 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 in the light of the circumstances then existing, and, at the request of any such Holder, the Company will, as soon as reasonably practicable, file and furnish to all such Holders a supplement or amendment to such prospectus or Free Writing Prospectus (to the extent prepared by or on behalf of the Company) so that, as thereafter delivered to the purchasers of such Registrable Securities, such prospectus will not contain an untrue statement of a material fact or omit to state any fact necessary to make the statements therein not misleading in light of the circumstances under which they were made;

(g) cause all such Registrable Securities registered pursuant to this Section 1 to be listed on a national exchange or trading system and on each securities exchange and trading system on which similar securities issued by the Company are then listed;

(h) provide a transfer agent and registrar for all Registrable Securities registered pursuant to this Agreement and a CUSIP number for all such Registrable Securities, in each case not later than the effective date of such registration; and

(i) use reasonable best efforts to furnish, at the request of any Holder requesting registration of Registrable Securities pursuant to this Section 1, on the date that such Registrable Securities are delivered to the underwriters for sale in connection with a registration pursuant to this Section 1, if such securities are being sold through underwriters, or, if such securities are not being sold through underwriters, on the date that the registration statement with respect to such securities becomes effective, (i) an opinion, dated as of such date, of the counsel representing the Company for the purposes of such registration, and (ii) a “comfort” letter, dated as of such date, from the independent certified public accountants of the Company, in each case in form and substance as is customarily given to underwriters in an underwritten public offering and reasonably satisfactory to a majority in interest of the Holders requesting registration, addressed to the underwriters and to the Holders requesting registration of Registrable Securities.

Notwithstanding the provisions of this Section 1, the Company shall be entitled to postpone or suspend, for a reasonable period of time, the filing, effectiveness or use of, or trading under, any registration statement if the Company shall determine that any such filing or the sale of any securities pursuant to such registration statement would in the good faith unanimous judgment of the Board of Directors of the Company:

(i) materially impede, delay or interfere with any material pending or proposed financing, acquisition, corporate reorganization or other similar transaction involving the Company for which the Board of Directors of the Company has authorized negotiations;

(ii) materially adversely impair the consummation of any pending or proposed material offering or sale of any class of securities by the Company; or

(iii) require disclosure of material nonpublic information that, if disclosed at such time, would be materially harmful to the interests of the Company and its stockholders; provided, however, that during any such period all executive officers and directors of the Company are also prohibited from selling securities of the Company (or any security of any of the Company's subsidiaries or affiliates).

In the event of the suspension of effectiveness of any registration statement pursuant to this Section 1.4, the applicable time period during which such registration statement is to remain effective shall be extended by that number of days equal to the number of days the effectiveness of such registration statement was suspended.

1.5 Information From Holder. It shall be a condition precedent to the obligations of the Company to take any action pursuant to this Section 1 with respect to the Registrable Securities of any selling Holder that such Holder shall furnish to the Company such information regarding itself, the Registrable Securities held by it, and the intended method of disposition of such securities as shall be reasonably required to effect the registration of such Holder's Registrable Securities.

1.6 Expenses of Registration. All expenses other than underwriting discounts and commissions incurred in connection with registrations, filings or qualifications pursuant to Sections 1.2 and 1.3, including (without limitation) all registration, filing and qualification fees, printers' and accounting fees, fees and disbursements of counsel for the Company and the reasonable fees and disbursements not to exceed $25,000 of one counsel for the selling Holders shall be borne by the Company. Notwithstanding the foregoing, the Company shall not be required to pay for any expenses of any registration proceeding begun pursuant to Section 1.2 if the registration request is subsequently withdrawn at the request of the Holders of a majority of the Registrable Securities to be registered (in which case all participating Holders shall bear such expenses pro rata based upon the number of Registrable Securities that were to be included in the withdrawn registration), unless, in the case of a registration requested under Section 1.2, the Holders of at least a majority of the Registrable Securities then held by the Investors agree to forfeit their right to one demand registration pursuant to Section 1.2 and provided, however, that if at the time of such withdrawal, the Holders have learned of a material adverse change in the condition, business or prospects of the Company from that known to the Holders at the time of their request and have withdrawn the request with reasonable promptness after learning of such material adverse change, then the Holders shall not be required to pay any of such expenses and shall retain their rights pursuant to Section 1.2.

1.7 Delay of Registration. No Holder shall have any right to obtain or seek an injunction restraining or otherwise delaying any such registration as the result of any controversy that might arise with respect to the interpretation or implementation of this Section 1.

1.8 Indemnification. In the event any Registrable Securities are included in a registration statement under this Section 1:

(a) To the extent permitted by law, the Company will indemnify and hold harmless each Holder, its Affiliates and their respective partners, members, managers, officers, directors, stockholders, legal counsel and accountants, any underwriter (as defined in

the Act) for such Holder and each person, if any, who controls such Holder or underwriter within the meaning of the Act or the 1934 Act, against any losses, claims, damages or liabilities (joint or several) to which they may become subject under the Act, the 1934 Act, any state securities laws or any rule or regulation promulgated under the Act, insofar as such losses, claims, damages, or liabilities (or actions in respect thereof) arise out of or are based upon any of the following statements, omissions or violations (collectively a "Violation"): (i) any untrue statement or alleged untrue statement of a material fact contained in such registration statement, including any preliminary prospectus, final prospectus or Free Writing Prospectus contained therein or any amendments or supplements thereto, any issuer information (as defined in Rule 433 of the Act) filed or required to be filed pursuant to Rule 433(d) under the Act or any other document incident to such registration prepared by or on behalf of the Company or used or referred to by the Company, (ii) the omission or alleged omission to state in such registration statement a material fact required to be stated therein, or necessary to make the statements therein not misleading or (iii) any violation or alleged violation by the Company of the Act, the 1934 Act, any state securities laws or any rule or regulation promulgated under the Act, the 1934 Act or any state securities laws, and the Company will reimburse each such Holder, underwriter, controlling person or other aforementioned person for any legal or other expenses reasonably incurred by them in connection with investigating or defending any such loss, claim, damage, liability or action as such expenses are incurred; provided, however, that the indemnity agreement contained in this subsection 1.8(a) shall not apply to amounts paid in settlement of any such loss, claim, damage, liability or action if such settlement is effected without the consent of the Company (which consent shall not be unreasonably withheld), nor shall the Company be liable in any such case with respect to a specific Holder for any such loss, claim, damage, liability or action to the extent that it arises out of or is based upon a Violation that occurs in reliance upon and in conformity with written information furnished expressly for use in connection with such registration by any such Holder, underwriter, controlling person or other aforementioned person.

(b) To the extent permitted by law, each selling Holder, severally and not jointly, will indemnify and hold harmless the Company, each of its directors, each of its officers who has signed the registration statement, each person, if any, who controls the Company within the meaning of the Act, legal counsel and accountants for the Company, any underwriter, any other Holder selling securities in such registration statement and any controlling person of any such underwriter or other Holder, against any losses, claims, damages or liabilities (joint or several) to which any of the foregoing persons may become subject, under the Act, the 1934 Act, any state securities laws or any rule or regulation promulgated under the Act, the 1934 Act or any state securities laws, insofar as such losses, claims, damages or liabilities (or actions in respect thereto) arise out of or are based upon any Violation, in each case to the extent (and only to the extent) that such Violation occurs in reliance upon and in conformity with written information furnished by such Holder expressly for use in connection with such registration; and each such Holder will reimburse any person intended to be indemnified pursuant to this subsection 1.8(b) for any legal or other expenses reasonably incurred by such person in connection with investigating or defending any such loss, claim, damage, liability or action as such expenses are incurred; provided, however, that the indemnity agreement contained in this subsection 1.8(b) shall not apply to amounts paid in settlement of any such loss, claim, damage, liability or action if such settlement is effected without the consent of the Holder (which consent shall not be unreasonably withheld), and provided that in no event shall any indemnity under this subsection 1.8(b), when aggregated with any contribution obligation under Section 1.8(d), exceed the net proceeds from the offering received by such Holder.

(c) Promptly after receipt by an indemnified party under this Section 1.8 of notice of the commencement of any action (including any governmental action) for which a party may be entitled to indemnification, such indemnified party will, if a claim in respect thereof is to be made against any indemnifying party under this Section 1.8, deliver to the indemnifying party a written notice of the commencement thereof and the indemnifying party shall have the right to participate in and, to the extent the indemnifying party so desires, jointly with any other indemnifying party similarly noticed, to assume the defense thereof with counsel mutually satisfactory to the parties; provided, however, that an indemnified party (together with all other indemnified parties that may be represented without conflict by one counsel) shall have the right to retain one separate counsel, with the fees and expenses to be paid by the indemnifying party, if representation of such indemnified party by the counsel retained by the indemnifying party would be inappropriate due to actual or potential differing interests between such indemnified party and any other party represented by such counsel in such proceeding. The failure to deliver written notice to the indemnifying party within a reasonable time of the commencement of any such action, if prejudicial to its ability to defend such action, shall relieve such indemnifying party of liability to the indemnified party under this Section 1.8 to the extent of such prejudice, but the omission to so deliver written notice to the indemnifying party will not relieve it of any liability that it may have to any indemnified party otherwise than under this Section 1.8.

(d) If the indemnification provided for in this Section 1.8 is held by a court of competent jurisdiction to be unavailable to an indemnified party with respect to any loss, liability, claim, damage or expense referred to herein, then 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 loss, liability, claim, damage or expense 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 hand in connection with the statements or omissions that resulted in such loss, liability, claim, damage or expense, as well as any other relevant equitable considerations; provided, however, that no contribution by any Holder, when combined with any amounts paid by such Holder pursuant to Section 1.8(b) and any other contributions by such Holder, shall exceed the net proceeds from the offering received by such Holder. The relative fault of the indemnifying party and the indemnified party shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the indemnifying party or by the indemnified party and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission; provided, however, that no person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Act) will be entitled to contribution from any person who or which was not guilty of such fraudulent misrepresentation.

(e) Notwithstanding the foregoing, to the extent that the provisions on indemnification and contribution contained in the underwriting agreement entered into in connection with the underwritten public offering are in conflict with the foregoing provisions, the provisions in the underwriting agreement shall control.

(f) The obligations of the Company and Holders under this Section 1.8 shall survive the completion of any offering of Registrable Securities in a registration statement under this Section 1 and otherwise.

1.9 Reports Under the 1934 Act. With a view to making available to the Holders the benefits of Rule 144 and any other rule or regulation of the SEC that may at any time permit a Holder to sell securities of the Company to the public without registration or pursuant to a registration on Form S-3, the Company agrees to:

(a) make and keep adequate current public information available, as those terms are understood and defined in Rule 144, at all times after the effective date of the Initial Offering;

(b) file with the SEC in a timely manner all reports and other documents required of the Company under the Act and the 1934 Act; and

(c) furnish to any Holder, so long as the Holder owns any Registrable Securities, forthwith upon request (i) a written statement by the Company that it has complied with the reporting requirements of Rule 144 (at any time after ninety (90) days after the effective date of the first registration statement filed by the Company), the Act and the 1934 Act (at any time after it has become subject to such reporting requirements), or that it qualifies as a registrant whose securities may be resold pursuant to Form S-3 (at any time after it so qualifies), (ii) a copy of the most recent annual or quarterly report of the Company and such other reports and documents so filed by the Company, and (iii) such other information as may be reasonably requested to avail any Holder of any rule or regulation of the SEC that permits the selling of any such securities without registration or pursuant to such form.

1.10 Assignment of Registration Rights. The rights to cause the Company to register Registrable Securities pursuant to this Section 1 may be assigned (but only with all related obligations) by a Holder to a transferee or assignee of such securities that (i) is an Affiliate, subsidiary, parent, partner, limited partner, retired partner or stockholder of a Holder, (ii) is a Holder's family member or trust for the benefit of an individual Holder, or (iii) after such assignment or transfer, holds at least 100,000 shares of Registrable Securities (subject to appropriate adjustment for stock splits, stock dividends, combinations or the like), provided: (a) the Company is, within a reasonable time after such transfer, furnished with written notice of the name and address of such transferee or assignee and the securities with respect to which such registration rights are being assigned; (b) such transferee or assignee agrees in writing to be bound by and subject to the terms and conditions of this Agreement, including, without limitation, the provisions of Section 2 below; and (c) such assignment shall be effective only if immediately following such transfer the further disposition of such securities by the transferee or assignee is restricted under the Act.

1.11 Limitations on Subsequent Registration Rights. From and after the date of this Agreement, the Company shall not, without the prior written consent of the Investors holding a majority of the then outstanding Registrable Securities, enter into any agreement with any holder or prospective holder of any securities of the Company that would allow such holder or prospective holder (a) to include any of such securities in any registration filed under Section 1.2 or 1.3 hereof,

unless under the terms of such agreement, such holder or prospective holder may include such securities in any such registration only to the extent that the inclusion of such securities will not reduce the amount of the Registrable Securities of the Holders that are included, (b) to demand registration of their securities or (c) to exercise other registration rights that are pari passu or senior to those granted to the Holders hereunder.

1.12 Termination of Registration Rights. No Holder shall be entitled to exercise any right provided for in this Section 1, and none of the shares of capital stock owned by such Holder shall be Registrable Securities, upon the earliest to occur of the following: (a) after five (5) years following the consummation of the Initial Offering, (b) as to any Holder, such earlier time after the Initial Offering at which all Registrable Securities held by such Holder (together with any Affiliate of the Holder with whom such Holder must aggregate its sales under Rule 144) can be sold in any ninety (90) day period without registration in compliance with Rule 144 or (c) upon the consummation of a transaction or series of related transactions which are deemed to be a liquidation, dissolution or winding up of the Company pursuant to the Restated Certificate.

2. "Market Stand-Off" Agreement.

2.1 Each Holder hereby agrees that it will not, without the prior written consent of the managing underwriter, during the period commencing on the date of the final prospectus relating to the Company's Initial Offering and ending on the date specified by the Company and the managing underwriter (such period not to exceed one hundred eighty (l80) days plus such additional period as may reasonably be requested by the Company or such underwriter to accommodate regulatory restrictions on (i) the publication or other distribution of research reports or (ii) analyst recommendations and opinions, including (without limitation) the restrictions set forth in FINRA Rule 2711(f)(4) or any similar successor rules) (i) lend, offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, or otherwise transfer or dispose of, directly or indirectly, any shares of Common Stock or any securities convertible into or exercisable or exchangeable for Common Stock held immediately prior to the effectiveness of the Registration Statement for such offering, or (ii) enter into any swap or other arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of the Common Stock, whether any such transaction described in clause (i) or (ii) above is to be settled by delivery of Common Stock or other securities, in cash or otherwise. The foregoing provisions of this Section 2.1 shall not apply to the sale of any shares to an underwriter pursuant to an underwriting agreement, and shall only be applicable to the Holders if all officers, directors and greater than one percent (1%) stockholders of the Company enter into similar agreements. The underwriters in connection with the Company's Initial Offering are intended third party beneficiaries of this Section 2.1 and shall have the right, power and authority to enforce the provisions hereof as though they were a party hereto. Each Holder further agrees to execute such agreements as may be reasonably requested by the underwriters in the Company's Initial Offering that are consistent with this Section 2.1 or that are necessary to give further effect thereto. Any discretionary waiver or termination of the restrictions of any or all of such agreements by the Company or the underwriters shall apply pro rata to all Holders subject to such agreements, based on the number of shares subject to such agreements.

In order to enforce the foregoing covenant, the Company may impose stop transfer instructions with respect to the Registrable Securities of each Holder (and the shares or securities of every other person subject to the foregoing restriction) until the end of such period.

2.2 Each Holder agrees that a legend reading substantially as follows shall be placed on all certificates representing all Registrable Securities of each Holder (and the shares or securities of every other person subject to the restriction contained in this Section 2):

THE SECURITIES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO A LOCK-UP PERIOD OF UP TO 180 DAYS AFTER THE EFFECTIVE DATE OF THE ISSUER'S REGISTRATION STATEMENT FILED UNDER THE ACT, AS AMENDED, AS SET FORTH IN AN AGREEMENT BETWEEN THE COMPANY AND THE ORIGINAL HOLDER OF THESE SECURITIES, A COPY OF WHICH MAY BE OBTAINED AT THE ISSUER'S PRINCIPAL OFFICE. SUCH LOCK-UP PERIOD IS BINDING ON TRANSFEREES OF THESE SHARES.

3. Covenants of the Company.

3.1 Delivery of Financial Statements and Other Information. The Company shall deliver to each Investor that together with its Affiliates continues to hold at least 180,000 shares of Preferred Stock of the Company (as adjusted for stock splits, stock dividends, recapitalizations and the like):

(a) as soon as practicable, but in any event within one hundred twenty (120) days after the end of each fiscal year of the Company (or such later period approved by the Board of Directors), an income statement for such fiscal year, a balance sheet of the Company and statement of stockholders' equity as of the end of such fiscal year, and a statement of cash flows for such fiscal year, all such financial statements audited and certified by independent public accountants of regionally recognized standing selected by the Company;

(b) as soon as practicable, but in any event within forty-five (45) days after the end of each of the four (4) quarters of each fiscal year of the Company, an unaudited income statement, statement of cash flows for such fiscal quarter and an unaudited balance sheet as of the end of such fiscal quarter, along with an up-to-date capitalization table of the Company; and

(c) within thirty (30) days prior to the beginning of each fiscal year, a budget and business plan for the next fiscal year, prepared on a monthly basis, including balance sheets, income statements and statements of cash flows for such months and, as soon as prepared, any other budgets or revised budgets prepared by the Company and approved by the Company's Board of Directors.

All income statements, balance sheets, statements of stockholders' equity and statements of cash flow delivered by the Company hereunder shall (1) be prepared in accordance with GAAP (except that interim financial statements may be subject to normal recurring year-end adjustments, the effect of which will not, individually or in the aggregate, be material to the Company), (2) be correct and complete in all material respects, (3) be consistent in all material respects with the

books and records of the Company and (4) fairly present, in all material respects, the financial condition, results of operations, changes in stockholders' equity and cash flows of the Company as of the respective dates and for the periods indicated therein.

3.2 Inspection. The Company shall permit each Investor that together with its Affiliates continues to hold at least 180,000 shares of Preferred Stock of the Company (as adjusted for stock splits, stock dividends, recapitalizations and the like), at such Investor's expense, and upon reasonable notice, during normal business hours, to visit and inspect the Company's properties, to examine its books of account and records and to discuss the Company's affairs, finances and accounts with its officers, all at such reasonable times as may be reasonably requested by the Investor; provided, however, that the Company shall not be obligated pursuant to this Section 3.2 to provide access to any information that it reasonably and in good faith considers to be a trade secret or similar confidential information, and provided, further, that the Company may require the Investor to execute a confidentiality and nondisclosure agreement with restrictions that are reasonable under the circumstances prior to any such visit and inspection.

3.3 Board Observer Right. For so long as D1 continues to hold at least twenty-five percent (25%) of the shares of Series E Preferred Stock and Series F Preferred Stock of the Company (as adjusted for stock splits, stock dividends, recapitalizations and the like) purchased by D1 pursuant to the Series E Purchase Agreement and the Series F Purchase Agreement, the Company shall invite a representative of D1 to attend all meetings of the Board and any committees thereof in a nonvoting observer capacity and, in this respect, shall give (at the same time and in the same manner that notice is given to other directors) such representative copies of all notices, minutes, consents, and other materials (financial or otherwise) that it provides to its directors. The initial observer shall be James Rogers and such observer may be replaced by D1 from time to time. The Company reserves the right to withhold any information and to exclude such representative from any meeting or portion thereof if access to such information or attendance at such meeting, in the reasonable opinion of counsel, could adversely affect the attorney-client privilege between the Company and its counsel. D1 agrees, and any representative of D1 will agree, to hold in confidence and trust with respect to all information provided to it or learned by it in connection with its rights under this Section 3.3, except that this shall in no way limit or restrict D1's ability to disclose any such information to its partners, employees or affiliated funds or to any banking regulatory authority or body, or to the extent otherwise required by law and any other regulatory process to which D1 is subject.

3.4 Right of First Offer. Subject to the terms and conditions specified in this Section 3.4, the Company hereby grants a right of first offer with respect to future private placement sales by the Company of its Shares (as hereinafter defined), as calculated pursuant to Section 3.4(b), (i) first, to D1 and the Janus Investors (together, the "Qualifying Investors"), for so long as any shares of Series F Preferred Stock remain outstanding and the Qualifying Investors continue to collectively hold the majority of the then outstanding shares of Series E Preferred Stock and Series F Preferred Stock, for up to an aggregate number of Shares equivalent to an aggregate total purchase price by all such Qualifying Investors of up to $70,000,000 (the "Maximum ROFO Amount of Shares"), and (ii) thereafter to all other Investors that continue to hold shares of capital stock of the Company, for any remaining Shares not purchased by the Qualifying Investors under (i) above (the "Unpurchased Shares"). For purposes of this Section 3.4, an Investor includes any partners and Affiliates of an Investor. An Investor shall be entitled to apportion the right of first

offer hereby granted it among itself and its partners and Affiliates in such proportions as it deems appropriate, so long as such apportionment does not cause the loss of the exemption under Section 4(a)(2) of the Act or any similar exemption under applicable state securities laws in connection with such sale of Shares by the Company.

Each time the Company proposes in a private placement to offer any shares of, or securities convertible into or exchangeable or exercisable for any shares of, any class of its capital stock (the "Shares"), the Company shall first make an offering of such Shares to each such Qualifying Investor in accordance with the following provisions:

(a) The Company shall deliver a notice in accordance with Section 4.6 (the "Notice") to the Qualifying Investors and all other Investors stating (i) its bona fide intention to offer such Shares, (ii) the number of such Shares to be offered, and (iii) the price, terms and conditions upon which it proposes to offer such Shares.

(b) By written notification received by the Company, within twenty (20) calendar days after receipt of the Notice, (i) each Qualifying Investor may elect to purchase or obtain, at the price and on the terms specified in the Notice, up to that portion of the Maximum ROFO Amount of Shares that equals the proportion that the aggregate number of shares of Common Stock issued and held, or issuable upon conversion of the Series E Preferred Stock and Series F Preferred Stock held as of the date hereof, by such Qualifying Investor bears to the total number of shares of Common Stock of the Company held as of the date hereof by all Qualifying Investors (assuming full conversion and exercise of all outstanding convertible and exercisable securities); provided, however, if one Qualifying Investor decides not to purchase all the Shares available to it under this subsection (i), then the other Qualifying Investor ("Fully Exercising QI") shall be entitled to obtain that portion of the Shares for which the Qualifying Investors were entitled to subscribe but which were not subscribed for, and (ii) any remaining Investor may elect to purchase or obtain, up to that portion of the Unpurchased Shares that equals the proportion that the number of shares of Common Stock issued and held, or issuable upon conversion of the Preferred Stock held as of the date hereof, by such Investor bears to the total number of shares of Common Stock of the Company outstanding as of the date hereof (assuming full conversion and exercise of all outstanding convertible and exercisable securities) plus any shares of Common Stock reserved for issuance under any equity incentive plan approved by the Board of Directors as of the date hereof. The Company shall promptly, in writing, inform each Qualifying Investor and Investor which purchases all the Shares available to it ("Fully-Exercising Investor") of any other Investor's failure to do likewise. During the ten (10) day period commencing after receipt of such information, each Fully-Exercising Investor shall be entitled to obtain that portion of the Shares for which Investors were entitled to subscribe but which were not subscribed for by the Investors that is equal to the proportion that the number of shares of Common Stock issued and held, or issuable upon conversion of Preferred Stock then held, by such Fully-Exercising Investor bears to the total number of shares of Common Stock issued and held, or issuable upon conversion of Preferred Stock then held, by all Fully-Exercising Investors who wish to purchase some of the unsubscribed shares.

(c) If all Shares that the Qualifying Investors and the Investors are entitled to obtain pursuant to Section 3.4(b) are not elected to be obtained as provided in Section 3.4(b) hereof, the Company may, during the ninety (90) day period following the

expiration of the period provided in Section 3.4(b) hereof, offer the remaining unsubscribed portion of such Shares to any person or persons at a price not less than, and upon terms no more favorable to the offeree than those specified in the Notice. If the Company does not enter into an agreement for the sale of the Shares within such period, or if such agreement is not consummated within thirty (30) days of the execution thereof, the right provided hereunder shall be deemed to be revived and such Shares shall not be offered unless first reoffered to the Investors in accordance herewith.

(d) Except with respect to D1's and the Janus Investors' rights under Section 3.4(f), the right of first offer in this Section 3.4 shall not be applicable to:

(i) the issuance of securities pursuant to a split or subdivision of the outstanding shares of Common Stock or the determination of holders of Common Stock entitled to receive a dividend or other distribution payable in additional shares of Common Stock or other securities or rights convertible into, or entitling the holder thereof to receive directly or indirectly, additional shares of Common Stock (hereinafter referred to as "Common Stock Equivalents") without payment of any consideration by such holder for the additional shares of Common Stock or the Common Stock Equivalents (including the additional shares of Common Stock issuable upon conversion or exercise thereof);

(ii) the issuance of shares of Common Stock or options therefor to employees, consultants, officers, directors or strategic partners (if in transactions with primarily non-financing purposes) of the Company directly or pursuant to a stock option plan or restricted stock purchase plan approved by the Board of Directors of the Company including at least the Series E/F Director (as defined in the Restated Certificate);

(iii) the issuance of shares of Common Stock (A) in a bona fide, firmly underwritten public offering under the Act before which or in connection with which all outstanding shares of Preferred Stock will be automatically converted to Common Stock, or (B) upon exercise of warrants or rights granted to underwriters in connection with such a public offering;

(iv) the issuance of shares of Common Stock pursuant to the conversion or exercise of convertible or exercisable securities outstanding as of the date hereof or subsequently issued pursuant to this Section 3.4;

(v) the issuance of shares of Common Stock in connection with a bona fide business acquisition of or by the Company, whether by merger, consolidation, sale of assets, sale or exchange of stock or otherwise, each as approved by the Board of Directors of the Company, including at least the Series E/F Director;

(vi) the issuance or sale of stock, warrants or other securities or rights, for other than primarily equity financing purposes, as approved by the Board of Directors of the Company, including at least the Series E/F Director, to entities with which the Company has any of the following bona fide business relationships: (1) joint venture, technology licensing or development activities, or (2) distribution, supply or manufacture of the Company's products or services;

(vii) the issuance or sale of stock, warrants or other securities or rights in connection with commercial credit arrangements, equipment financings, commercial property lease transactions or similar transactions, each as approved by the Board of Directors of the Company, including at least the Series E/F Director; or

(viii) shares of Common Stock issued or issuable in connection with any transaction approved by the Board of Directors of the Company, where such securities so issued are exempted from the right of first offer in this Section 3.4 by the affirmative vote of Investors holding at least a majority of the then outstanding Series F Preferred Stock held by all Investors (voting together as a single class and not as separate series, and on an as-converted basis).

In addition to the foregoing, the right of first offer in this Section 3.4 shall not be applicable with respect to any Investor and any subsequent securities issuance, if (i) at the time of such subsequent securities issuance, the Investor is not an "accredited investor," as that term is then defined in Rule 501(a) under the Act, and (ii) such subsequent securities issuance is otherwise being offered only to accredited investors.

(e) The right of first offer set forth in this Section 3.4 may not be assigned or transferred, except that such right may be assigned (but only with all related obligations) by a Holder to a transferee or assignee of such rights that (i) is an Affiliate, subsidiary, parent, partner, limited partner, retired partner or stockholder of a Holder, (ii) is a Holder's family member or trust for the benefit of an individual Holder, or (iii) after such assignment or transfer, holds at least 100,000 shares of Registrable Securities (subject to appropriate adjustment for stock splits, stock dividends, combinations or the like).

(f) Notwithstanding any provisions herein to the contrary, in the event of a Qualified IPO (as defined in the Restated Certificate), the Company shall use its reasonable efforts, subject to the requirements of all applicable securities laws and regulations, to provide each of D1 and the Janus Investors with a right of first offer with respect to such shares of Common Stock of the Company that either Holder desires to purchase, in each case, up to such number of shares equal to the greater of (i) $15,000,000 divided by the per share purchase price of the Company's Common Stock in the Qualified IPO and (ii) fifteen percent (15%) of the total number of shares of Common Stock to be sold in the Qualified IPO. If such right of first offer may not be granted to either Holder, then the Company shall, in good faith and upon the written request of either Holder, consider the sale of an equivalent number of shares of the Company's Common Stock to either Holder in a private placement transaction concurrent to the Qualified IPO. The Company may not reduce the amount of shares of Common Stock that may be purchased by either D1 or the Janus Investors in the Qualified Financing or a concurrent private placement transaction, unless the same reduction is applied to both D1 and the Janus Investors.

3.5 Insurance. The Company (a) shall maintain from financially sound and reputable insurers Directors and Officers liability insurance and commercial liability insurance, each in an amount and on terms and conditions satisfactory to the Board of Directors, and (b) shall use its commercially reasonable efforts to obtain within ninety (90) days of the date hereof from financially sound and reputable insurers "key person" insurance on Paul Badawi and David Badawi in an amount equal to at least $1,000,000 per person on terms and conditions satisfactory to the Board of Directors, and will use commercially reasonable efforts to cause such insurance

policies to be maintained until such time as the Board of Directors determines that such insurance should be discontinued; provided, that the "key person" insurance described in this Section 3.5 shall not be discontinued without the affirmative vote of at least two (2) Preferred Directors.

3.6 Employee Stock. Unless otherwise approved by the Board of Directors, all future employees and consultants of the Company who purchase, receive options to purchase, or receive awards of shares of the Company's capital stock after the date hereof shall be required to execute restricted stock or option agreements, as applicable, providing for (a) vesting of shares over a four (4)-year period, with the first twenty-five percent (25%) of such shares vesting following twelve (12) months of continued employment or service, and the remaining shares vesting in equal monthly installments over the following thirty-six (36) months; (b) a market stand-off provision substantially similar to that in Section 2; (c) the Company to have a right of first refusal on transfers of shares until the Initial Offering; and (d) the Company to have the right to repurchase unvested shares at cost upon termination of the employment or consulting relationship of a holder of restricted stock.

3.7 Employees and Consultants. The Company shall require all employees and consultants to enter into the Company's standard form of proprietary information and inventions agreement.

3.8 Board Matters. The Company shall maintain an audit and compensation committee, consisting solely of non-management directors. Each non-employee director shall be entitled in such person's discretion to be a member of any committee of the Board of Directors. The Company shall take all requisite actions to alter the number of authorized members of the Board of Directors immediately following an Initial Offering to be no less than seven (7) and no greater than nine (9) (the "IPO Board Size"). Following the Initial Closing (as defined in the Series F Purchase Agreement), the Board of Directors, the Investors, the holders of the then outstanding shares of Common Stock, the then serving Chief Executive Officer, and the then serving Chief Financial Officer shall collectively use their commercially reasonable efforts to achieve the IPO Board Size.

3.9 Successor Indemnification. If the Company or any of its successors or assignees consolidates with or merges into any other entity and is not the continuing or surviving corporation or entity of such consolidation or merger, then to the extent necessary, proper provision shall be made so that the successors and assignees of the Company assume the obligations of the Company with respect to indemnification of members of the Board of Directors as in effect immediately before such transaction, whether such obligations are contained in the Company's Bylaws, its Certificate of Incorporation, or elsewhere, as the case may be.

3.10 FCPA. The Company shall not (and shall not permit any of its subsidiaries or affiliates or any of its or their respective directors, officers, managers, employees, independent contractors, representatives or agents to) promise, authorize or make any payment to, or otherwise contribute any item of value to, directly or indirectly, to any third party, including any Non-U.S. Official (as such term is defined in the U.S. Foreign Corrupt Practices Act of 1977, as amended (the "FCPA")), in each case, in violation of the FCPA, the U.K. Bribery Act, or any other applicable anti-bribery or anti-corruption law. The Company further shall (and shall cause each of its subsidiaries and affiliates to) cease all of its or their respective activities, as well as remediate

any actions taken by the Company, its subsidiaries or affiliates, or any of their respective directors, officers, managers, employees, independent contractors, representatives or agents in violation of the FCPA, the U.K. Bribery Act, or any other applicable anti-bribery or anti-corruption law.

3.11 Termination of Certain Covenants. The covenants set forth in this Section 3, except for Section 3.9, shall terminate and be of no further force or effect upon the earlier of the consummation of the Initial Offering or at such time as the Company is required to file reports pursuant to Sections 13 or 15(d) of the 1934 Act. This Agreement, except for Section 3.9, shall terminate and be of no further force or effect upon the consummation of a transaction or series of related transactions which are deemed to be a liquidation, dissolution or winding up of the Company pursuant to the Restated Certificate.

4. Miscellaneous.

4.1 Successors and Assigns. Except as otherwise provided herein, the terms and conditions of this Agreement shall inure to the benefit of and be binding upon the respective successors and assigns of the parties (including transferees of any shares of Preferred Stock). Nothing in this Agreement, express or implied, is intended to confer upon any party other than the parties hereto or their respective successors and assigns any rights, remedies, obligations, or liabilities under or by reason of this Agreement, except as expressly provided in this Agreement.

4.2 Governing Law; Venue. This Agreement is to be construed in accordance with and governed by the internal laws of the State of Delaware without giving effect to any choice of law rule that would cause the application of the laws of any jurisdiction other than the internal laws of the State of Delaware to the rights and duties of the parties. All disputes and controversies arising out of or in connection with this Agreement shall be resolved exclusively by the state and federal courts located in the State of California, and each party hereto agrees to submit to the jurisdiction of said courts and agrees that venue shall lie exclusively with such courts.

4.3 Specific Enforcement. Each party hereto agrees that its obligations hereunder are necessary and reasonable in order to protect the other parties to this Agreement, and each party expressly agrees and understands that monetary damages would inadequately compensate an injured party for the breach of this Agreement by any party, that this Agreement shall be specifically enforceable, and that, in addition to any other remedies that may be available at law, in equity or otherwise, any breach or threatened breach of this Agreement shall be the proper subject of a temporary or permanent injunction or restraining order, without the necessity of proving actual damages. Further, each party hereto waives any claim or defense that there is an adequate remedy at law for such breach or threatened breach.

4.4 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

4.5 Titles and Subtitles. The titles and subtitles used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement.

4.6 Notices. Except as may be otherwise provided herein, all notices, requests, waivers and other communications made pursuant to this Agreement shall be in writing and shall be conclusively deemed to have been duly given (a) when hand delivered; (b) when sent by facsimile if sent between 8:00 a.m. and 5:00 p.m. recipient's local time on a business day, or on the next business day if sent by facsimile other than between 8:00 a.m. and 5:00 p.m. recipient's local time on a business day; (c) three business days after deposit in the U.S. mail with first class or certified mail receipt requested postage prepaid; or (d) the next business day after deposit with a national overnight delivery service, postage prepaid, with next business day delivery guaranteed, provided that the sending party receives a confirmation of delivery from the delivery service provider. Each person making a communication hereunder by facsimile shall promptly confirm by telephone to the persons to whom such communication was addressed each communication made by it by facsimile pursuant hereto but the absence of such confirmation shall not affect the validity of any such communication. All communications made pursuant to this Agreement shall be sent to the respective parties at their addresses set forth on the signature pages hereto; provided, that a party may change or supplement its addresses, or designate additional addresses, for purposes of this Section 4.6 by giving the other parties written notice of the new address in the manner set forth above.

4.7 Expenses. If any action at law or in equity is necessary to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees, costs and necessary disbursements in addition to any other relief to which such party may be entitled.

4.8 Amendments and Waivers. Any term of this Agreement may be amended and the observance of any term of this Agreement may be waived (either generally or in a particular instance and either retroactively or prospectively), only with the written consent of the Company and the Investors holding a majority of the then outstanding Registrable Securities; provided, however, that if any amendment or waiver operates in a manner that treats any Investor different, in any material respect, from other Investors, the consent of such Investor shall also be required for such amendment or waiver and; provided further, that (i) Section 3.3 may only be amended or waived with the written consent of D1, (ii) Section 3.4 and this subpart (ii) may only be amended or waived with the prior written consent of D1 and the Janus Investors, (iii) the definition of "Affiliate" (as it pertains to the Janus Investors), the definition of "Janus Investors" and this subpart (iii) may only be amended or waived with the prior written consent of the Janus Investors, and (iv) the definition of "Affiliate" (as it pertains to D1), the definition of "D1" and this subpart (iv) may only be amended or waived with the prior written consent of D1. Any amendment or waiver effected in accordance with this paragraph shall be binding upon each Investor and the Company.

4.9 Additional Investors. Notwithstanding anything to the contrary contained herein, if the Company issues additional shares of the Company's Series F Preferred Stock after the date hereof, any purchaser of such shares of Series F Preferred Stock shall become a party to this Agreement by executing and delivering an additional counterpart signature page to this Agreement and thereafter shall be deemed an "Investor" for all purposes hereunder. The Company shall promptly update Schedule A to reflect such purchaser as a party hereto.

4.10 Severability. If one or more provisions of this Agreement are held to be unenforceable under applicable law, such provision shall be excluded from this Agreement and the balance of the Agreement shall be interpreted as if such provision were so excluded and shall be enforceable in accordance with its terms.

4.11 Aggregation of Stock. All shares of Registrable Securities held or acquired by entities advised by the same investment adviser and Affiliates shall be aggregated together for the purpose of determining the availability of any rights under this Agreement.

4.12 Termination of Prior Agreement. Upon the effectiveness of this Agreement, the Prior Agreement shall terminate and be of no further force or effect, and shall be superseded and replaced in its entirety by this Agreement.

4.13 Entire Agreement. This Agreement and the documents referred to herein constitute the entire agreement among the parties with respect to the subject matter hereof and no party shall be liable or bound to any other party in any manner by any warranties, representations or covenants except as specifically set forth herein or therein.

* * *

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

COMPANY:

SIGHT SCIENCES, INC.

By: /s/ Paul Badawi
Name: Paul Badawi
Title: President

Address:
4040 Campbell Ave.
Menlo Park, CA 94025

Email: XXX@sightsciences.com

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

INVESTOR:

D1 Master Holdco I LLC
By: D1 Capital Partners Master LP,
its Managing Member

By: D1 Capital Partners GP Sub LLC,
its General Partner

/s/ Daniel Sundheim
Daniel Sundheim
Authorized Signatory

Address: c/o D1 Capital Management LC
9 West 57th Street
36th Floor
New York, NY 10019

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

Sidley Austin LLP,
787 Seventh Avenue,
New York, NY 10019,
Attention: Geoff Levin,
Facsimile: 212-839-5599
E-mail: XXX@sidley.com

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

INVESTOR:

Janus Henderson Venture Fund

By: Janus Capital Management LLC, its investment advisor

By: /s/ Jonathan Coleman
Name: Jonathan Coleman
Title: Authorized Signatory

Janus Henderson Capital Funds plc on behalf of its series Janus Henderson US Venture Fund

By: Janus Capital Management LLC, its investment advisor

By: /s/ Jonathan Coleman
Name: Jonathan Coleman
Title: Authorized Signatory

Address:
Janus Capital Management LLC,
151 Detroit Street
Denver, CO 80206
Attn: Jonathan Coleman (Email: XXX@JanusHenderson.com)
Attn: Scott Stutzman (Email: XXX@JanusHenderson.com)
Attn: Angela Morton (Email: XXX@janushenderson.com)

with a copy, which shall not constitute notice, to:

Perkins Coie LLP
3150 Porter Drive
Palo Alto, CA 94306
Attn: Adrian Rich (Email: XXX@perkinscoie.com)

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

INVESTOR:

KCK Ltd., a British Virgin Islands limited company

By: /s/ Nael Kassar
Name: Nael Kassar
Title: Director

Address:
Dubai Airport Free Zone
Bldg. 5, Block A, 5th Floor, Office No. 512
P.O. Box 29506
Dubai, UAE

Email:

with a copy to:

DLA Piper LLP (US)
701 Fifth Avenue, Suite 6900
Seattle, WA 98104-7044
Attention: Tyler K. Hollenbeck

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

INVESTOR:

MIDCAP FUNDING XXVII TRUST

By: Apollo Capital Management, L.P., its investment manager

By: Apollo Capital Management GP, LLC, its general partner

By: /s/ Maurice Amsellem
Name: Maurice Amsellem
Title: Authorized Signatory

c/o MidCap Financial Services, LLC, as Servicer
7255 Woodmont Avenue, Suite 300
Bethesda, MD 20814
Attention: Legal Group
E-mail: legalamidcapfinancial.com

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

INVESTOR:

HH SIGHT PARTNERS, L.P.,
a Texas limited partnership

By: HH Sight Partners GP, L.P.,
Its: General Partner

By: HH Sight, LLC,
Its: General Partner

By: /s/ Mack H. Hicks
Name: Mack H. Hicks
Title: Co-President

Address:
2200 Ross Avenue, Fiftieth Floor
Dallas, TX 75201
Email: XXX@hicksholdings.com

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

INVESTOR:

HH-IOP PARTNERS, L.P.,
a Texas limited partnership

By: HH Sight Partners GP, L.P., Its: General Partner

By: HH Sight, LLC,
Its: General Partner

By: /s/ Mack H. Hicks
Name: Mack H. Hicks
Title: Co-President

Address:
2200 Ross Avenue, Fiftieth Floor
Dallas, TX 75201
Email: XXX@hicksholdings.com

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

INVESTOR:

ALLEGRO INVESTMENT FUND, L.P.

By: /s/ Staffan Encrantz
Name: Staffan Encrantz
Title: As Investment Manager for the General Partner
Address: 525 Middlefield Road, suite 20
Menlo Park, CA 94025

Telephone: _____

Facsimile: _____

Email: XXX@allegroinvestment.com

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

INVESTOR:

ALLEGRO INVESTORS LLC

By: /s/ Staffan Encrantz
Name: Staffan Encrantz
Title: As Investment Manager for the General Partner
Address: 525 Middlefield Road, suite 20
Menlo Park, CA 94025

Telephone: _____

Facsimile: _____

Email: XXX@allegroinvestment.com

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

INVESTOR:

SCIENTIFIC HEALTH DEVELOPMENT II, LTD

By: SHD GP II, LLC
Its: General Partner

By: /s/ Andrew Offer

Name: Andrew Offer
Title: CEO

Address:
2305 Cedar Springs, Suite 240
Dallas, TX 75201
Email: XXX@shdpartners.com

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

INVESTOR:

SIGHT SCIENCES ANGELS, LP

By: ShervKo, LLC
Its: General Partner

By: /s/ Jesse Selnick

Name: Jesse Selnick
Title: Managing Member

Address:
1080 S. Adams
Denver, CO 80209
Email: XXXk@gmail.com

SCHEDULE A
INVESTORS

Al G. Hill Jr. Family Trust, dated December 20, 2014
Al G. Hill, Jr.
Allegro Investment Fund, L.P.
Allegro Investors LLC
Andrew Offer
Armour Trust
Bryan Goolsby
Carter Meyer
Colonnetta Family Partners I, L.P.
Dikigoros Holdings LLC
D1 Master Holdco I LLC
Deirdre Porter Living Trust
E. Grant Fitts 1994 Grandchildren's Trust
E.C. Coppola Family Limited Partnership
Edward C. Coppola, Jr.
EGF Investments, LP
Equity Trust Company, Custodian FBO Jeff Peterson IRA
Genus Holdings, L.L.C.
HH Sight Partners, L.P.
HH-IOP Partners, L.P.
James C. Gorton
James Parks
Janus Henderson Venture Fund
Janus Henderson Capital Funds plc - Janus Henderson US Venture Fund
Jerald T. & Emily Z. Baldridge Revocable Trust
KCK Ltd.
MidCap Funding XXVII Trust
Pensco Trust Co. Custodian FBO Jordan C. Meyer IRA
Peregrine Investments Limited
Samson Investments, LLC
Scientific Health Development II, Ltd
SHD Sight Sciences-18 LP
Sight Sciences Angel LP
Stark 2010 Family Trust
Stephen ones
The Brendan Iribe Group X, LLC
Thomas C. Unis
Timothy P. Rooney
VP Company Investments 2018, LLC
William Munck

Sight Sciences, Inc.

Schedule of Holders of Warrants

Holder Name	Number of Shares	Class of Stock	Warrant Price	Issue Date
MidCap Funding XXVII Trust	3,162	C	$ 9.4868	2/4/2019[1]
MidCap Funding XXVII Trust	527	C	$ 9.4868	2/9/2019[2]
MidCap Funding XXVII Trust	300,000	F	$21.8779	11/23/2020
MidCap Funding XXVIII Trust	22,136	C	$ 9.4868	1/25/2019
MidCap Funding XXVIII Trust	3,689	C	$ 9.4868	1/28/2019

1 Represents the warrant reissue date. The original issuance date was on January 25, 2019.

2 Represents the warrant reissue date. The original issuance date was on January 28, 2019.

THIS WARRANT AND THE SHARES ISSUABLE HEREUNDER HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"), OR THE SECURITIES LAWS OF ANY STATE AND, EXCEPT AND PURSUANT TO THE PROVISIONS OF ARTICLE 5 BELOW, MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED, PLEDGED OR HYPOTHECATED UNLESS AND UNTIL REGISTERED UNDER SAID ACT AND APPLICABLE STATE SECURITIES LAW, OR SUCH OFFER, SALE OR TRANSFER, PLEDGE OR HYPOTHECATION CAN BE MADE IN COMPLIANCE WITH RULE 144 OF THE ACT, OR IN THE OPINION OF LEGAL COUNSEL IN FORM AND SUBSTANCE REASONABLY SATISFACTORY TO THE ISSUER OF THESE SECURITIES, SUCH OFFER, SALE OR TRANSFER, PLEDGE OR HYPOTHECATION IS EXEMPT FROM REGISTRATION.

WARRANT TO PURCHASE STOCK

Company:	Sight Sciences, Inc., a Delaware corporation
Number of Shares:	[●] (Subject to adjustment as hereinafter provided)
Class of Stock:	Series [●] Preferred Stock
Warrant Price:	$[●] per Share (Subject to adjustment as hereinafter provided)
Issue Date:	[●]
Expiration Date:	The earlier to occur of the (i) expiration of this Warrant pursuant to Section 1.6 hereof or (ii) tenth (10th) anniversary of the Issue Date
Credit Facility:	This Warrant is issued in connection with the Credit and Security Agreement, dated as of January 25, 2019, among the Company, the other Borrowers (as defined therein) from time to time party thereto, MidCap Financial Trust, a Delaware statutory trust, as Agent and the lenders from time to time party thereto (as amended, restated, supplemented or otherwise modified from time to time, the "Credit Agreement").

THIS WARRANT TO PURCHASE STOCK (this "Warrant") CERTIFIES THAT, for good and valuable consideration, including without limitation the mutual promises contained in the Credit Agreement (defined above), [●] (together with any registered holder from time to time of this Warrant or any holder of the Shares issuable or issued upon the exercise or conversion of this Warrant, "Holder") is entitled to purchase the number of fully paid and nonassessable shares of the class and series of capital stock of the Company at the Warrant Price, all as set forth above or herein below and as adjusted pursuant to the terms of this Warrant, subject to the provisions and upon the terms and conditions set forth in this Warrant. This Warrant is issued in connection with that certain Warrant Side Letter dated January 25, 2019, between the Company and Midcap Financial Trust and the Credit Agreement referenced therein. As used herein, "Share" or "Shares" shall refer to either (i) the shares of stock issuable upon the exercise or conversion of this Warrant and any shares of capital stock into which such shares may be converted or exchanged, or (ii) the authorized or issued and outstanding shares of capital stock of the Company which are of the same class and series as the shares of stock issuable upon the exercise or conversion of this Warrant, in either case as the specific provisions of this Warrant or the context may require.

ARTICLE 1. EXERCISE.

1.1 Method of Exercise. Holder may at any time and from time to time exercise this Warrant, in whole or in part, by delivering a duly completed and executed Notice of Exercise in substantially the form attached as Appendix 1 to the principal office of the Company. Unless Holder is exercising the conversion right set forth in Section 1.2, Holder shall also deliver to the Company a check, wire transfer (to an account designated by the Company), or other form of payment acceptable to the Company for the aggregate Warrant Price for the Shares being purchased.

1.2 Conversion Right. In lieu of exercising this Warrant as specified in Section 1.1, Holder may at any time and from time to time after the Issue Date convert this Warrant, in whole or in part, into a number of Shares determined by dividing (a) the aggregate Fair Market Value of the number of Shares or the securities otherwise issuable upon exercise of this Warrant with respect to which Holder elects to convert this Warrant minus the aggregate Warrant Price of such Shares by (b) the Fair Market Value of one Share, and by delivering a duly completed and executed Notice of Exercise in substantially the form attached as Appendix 1 to the principal office of the Company. The "Fair Market Value" of a Share shall be determined pursuant to Section 1.3.

1.3 Fair Market Value. If the Company's common stock is traded on a nationally recognized securities exchange, inter-dealer quotation system or over-the-counter market (a "Trading Market") and the Shares are common stock, the Fair Market Value of each Share shall be the closing price of a Share reported for the business day immediately before Holder delivers its Notice of Exercise to the Company (or in the instance where the Warrant is exercised immediately prior to the effectiveness of the Company's initial public offering of its common stock ("IPO"), the "price to public" per share specified in the final prospectus relating to such offering). If the Company's common stock is traded in a Trading Market and the Shares are preferred stock, the Fair Market Value of each Share shall be the closing price of such common stock reported for the business day immediately before Holder delivers its Notice of Exercise to the Company (or in the instance where the Warrant is exercised immediately prior to the effectiveness of an IPO, the initial "price to public" per share specified in the final prospectus relating to the IPO), in either case, multiplied by the number of shares of the Company's common stock into which a Share is then convertible. In the event of an exercise in connection with an Acquisition, the Fair Market Value of a Share shall be the value to be received per Share by all holders of such Shares in such transaction. If the Company's common stock is not traded in a Trading Market and other than in the event of an exercise in connection with an IPO or Acquisition, the Board of Directors of the Company shall determine the Fair Market Value in its reasonable good faith judgment.

1.4 Delivery of Certificate and New Warrant. Promptly after Holder exercises or converts this Warrant pursuant to Section 1.1 or 1.2, respectively, and, if applicable, the Company receives payment of the aggregate Warrant Price, the Company shall promptly deliver to Holder certificates for the Shares acquired and, if this Warrant has not been fully exercised or converted and has not expired, a new Warrant of like tenor representing the Shares not so acquired. This Warrant shall be deemed to have been exercised and such certificates deemed issued, and Holder shall become the holder of record of the Shares for all purposes, as of the date of Holder's delivery of the exercise notice pursuant to Section 1.1 or 1.2 and payment of the Warrant Price, if applicable.

1.5 Replacement of Warrants. On receipt of evidence reasonably satisfactory to the Company of the loss, theft, destruction or mutilation of this Warrant and, in the case of loss, theft or destruction, on delivery of an indemnity agreement reasonably satisfactory in form and amount to the Company or, in the case of mutilation on surrender and cancellation of this Warrant, the Company shall execute and deliver, in lieu of this Warrant, a new warrant of like tenor.

1.6 Treatment of Warrant Upon Acquisition of Company.

1.6.1 "Acquisition". For the purpose of this Warrant, "Acquisition" means (a) any sale, exclusive license, or other disposition of all or substantially all of the assets of the Company, or (b) any reorganization, consolidation, share exchange or merger of the Company with or into another person or entity, or sale of outstanding securities of the Company by the holders thereof, in each case where the holders of the Company's securities before the transaction beneficially own less than fifty percent (50%) of the outstanding voting securities of the successor, acquiring or surviving person or entity after the transaction.

1.6.2 Treatment of Warrant Upon Acquisition.

A) Upon the written request of the Company, Holder agrees that, in the event of an Acquisition that (i) is not described in Section 1.6.1(a), (ii) in which the sole consideration is cash, and (iii) in connection with or as a result of which all holders of the Shares are receiving or have the right to receive solely cash in the same proportions in respect of all of their Shares, then either (a) Holder shall exercise its conversion or purchase right under this Warrant and such exercise will be deemed effective immediately prior to the consummation of such Acquisition, or (b) if Holder elects not to exercise the Warrant, this Warrant will expire upon the consummation of such Acquisition, subject to Section 5.8. The Company shall provide Holder with written notice of its request relating to the foregoing (together with such reasonable information as Holder may reasonably request in connection with such contemplated Acquisition giving rise to such notice), which notice is to be delivered to Holder not less than ten (10) business days prior to the closing of the proposed Acquisition.

B) Upon the written request of the Company, Holder agrees that, in the event of an Acquisition that is described in Section 1.6.1(a) and is an "arms'-length" transaction with a third party that is not an Affiliate (as defined below) of the Company (a "True Asset Sale"), Holder may (a) exercise its conversion or purchase right under this Warrant and such exercise will be deemed effective immediately prior to the consummation of such True Asset Sale, (b) permit this Warrant to continue (unless exercised in the interim) until the earlier of the Expiration Date or the dissolution and/or liquidation of the Company following the closing of any such True Asset Sale, subject to Section 5.8, or (c) elect to have the terms of Section 1.6.2(D) below apply. The Company shall provide Holder with written notice of its request relating to the foregoing (together with such reasonable information as Holder may request in connection with such contemplated Acquisition giving rise to such notice), which notice is to be delivered to Holder not less than ten (10) business days prior to the closing of the proposed True Asset Sale.

C) Upon the written request of the Company, Holder agrees that, in the event of an Acquisition (i) in which the consideration consists of cash and/or equity securities of the acquirer listed for trading on a U.S. national securities exchange and which may be freely resold pursuant to a resale registration statement or, upon conversion pursuant to Section 1.2 above, under Rule 144 of the Act without any restriction or limitation (including without limitation volume and manner of sale restrictions), (ii) in connection with or as a result of which all holders of the Shares are receiving or have the right to receive solely cash and/or such securities in the same proportions in respect of all of their Shares, and (iii) on the record date for which the Fair Market Value of one Share (or other securities issuable upon exercise of this Warrant) is greater than the Warrant Price, Holder may (a) exercise its conversion or purchase right under this Warrant and such exercise will be deemed effective immediately prior to the consummation of such Acquisition, or (b) if Holder elects not to exercise the Warrant, this Warrant will expire upon the consummation of such Acquisition, subject to Section 5.8. The Company shall provide Holder with written notice

of its request relating to the foregoing (together with such reasonable information as Holder may reasonably request in connection with such contemplated Acquisition giving rise to such notice), which notice is to be delivered to Holder not less than ten (10) business days prior to the closing of the proposed Acquisition.

D) Upon the closing of any Acquisition other than those particularly described in subsections (A), (B) and (C) above (or in the case of an Acquisition described in Section 1.6.2(B) above if Holder elects to have the terms of this Section 1.6.2(D) apply), the successor, surviving or acquiring entity shall assume in writing the obligations of this Warrant, including agreements to deliver to Holder in exchange for this Warrant a written instrument issued by the successor, surviving or acquiring entity pursuant to which this Warrant shall thereafter be exercisable for the kind, amount and value of securities, cash, and property as would have been payable for the Shares issuable upon exercise of the unexercised portion of this Warrant had such Shares been outstanding on the record date for the Acquisition and subsequent closing. The Warrant Price and/or number of Shares shall be adjusted accordingly.

E) Conditional Exercise. Notwithstanding any other provision hereof, if an exercise of this Warrant is to be made in connection with an IPO or an Acquisition, such exercise may at the election of Holder be conditioned upon the consummation of such transaction, in which case such exercise shall not be deemed to be effective until immediately prior to the consummation of such transaction.

As used herein “Affiliate” shall mean any person or entity that owns or controls directly or indirectly twenty-five percent (25%) or more of the voting securities of the Company, any person or entity that controls, is controlled by or is under common control with any such person or entity, and each of such person’s or entity’s officers, directors, members, managers, joint venturers or partners, as applicable (whether as a result of the ownership of voting securities, by contract or otherwise).

ARTICLE 2. ADJUSTMENTS TO THE SHARES.

2.1 Stock Dividends, Subdivisions and Combinations. If the Company declares or pays a dividend on the Shares payable in common stock or other securities, then upon exercise of this Warrant, for each Share acquired, Holder shall receive, without cost to Holder, the total number and kind of securities to which Holder would have been entitled had Holder owned the Shares of record as of the date the dividend occurred. If the Company subdivides the Shares by reclassification, stock split, split-up or otherwise into a greater number of shares or takes any other action which increases the number of shares of any class or series of capital stock into which the Shares are convertible, the number of Shares purchasable hereunder shall be proportionately increased and the Warrant Price shall be proportionately decreased. If the outstanding Shares are combined or consolidated, by reclassification or otherwise, into a lesser number of shares, the Warrant Price shall be proportionately increased and the number of Shares shall be proportionately decreased.

2.2 Reclassification, Exchange, Combination or Substitution. Upon any reclassification, exchange, combination, substitution, reorganization, merger, consolidation or other event that results in a change of the number and/or class of the underlying securities as to which purchase rights under this Warrant exist, Holder shall be entitled to receive, upon exercise or conversion of this Warrant, the number, amount and kind of securities, money and property that Holder would have ultimately received upon the completion of such reclassification, exchange, combination, substitution, reorganization, merger, consolidation or other event if this Warrant had been exercised immediately before such reclassification, exchange, combination,

substitution, reorganization, merger, consolidation or other event. Such an event shall include any automatic conversion of the outstanding or issuable securities of the Company of the same class or series as the Shares to common stock pursuant to the terms of the Company's Amended and Restated Certificate of Incorporation, as amended (the "Certificate"). The Company or its successor shall promptly issue to Holder an amendment to this Warrant setting forth the number and kind of such new securities or other property issuable upon exercise or conversion of this Warrant as a result of such reclassification, exchange, combination, substitution, reorganization, merger, consolidation or other event that results in a change of the number and/or class of securities issuable upon exercise or conversion of this Warrant. The amendment to this Warrant shall provide for adjustments which shall be as nearly equivalent as may be practicable to the adjustments provided for in this Article 2 including, without limitation, adjustments to the Warrant Price and to the number of securities or property issuable upon exercise of the amended Warrant. The provisions of this Section 2.2 shall similarly apply to successive reclassifications, exchanges, combinations, substitutions, reorganizations, mergers, consolidations or other events.

2.3 Adjustments for Diluting Issuances. The Warrant Price and the number of Shares issuable upon exercise of this Warrant, and the number of shares of common stock or other securities issuable upon conversion of the Shares, shall be subject to adjustment, from time to time in the manner set forth in the Certificate as if the Shares were issued and outstanding on and as of the date of any such required adjustment. The provisions set forth for the Shares in the Certificate relating to the above in effect as of the Issue Date may not be amended, modified or waived, without the prior written consent of Holder unless such amendment, modification or waiver affects the rights associated with the Shares in the same manner as such amendment, modification or waiver affects the rights associated with all other shares of the same series and class as the Shares.

2.4 No Impairment. Without the prior written consent of Holder, the Company shall not, by amendment of the Certificate, the Stockholders Agreements (as defined below) or its by-laws, or through any reorganization, recapitalization, share exchange, transfer of assets, consolidation, merger, dissolution, issuance or sale of securities, or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms of this Warrant, and shall at all times in good faith assist in carrying out of all such terms and in taking all such action as may be necessary or appropriate to protect Holder's rights against such avoidance or impairment.

2.5 Fractional Shares. No fractional Shares shall be issuable upon exercise or conversion of this Warrant and the number of Shares to be issued shall be rounded down to the nearest whole Share. If a fractional share interest arises upon any exercise or conversion of the Warrant, the Company shall eliminate such fractional share interest by paying Holder the amount computed by multiplying the fractional interest by the Fair Market Value of a full Share.

2.6 Certificate as to Adjustments. Upon each adjustment of the Warrant Price or the kind or number of securities issuable under this Warrant pursuant to this Article 2, the Company shall promptly notify Holder in writing, and, at the Company's expense, promptly compute such adjustment, and furnish Holder with a certificate of its Chief Executive Officer, Corporate Secretary or a senior financial officer setting forth such adjustment and the facts upon which such adjustment is based. The Company shall, upon written request, furnish Holder a certificate setting forth the Warrant Price and the number and kind of securities issuable under this Warrant in effect upon the date thereof and the series of adjustments leading to such Warrant Price and such number and kind of securities.

ARTICLE 3. REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE COMPANY.

3.1 Representations and Warranties. The Company represents and warrants and covenants to Holder as follows:

(a) The Company has all requisite legal and corporate power and authority, and has taken all corporate action on the part of itself, its officers, directors and stockholders necessary, to execute, issue and deliver this Warrant, to issue the Shares issuable upon exercise or conversion of this Warrant and the securities issuable upon conversion of the Shares, and to carry out and perform its obligations under this Warrant, and this Warrant constitutes the legally binding and valid obligation of the Company enforceable in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, or similar laws relating to or affecting the enforcement of creditors' rights, or to principles of equity.

(b) This Warrant has been validly issued and is free of restrictions on transfer other than restrictions on transfer set forth herein and under applicable state and federal securities laws. All Shares which may be issued upon the exercise of the purchase or conversion right represented by this Warrant, and all securities, if any, issuable upon conversion of the Shares, shall, upon issuance, be duly authorized, validly issued, fully paid and nonassessable, and free of any liens and encumbrances (including preemptive or other similar rights) except for restrictions on transfer provided for herein or under applicable federal and state securities laws.

(c) The execution, delivery, and performance of this Warrant will not result in a violation of, be in conflict with, or constitute a default under, with or without the passage of time or giving of notice, any provision of the Certificate, the Stockholders Agreements or the Company's by-laws, any provision of any judgment, decree, or order to which the Company is a party, by which it is bound, or to which any of its material assets are subject, any contract, obligation, or commitment to which the Company is a party or by which it is bound, or any statute, rule, or governmental regulation applicable to the Company, or the creation of any lien, charge, or encumbrance upon any assets of the Company.

(d) The Company has provided Holder with a capitalization table of the Company, and such capitalization table is complete and accurate as of the date hereof and reflects all outstanding capital stock of the Company and all outstanding warrants, options, conversion privileges, preemptive rights and other rights or agreements to purchase or otherwise acquire or issued any equity securities or convertible debt securities of the Company. The Company has reserved a sufficient number of Shares for issuance upon the exercise of this Warrant and a sufficient number of shares of the securities issuable upon conversion of the Shares.

(e) The Warrant Price is no greater than the lowest price at which the Company has issued Series [●] Preferred Stock.

3.2 Notice of Certain Events; Information. If the Company proposes at any time (a) to declare any dividend or distribution upon any of its stock, whether in cash, property, stock, or other securities and whether or not a regular cash dividend; (b) to effect any reclassification or recapitalization of any of its stock; (c) to merge or consolidate with or into any other corporation, or sell, lease, license, or convey all or substantially all of its assets, (d) to approve or participate in any Acquisition or an IPO, (e) to liquidate, dissolve or wind up or approve or consummate any Liquidation Event (as defined in the Certificate), or (f) to take any action or to effect any transaction

which requires the Company to provide notice to other holders of the Shares, then, in connection with each such event, the Company shall give Holder: (1) at least ten (10) business days prior written notice of the date on which a record will be taken for such dividend or distribution (and specifying the date on which the holders of stock will be entitled thereto) or for determining rights to vote, if any, in respect of the matters referred to in (a) above; and (2) in the case of the matters referred to in (b), (c), (d), (e) or (f) above, at least ten (10) business days prior written notice of the date when the same will take place (and, if applicable, specifying the date on which the holders of stock will be entitled to exchange their common stock for securities or other property deliverable upon the occurrence of such event). The Company will also provide such information in its possession as is reasonably requested by Holder and as is reasonably necessary to enable Holder to comply with Holder's accounting or reporting requirements, including without limitation, a capitalization table, to be provided to Holder within thirty (30) days after such request, including the per share price of the Company's equity securities most recently issued prior to the date such capitalization table and indication are so provided; provided, that the Company's obligations set forth in this sentence shall terminate immediately prior to the Company's IPO.

3.3 Stockholders Agreements; No Other Stockholder Rights. Except as provided in this Warrant and subject to the following provisions of this Section 3.3, Holder will not have any rights as a stockholder of the Company until the exercise of this Warrant. Effective upon any exercise or conversion of this Warrant, Holder and any permitted transferee of the Warrant or the Shares shall be entitled to all of the rights and benefits provided to all other holders of the Shares pursuant to, and the Company and Holder agree that Holder (and any permitted transferee of the Warrant or the Shares) will execute a counterpart signature page and become a party to (a) the Amended and Restated Investor Rights Agreement, dated as of July 7, 2017, the Amended and Restated Right of First Refusal and Co-Sale Agreement, dated as of July 7, 2017, and the Amended and Restating Voting Agreement, dated as of July 7, 2017, in all such cases, by and among the Company and certain of its stockholders (as hereafter amended, restated or superseded, together, the "Stockholders Agreements").

ARTICLE 4. REPRESENTATIONS AND WARRANTIES OF HOLDER. Holder represents and warrants to the Company as follows:

4.1 Purchase for Own Account. This Warrant and the securities to be acquired upon exercise of this Warrant by Holder will be acquired for investment for Holder's account, not as a nominee or agent, and not with a view to the public resale or distribution within the meaning of the Act and Holder has no present intention of selling or engaging in any public distribution of the same except pursuant to a registration or exemption or any transfer contemplated by or permitted under Section 3.3. Holder also represents that Holder has not been formed for the specific purpose of acquiring this Warrant or the Shares.

4.2 Disclosure of Information. Holder has received or has had full access to all the information it considers necessary or appropriate to make an informed investment decision with respect to the acquisition of this Warrant and its underlying securities. Holder further has had an opportunity to ask questions and receive answers from the Company regarding the terms and conditions of the offering of this Warrant and its underlying securities and to obtain additional information (to the extent the Company possessed such information or could acquire it without unreasonable effort or expense) necessary to verify any information furnished to Holder or to which Holder has access.

4.3 Investment Experience. Holder understands that the purchase of this Warrant and its underlying securities involves substantial risk. Holder has experience as an

investor in securities of companies in the development stage and acknowledges that Holder can bear the economic risk of Holder's investment in this Warrant and its underlying securities and has such knowledge and experience in financial or business matters that Holder is capable of evaluating the merits and risks of its investment in this Warrant and its underlying securities and/or has a preexisting personal or business relationship with the Company and certain of its officers, directors or controlling persons of a nature and duration that enables Holder to be aware of the character, business acumen and financial circumstances of such persons.

4.4 Accredited Investor Status. Holder is an "accredited investor" within the meaning of Regulation D promulgated under the Act.

4.5 The Act. Holder understands that this Warrant and the Shares issuable upon exercise or conversion hereof have not been registered under the Act in reliance upon a specific exemption therefrom, which exemption depends upon, among other things, the bona fide nature of Holder's investment intent as expressed herein. Holder understands that this Warrant and the Shares issued upon any exercise or conversion hereof must be held indefinitely unless subsequently registered under the Act and qualified under applicable state securities laws, or unless exemption from such registration and qualification are otherwise available.

4.6 Market Stand-Off. Holder hereby agrees that, in connection with the Company's IPO it shall not to the extent requested by the Company's underwriter(s) sell, make any short sale of, loan, grant any option for the purchase of, or otherwise dispose of any securities of the Company (other than any disposed of in the registration and those acquired by Holder in the IPO or thereafter in open market transactions) for up to one hundred eighty (180) days from the effective date of the registration statement filed in connection with the IPO; provided, however, that such one hundred eighty (180) day period may be extended to the extent necessary to permit any managing underwriter to comply with applicable law or regulation; provided further, however, that Holder shall not be bound by the restrictions set forth in this Section 4.6 unless all five percent (5%) or greater (in terms of ownership of the issued and outstanding capital stock of the Company) stockholders of the Company also agree to such restrictions; and provided, further, that any discretionary waiver or termination of the foregoing restrictions by the Company or the underwriters shall apply to all holders of the Company's equity securities subject to such restrictions pro rata based on the number of shares subject to such restrictions. Holder agrees to enter into the form of lock-up agreement as reasonably requested by the underwriter(s) in connection with this Section 4.6.

ARTICLE 5. MISCELLANEOUS.

5.1 Term. This Warrant is exercisable in whole or in part at any time and from time to time on or before the Expiration Date. The conditions under which the Warrant shall automatically convert on the Expiration Date are set forth in Section 5.8 below.

5.2 Legends.

(a) This Warrant and the Shares (and the securities issuable, directly or indirectly, upon conversion of the Shares, if any) shall be imprinted with a legend in substantially the following form:

THIS WARRANT AND THE SHARES ISSUABLE HEREUNDER HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"), OR THE SECURITIES LAWS OF ANY STATE AND, EXCEPT

PURSUANT TO THE PROVISIONS OF ARTICLE 5, MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED, PLEDGED OR HYPOTHECATED UNLESS REGISTERED UNDER SAID ACT AND APPLICABLE STATE SECURITIES LAW, OR UNLESS SUCH OFFER, SALE OR TRANSFER, PLEDGE OR HYPOTHECATION CAN BE MADE IN COMPLIANCE WITH RULE 144 OF THE ACT, OR UNLESS, IN THE OPINION OF LEGAL COUNSEL IN FORM AND SUBSTANCE REASONABLY SATISFACTORY TO THE ISSUER OF THESE SECURITIES, SUCH OFFER, SALE OR TRANSFER, PLEDGE OR HYPOTHECATION IS EXEMPT FROM REGISTRATION.

THE SECURITIES EVIDENCED BY THIS CERTIFICATE ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE, INCLUDING A MARKET STAND-OFF PERIOD OF UP TO 180 DAYS IN THE EVENT OF A PUBLIC OFFERING, OR FOR A LONGER PERIOD IF THE ISSUER'S TRANSFER AGENT IS NOTIFIED BY THE ISSUER OR THE ISSUER'S COUNSEL THAT THIS MARKET STAND-OFF RESTRICTION HAS BEEN EXTENDED FOR THE PURPOSE OF COMPLYING WITH APPLICABLE LAW.

(b) Notwithstanding the foregoing, neither this Warrant nor any certificate or instrument evidencing this Warrant or the Shares shall bear, and the Company hereby agrees to remove, within ten (10) days of any written request (together with such evidence or documentation described in the following provisions) by Holder, pursuant to the following provisions of this Section 5.2(b), or not to affix, as applicable, any restrictive or other legend, notice or provision restricting the sale or transfer of this Warrant or the Shares, in each case provided that Holder has provided reasonable evidence to the Company (including any customary broker's or transferring stockholder's letters but expressly excluding an opinion of counsel other than with respect to clause (D) below) that: (A) a transfer of this Warrant or the Shares, as applicable, has been made pursuant to SEC Rule 144 (assuming the transferor is not an "affiliate" (as defined in SEC Rule 144) of the Company); (B) the Warrant or the Shares, as applicable, are then eligible for transfer pursuant to SEC Rule 144; (C) a transfer of this Warrant or the Shares has been made for no consideration to an affiliate of Holder or any assignee or purchaser of Holder's or its affiliate's rights under the Credit Agreement or any interest or participation therein or has otherwise been made to any affiliate of Holder who is an "accredited investor" as defined in Regulation D promulgated under the Act, and that is otherwise in compliance with all applicable securities laws; or (D) in connection with any other sale or transfer, provided that upon the request of the Company, such Holder provides the Company with an opinion of counsel to such Holder, in a reasonably acceptable form to the Company, to the effect that either such sale or transfer may be made without registration under the applicable requirements of the Act or that such a legend, notice or provision is not required by, and is not required in order to establish compliance with any provisions of, the Act. For all purposes of Section 1.4, the Company shall not be deemed to have delivered to Holder Shares unless and until the Company shall have fully complied with all of the terms and conditions of this Section 5.2(b) (if removal has been requested by Holder in compliance with this Section 5.2(b)).

5.3 Compliance with Securities Laws on Transfer. This Warrant and the Shares issuable upon exercise of this Warrant (and the securities issuable, directly or indirectly, upon conversion of the Shares, if any) may not be transferred or assigned in whole or in part without compliance with applicable federal and state securities laws by the transferor and the transferee (including, without limitation, the delivery of investment representation letters and, subject to Section 5.2(b), legal opinions reasonably satisfactory to the Company, as reasonably requested by the Company). The Company shall not require Holder to provide an opinion of

counsel if the transfer is to an affiliate of Holder or any assignee or purchaser of Holder's or its affiliate's rights under the Credit Agreement or any interest or participation therein. Additionally, the Company shall also not require an opinion of counsel if there is no material question as to the availability of Rule 144.

5.4 Transfer Procedure. Subject to the provisions of Section 5.3 and upon and effective immediately as of providing Company with written notice substantially in the form attached as Appendix 2, Holder and any permitted transferee may transfer all or part of this Warrant or the Shares issuable upon exercise of this Warrant (or the Shares issuable directly or indirectly, upon conversion of the Shares, if any) to any transferee, provided, however, in connection with any such transfer, Holder or such transferee will give the Company notice of the portion of the Warrant being transferred with the name, address and taxpayer identification number of the transferee and, in the case of transfer to a transferee who is not an affiliate of the Holder, Holder or such transferee promptly thereafter surrenders this Warrant to the Company for reissuance to the transferee(s) (and Holder if applicable).

5.5 Notices. All notices, requests, documents and other communications (collectively, "Notices") from the Company to Holder, or vice versa, shall be in writing and deemed validly delivered effective as of the earliest to occur of (a) when actually received, (b) when transmitted by facsimile or electronic mail (PDF), (c) the first business day after mailing by first-class registered or certified mail, postage prepaid, or after deposit with a reputable overnight courier with all charges paid, in each case other than actual receipt at such mailing, facsimile or electronic mail address as may have been furnished to the Company or Holder, as the case may be. As used in this Warrant, "business days" shall refer to all days other than any Saturday, Sunday or day on which the Company's primary depository bank is closed. All notices to Holder shall be addressed as follows until the Company receives notice of a change of address in connection with a transfer or otherwise:

[●]

with a copy to:

[●]

Notice to the Company shall be addressed as follows until Holder receives notice of a change in address:

Sight Sciences, Inc.
3000 Sand Hill Road
Building 3, Suite 105
Menlo Park, CA 94025
Attention: Jesse Selnick, Robert Geronimo
Fax: 650-352-2509
E-Mail: [●]

With a copy to:

[●]

5.6 Waiver. This Warrant and any term hereof may be changed, waived, discharged or terminated only by an instrument in writing signed by the party against which enforcement of such change, waiver, discharge or termination is sought.

5.7 Attorneys' Fees. In the event of any dispute between the parties concerning the terms and provisions of this Warrant, the party prevailing in such dispute shall be entitled to collect from the other party all costs incurred in such dispute, including reasonable attorneys' fees.

5.8 Automatic Conversion upon Expiration. Unless Holder notifies the Company in writing to the contrary prior to such automatic conversion, in the event that, upon the earliest to occur of the Expiration Date or any expiration, involuntary termination or cancellation of this Warrant, the Fair Market Value of one Share as determined in accordance with Section 1.3 above is greater than the Warrant Price in effect on such date, then this Warrant shall automatically be deemed as of immediately before such date to have been converted pursuant to Section 1.2 above as to all Shares for which it shall not previously have been exercised or converted, and the Company shall promptly deliver a certificate representing the Shares issued upon such conversion to the Holder.

5.9 Counterparts. This Warrant may be executed in counterparts, all of which together shall constitute one and the same agreement.

5.10 Governing Law. This Warrant shall be governed by and construed in accordance with the laws of the State of New York, in each case (except to the extent the General Corporation Law of the State of Delaware applies) without giving effect to its principles regarding conflicts of law (other than Section 5-1401 of the General Obligations Law).

5.11 Headings. The various headings in this Warrant are inserted for convenience only and shall not affect the meaning or interpretation of this Warrant or any provisions hereof.

5.12 Severability. In the event any one or more of the provisions of this Warrant shall for any reason be held invalid, illegal or unenforceable, the remaining provisions of this Warrant shall be unimpaired, and the invalid, illegal or unenforceable provision shall be replaced by a mutually acceptable valid, legal and enforceable provision.

[5.13 Replacement of Prior Warrant This Warrant, together with that certain Warrant to Purchase Stock, issued by the Company to Flexpoint MCLS Holdings, LLC, permitting the purchase of 3,162 shares of Series C Preferred Stock, replaces and supersedes in its entirety the warrant to purchase 25,298 shares of Series C Preferred Stock by the Company to MidCap Funding XXVIII Trust on January 25, 2019 (the "Original Issue Date"). Any reference to the "Issue Date" or the "date hereof" in this Warrant shall refer to the Original Issue Date.][3]

[***Balance of Page Intentionally Left Blank***]

3 Insert for MidCap Funding XXVII Trust warrants dated February 4, 2019 and February 9, 2019.

"COMPANY"

SIGHT SCIENCES, INC.

By: _____

Name: _____
(Print)

Title: _____

"HOLDER"

[●]

By: _____

Name: _____

Title: _____

APPENDIX 1

NOTICE OF EXERCISE

1. Holder elects to purchase shares of the [Preferred/Common] Stock of Sight Sciences, Inc. pursuant to the terms of the attached Warrant, and tenders payment of the purchase price of the shares in full.

[or]

1. Holder elects to convert the attached Warrant into Shares/cash [strike one] in the manner specified in the Warrant. This conversion is exercised for of the Shares covered by the Warrant.

[Strike paragraph that does not apply.]

2. Please issue a certificate or certificates representing the shares in the name specified below:

_____
Holder's Name

_____

_____
(Address)

3. By its execution below and for the benefit of the Company, Holder hereby restates each of the representations and warranties in Article 4 of the Warrant as the date hereof.

HOLDER:

_____

By: _____
Name: _____
Title: _____
(Date): _____

APPENDIX 2

ASSIGNMENT

For value received, [●] hereby sells, assigns and transfers unto

Name:

Address:

Tax ID:

that certain Warrant to Purchase Stock issued by Sight Sciences, Inc. (the "Company"), on [●] (the "Warrant") together with all rights, title and interest therein.

[●]

By: _____
Name: _____
Title: _____

Date: _____

By its execution below, and for the benefit of the Company, makes each of the representations and warranties set forth in Article 4 of the Warrant and agrees to all other provisions of the Warrant as of the date hereof.

[NAME OF TRANSFEREE]

By: _____
Name: _____
Title: _____

SUBLEASE

THIS SUBLEASE ("***Sublease***"), dated as of September 17, 2019, is made by and between **CELLULAR RESEARCH, INC.**, a Delaware corporation (a wholly owned subsidiary of Becton, Dickinson and Company, a New Jersey corporation) ("***Sublessor***") and **SIGHT SCIENCES, INC.**, a Delaware corporation ("***Sublessee***") (Sublessor and Sublessee, collectively the "***Parties***," or individually a "***Party***"). This Sublease is and shall at all times be subject and subordinate to that certain Multi-Tenant Space Lease, dated as of July 15, 2015 (the "***Master Lease***"), by and between Sublessor, as tenant, and Deerfield Campbell, LLC, a California limited liability company (the "***Master Lessor***"), as landlord. A true and correct copy of the Master Lease is attached hereto as **Exhibit A**. Capitalized terms used but not defined herein shall have the meanings set forth in the Master Lease.

1. Basic Provisions ("***Basic Provisions***")

1.1 Premises: The "***Premises***" consist of certain portions of that certain real property commonly known as 4040 Campbell Avenue, Menlo Park, located in the County of San Mateo, State of California, comprising approximately 10,823 rentable square feet and known as Suites 100 and 120. "***Sublessee's Percentage Share***" is 26.09%. A diagram of the Premises is attached hereto as **Exhibit B**.

1.2 Term: The term of this Sublease shall commence on the later to occur of (**i**) October 1, 2019 or (**ii**) the date upon which a fully-executed consent to sublease by Master Lessor is received and the Premises are delivered to Sublessee ("***Commencement Date***") and shall end on July 31, 2021 ("***Expiration Date***").

1.3 Sublessor Early Termination Right: Sublessor shall have the right to terminate this sublease effective on April 30, 2021 ("***Termination Date***"), upon providing written notice to Sublessee on or before January 31, 2021. Failure to vacate by the Termination Date will cause penalties under Paragraph 15.2 of the Master Lease and Sublessee shall be fully responsible for payment of such penalties.

1.4 Base Rent: The base rent hereunder shall be $43,292.00 (equal to $4.00 per square foot per month) (the "***Base Rent***"), increasing by three percent (3%) annually commencing upon the first year anniversary of the Commencement Date.

1.5 Additional Rent. Sublessee shall pay Sublessee's Percentage Share of Real Property Taxes, Landlord's Real Property Insurance, Common Operating Expenses and Management Fee (together with all other monetary obligations of Sublessee due under this Sublease "***Additional Rent***") as provided in Section 3.2 of the Master Lease (but expressly excluding Subsections (4) and (6) thereof to the extent such costs arise from Sublessor's actions or omissions) in lieu of (and not in additional to) Tenant's Allocated Share of Additional Rent due under the Master Lease. The initial estimated Additional Rent for calendar year 2019 shall be $9,037.21 per month, not including Pacific Gas and Electric costs.

1.6 First Month's Rent and Security Deposit: Simultaneously with the execution of this Sublease, Sublessee shall deliver to Sublessor **$182,205.21** in immediately available funds. Such amount is comprised of the sum of the following: $52,329.21 (representing the Base Rent plus the estimated Additional Rent for the first full month of the Sublease Term), **PLUS** $129,876.00 (the ***Security Deposit***", which is equal to three (3) months of the Base Rent).

2. Premises.

2.1 Letting. Sublessor hereby subleases to Sublessee, and Sublessee hereby subleases from Sublessor, subject to the Master Lease, the Premises for the term, at the rental, and upon all of the terms covenants and conditions set forth in this Sublease. Unless otherwise provided herein, any statement of size set forth in this Sublease, or that may have been used in calculating rent, is an approximation which the Parties agree is reasonable and any payments based thereon are not subject to revision whether or not the actual size is more or less. Sublessee is advised to verify the actual size prior to executing this Sublease.

2.2 Condition. Sublessor shall deliver the Premises to Sublessee broom clean and free of debris on the Commencement Date. Sublessor agrees to coordinate with Master Lessor to ensure the building systems are in good operating condition.

2.3 Compliance. Sublessor makes no representation or warranty regarding the compliance of any improvements, alterations or utility installations made or installed by or on behalf of Sublessor and/or Master Lessor to or on the Premises with applicable covenants or restrictions of record and applicable building codes, regulations and ordinances ("***Applicable Requirements***") in effect on the date that they were made or installed. Sublessor makes no warranty as to the use to which Sublessee will put the Premises or to modifications which may be required by the Americans with Disabilities Act or any similar laws as a result of Sublessee's use. Sublessee is responsible for determining whether or not the zoning and other Applicable Requirements are appropriate for Sublessee's intended use, and acknowledges that past uses of the Premises may no longer be allowed.

2.4 Acknowledgements. Sublessee acknowledges that: (a) it has been advised by Sublessor to satisfy itself with respect to the condition of the Premises (including but not limited to the electrical, heating, ventilating and air condition systems ("***HVAC***") and fire sprinkler systems, security, environmental aspects, and compliance with Applicable Requirements and the Americans with Disabilities Act), and their suitability for Sublessee's intended use, (b) Sublessee has made such investigation as it deems necessary with reference to such matters and assumes all responsibility therefor as the same relate to its occupancy of the Premises, and (c) neither Sublessor, nor Sublessor's agents, have made any oral or written representations or warranties with respect to said matters other than as set forth in this Sublease.

2.5 Americans with Disabilities Act. In the event that as a result of Sublessee's specific use of the Premises the Americans with Disabilities Act or any similar law requires modifications or the construction of installation of improvements in or to the Premises, or applicable building, project and/or common areas, the Parties agree that such modifications, construction or improvements shall be made at Master Lessor's expense pursuant to the Master Lease or, if not so required by the Master Lessor, at Sublessee's expense to the extent required under the Master Lease. Sublessor shall have no obligation in this regard.

3. Possession.

3.1 Early Possession. Sublessor agreed to tender possession of the Premises to Sublessee on the date all the following are satisfied: (i) Sublessee's delivery of **$182,205.21** to Sublessor in immediately available funds as set forth in Section 1.6; (ii) Sublessee's delivery of evidence of insurance; and (iii) Sublessor's receipt of Master Lessor's written consent to this Sublease

3.2 Delay in Commencement. If the Commencement Date has not occurred by November 1, 2019, then Sublessee may terminate this Sublease upon written notice to Sublessor and, upon receipt of such notice, Sublessor shall return any prepaid Rent and Security Deposit to Sublessee.

3.3 Approval of Master Lessor. This Sublease is conditioned upon, and shall not take effect until Sublessor received written consent of the Master Lessor. If such consent has not been received by November 1, 2019, then Sublessee may terminate this Sublease upon written notice to Sublessor and, upon receipt of such notice, Sublessor shall return any prepaid Rent and Security Deposit to Sublessee. A copy of the executed Consent of Master Lessor shall be attached to this Sublease.

3.4 Sublessee Compliance. Sublessor shall not be required to tender possession of the Premises to Sublessee until Sublessee complies with its obligation to provide evidence of insurance. Pending delivery of such evidence, Sublessee shall be required to perform all of its obligations under this Sublease from and after the Commencement Date, notwithstanding Sublessor's election to withhold possession pending receipt of such evidence of insurance. Further, if Sublessee is required to perform any other conditions prior to or concurrent with the Commencement Date pursuant to the express provisions of this Sublease, the Commencement Date shall occur but Sublessor may elect to withhold possession until such conditions are satisfied.

4. Rent. The Base Rent plus the estimated Additional Rent shall be due and payable on the first day of each month. All monetary obligations of Sublessee to Sublessor under the terms of this Sublease are deemed to be rent ("***Rent***"). Rent shall be made payable to: **Becton, Dickinson and Company** in lawful money of the United States and sent to: **Nancy Chipman, Becton, Dickinson and Company, 2350 Qume Drive, San Jose, CA 95131** (XXX@bd.com) or to such other persons or at such other places as Sublessor may designate in writing.

5. Agreed Use. The Premises shall be used and occupied only for a Permitted Use under the Master Lease, and other lawful uses reasonably related thereto, and for no other purpose.

6. Master Lease.

6.1 Applicability of Master Lease. The terms, conditions and respective obligations of Sublessor and Sublessee to each other under this Sublease shall be the terms and conditions of the Master Lease except for those provisions of the Master Lease which are directly contradicted by this Sublease in which event the terms of this Sublease document shall control over the Master Lease as between Sublessor and Sublessee. Therefore, for the purposes of this Sublease, wherever in the Master Lease the word "Landlord" is used it shall be deemed to mean the Sublessor herein (except for those services and repairs to be provided by Master Lessor which shall remain the responsibility of Master Lessor) and wherever in the Master Lease the word "Tenant" is used it shall be deemed to mean the Sublessee herein.

6.2 Assumption of Obligations under Master Lease. During the term of this Sublease and for all periods subsequent for obligations which have arisen prior to the termination of this Sublease, Sublessee does hereby expressly assume and agree to perform and comply with, for the benefit of Sublessor and Master Lessor, each and every obligation of Sublessor as tenant under the Master Lease applicable to the Premises except for the following provisions which are excluded therefrom for purposes of Sublessee's obligations: Sections 1.1, 1.2, 1.4, 1.6, 1.7, 1.8, 2.1, 2.2, 2.3, 2.4, 2.5, 2.6, 2.7, 3.1, 3.2(4), 3.2(6), 3.3, 3.5, 3.6.1, 15.1 (but only as related to obligations to remove Leasehold Improvements, or personal property or Trade Fixtures owned by Sublessor or any alterations, Leasehold Improvements, cabling, wiring, hazardous materials, or signs existing as of the Commencement Date) 18.9, 20.1, 21.1, 22.1, and 23.1. The obligations that Sublessee has so assumed are hereinafter referred to as the "***Sublessee's Assumed Obligations***." The obligations that Sublessee has not so assumed, together with all of Sublessor's obligations under the entire Master Lease, with no exclusions, as applied to the Leased Premises (as defined in the Master Lease) not leased by Sublessee pursuant to this Sublease, are hereinafter referred to as the "***Sublessor's Remaining Obligations***."

6.3 Indemnity by Sublessee. Sublessee shall hold Sublessor free and harmless from all liability, judgments, costs, damages, claims or demands, including reasonable attorney's fees, arising out of (a) Sublessee's failure to comply with or perform Sublessee's Assumed Obligations, and/or (b) Sublessee's use and occupancy of the Building.

6.4 Obligations of Sublessor under Master Lease. Sublessor agrees to maintain the Master Lease during the entire term of this Sublease, subject, however, to any earlier termination of the Master Lease without the fault of the Sublessor, and to comply with or perform or cause to be performed Sublessor's Remaining Obligations and to hold Sublessee free and harmless from all liability, judgments, costs, damages, claims or demands arising out of (i) Sublessor's failure to comply with or perform Sublessor's Remaining Obligations or (ii) Sublessor's use and occupancy of the Building or breach of this Sublease. Sublessor represents to Sublessee that (a) the Master Lease is in full force and effect, (b) a complete copy of the Master Lease is attached as **Exhibit A** hereto, (c) the Master Lease has not been amended or modified and no provisions have been expressly waived, except as set forth in **Exhibit A**, and (d) that no default exists on the part of any party to the Master Lease. Sublessor shall use commercially reasonable efforts to cause the Master Lessor to perform its obligations under the Master Lease and shall cooperate with Sublessee in its efforts to obtain such performance. In the event Sublessor obtains a diminution or abatement of rent pursuant to the Master Lease attributable in part to the Premises or Sublessee's use or occupation thereof, Sublessee shall receive a pro rata abatement of rent equal to the rentable square feet of the Premises divided by the rentable square feet of the Leased Premises (as defined in the Master Lease), multiplied by the total amount of such abatement or diminution or, if such diminution or abatement is attributable solely to the Premises, Sublessee shall receive a rental abatement equal to such abatement or diminution. Sublessor agrees it will not amend or terminate the Master Lease which may adversely affect Sublessee's rights hereunder, without Sublessee's prior written consent (which consent Sublessee agrees it will not unreasonably withhold, condition or delay).

7. Representations and Indemnities of Broker Relationships. With the exception only of Jones Lang LaSalle (Conor Flannery and Grant Dettmer) ("***JLL***"), acting as agent for Sublessee, and Colliers International (Greg Galasso), acting as agent for Sublessor, the Parties each represent and warrant to the other that it has had no dealings with any person, firm, broker or finder in connection with this Sublease, and that, except as otherwise set forth herein, no one is entitled to any commission or finder's fee in connection herewith. Sublessor shall pay Colliers International who will, in turn pay JLL a standard market commission in accordance with the current listing agreement between Colliers International and Sublessor. Sublessee and Sublessor do each hereby agree to indemnify, protect, defend and hold the other harmless from and against liability for compensation or charges which may be claimed by any such unnamed broker, finder or other similar party by reason of any dealings or actions of the indemnifying Party, including any costs, expenses, attorneys' fees reasonably incurred with respect thereto.

8. Attorney's Fees. If any Party brings an action or proceeding involving the Premises whether founded in tort, contract or equity, or to declare rights hereunder, the substantially prevailing party in any such proceeding, action, or appeal thereon, shall be entitled to reasonable attorneys' fees. In addition, Sublessor shall be entitled to attorneys' fees, costs and expenses incurred in the preparation and service of notices of default and consultations in connection therewith, whether or not a legal action is subsequently commenced in connection with such default or resulting breach.

9. No Prior or Other Agreements. This Sublease contains all agreements between the Parties with respect to any matter mentioned herein, and no other prior or contemporaneous agreement or understanding shall be effective.

10. Furnishings. Sublessor agrees to deliver the Premises to Sublessee with all property, machinery, equipment and furnishings depicted on **Exhibit B** (the "***Assets***") in their "AS IS and "WHERE IS" condition. The Assets consists of certain property, machinery, equipment and furnishings owned by (i) Master Lessor (the "***Deerfield Assets***") and (ii) Sublessor (the "***Cellular Assets***"). On or before the Commencement Date, Sublessor and Master Lessor will enter into a Bill of Sale transferring all Cellular Assets to Master Lessor.

11. Parking. Sublessee shall have the non-exclusive right to use no more than Sublessee's Percentage Share of parking spaces within the Common Area (subject to the limitations in Section 4.6 of the Master Lease).

12. Signage. Sublessee shall have the right to install its pro rata space of lobby and door signage in compliance with Master Lease upon Master Lessor's prior approval. Sublessee shall have no obligation to remove Sublessor's, or any other tenant or subtenant's, signage.

[*Signatures on following page.*]

IN WITNESS WHEREOF, the Parties have executed this Sublease as of the date first written above.

SUBLESSEE:	SUBLESSOR:
SIGHT SCIENCES, INC.	CELLULAR RESEARCH, INC.
/s/ Jesse Selnick	/s/ Gary DeFazio
Name: Jesse Selnick	Name: Gary DeFazio
Title: CFO	Title: Vice President/Secretary

CONSENT OF MASTER LESSOR

[Intentionally Omitted]

EXHIBIT A

MASTER LEASE

[Intentionally Omitted]

EXHIBIT B

DIAGRAM OF PREMISES

[Intentionally Omitted]

MULTI-TENANT SPACE LEASE
("NNN")

LANDLORD	:	DEERFIELD CAMPBELL LLC, a California limited liability company
TENANT	:	SIGHT SCIENCES, INC., a Delaware corporation
REFERENCE **D**ATE	:	February 5, 2021
SUBJECT **P**ROPERTY	:	4040 Campbell Avenue Suites 100 and 120 Menlo Park, California (San Mateo County)

TABLE OF CONTENTS

MULTI-TENANT SPACE LEASE

THIS MULTI-TENANT SPACE LEASE (the "**Lease**"), dated as of February 5, 2021 (the "**Reference Date**") is made and entered into by and between **DEERFIELD CAMPBELL LLC**, a California limited liability company ("**Landlord**"), and **SIGHT SCIENCES, INC**., a Delaware corporation ("**Tenant**"), with reference to those matters set forth hereinafter.

ARTICLE 1.
DEFINITIONS

1.1 **Commencement Date**. The term "**Commencement Date**" shall mean August 1, 2021.

1.2 **Lease Term**. The term "**Lease Term**" shall mean the term of this Lease, which shall be for a period of thirty-seven (37) full calendar months (plus the partial month, if any, immediately following the Commencement Date), commencing on the Commencement Date and ending at midnight on the last day of the 37th full calendar month thereafter, unless this Lease is sooner terminated according to its terms or by mutual agreement. During the Lease Term, Tenant shall have access to the Premises and Building 24 hours a day, 7 days a week.

1.3 **Property.** The term "**Property**" shall mean that real property commonly described as 4040 Campbell Avenue, First Floor, City of Menlo Park, City, County of San Mateo, State of California, with all improvements now or hereafter located thereon described by the Site Plan attached hereto as **Exhibit A**, containing a two-story building, the aggregate gross leasable area of which is approximately 41,482 square feet (the "**Property Gross Leasable Area**"), together with all parking, landscaping, and other areas within the Property.

1.4 **Leased Premises.** The term "**Leased Premises**" and/or "**Premises**" shall mean those certain premises commonly known as 4040 Campbell Avenue, Suites 100 and 120, Menlo Park, California, as outlined in the Site Plan attached hereto as **Exhibit A** and as shown by the Floor Plan attached hereto as **Exhibit B** containing approximately 10,823 square feet of gross leasable area located in the Building, as hereinafter defined ("**Tenant's Gross Leasable Area**).

1.5 **Building.** The term "**Building**" shall mean the structure situated on the Property in which the Leased Premises are located containing approximately 41,482 square feet of gross leasable area (the "**Building Gross Leasable Area**").

1.6 **Tenant's Allocated Share.** The term "**Tenant's Allocated Share**" shall mean the percentage obtained by dividing Tenant's Gross Leasable Area by the Building Gross Leasable Area which, as of the Reference Date hereof is agreed to be 26.09%.

1.7 **Prepaid Rent**. The term "**Prepaid Rent**" shall mean the sum of Forty Nine Thousand Eight Hundred Fifty Dollars and 02/100 ($49,850.02) representing Base Monthly Rent for the September 2021 month of occupancy ($43,292.00) and Tenant's Allocated Share of Operating Expenses for August ($6,558.02) after the Commencement Date.

1.8 **Security Deposit.** The term "**Security Deposit**" shall mean the sum of One Hundred Eight Thousand Three Hundred Fifty-Eight Dollars and 44/100 ($108,358.44) which amount is equivalent to last two (2) months' of Base Monthly Rent and the first two (2) months' estimated Common Operating Expenses (as defined in section 6.4) as provided for in section 3.6 herein.

1.9 **Permitted Use.** The term **"Permitted Use"** shall mean allowing use for general office, administrative, laboratory, research and development, light manufacturing and other related legal uses**.**

1.10 **Tenant's Minimum Liability Insurance Coverage.** The term "**Tenant's Minimum Liability Insurance Coverage**" shall mean single limit coverage in an amount not less than Two Million Dollars ($2,000,000.00) per occurrence, with an annual aggregate amount of not less than Four Million Dollars ($4,000,000.00).

1.11 **Additional Definitions.** As used in this Lease or any addendum or amendment thereto, the following terms shall have the meanings set forth in section 18.5 hereinbelow: "**Agreed Interest Rate**," "**Common Area**," "**Effective Date**," "**Private Restrictions**," "**Lender**," "**Law**," "**Leasehold Improvements**," and "**Trade Fixtures**."

ARTICLE 2.
DEMISE AND ACCEPTANCE

2.1 **Demise of Premises.** Landlord hereby leases to Tenant, and Tenant hires and takes from the Landlord, for the Lease Term upon the terms and conditions of this Lease, the Leased Premises together with (i) the non-exclusive right to use the Common Area, (ii) the non-exclusive right to use no more than Tenant's Allocated Share of parking spaces within the Common Area (subject to the limitations set forth in section 4.6 of this Lease), which pro rata share shall provide Tenant with no fewer than four and 4/10th (4.4) parking spaces in the Common Area per 1,000 square feet of gross leasable area in the Building, and (iii) the non-exclusive right to use the surface of the Common Area for ingress to and egress from the Leased Premises. Tenant's lease of the Leased Premises shall be subject to (i) all Laws, (ii) all Private Restrictions, easements, and other matters of public record, and (iii) reasonable rules and regulations from time-to-time promulgated by Landlord governing the use of the Common Area. Tenant may use any of the electrical vehicle charging stations.

2.2 **Term.** The term of this Lease shall be the Lease Term and shall commence upon the Commencement Date and continue for the period set forth in section 1.2 hereinabove.

2.3 **Delivery and Acceptance of the Premises.** Landlord shall deliver possession of the Leased Premises to Tenant on the Commencement Date with the roof membrane in water-tight

condition without leaks and all operating systems and components thereof in good working order and repair, including, but not limited to, heating, ventilation, and air conditioning ("**HVAC**"), electrical, plumbing, lighting, water and gas ("**Landlord's Work**"). Tenant shall have a one hundred and twenty (120) day warranty period to report any malfunctioning items and may submit a punchlist of the same to Landlord, which punchlist items Landlord will correct at Landlord's sole cost and expense (and not as an Common Operating Expense). Except as expressly set forth in article 2 to the contrary, Tenant shall accept the Leased Premises in their then-existing "**As-Is**" condition.

2.4 **Tenant's Improvements**. None.

2.5 **Early Occupancy**. Tenant presently occupies the Leased Premises pursuant to a sublease which sublease expires at midnight on July 31, 2021.

2.6 **Conditions Precedent to Delivery of the Leased Premises.** Notwithstanding any provision to the contrary in this Lease, Landlord will not be obligated to deliver possession of the Leased Premises to Tenant until Landlord has received from Tenant all of the following items: **(a)** a copy of this Lease, fully-executed by Tenant; **(b)** the Security Deposit, and the Prepaid Rent; **(c)** copies of insurance certificates thereof as required under section 9.1 of this Lease; **(d)** copies of all governmental permits and authorizations, if any, required in connection with Tenant's operation of its business within the Leased Premises.

ARTICLE 3.
RENT

3.1 **Base Monthly Rent.** Commencing on the Commencement Date and continuing throughout the Lease Term, Tenant shall pay to Landlord the Base Monthly Rent determined as follows:

Period	NNN/Monthly Base Rent Rate	Base Monthly Rent
August 1, 2021-August 31, 2021	$ 0.00	$ 0.00
September 1, 2021 through August 31, 2022	$ 4.00	$ 43,292.00
September 1, 2022 through August 31, 2023	$ 4.20	$ 45,456.60
September 1, 2023 through August 31, 2024	$ 4.40	$ 47,621.20

3.2 **Additional Rent**. Commencing on the Commencement Date and continuing throughout the Lease Term, Tenant shall pay to Landlord (or to Landlord's designated agent or entity) as Additional Rent, the following:

(1) subject to the provisions of Lease section 6.3, Tenant's Allocated Share of Real Property Taxes relating to the Premises as set forth in article 8 of this Lease; and

(2) subject to the provisions of Lease section 6.3, Tenant's Allocated Share of Landlord's Real Property Insurance relating to the Premises, as set forth in section 9.3 of this Lease; and

(3) Tenant's Allocated Share of Common Operating Expenses as required by sections 6.3, 6.4, and 1.6 of this Lease; and

(4) Landlord's share of the net consideration received by Tenant upon certain assignments and incidents of subletting as required by section 14.1.6 of this Lease; and

(5) an additional monthly management fee ("**Management Fee**") amount equal to four percent (4%) of the Base Monthly Rent as compensation to Landlord for accounting and property management services rendered by Landlord; and

(6) all charges, costs, expenses and other amounts which Tenant is required to pay hereunder to Landlord, together with all interest, late charges, penalties, costs and expenses including, without limitation, reasonable attorneys' fees, legal and accounting expenses, collection costs, and court costs, that may accrue thereto or be incurred in the event of Tenant's Default, refusal or failure to pay such amounts, and all damages, reasonable costs and expenses which Landlord may incur by reason of any Default by Tenant or failure on Tenant's part to comply with the terms of this Lease. In the event of failure by Tenant to pay such Additional Rent in accordance with the terms hereof, Landlord shall have all the rights and remedies with respect thereto as Landlord has for nonpayment of Base Rent. The term "**rent**" shall include, without limitation, "**Base Monthly Rent**" and "**Additional Rent**." Landlord estimates that Additional Rent will be $0.61 per rentable square foot per month for 2021.

3.3 **Place of Payment of Rent and Additional Rent.** All rent required to be paid in monthly installments shall be paid in advance on the first day of each calendar month during the Lease Term. All rent shall be paid in lawful money of the United States, without any abatement, deduction or offset whatsoever, except as expressly set forth in this Lease, and without any prior demand therefor, to Landlord at such place as Landlord may designate from time-to-time. Landlord shall provide advance written notice to Tenant of any changes in the address for the payment of Rent. Tenant's obligation to pay rent shall be prorated at the commencement and expiration of the Lease Term. All Base Monthly Rent and Additional Rent hereunder shall be paid to Landlord at the office of Landlord at 3715 Haven Avenue, Suite 210, Menlo Park, California (Attn.: Laura Hesselgren, Property Manager).

3.4 **Late Charge and Interest on Rent in Default.** Tenant acknowledges that the late payment by Tenant of any Base Monthly Rent or any Additional Rent will cause Landlord to incur certain costs and expenses not contemplated under this Lease, the exact amount of which are extremely difficult or impractical to fix. Such costs and expenses will include, without limitation, administration and collection costs and processing and

accounting expenses. Therefore, if any such rent is not received by Landlord from Tenant within 10 days after the same becomes due, Tenant shall immediately pay to Landlord a late charge equal to tenpercent (10%) of such delinquent rent ("**Late Charge**"); provided, however, that no fee or other charge shall be imposed for the first late payment in any twelve (12) month period and Landlord will not assess a Late Charge so long as Tenant pays the delinquent amount to Landlord within five (5) days after written notice or delinquency of the late payment is delivered by Landlord to Tenant. Landlord and Tenant agree that this late charge represents a reasonable estimate of such costs and expenses and is fair compensation to Landlord for its loss suffered by Tenant's failure to make timely payment. In no event shall this provision for a late charge be deemed to grant to Tenant a grace period or extension of time within which to pay any rental installment, nor shall this provision prevent Landlord from exercising any right or remedy available to Landlord upon Tenant's failure to pay each rental installment due under this Lease in a timely fashion. If any rental installment should become delinquent for a period in excess of 30 days then, in addition to such late charge, Tenant shall pay to Landlord interest on any rent that is not paid when due at the Agreed Interest Rate from the 30th day following the date such amount became due, until paid.

3.5 **Prepayment of Rent.** Tenant has paid to Landlord the amount set forth in section 1.7 of this Lease concurrently with its execution of this Lease as prepayment of rent for credit against the second installment(s) of Base Monthly Rent due hereunder.

3.6 **Security Deposit.** Tenant has deposited with Landlord the amount set forth in Section 1.8 concurrently with its execution of the Lease (the "**Security Deposit**") as security for the performance by Tenant of the terms of this Lease to be performed by Tenant, and not as prepayment of rent. Landlord may apply such portion or portions of the Security Deposit as are reasonably necessary for the following purposes: (i) to remedy Tenant's Default (as defined in Article 13 below) in the payment of any Rent; (ii) to repair damage to the Leased Premises caused by Tenant; (iii) intentionally deleted; (iv) to reimburse Landlord for the payment of any amount which Landlord may reasonably spend or be required to spend by reason of Tenant's Default; or (v) to compensate Landlord for any other loss or damage which Landlord may suffer by reason of Tenant's Default, including without limitation, those damages provided for in California Civil Code, Section 1951.2, and any successor statutes providing for damages in the event of the termination of a lease due to a default by the tenant thereunder, and those damages provided by other provisions of applicable law now or hereafter in force or provided for in equity. In the event the Security Deposit or any portion thereof is so used, Tenant agrees to pay to Landlord, within ten (10) days of receipt of written demand, an amount in cash sufficient to restore the Security Deposit to the full original sum. Landlord shall not be deemed a trustee of the Security Deposit. Landlord may use the Security Deposit in Landlord's ordinary business and shall not be required to segregate it from its general accounts. Tenant shall not be entitled to any interest on the Security Deposit. If Landlord transfers the Leased Premises during the Lease Term, Landlord shall pay the Security Deposit to any subsequent owner in conformity with the provisions of Section 1950.7 of the California Civil Code and/or any successor statute, in which event the transferring

Landlord will be released from all liability for the return of the Security Deposit. As a material part of the consideration given by Tenant to Landlord to induce Landlord to enter into this Lease, Tenant waives the provisions of California Civil Code, Section 1950.7, and all other provisions of law now in force or that become in force after the Reference Date, that provide that Landlord may claim from a security deposit only those sums reasonably necessary to remedy defaults in the payment of rent, to repair damage caused by Tenant, or to clean the Leased Premises. Landlord and Tenant agree that Landlord may, in addition, claim those sums reasonably necessary to compensate Landlord for any other foreseeable or unforeseeable loss or damage caused by the acts or omissions of Tenant or Tenant's officers, agents, employees, independent contractors or invitees. Should Tenant faithfully and fully comply with all of the terms, covenants, and conditions of this Lease, within thirty (30) days following the expiration of the Term, the Security Deposit shall be returned to Tenant or, at the option of Landlord, to the last assignee of Tenant's interest in this Lease.

3.7 **No Accord and Satisfaction.** No payment by Tenant or receipt by Landlord of a lesser amount than the rent herein provided shall be deemed to be other than on account of the earliest rent due and payable hereunder, nor shall any endorsement or statement on any check or any letter accompanying any check or payment as rent be deemed an accord and satisfaction (except upon Landlord's written consent), and Landlord may accept any such check or payment without prejudice to Landlord's right to recover the balance of such rent or pursue any other remedy provided in this Lease.

3.8 **Disputed Sums.** Under the terms of this Lease, numerous charges are and may be due from Tenant to Landlord including, without limitation, Base Monthly Rent, Common Operating Expenses and other items of a similar nature, including Additional Rent and advances made by Landlord in respect of Tenant's Default at Landlord's option. In the event that, at any time during the term of this Lease, there is a bona fide dispute between the parties as to the amount due for any of such charges claimed by Landlord to be due, the amount demanded by Landlord shall be paid by Tenant and held by Landlord in trust in an account separate from Landlord's general funds until the resolution of the dispute between the parties or by litigation.

ARTICLE 4.
USE OF LEASED PREMISES

4.1 **Limitation on Type.** Tenant shall use the Leased Premises solely for the Permitted Use (as described in section 1.9 of this Lease) and for no other use unless Tenant shall have first obtained Landlord's prior written consent. Tenant shall not do, nor permit anything to be done, in or about the Leased Premises which might unreasonably interfere with the rights of other tenants of Landlord to use the Property or cause structural injury to the Leased Premises or the Building. Tenant shall not commit, nor permit to be committed, any waste in or about the Leased Premises; and Tenant shall keep the Leased Premises in a clean, attractive and wholesome condition, free of any reasonably objectionable noises, odors, dust or nuisances.

4.2 **Compliance with Laws and Private Restrictions.** Tenant shall not use or permit any person to use the Leased Premises in any manner which violates any Laws or Private Restrictions. Tenant shall abide by and promptly observe and comply with all Laws and Private Restrictions and shall indemnify and hold Landlord harmless from any liability resulting from Tenant's failure to do so. Tenant shall not, however, be required to comply with any Laws or Private Restrictions requiring Tenant to make structural changes or capital improvements to the Leased Premises, or any changes or improvements required by Title 24 or the American With Disabilities Act unless necessitated, in whole or in part, by Tenant's particular use or occupancy of, or business conducted in, the Leased Premises, or as otherwise provided in section 5.3 hereinafter.

4.3 **Insurance Requirements.** Tenant shall not use, nor permit any person to use, the Leased Premises in any manner which will cause the existing rate of insurance upon the Building or any of its contents to be increased or cause a cancellation of any insurance policy covering the Building. Tenant shall not sell, nor permit to be kept, used, or sold in or about the Leased Premises any article which may be prohibited by the standard form of fire insurance policy. Tenant shall comply with all requirements of any insurance company, insurance underwriter, or Board of Fire Underwriters which are necessary to maintain, at standard rates, the insurance coverage carried by either Landlord or Tenant pursuant to this Lease.

4.4 **Signs.** Tenant shall not place on any portion of the Leased Premises, the Building nor the Property any sign, placard, lettering in or on windows, banner, displays or other advertising or communicative material which is visible from the exterior of the Building without the prior written approval of Landlord, which approval shall not be unreasonably withheld, conditioned or delayed. All such approved signs shall conform to all Laws, Private Restrictions and Landlord's sign criteria, if any, and shall be installed at the expense of Tenant. If Landlord so elects, Tenant shall, at the expiration or sooner termination of this Lease, remove all signs installed and repair any damage caused by such removal. Tenant shall at all times maintain such signs in good condition and repair. Tenant shall have the right to install its pro rata space of monument signage, lobby and door signage in compliance with the provisions of this section 4.4. which signage is hereby pre-approved subject to compliance with Laws.

4.5 **Rules and Regulations.** Landlord may, from time-to-time, promulgate reasonable and non-discriminatory rules and regulations applicable to all occupants of the Property for the care and orderly management of the Property and the safety of its tenants and invitees, provided that the rules and regulations shall not be changed or revised or enforced in any unreasonable or discriminatory manner by Landlord, nor enforced or changed by Landlord in such a manner as to interfere with the terms and conditions and/or purposes permitted under this Lease. Such rules and regulations shall be binding upon Tenant upon delivery of a copy thereof to Tenant, and Tenant agrees to abide by such rules and regulations. The most current rules and regulations are set forth on **Exhibit C**, attached hereto and incorporated herein. Tenant shall not, however, be

required to comply with any rules or regulations requiring Tenant to make structural changes or capital improvements to the Leased Premises except to the extent caused by Tenant's particular use or occupancy of, or business conducted in, the Leased Premises. If there is a conflict between the rules and regulations and any of the provisions of this Lease, the provisions of this Lease shall prevail. Landlord shall not be responsible for the violation by any other tenant of the Property of any such rules and regulations, but shall use commercially reasonable efforts to ensure such other tenants' compliance with such rules and regulations, which efforts shall not include the filing of a lawsuit against any other tenant.

4.6 **Parking.** At no additional cost to Tenant during the Term (as it may be extended), Tenant is allocated and shall have the nonexclusive right to use not more than Tenant's Allocated Share of parking spaces contained within the Property described in section 2.1 of this Lease for its use and the use of its employees and invitees, the location of which may be designated from time-to-time by Landlord. Tenant shall not at any time use nor permit its employees, invitees or customers to use more parking spaces than the number so allocated to Tenant. Tenant shall not have the exclusive right to use any specific parking space. Landlord reserves the right, after having given Tenant reasonable notice, to have any vehicles owned by Tenant or its employees or invitees utilizing parking spaces in excess of the parking spaces allowed for Tenant's use to be towed away at Tenant's cost. Landlord reserves the right to assign parking spaces to Tenant. All trucks and delivery vehicles shall be:

(i) parked at the rear of the Building;

(ii) loaded and unloaded in a manner which does not interfere with the businesses of other occupants of the Property; and

(iii) permitted to remain on the Property only so long as is reasonably necessary to complete loading and unloading.

Landlord may, upon advance written notice to Tenant, grant to any other tenant the exclusive right to use any particular parking space(s), excluding those spaces assigned to Tenant; and, as a result thereof, neither Tenant nor its employees or invitees shall use such spaces; provided, however, that Landlord shall grant to Tenant the same number of spaces taken from Tenant, if any, elsewhere on the Property and Tenant shall always be permitted to use any electrical vehicle charging stations. Tenant shall not at any time park or permit the parking of its vehicles or the vehicles of others adjacent to loading areas so as to interfere in any way with the use of such loading areas, nor shall Tenant at any time park or permit the parking of its vehicles or the vehicles of others on any portion of the Property not designated by Landlord as a parking area. In the event Landlord elects or is required by any Law to limit or control parking in the Property, whether by validation of parking tickets or any other method of assessment, Tenant agrees to participate in such validation or assessment program under such reasonable rules and regulations as are from time-to-time established by Landlord, but at no cost to Tenant.

Landlord reserves that right, after having given Tenant reasonable prior notice, to have any vehicles owned or operated by Tenant's employees or invitees utilizing parking spaces in excess of the parking spaces allowed for Tenant's use to be towed away at Tenant's cost.

ARTICLE 5.
TRADE FIXTURES AND LEASEHOLD IMPROVEMENTS

5.1 **Trade Fixtures.** Throughout the Lease Term, Tenant shall provide, install, and maintain in good condition all Trade Fixtures required in the conduct of its business in the Leased Premises. All Trade Fixtures shall remain Tenant's property.

5.2 **Leasehold Improvements.** Tenant shall not construct any Leasehold Improvements or otherwise alter the Leased Premises without Landlord's prior approval, if the cost thereof exceeds five thousand dollars (**$5,000**) per work of improvement, and not until Landlord shall have first approved the plans and specifications therefore, which approvals shall not be unreasonably withheld, conditioned or delayed. In no event shall Tenant make any alterations to the Lease Premises which could affect the structural integrity or the design of the Building without Landlord's prior written consent. All Leasehold Improvements constructed by Tenant shall be constructed by Tenant at Tenant's expense, using a licensed contractor first reasonably approved by Landlord in substantial compliance with the approved plans and specifications therefor. All construction done by Tenant shall be done in accordance with all Laws and in a good and workmanlike manner using new materials of good quality. Tenant shall not commence construction of any Leasehold Improvements until:

(i) all required governmental approvals and permits shall have been obtained;

(ii) all requirements regarding insurance imposed by this Lease have been satisfied;

(iii) Tenant shall have given Landlord at least five days' prior written notice of its intention to commence such construction;

(iv) Tenant shall have notified Landlord by telephone of the commencement of construction on the day it commences; and

(v) if reasonably requested by Landlord, Tenant or its contractor shall have obtained contingent liability and broad form builders risk insurance in an amount reasonably satisfactory to Landlord if there are any perils relating to the proposed construction not covered by the insurance carried pursuant to article 9 of this Lease.

All Leasehold Improvements shall remain the property of Tenant during the Lease Term but shall not be damaged, altered, or removed by Tenant from the Leased Premises. At the expiration or sooner termination of the Lease Term, all Leasehold Improvements shall

be surrendered to Landlord as a part of the realty and shall then become Landlord's property, and Landlord shall have no obligation to reimburse Tenant for all or any portion of the value or cost thereof; provided, however, that if Landlord shall require Tenant to remove any Leasehold Improvements in accordance with the provisions of section 15.1 of this Lease, then Tenant shall so remove such Leasehold Improvements prior to the expiration of the Lease Term. Landlord shall not have the right to require Tenant to remove any Leasehold Improvements or Alterations at the end of the Lease Term unless Landlord specifically reserved such right at the time it approved the installation of such Tenant Improvement or Alteration by written notice ("**Removal Notice**").

5.3 **Alterations Required by Law**. Subject to Landlord's obligations set forth in section 2.3 above, and subject to the provisions of section 4.2 above, Tenant shall make any alteration, addition or change of any sort, whether structural or otherwise, to the Leased Premises which is required by any Law because of:

(i) Tenant's particular use or change of use of the Leased Premises;

(ii) Tenant's application for any permit or governmental approval; or

(iii) Tenant's construction or installation of any Leasehold Improvements or Trade Fixtures (which for clarity, excludes Landlord's Work).

5.4 **Landlord's Improvements**. All fixtures, improvements or equipment which are installed, constructed on, or attached to the Property by Landlord at its expense shall become a part of the realty and belong to Landlord.

5.5 **Liens.** Tenant shall keep the Leased Premises and the Property free from any liens and shall pay when due all bills arising out of any work performed, materials furnished, or obligations incurred by Tenant, its agents, employees or contractors relating to the Leased Premises. If any claim or lien is recorded, Tenant shall bond against or discharge the same within 15 days after Tenant has received written Notice that the same has been recorded against the Leased Premises and/or the Property.

ARTICLE 6.
REPAIR AND MAINTENANCE

6.1 **Tenant's Obligations to Maintain.** Except as otherwise provided in section 6.2 below and in article 11 of this Lease regarding the restoration of damage caused by fire and other perils, Tenant shall, at all times during the Lease Term, reasonably clean, keep, and maintain in good order, ordinary wear and tear, acts of God, casualty and condemnation excepted, through regular inspections and servicing, including, but not limited to:

(i) all plumbing and sewage fixtures (including all sinks, toilets, faucets and drains) exclusively serving the Leased Premises;

(ii) all fixtures, interior walls, floors, carpets and ceilings;

(iii) all windows, doors, entrances, plate glass, showcases, including cleaning both interior and exterior surfaces; and

(iv) all electrical facilities and all equipment including all lighting fixtures, lamps, bulbs and tubes.

With respect to utility facilities serving the Leased Premises (including electrical wiring and conduits, gas lines, water pipes, and plumbing and sewage fixtures and pipes), Tenant shall be responsible for the maintenance and repair of any such facilities which serve only the Leased Premises. Tenant shall replace any damaged or broken glass in the Leased Premises (including all interior and exterior doors, windows, and showcases) with glass of like kind, size and quality. Tenant shall repair any damage to the Leased Premises (including exterior doors and windows) caused by vandalism and unauthorized entry. All repairs and replacements required of Tenant shall be promptly made with new materials of like kind and quality. If the work affects the structural parts of the Building or if the estimated cost of any item of repair or replacement is in excess of five thousand dollars (**$5,000**), then Tenant shall first obtain Landlord's written approval of the scope of work, plans therefor, materials to be used, and the contractor, which approval shall not be unreasonably withheld, conditioned or delayed. Neither Tenant, nor its agents, employees, guests, or contractors shall make any penetration(s) of the roof membrane over the Premises and Building without Landlord's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed; and any such approved penetration(s) shall be made only by a licensed contractor approved by Landlord, which approval shall not be unreasonably withheld, conditioned or delayed.

6.2 **Landlord's Obligation to Maintain.** Except to the extent either or both Tenant's responsibility under this Lease, or the responsibility of one or more third parties, Landlord shall maintain, repair and, as necessary, replace, all aspects of Property, including, without limitation:

(i) the roof membrane, roof covering and the structural portions of the roof;

(ii) the foundation of the Building;

(iii) exterior walls of the Building (subject to section 6.1. of this Lease) so that they are kept in good order and repair, reasonable wear and tear excepted;

(iv) the Common Areas;

(v) any damages to the Premises caused by the negligence or willful misconduct of Landlord, Landlord's agents, employees or contractors;

(vi) the structural portions of the Building; and

(vii) HVAC, electrical, water, sewer, elevator and plumbing systems serving the Premises and the Building; and

(viii) janitorial services to the Leased Premises.

Landlord shall not be responsible for repairs required by any accident, fire or other peril except as otherwise required by article 11 or, subject to the provisions of section 9.2, for the cost of damage caused to any part of the Property by any act, negligence or omission on the part of Tenant or its agents, contractors, or employees or invitees. Landlord may engage contractors of its choice to perform the obligations required of it by this article, and the necessity of any expenditure to perform such obligations shall be at the reasonable discretion of Landlord. It is an express condition precedent to all obligations of Landlord to repair and maintain the Premises that Landlord shall have received written notice of the need for such repairs or maintenance, after which Landlord shall be given a reasonable opportunity to do same.

6.3 **Tenant's Obligation to Reimburse.** As Additional Rent, Tenant shall pay Tenant's Allocated Share of all Common Operating Expenses (as that term is defined, below). Tenant shall make such payment in monthly installments due in advance with the installments of Base Monthly Rent on the first day of each calendar month of each calendar year, or part thereof, during the Lease Term (a "**Lease Year**") in an amount equal, at Landlord's election, to either **(i)** Tenant's share of the actual Common Operating Expenses incurred or paid by Landlord but not theretofore billed to Tenant, as invoiced by Landlord, or **(ii)** one-twelfth (1/12) of Landlord's reasonable estimate of Tenant's share of the Common Operating Expenses for the current Lease Year. Within 90 days after the end of each Lease Year, Landlord shall furnish to Tenant a statement in reasonable detail of the actual Common Operating Expenses paid or incurred by Landlord in accordance with this article during the just ending Lease Year, and thereupon there shall be an adjustment between Landlord and Tenant, with payment to or repayment by Landlord, as the case may require, within 30 days after receipt of delivery by Landlord to Tenant of said statement, to the end that Landlord shall receive the entire amount of Tenant's share of all Common Operating Expenses for such Lease Year and no more.

Tenant shall have the right, exercisable upon reasonable prior notice to Landlord in writing, to audit Landlord's books and records at Landlord's office relating to Common Operating Expenses within 90 days of receipt of any statement for the same, for the purpose of verifying the charges contained in such statement. Tenant may not withhold payment of such bill pending completion of such audit. If such audit reveals overpayment in excess of five percent (5%), then Landlord is to reimburse Tenant for its costs of inspection.

6.4 **Common Operating Expenses Defined.** The term "**Common Operating Expenses**" shall mean the sum of the following:

6.4.1 All costs and expenses paid or incurred by Landlord in doing the following (including payments to independent contractors providing services related to the performance of the following):

(i) maintaining, cleaning, repairing and resurfacing the roof membrane and roof covering (including repair of leaks) and the exterior surfaces (including painting) of the Building;

(ii) maintaining and repairing the structural parts (including roof, foundation, floor slab, and load bearing walls) of the Building;

(iii) maintaining the liability, fire and property damage insurance covering the Property carried by Landlord pursuant to section 9.3 of this Lease (including the payment of a deductible of up to $1,000 per occurrence, and the pre-payment of premiums for coverage of up to one year);

(iv) maintaining, repairing, operating, and replacing when necessary HVAC equipment, utility facilities, and other Building service equipment;

(v) providing utilities to the Common Area (including trash removal and water for landscaping irrigation);

(vi) complying with all applicable Laws and Private Restrictions;

(vii) operating, maintaining, repairing, cleaning, painting, re-striping, and resurfacing of the parking lot, driveway(s), sidewalks, curb, and gutters in the Common Area;

(viii) replacing or installing exterior lighting fixtures, directional or other signs and signals, irrigation systems and all landscaping in the Common Area;

(ix) providing janitorial services to the Building, excluding the Premises; and

(x) paying to the San Mateo County Assessor's Office Tenant's Allocated Share of Real Property Taxes (as defined in section 8.1, hereinafter).

6.4.2 All additional costs and expenses incurred by Landlord with respect to the operation, protection, maintenance, repair and replacement of the Common Areas which, under generally accepted accounting principles (GAAP) would be considered a deductible business expense for federal income tax purposes; and

6.4.3 That portion of all compensation (including benefits and premiums for workers' compensation and other insurance) paid to or on behalf of employees of Landlord up to the level of property manager or equivalent to the extent involved in the performance of the work described by sections 6.4.1 and 6.4.2 of this Lease, that is fairly allocable to the Property.

Notwithstanding anything hereinabove to the contrary, Common Operating Expenses other than 6.4.1(iii) and 6.4.1 (x), shall be limited by the standard set forth in section 6.4.2 of this Lease.

6.5 **Exclusions from Common Operating Expenses.** Notwithstanding the provisions of section 6.4 of this Lease, the Common Operating Expenses shall not include those costs and expenses incurred as a result of the following:

(a) expenses paid by any tenants of Landlord directly to third parties, or as to which Landlord is otherwise reimbursed by any third party other than Tenant;

(b) Landlord's Federal or State Income, Franchise, Franchise, Inheritance, Transfer or State Taxes;

(c) costs incurred by Landlord for the repair of damage to the Building, to the extent Landlord is reimbursed by insurance or condemnation proceeds or by tenants, warrantors or other third persons or would have been reimbursed by insurance that Landlord is required to carry pursuant to the terms of the Lease;

(d) depreciation, amortization and interest payments, except as specifically provided herein;

(e) brokerage commissions, finder's fees, attorney's fees, space planning costs and other costs incurred by Landlord in leasing or attempting to lease space in the Building;

(f) interest, principal, points and fees on debt or amortization of any mortgage, deed of trust or other indebtedness encumbering the Building or the Property;

(g) any ground lease rental;

(h) costs (including permit, license and inspection costs) incurred with respect to the installation of tenant improvements for tenants in the Building or incurred in renovating or otherwise improving, decorating, painting, or redecorating space for tenants or other occupants of the Building, including space planning and interior design costs and fees;

(i) attorneys' fees and other costs and expenses incurred in connection with negotiations or disputes involving present or prospective tenants or other occupants of the Building;

(j) except for the administrative/management fees described in section 3.2(5) of this Lease, costs of Landlord's general corporate overhead;

(k) costs arising from Landlord's charitable or political contributions;

(l) costs occasioned by the act, omission, or violation of any Law by Landlord, any other occupant of the property or their respective agents, employees or contractors, or violation of any term or condition of any lease or contract;

(m) costs to correct any construction defect in the Property or to comply with any Private Restriction, underwriter's requirement or Law applicable to the Property on the Commencement Date;

(n) increases in insurance costs caused by the activities of another occupant of the Property, and co-insurance payments;

(o) costs incurred in connection with the presence of any Hazardous Material (as defined below), except to the extent caused by Tenant's release or emission of the Hazardous Material in question;

(p) expense reserves; and

(q) any amount payable by Landlord by way of indemnity or for damages or which constitutes a fine or penalty, including interest or penalties for late payment of taxes, utility bills or other such costs.

6.6 **Control of Common Area.** Landlord shall maintain the Common Area in first class condition. Landlord shall at all times have exclusive control of the Common Area. Landlord may at any time temporarily close any part of the Common Area and exclude anyone from any part thereof, except the bona fide employees and invitees of Tenant and other occupants of the Property who have the non-exclusive right to use the surface of the Common Area. Landlord may, from time-to-time, change the configuration or location of the Common Area or construct additional improvements on the Property. Landlord may, at any time, without the same constituting an actual or constructive eviction and without incurring any liability to Tenant therefor:

(i) change the arrangement and/or location of entrances or passageways, doors and doorways, corridors, elevators, escalators, stairs, restrooms, parking areas, driveways, or other Common Areas of the Building; and

(ii) change the name and address of the Building.

In exercising any such rights regarding the Common Area, Landlord shall make a reasonable effort to minimize any disruption to Tenant's business or its access to or use of the Premises and parking areas.

6.7 **Tenant's Negligence.** Anything in this article to the contrary notwithstanding, Tenant shall pay for all damage to the Leased Premises or the Property caused by the negligent act or omission of Tenant, its employees, contractors or invitees, or by the failure of Tenant to promptly discharge its obligations under this Lease or comply with the terms of this Lease, but only to the extent that the parties hereto have not waived claims for the same under section 9.3. Tenant shall make payment therefore on damages incurred by Landlord.

6.8 **Capital Improvements.** Cost which would, under generally accepted accounting principles, be deemed capital costs or capital expenditures may be included in the definition of Common Operating Expenses only to the extent that such cost: (i) relates to an expenditure which is required to comply with changes in Laws which occur after the Commencement Date; (ii) relates to an expenditure which is incurred based upon a reasonable forecast that such expenditure will reduce in future years another cost which would be deemed an Common Operating Expense, or (iii) as required to operate the Property at the same quality levels as prior to the repair or replacement.

6.8.1 Any permitted capital costs shall be amortized over the useful life of the improvement as reasonably determined by Landlord with interest on the unamortized balance at the then prevailing market rate Landlord would pay if it borrowed funds for the capital cost from an institutional lender, and Landlord shall inform Tenant of the monthly amortization payment required to so amortize such costs, and shall also provide Tenant with the information upon which such determination is made.

6.8.2 As a form of Additional Rent, Tenant shall pay Tenant's Allocated Share of such amortization payment for each month after such cost is incurred until the first to occur of **(i)** the expiration of the Lease Term or **(ii)** the end of the term over which such costs were amortized, which amount shall be due at the same time the Base Monthly Rent is due.

ARTICLE 7.
WASTE DISPOSAL, UTILITIES & SERVICES

7.1 **Waste Disposal**. Tenant shall store its waste either inside the Leased Premises or within outside trash enclosures that are **(i)** fully fenced and screened in compliance with all Private Restrictions designed for such purpose to be used either exclusively by Tenant or in common with other occupants of the Property, as designated by Landlord, and **(ii)** first approved by Landlord, which approval shall not be unreasonably withheld, conditioned or delayed and which such trash enclosures are provided by Landlord at no additional cost to Tenant. All entrances to such outside trash enclosures shall be kept closed, and waste shall be stored in such manner as not to be visible from the exterior of such outside enclosures. Landlord shall cause all of Tenant's waste to be regularly removed from the Property. Tenant shall keep all fire corridors and mechanical equipment rooms in the Leased Premises free and clear of all obstructions at all times. Such waste containers provided by Landlord shall include proper containers for paper and cardboard recycling.

7.2 **Utilities**. Tenant shall promptly pay, as the same becomes due, all charges for water, gas, electricity, telephone, sewer service, and any other utilities, materials or services furnished directly to or used by Tenant on or about the Leased Premises during the Lease Term, including, without limitation, all hookup and installation costs, fees and expenses of any such utilities (including the monthly energy charges for the use of Server Room HVACs). If any utility service is not separately metered to the Leased Premises, then Tenant shall pay its pro-rata share of the actual cost of such utility service with all others served by the service not separately metered so long as Landlord bills any other tenants using a disproportionate amount of any utility service for their excess usage. However, if Landlord reasonably determines that Tenant is using a disproportionate amount of any utility service not separately metered, then Landlord, at its election, may periodically charge Tenant, as Additional Rent, a sum equal to Landlord's reasonable estimate of the cost of Tenant's excess use of such utility service. In the event of any stoppage or interruption of services or utilities to the Leased Premises, Landlord shall diligently attempt to resume such services or utilities as promptly as practicable. Tenant shall have the right to audit all charges from Landlord pursuant to section 7.2 hereof (including the subsections thereof).

7.2.1 **Overstandard Tenant Use**. Tenant shall not, without Landlord's prior written consent, use heat-generating machines, machines other than normal fractional horsepower office machines, or equipment or lighting other than Building standard lights in the Premises, which may affect the temperature otherwise maintained by the air conditioning system or increase the water normally furnished for the Premises by Landlord pursuant to the terms of Section 7.4 of this Lease. If such consent is given, Landlord shall have the right to install supplementary air conditioning units or other facilities in the Premises, including supplementary or additional metering devices, and the cost thereof, including the reasonable cost of installation, operation and maintenance, increased wear and tear on existing equipment and other similar charges, shall be paid by Tenant to Landlord upon billing by Landlord. If Tenant uses water or heat or air conditioning in excess of that supplied by Landlord pursuant to Section 7.4 of this Lease, Tenant shall pay to Landlord, within 30 days after billing and as Additional Rent, the cost of such excess consumption, the reasonable cost of the installation, operation, and maintenance of equipment which is installed in order to supply such excess consumption, and the cost of the increased wear and tear on existing equipment caused by such excess consumption; and Landlord may install devices to separately meter any increased use, and in such event Tenant shall pay, as Additional Rent, the increased cost directly to Landlord, within 30 days after demand, including the cost of such additional metering devices. If Tenant desires to use heat, ventilation or air conditioning during hours other than those for which Landlord is obligated to supply such utilities pursuant to the terms of Section 7.4 of this Lease, (i) Tenant shall give Landlord such prior notice, as Landlord shall from time to time establish as appropriate, of Tenant's desired use, (ii) Landlord shall supply such heat, ventilation or air conditioning to Tenant at such reasonable hourly cost to Tenant as Landlord shall from time to time establish, and (iii) Tenant shall pay such cost within 30 days after billing, as Additional Rent.

7.2.2 **Interruption of Use**. Notwithstanding the foregoing to the contrary, Tenant shall be entitled to rent abatement if Tenant is unable to access or occupy all or a portion of the Leased Premises for a period longer than five consecutive days after Landlord's receipt of written notice of the abatement event (the "**Eligibility Period**"), with the following provisos: **(i)** that Tenant's inability to occupy all or any portion of the Leased Premises is not caused by Tenant's negligent or willful misconduct, (ii) that Tenant's inability to occupy all or a portion of the Leased Premises is caused by the negligence or willful misconduct of Landlord, Landlord's agents, employees, or contractors, and **(iii)** that Tenant has caused to be delivered, and Landlord has received, written notice from Tenant informing Landlord that Tenant is unable to occupy the Leased Premises, and that this inability constitutes an identified abatement event, having been so identified in Tenant's written notice to Landlord. In this event, commencing forthwith upon expiration of the Eligibility Period, the rent payable under this Lease shall be proportionately abated or reduced for such time as Tenant continues to be prevented from using, and does not use, all or a portion of the Premises.

7.3 **Compliance with Rules, Regulations and Requirements**. Landlord shall comply with all Laws concerning the use of utility services, including any rationing, limitation or other control. Tenant shall not be entitled to terminate this Lease nor to any abatement in rent by reason of such compliance, unless such compliance would render the Premises unusable by Tenant for a period of thirty (30) days or longer. Furthermore, Landlord shall be entitled to cooperate voluntarily in a reasonable manner with the efforts of all governmental agencies or utility suppliers in reducing energy or other resources consumption provided the same does not materially impair Tenant's ability to run its business on the Premises. Tenant agrees at all times to use commercially reasonable good faith efforts to cooperate with Landlord and to abide by all rules and regulations and requirements which Landlord may reasonably prescribe in order to maximize the efficient operation of the HVAC system and all other utility systems. Following notice by Landlord, Tenant also agrees to reasonably keep and cause to be kept closed all window coverings when reasonably necessary because of the sun's position.

7.4 **Standard Tenant Services**. Landlord shall provide the following services on all days during the Lease Term, unless otherwise stated below. Tenant has the right to request any or all of the following services outside of Tenant's normal business hours, and Landlord shall provide the same after receipt of Tenant's written request therefor. The cost for these additional services will, in no event, exceed Landlord's actual costs therefor, and overtime HVAC costs are billed at $31.50 per hour, per suite. Tenant shall pay any overtime charges within 30 days after billing therefor.

7.4.1 Subject to reasonable changes implemented by Landlord, and to all Laws applicable thereto, Landlord shall provide heating and air conditioning when

necessary for normal comfort for normal office use in the Premises, from Monday through Friday, during the period from 8:00 a.m. to 5:30 p.m., except for the date of observation of New Year's Day, Presidents' Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day (collectively, the "**Holidays**").

7.4.2 Landlord shall provide adequate electrical wiring and facilities and power for normal office use and for Building standard lighting as reasonably determined by Landlord. Landlord shall designate the electricity utility provider from time to time.

7.4.3 As part of Operating Expenses or Utilities Costs (as determined by Landlord), Landlord shall replace lamps, starters and ballasts for Building standard lighting fixtures on or about the Premises. Tenant shall bear the cost of replacement of lamps, starters and ballasts for non-Building standard lighting fixtures installed by Tenant within the Premises.

7.4.4 Landlord shall provide city water from the regular Building outlets for drinking, lavatory and toilet purposes.

7.4.5 Landlord shall provide janitorial services five (5) days per week, except the date of observation of the Holidays, in and about the Premises and window washing services in a manner consistent with other comparable buildings in the vicinity of the Property.

7.4.6 Landlord shall provide nonexclusive automatic passenger elevator service at all times and shall provide prompt and immediate repair services to prevent any disruption in use by Building tenants.

ARTICLE 8.
REAL PROPERTY TAXES

8.1 **Real Property Taxes Defined.** The term "**Real Property Taxes**" as used herein shall mean:

(i) all taxes, assessments, levies, and other charges of any kind or nature whatsoever, general and special, foreseen and unforeseen (including all installments or principal and interest required to pay any general or special assessments for public improvements and any increases resulting from reassessments caused by any change in ownership), or hereafter imposed by any governmental or quasi-governmental authority or special district having the direct or indirect power to tax or levy assessments, which are levied or assessed against, or with respect to the value, occupancy or use of, all or any portion of the Property (as now constructed or as may at any time hereafter be constructed, altered, or otherwise changed) or Landlord's interest therein; the fixtures, equipment and other property of Landlord, real or personal, that are an integral part of and located on the Property; or the use of parking areas, public utilities, or energy within the Property;

(ii) all charges, levies or fees imposed by reason of environmental regulation or other governmental control of the Property; and

(iii) all reasonable costs and fees (including reasonable attorneys' fees) incurred by Landlord in contesting any Real Property Tax and in negotiating with public authorities as to any Real Property Tax, provided that the same are allocated solely to the tax years at issue.

If at any time during the Lease Term, the taxation or assessment of the Property prevailing as of the Effective Date shall be altered so that in lieu of or in addition to any Real Property Tax described above there shall be levied, assessed or imposed (whether by reason of a change in the method of taxation or assessment, creation of a new tax or charge, or any other cause) an alternate or additional tax or charge on the value, use or occupancy of the Property of Landlord's interest therein then any such tax or charge, however designated, shall be included within the meaning of the term Real Property Taxes for purposes of this Lease. If any Real Property Tax is based upon property or rents unrelated to the Property, then only that part of such Real Property Tax that is fairly allocable to the Property shall be included within the meaning of the term Real Property Taxes. Notwithstanding the foregoing, the term Real Property Taxes shall not include estate, inheritance, transfer, gift or franchise taxes of Landlord or the federal or state net franchise, income tax nor any gross receipts tax imposed on Landlord's income from all sources, or any penalties or late charges.

8.2 **Tenant's Obligation to Reimburse.** As Additional Rent, Tenant shall pay Tenant's Allocated Share of all Real Property Taxes as part of the Common Area Operating Expenses pursuant to section 6.3 of this Lease. If requested by Tenant in writing within thirty (30) days of receipt of a bill for Tenant's Allocated Shares of Real Property Taxes, Landlord shall furnish Tenant with such evidence as is reasonably available to Landlord with respect to the amount of any Real Property Tax which is part of such bill. Tenant may not withhold payment of such bill pending receipt and/or review of such evidence. Notwithstanding that the payment of Real Property Taxes are deemed Additional Rent, if Landlord, at any time, receives a refund for any period of Real Property Taxes which Tenant has paid Landlord, Landlord shall pay to Tenant, Tenant's Allocated Share of such refund (less Landlord's reasonable costs incurred in obtaining such a refund if such costs were not already included as Common Operating Expenses or Real Property Taxes). The foregoing sentence shall survive the expiration or earlier termination of this Lease.

8.3 **Taxes on Tenant's Personal Property.** Tenant shall pay before delinquency any and all taxes, assessments, license fees, and public charges levied, assessed, or imposed against Tenant or Tenant's estate in this Lease or the property of Tenant situated within

the Leased Premises which become due during the Lease Term. Within a reasonable period after receipt of written demand from Landlord, Tenant shall furnish Landlord with reasonably satisfactory evidence of these payments.

8.4 **Tenant's Improvements.** If any of the Alterations and/or Tenant Improvements constructed and/or installed in the Leased Premises, whether installed and/or paid for by Landlord or Tenant, and whether or not the same affect the Real Property so as to become part thereof, are assessed for Real Property Tax purposes at a valuation higher than the valuation at which the Building standard improvements are assessed, then the Real Property Taxes and assessments levied against the Building by reason of such excess assessed valuation shall be governed by the provisions of section 8.2 of this Lease. If the records of the County Assessor are available and sufficiently detailed to serve as a basis for determining whether the Alterations and/or Tenant Improvements are assessed at a higher valuation than the Building standard improvements, such records shall be binding on both the Landlord and Tenant. If the records of the County Assessor are not available or sufficiently detailed to serve as a basis for making such determination, the actual costs of construction shall be used.

ARTICLE 9.
INSURANCE

9.1 **Tenant's Insurance.** Tenant shall maintain in full force and effect during the Lease Term the following insurance:

9.1.1 Tenant shall maintain a policy or policies of commercial general liability insurance, including property damage, against liability for personal injury, bodily injury, death, and damage to property occurring in or about, or resulting from an occurrence in or about, the Leased Premises with combined single limit coverage of not less than the amount of Tenant's Minimum Liability Insurance set forth in section 1.10 of this Lease. Such commercial general liability insurance shall contain fire damage coverage and a "contractual liability" endorsement insuring Tenant's performance of Tenant's obligation to indemnify Landlord contained in section 10.3 of this Lease. If Landlord's Lender, insurance advisor or counsel reasonably determines at any time that the amount of such coverage is not adequate, Tenant shall increase such coverage to such amount as Landlord's Lender, insurance advisor or counsel reasonably deem adequate, not to exceed the level of coverage then commonly carried by comparable businesses similarly situated; provided, however, that no such request may be made more than one time during the Term and, if applicable, one time during the Extension Term.

9.1.2 Tenant shall maintain a policy or policies of fire and property damage insurance in "all risk" form insuring the personal property, inventory, Trade Fixtures, and Leasehold Improvements within the Leased Premises for the value thereof reasonably determined by Tenant. The proceeds from any of such policies shall be used for the repair or replacement of such items so insured.

9.1.3 Tenant shall maintain a policy or policies of worker's compensation insurance and any other employee benefit insurance sufficient to comply with all Laws.

9.1.4 Landlord and such others as it shall reasonably designate with an interest in the Property, shall be named as additional insureds or loss payees, as appropriate, on the policies of insurance described in sections 9.1.1 and 9.1.2 of this Lease, above. All insurance required by this paragraph:

(i) shall be primary insurance which provides that the insurer shall be liable for the full amount of the loss up to and including the total amount of liability set forth in the declarations without the right of contribution from any other insurance coverage of Landlord;

(ii) shall be in a form reasonably satisfactory to Landlord;

(iii) shall be carried with companies with a rating of no less than A-VIII or better, reasonably acceptable to Landlord;

(iv) shall provide that Tenant's insurers shall use good faith efforts to provide at least 10 days' prior written notice to Landlord in the event of cancellation or change; and

(v) shall not have a deductible in excess of ten thousand dollars ($10,000) per occurrence.

Certificates of insurance for such policy or policies shall be deposited with Landlord prior to the time Tenant enters into possession of the Leased Premises and upon renewal of such policies, but not less than 10 days prior to the expiration of the term of such coverage.

9.1.5 **Extra Expense Coverage.** Intentionally omitted.

9.2 **Release and Waiver of Subrogation.** Landlord and Tenant agree that all policies of insurance to be kept and maintained in force by the respective parties hereto, shall, unless prohibited by Law or other regulation having the effect of Law, contain provisions in which the rights of subrogation against the Landlord and Tenant are waived by the insurance company or carriers insuring the Premises, the Building, the Property, or other property in question. Landlord expressly waives any right of recovery against Tenant for damage to or loss of the Building, the Premises, the Property, including the Common Areas, or the improvements thereon, which loss or damage may arise by fire or any other peril covered by any policy of insurance required to be maintained pursuant to this Lease, and Landlord shall make no claim for recovery against Tenant therefor. Tenant expressly waives any right off recovery against Landlord for damage to or loss of its fixtures, improvements, or other property located in the Premises, which damage or loss may arise

by fire or any other peril covered by any policy of insurance maintained or required to be maintained pursuant to this Lease which contains or is required to contain a waiver of subrogation right against Landlord as set forth in this section, and Tenant shall make no claim for recovery against Landlord therefor.

9.3 **Landlord's Real Property Insurance.** Landlord shall purchase and keep in force policies of insurance:

(i) covering loss or damage to the Building by reason of fire (extended coverage), flood and/or earthquake (if available and available at commercially reasonable cost in Landlord's reasonable discretion, or if required by Lender) and those perils included within the classification of "**all risks**" insurance (with sprinkler damage and other appropriate endorsements), which insurance shall be in the amount of the full replacement value of the Building as determined by insurance company appraisers or Landlord's insurance broker; plus

(ii) Landlord's commercial general liability insurance in an amount equal to or greater than Tenant's Minimum Liability Insurance coverage; plus

(iii) rental income insurance in the amount of one hundred percent (100%) of up to 12 months' Base Monthly Rent, plus sums paid during such period as Additional Rent.

Such coverage shall exclude routine maintenance and repairs and incidental damage caused by accidents or vandalism for which Tenant is responsible under section 9 of this Lease. Tenant agrees to pay to Landlord, as Additional Rent as part of Common Operating Expenses, Tenant's Allocated Share of the costs of such insurance coverage, including the premiums and deductibles not in excess of five thousand dollars ($5,000) for any such coverage obtained by Landlord; or, if Tenant does not lease the entire Building, then Tenant's Allocated Share of the costs of such insurance coverage which shall be allocated during the term of this Lease to the Premises by the Building Gross Leasable Area. If such insurance cost is increased due to Tenant's particular use of the Premises, Tenant agrees to pay to Landlord the full costs of such increase. Tenant shall have no interest in, nor any right to, the proceeds of any insurance procured by Landlord for or with respect to the Premises other than proceeds for any improvements which Tenant is required to restore hereunder.

ARTICLE 10.
LIMITATION ON LANDLORD'S LIABILITY AND INDEMNITY

10.1 **Limitation on Landlord's Liability.** Except as expressly provided to the contrary elsewhere in this Lease, Landlord shall not be liable to Tenant, nor shall Tenant be entitled to any abatement of rent, for any injury to Tenant, its agents, employees, contractors, or invitees; damage to Tenant's property; or loss to Tenant's business resulting from any cause, including, without limitation, any:

(i) failure, interruption or installation of any heating, ventilation and/or air-conditioning system or other utility system or service;

(ii) failure to furnish, or delay in furnishing any utilities or services when such failure or delay is caused by acts of God or the elements, labor disturbances of any character, any other accidents or other conditions beyond the reasonable control of Landlord, or by the making of repairs or improvements to the Leased Premises or Building;

(iii) the limitation, curtailment, rationing or restriction on the use of water or electricity, gas or any other form of energy or any services or utility whatsoever serving the Leased Premises or Building;

(iv) vandalism or forcible entry by unauthorized person(s); or

(v) penetration of water into or onto any portion of the Leased Premises or the Common Area through roof leaks or otherwise.

Notwithstanding the foregoing, Landlord shall be liable for such injury, damage or loss which is proximately caused by Landlord's negligence or willful misconduct, or that of its agents, employees or contractors, or Landlord's breach of this Lease, but only to the extent such injury, damage or loss is not covered by insurance actually carried pursuant to this Lease.

10.2 **Limitation on Tenant's Recourse.** Tenant expressly agrees that so long as Landlord under this Lease shall be and remains a corporation, trust, partnership, limited liability company, joint venture, unincorporated association or other form of business entity, that:

(i) the obligations of the Landlord under this Lease shall not constitute personal obligations of the officers, directors, members, trustees, partners, joint venturers, members, owners, stockholders, or other principals or representatives of such business entity, and

(ii) Tenant shall have recourse only to the assets of such business entity, and the sales, rental, insurance and condemnation proceeds therefrom, for the satisfaction of such obligations and not against the assets of such officers, members, directors, trustees, partners, joint venturers, members, owners, stockholders, principals, or representatives, other than to the extent of their interest in the assets (and above-referenced proceeds) owned by such business entity.

10.3 **Indemnification of Landlord.** Tenant shall hold harmless, indemnify and defend Landlord, and its employees, agents, and contractors, with counsel reasonably satisfactory to Landlord, from all liability, penalties, losses, damages, costs, expenses, causes of action, claims and/or judgments arising by reason of any death, bodily injury, personal injury or property damage:

(i) resulting from any cause or causes whatsoever (other than the negligence or willful misconduct of Landlord, its agents, employees or contractors) occurring in or about or resulting from any occurrence in the Leased Premises during the Lease Term; or

(ii) resulting from the negligence or willful misconduct of Tenant, its agents, employees and contractors, wherever the same may occur.

The provisions of this paragraph shall be subject to the waiver of subrogation in section 9.2 hereof, and shall survive the expiration or termination of this Lease with respect to any claims or liability occurring prior to such expiration or sooner termination.

10.4 **Indemnification of Tenant.** Landlord shall hold harmless, indemnify and defend Tenant, and its employees, agents, and contractors, with competent counsel reasonably satisfactory to Tenant, from all liability, penalties, losses, damages, costs, expenses, causes of action, claims and/or judgments arising by reason of any death, bodily injury, personal injury or property damages due to:

(i) a breach of Landlord's obligations under the Lease; or

(ii) the negligence or willful misconduct of Landlord or its agents, contractors, licensees or invitees, wherever the same may occur.

The provisions of this paragraph shall be subject to the waiver of subrogation in section 9.2 hereof, and shall survive the expiration or termination of this Lease with respect to any claims or liability occurring prior to such expiration or sooner termination.

10.5 **Consequential Damages**. Notwithstanding anything to the contrary contained in this Lease, in no event shall either party be liable to the other for any consequential, special, or punitive damages arising from or relating to this Lease. The provisions of this section 10.5 shall survive the expiration or earlier termination of this Lease.

ARTICLE 11.
DAMAGE TO LEASED PREMISES

11.1 **Landlord's Duty to Restore.** If the Leased Premises or Building necessary for use of, or access, to the Leased Premises are damaged by any Peril (as hereinafter defined) after the Effective Date of this Lease, Landlord shall restore the Leased Premises and Building unless the Lease is terminated by Landlord pursuant to section 11.2 of this Lease or by Tenant pursuant to section 11.3 of this Lease. All insurance proceeds available from the fire and property damage insurance carried by Landlord pursuant to section 9.3 of this Lease shall be paid to, and become the property of, Landlord. All insurance proceeds available from insurance carried by Tenant which covers loss to property that is Landlord's property or would become Landlord's property on termination of this Lease shall be paid to, and become the property of, Landlord.

If this Lease is not so terminated, then, upon receipt of the insurance proceeds (if the loss is covered by insurance) and the issuance of all necessary governmental permits, Landlord shall commence and diligently prosecute to completion the restoration of the Leased Premises and Building to the extent then allowed by Law, to substantially the same condition in which the Leased Premises and Building existed immediately prior to such damage. Landlord's obligation to restore shall be limited to the Building, Leased Premises and interior improvements constructed by Landlord as they existed as of the Commencement Date, excluding any Leasehold Improvements, Trade Fixtures and/or personal property constructed or installed by Tenant in the Leased Premises except to the extent Landlord receives the applicable insurance proceeds for such Leasehold Improvements pursuant to the previous paragraph. Tenant shall forthwith replace or fully repair all Leasehold Improvements and Trade Fixtures installed by Tenant and existing at the time of such damage or destruction to the extent Landlord is not responsible for such restoration.

Notwithstanding the above, Tenant agrees to promptly using commercially reasonable efforts to do so (within 48 hours) notify Landlord in writing of any damage to the Premises resulting from fire, flood, earthquake, vandalism, or any other identifiable event of a sudden, unexpected or unusual nature ("**Peril**").

11.2 **Landlord's Right to Terminate.** Landlord shall have the option to terminate this Lease in the event any of the following occurs, which option may be exercised only by delivery to Tenant of a written notice of election to terminate within 30 days after the date of such notice.

11.2.1 The Building is damaged by any Peril covered by valid and collectible insurance actually carried by Landlord and in force at the time of such damage or destruction ("**Covered Peril**"), to such an extent that the estimated cost to restore the Building equals or exceeds fifty percent (50%) of the then-replacement value thereof;

11.2.2 The Building is damaged by any Peril not covered by valid and collectible insurance actually carried by Landlord and in force at the time of such damage or destruction, to such an extent that the estimated cost to restore the Building equals or exceeds twenty-five percent (25%) of the then-replacement value thereof;

11.2.3 The Leased Premises are damaged by any Covered Peril within six months of the last day of the Lease Term to such an extent that the estimated cost to restore equals or exceeds an amount equal to six times the Base Monthly Rent then due; provided, however, that Landlord may not terminate this Lease pursuant to this section 11.2.3 of this Lease if Tenant, at the time of such damage, has an express written option to further extend the term of this Lease and Tenant exercises such option to so further extend the Lease Term within 15 days following the date of Landlord's termination notice; or

11.2.4 The Building is damaged by any Covered Peril and, because of the Laws then in force, the Building either:

(i) may not be restored at reasonable cost to substantially the same condition in which it existed prior to such damage; or

(ii) may not be used for the same use being made thereof before such damage whether or not restored as required by this article.

Neither party shall have any further obligations under this Lease after such termination, except for Landlord's obligation to return the Security Deposit (less any permitted deductions) to Tenant. Notwithstanding anything set forth in this section 11.2, any insurance that Landlord is required to carry pursuant to the terms of this Lease shall be deemed to be actually carried for the purposes of this section 11.2, if Landlord is in breach of such obligation.

11.3 **Tenant's Right to Terminate.** If the Leased Premises are damaged by any Peril not caused by Tenant, and Landlord does not elect to terminate this Lease or is not entitled to terminate this Lease pursuant to section 11.2 of this Lease, then as soon as reasonably practicable, Landlord shall furnish Tenant with the written opinion of Landlord's architect or construction consultant as to when the restoration work required of Landlord may be completed. Tenant shall have the option to terminate this Lease in the event any of the following occurs, which option may be exercised only by delivery to Landlord of a written notice of election to terminate within 30 days after the date of Landlord's contractor's estimate of the time needed to complete such restoration:

11.3.1 The Leased Premises or Building necessary for use of, or access to, the Leased Premises are damaged by any Peril and, in the reasonable opinion of Landlord's architect or construction consultant, the restoration of the Leased Premises cannot be substantially completed within 150 days after the date of such damage.

Neither party shall have any further obligations under this Lease after such termination, except for Landlord's obligation to return the Security Deposit (less any permitted deductions) to Tenant.

11.4 **Abatement of Rent.** In the event of damage to the Leased Premises or Building necessary for use of, or access to, the Leased Premises which does not result in the termination of this Lease, the Base Monthly Rent and Additional Rent shall be temporarily abated during the period of damage and restoration in proportion to the degree to which Tenant's access to or use of the Leased Premises is impaired by such damage. Tenant shall not be entitled to any compensation or damages from Landlord for loss of Tenant's property or any inconvenience or annoyance caused by such damage or restoration. Tenant hereby waives the provisions of California Civil Code §§ 1932(2) and 1933(4), and the provisions of any similar law hereinafter enacted.

11.5 **Tenant's Costs and Insurance Proceeds.** Upon damage or destruction of all or any part of the Premises by a Covered Peril, Tenant shall immediately deliver to Landlord all property insurance proceeds received by Tenant with respect to the Leasehold Improvements and any Alterations, but excluding proceeds for Tenant's FF&E and other personal property, whether or not this Lease is terminated as permitted in this article 11 of this Lease, and Tenant hereby assigns to Landlord all rights to receive such insurance proceeds, and if this Lease is not terminated, Landlord's restoration obligation shall include such Leasehold Improvements and Alterations. If, as a result of Tenant's failure to obtain the required insurance for the full replacement cost of the Leasehold Improvements and the Alterations, Tenant fails to receive insurance proceeds covering the full replacement cost of the Leasehold Improvements and the Alterations which are damaged, Tenant shall be deemed to have self-insured the replacement cost of such items, and upon any damage or destruction thereto, Tenant shall pay to Landlord within 20 days after receipt of Landlord's written request therefor, the full replacement cost of such items, less any insurance proceeds actually received by Landlord from Tenant's insurance with respect to such items.

11.6 **Waiver of Statutory Provisions.** The provisions of this Lease, including those in this article 11, constitute an express agreement between Landlord and Tenant that applies in the event of any Covered Peril to the Premises or the Building. Tenant, therefore, fully waives the provisions of any statute or regulation, including California Civil Code sections 1932(2) and 1933(4), for any rights or obligations concerning a Covered Peril.

ARTICLE 12.
CONDEMNATION

12.1 **Taking of Leased Premises.** If all or any part of the Leased Premises exceeding twenty-five percent (25%) of such Leased Premises are taken by means of:

(i) any taking by the exercise of the power of eminent domain, whether by legal proceedings or otherwise;

(ii) a voluntary sale or transfer by Landlord to any condemnor under threat of condemnation or while legal proceedings for condemnation are pending; or

(iii) any taking by inverse condemnation (collectively, a "Condemnation"),

Landlord shall have the option to terminate this Lease. If all or any part of the Leased Premises exceeding ten percent (10%) of such Leased Premises are taken by Condemnation and the Leased Premises cannot be reconstructed within a reasonable period of time and thereby made reasonably suitable for Tenant's continued occupancy for the Permitted Use, then Tenant shall have the option to terminate this Lease. Any

such option to terminate by either Landlord or Tenant must be exercised within a reasonable period of time, to be effective as of the date that possession of the Leased Premises is taken by the condemnor. Neither party shall have any further obligations under this Lease after such termination, except for Landlord's obligation to return the Security Deposit (less any permitted deductions) to Tenant.

12.2 **Taking of Common Area.** Tenant shall have the option to terminate this Lease if there is a taking of any part of the Common Area which serves the Building and, as a result of such taking:

(i) Landlord cannot provide Tenant with the non-exclusive right to use parking spaces within a reasonable walking distance of the Leased Premises, equal in number to at least eighty percent (80%) of the number of spaces allocated to Tenant's use by section 2.1 of this Lease, whether by rearrangement of the remaining parking areas in the Common Area (including re-stripping for compact cars where permitted by Law), or by alternative parking facilities on other land of Landlord within reasonable walking distance of the Leased Premises; or

(ii) Tenant's use of the Leased Premises is materially and adversely affected by reason of a taking of loading docks or loading areas serving the Leased Premises.

Tenant must exercise such option within a reasonable period of time, to be effective on the date that possession of that portion of the Common Area that is condemned is taken by the condemnor. Neither party shall have any further obligations under this Lease after such termination, except for Landlord's obligation to return the Security Deposit (less any permitted deductions) to Tenant.

12.3 **Restoration Following the Taking.** If any part of the Leased Premises or the Common Area is taken by Condemnation and this Lease is not terminated, then Landlord shall make all repairs and alterations that are reasonably necessary to make that which is not taken a complete architectural unit, but such work shall not exceed the scope of the work done by Landlord in originally constructing the Property.

12.4 **Abatement of Rent.** If any portion of the Leased Premises is taken by Condemnation and this Lease is not terminated, then, as of the date possession is taken, the Base Monthly Rent and Additional Rent shall be reduced in the same proportion that the floor area of that part of the Leased Premises so taken (less any addition thereto by reason of any reconstruction) bears to the original floor area of the Leased Premises.

12.5 **Temporary Taking.** If any portion of the Leased Premises exceeding twenty-five percent (25%) of the Leased Premises is temporarily taken by Condemnation for a period which either exceeds 30 days or which extends beyond the natural expiration of the Lease Term, then Landlord and Tenant shall each independently have the option to terminate this Lease, effective on the date possession is taken by the condemnor. Neither party shall have any further obligations under this Lease after such termination.

12.6 **Division of Condemnation Award.** Any award made as a result of any Condemnation of the Leased Premises or Common Area shall belong to and be paid to Landlord, and Tenant hereby assigns to Landlord all of its right, title and interest in any such award; provided, however, that Tenant shall be entitled to receive any Condemnation award made directly to Tenant:

(i) for the taking of personal property or Trade Fixtures belonging to Tenant;

(ii) for the interruption of Tenant's business or its moving costs;

(iii) for loss of Tenant's goodwill; or

(iv) for any temporary taking where this Lease is not terminated as a result of such taking.

The rights of Landlord and Tenant regarding any Condemnation shall be determined as provided in this article. Each party hereby waives the provisions of California Code of Civil Procedure section 1265.130 and the provisions of any similar law hereinafter enacted allowing either party to petition the Superior Court to terminate this Lease in the event of a partial taking of the Leased Premises.

ARTICLE 13.
DEFAULT AND REMEDIES

13.1 **Events of Tenant's Default.** Tenant shall be in default ("**Tenant's Default**" or "**Default**") of its obligations under this Lease if any of the following events shall occur:

13.1.1 Subject to the provisions of section 18.14 hereinafter, Tenant's abandonment of the Leased Premises;

13.1.2 Failure to pay any installment of rent or any other monies due and payable hereunder, said failure continuing for a period of three (3) business days after written notice that such sum is past due;

13.1.3 A general assignment by Tenant for the benefit of creditors;

13.1.4 The filing of a voluntary petition in bankruptcy by Tenant, the filing of a voluntary petition for an arrangement, the filing of a petition (voluntary or involuntary) for reorganization, or the filing of an involuntary petition by Tenant's creditors, said involuntary petition remaining undischarged for a period of 60 days;

13.1.5 Receivership, attachment, or other judicial seizure of substantially all of Tenant's assets on the Leased Premises, such attachment or other seizure remaining undismissed or undischarged for a period of 60 days after the levy thereof;

13.1.6 Failure of Tenant to execute and deliver to Landlord any estoppel certificate, subordination agreement, or financial statement within five days after Notice from Landlord that such executed documents or financial statements have not been received within the time periods and in the manner required by article 17 of this Lease;

13.1.7 An assignment or sublease, or attempted assignment or sublease, of this Lease or the Leased Premises by Tenant contrary to the provisions of article 14 of this Lease;

13.1.8 Failure of Tenant to restore the Security Deposit to the amount and within the time period provided in section 3.6 of this Lease;

13.1.9 Failure in the performance of any of Tenant's covenants, agreements or obligations hereunder (except those failures specified as events of Default in other sections of this article 13 of this Lease, which shall be governed by such other sections), which failure continues for 30 days after written notice thereof from Landlord to Tenant **provided that,** if Tenant has exercised reasonable diligence to cure such failure and such failure cannot be cured within such 30 day period despite reasonable diligence, Tenant shall not be in default under this subparagraph unless Tenant fails thereafter diligently and continuously to prosecute the cure to completion; and

13.1.10 **Chronic Delinquency by Tenant in the Payment of Rent or any other Periodic Payments Required, under the Lease, to be Paid by Tenant.**

Intentionally deleted.

13.2 **Landlord's Remedies.** In the event of any Default by Tenant, Landlord shall have the following remedies, in addition to all other rights and remedies provided by any Law or otherwise provided in this Lease, to which Landlord may resort cumulatively, or in the alternative:

13.2.1 Landlord may, at Landlord's election, keep this Lease in effect and enforce by an action at law or in equity all of its rights and remedies under the Lease, including:

(i) the right to recover the rent and other sums as they become due by appropriate legal action;

(ii) the right to make payments required of Tenant or perform Tenant's obligations and be reimbursed by Tenant for the cost thereof with interest at the Agreed Interest Rate from the date the sum is paid by Landlord until Landlord is reimbursed by Tenant; and

(iii) the remedies of injunctive relief and specific enforcement to compel Tenant to perform its obligations under this Lease.

13.2.2 Landlord may, at Landlord's election, terminate this Lease by giving Tenant written notice of termination, in which event this Lease shall terminate on the date set forth for termination in such notice. Any termination hereunder shall not relieve Tenant from its obligation to pay any sums then due Landlord or from any claim against Tenant for damages or rent previously accrued or then accruing. In no event shall any one or more of the following actions by Landlord, in the absence of a written election by Landlord to terminate this Lease, constitute a termination of this Lease:

A. appointment of a receiver or keeper in order to protect Landlord's interest hereunder;

B. consent to any subletting of the Leased Premises or assignment of this Lease by Tenant, whether pursuant to the provisions hereof or otherwise; or

C. any other action by Landlord or Landlord's agents intended to mitigate the adverse effects of any breach of this Lease by Tenant, including, without limitation, any action taken to maintain and preserve the Leased Premises or any action taken to re-let the Leased Premises or any portions thereof, for the account of Tenant and in the name of Tenant.

13.2.3 In the event Tenant breaches this Lease and abandons the Leased Premises, this Lease shall not terminate unless Landlord gives Tenant written notice of its election to so terminate this Lease. No act by or on behalf of Landlord intended to mitigate the adverse effect of such breach, including those described by section 13.2.2, subparagraphs A, B and C immediately preceding, shall constitute a termination of Tenant's right to possession unless Landlord gives Tenant written notice of termination. Should Landlord not terminate this Lease by giving Tenant written notice, Landlord may enforce all its rights and remedies under this Lease, including the right to recover the rent as it becomes due under the Lease as provided in California Civil Code § 1951.4, as in effect on the Effective Date of this Lease.

13.2.4 In the event Landlord terminates this Lease, Landlord shall be entitled, at Landlord's election, to damages in an amount as set forth in Civil Code § 1951.2 as in effect on the Effective Date of this Lease. For purposes of computing damages pursuant to California Civil Code § 1951.2:

(i) the Agreed Interest Rate shall be used where permitted; and

(ii) rent due under this Lease shall include Base Monthly Rent and all other rent hereunder, prorated on a monthly basis where necessary to compute such damages.

Such damages shall include, without limitation:

A. the worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of such rental loss that Tenant proves could be reasonably avoided, computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%); and

B. any other amount reasonably necessary to compensate Landlord for all detriment proximately caused by Tenant's failure to perform Tenant's obligations under this Lease, or which in the ordinary course of things would be likely to result therefrom, including, without limitation, the following:

(i) reasonable expenses for cleaning, repairing or restoring the Leased Premises;

(ii) reasonable expenses for altering, remodeling or otherwise improving the Leased Premises for the purpose of reletting, including installation of leasehold improvements (whether such installation be funded by a reduction of rent, direct payment or allowance to a new tenant, or otherwise);

(iii) reasonable broker's fees, advertising costs and other expenses of reletting the Leased Premises;

(iv) costs of carrying the Leased Premises, such as taxes, insurance premiums, utilities, and security precautions;

(v) reasonable expenses in retaking possession of the Leased Premises; and

(vi) reasonable attorneys' fees and court costs incurred by Landlord in retaking possession of the Leased Premises and in re-leasing the Leased Premises or otherwise incurred as a result of Tenant's default.

13.2.5 Nothing in this section shall limit Landlord's right to indemnification from Tenant as provided in sections 10.2 and 10.5 of this Lease.

13.3 **Landlord's Default and Tenant's Remedies**. In the event Landlord fails to perform any of its obligations under this Lease and fails to cure such default within a reasonable period in light of all the circumstances, and in no event later than 30 days after written notice from Tenant specifying the nature of such default where such default could reasonably be cured within said 30 day period, or fails to commence such cure within said 30 day period and thereafter continuously with due diligence prosecute such cure to completion where such default could not reasonably be cured within said 30 day period, then Tenant shall have the following remedies only:

13.3.1 Tenant may proceed in equity or at law to compel Landlord to perform its obligations and/or to recover damages proximately caused by such failure to perform (except to the extent Tenant has waived its right to damages resulting from injury to person or damage to property as expressly provided in this Lease).

13.3.2 Tenant, at its option, may cure any default of Landlord at Landlord's cost. If Tenant at any time by reason of Landlord's default reasonably pays any sum or does any act that requires the payment of any sum, the sum paid by Tenant shall be immediately due from Landlord to Tenant at the time the sum is paid, and shall bear interest at the Agreed Interest Rate from the date the sum is paid by Tenant until Tenant is reimbursed by Landlord.

13.3.3 Tenant waives the provisions of sections 1932, 1933(4), 1941, and 1942 of the California Civil Code and/or any similar or successor law regarding Tenant's right to terminate this Lease or to make repairs and deduct the expenses of such repairs from the rent due under the Lease. Tenant hereby waives any right of redemption or relief from forfeiture under the laws of the State of California, or under any other present or future law, in the event Tenant is evicted or Landlord takes possession of the Leased Premises by reason of any Default by Tenant.

13.4 **Waiver**. One party's consent to or approval of any act by the other party requiring the first party's consent or approval shall not be deemed to waive or render unnecessary the first party's consent to or approval of any subsequent similar act by the other party. The receipt by Landlord of any rent or payment with or without knowledge of the breach of any other provision hereof shall not be deemed a waiver of any such breach unless such waiver is in writing and signed by Landlord. No delay or omission in the exercise of any right or remedy accruing to either party upon any breach by the other party under this Lease shall impair such right or remedy or be construed as a waiver of any such breach theretofore or hereafter occurring. The waiver by either party of any breach of any provision of this Lease shall not be deemed to be a waiver of any subsequent breach of the same or any other provisions herein contained. Moreover, if Landlord accepts a partial payment of rent after the delivery to Tenant of a three day notice to pay or quit and/or after filing an unlawful detainer complaint pursuant to California Code of Civil Procedure section 1166, the Landlord's acceptance of partial payment is only evidence of that payment, without waiver of any rights, including any right Landlord may have to recover possession of the Leased Premises.

ARTICLE 14.
ASSIGNMENT AND SUBLEASING

14.1 By Tenant.

A. Except to the extent permitted by this Lease, Tenant shall not, without Landlord's prior written consent, not to be unreasonably withheld, conditioned or delayed, voluntarily or by operation of law:

(1) mortgage, pledge, hypothecate or encumber this Lease or any interest herein;

(2) assign or transfer this Lease or any interest herein (with the sole exception of Voluntary Permitted Transfers as hereinafter defined);

(3) sublet the Leased Premises or any part thereof, or any right or privilege appurtenant thereto (with the sole exception of Voluntary Permitted Transfers as hereinafter defined); or

(4) allow any other person (the employees, agents, and invitees of Tenant excepted) to occupy or use the Leased Premises, or any portion thereof, without first obtaining the written consent of Landlord, which consent shall not be withheld, conditioned or delayed unreasonably ("**Transfer Request**").

B. When Tenant requests Landlord's consent to such assignment or subletting, Landlord shall have the option, to be exercised within 15 days of receipt of the foregoing request, to:

(1) cancel this Lease (or if a sublease, as to the portion of the Leased Premises to be subleased only) as of the Commencement Date stated in the proposed sublease or assignment, provided that Landlord shall have this right only if such sublease or assignment is for more than 90% of the remaining Lease Term;

(2) consent to the proposed assignment or sublease; or

(3) refuse to give its consent to the proposed assignment or sublease, providing that such consent shall not be unreasonably withheld. In this regard:

14.1.1 Any attempted subletting, assignment, or encumbrance without Landlord's prior consent (other than Voluntary Permitted Transfers) shall be voidable and, at Landlord's election, shall constitute a Default.

14.1.2 Tenant agrees to reimburse Landlord for all reasonable costs and attorneys' fees incurred by Landlord in conjunction with the processing and documentation of any such requested subletting, assignment or encumbrance, none of which shall be effective until Tenant shall have paid such costs and fees.

14.1.3 Consent by Landlord to one or more assignments or encumbrances of this Lease, or to one or more instances of subletting of the Leased Premises, shall not be deemed to be a consent to any subsequent assignment, encumbrances, or subletting.

14.1.4 No subletting or assignment, even with the consent of Landlord, shall relieve Tenant of its personal and primary obligation to pay the rent and to perform all of the other obligations to be performed by Tenant hereunder. The acceptance of rent by Landlord from any person shall not be deemed to be a waiver by Landlord of any provision of this Lease nor as a consent by Landlord to any assignment or subletting.

14.1.5 This section 14.1.5 is not applicable to a Voluntary Permitted Transfer. If Tenant is a corporation, any dissolution, merger, consolidation, or other reorganization of Tenant, or the sale or other transfer in the aggregate over the Lease Term of a controlling percentage of the capital stock of Tenant, shall be deemed a voluntary assignment of Tenant's interest in this Lease. The phrase "**controlling percentage**" means the ownership of and the right to vote stock possessing more than fifty percent (50%) of the total combined voting power of all classes of Tenant's capital stock issued, outstanding and entitled to vote for the election of directors. If Tenant is a partnership or a limited liability company, a withdrawal or change, voluntary, involuntary or by operation of law, of any general partner or member(s), or the dissolution of the partnership or limited liability company, shall be deemed a voluntary assignment.

14.1.6 This section 14.1.6 is not applicable to a Voluntary Permitted Transfer. If Tenant assigns or sublets its interest (or any portion thereof) in this Lease in accordance with this article, then Tenant shall pay to Landlord fifty percent (50%) of all net consideration received by Tenant in excess of the rent under the Lease as a result of such assignment as and when received by Tenant as allowed by Civil Code section 1995.240, after deducting any cost incurred for advertising and other marketing expenses, leasing commission, attorney fees and tenant improvements or allowances ("**Allowed Transfer Costs**"). For purposes of this section 14, the proceeds from Tenant's sale or lease of Tenant's personal property to the proposed transferee shall not be deemed consideration received by Tenant.

If Tenant sublets all or part of the Leased Premises in accordance with this article, then Tenant shall pay to Landlord fifty percent (50%) of the positive difference, if any, between **(i)** all rent and other consideration paid by the subtenant to Tenant

less **(ii)** Allowed Transfer Costs incurred by Tenant incident to the sublease agreement (including an amount equal to the resulting product of the rent payable hereunder to Landlord by Tenant during the time period covered by such payments by the subtenant times a fraction whose numerator is the leasable area of that portion of the Leased Premises so sublet and whose denominator is Tenant's Gross Leasable Area).

Said consideration shall be payable to Landlord on the same basis, whether periodic or in lump sum, that such consideration is paid to Tenant by its subtenant after all Allowed Transfer Costs theretofore paid by Tenant have been recouped. Immediately following its execution, Tenant shall deliver to Landlord a true copy of any permitted assignment or sublease. At the time Tenant makes any payment to Landlord required by this section 14.1.6, Tenant shall deliver an itemized statement of the method by which the amount due Landlord was calculated, certified by Tenant as true and correct.

Landlord shall have the reasonable right to inspect Tenant's books and records relating to the payments due pursuant to this section by providing prior written notice to Tenant.

14.1.7 This section 14.1.7 is not applicable to a Voluntary Permitted Transfer. Tenant shall give Landlord at least 15 days' prior written notice of any desired Transfer and of the proposed terms of such Transfer, including, but not limited to:

(i) the name and legal composition of the proposed Transferee;

(ii) an audited financial statement, if available, or any unaudited financial statement if an audited statement is not available, of the Transferee prepared in accordance with generally accepted accounting principles for a period ending not more than one year prior to the proposed effective date of the Transfer;

(iii) the nature of the proposed Transferee's business to be carried on in the Leased Premises;

(iv) all consideration to be given on account of the Transfer;

(v) a current financial statement of Tenant; and

(vi) such other information as may be reasonably requested by Landlord.

Tenant's notice shall not be deemed to have been served or given until such time as Tenant has provided Landlord with all information required by section 14.1.7.

If Landlord should fail to notify Tenant, in writing, of Landlord's decision whether to consent to or deny Tenant's proposed Transfer within 10 business days following Landlord's receipt of all information required by subsections 14.1.7 (i through vi), then Landlord shall be deemed to have consented to the proposed Transfer.

14.1.8 Notwithstanding the provisions of sections 14.1. through 14.1.7. to the contrary, Tenant may, without Landlord's consent and without advance notice to Landlord, permit the occupancy by, or sublet all or any portion of the Premises or assign the Lease to: **(i)** a subsidiary, parent, affiliate, division, corporation or other entity controlling, controlled by or under common control with Tenant; or **(ii)** a successor corporation or entity related to Tenant by merger, consolidation, reorganization, acquisition of capital stock or assets, or government action. In addition, any transfer of shares of stock of Tenant traded over a recognized security exchange or over-the-counter market shall not be deemed a transfer or an assignment of this Lease, and Tenant, if it is not a public company, shall be permitted to engage in an initial public offering of its shares on a recognized security exchange, and any private placement with a venture capital firm or other equity investor, wherein such venture capital firm or other equity investor receives stock in Tenant, shall not be deemed a transfer or assignment of this Lease. However, no such subletting or assignment, even without the consent of Landlord, shall relieve Tenant of its primary obligation to pay rent and perform all of the other obligations to be performed by Tenant hereunder for which it will remain liable. Any of the above transfers shall be considered a "**Voluntary Permitted Transfer**" of Tenant's interest in this Lease. Under any such Voluntary Permitted Transfer, Tenant and any assignee(s) or transferee(s) shall be, and agree to be, fully liable for all of the obligations of Tenant due under the Lease. Moreover, Tenant and such assignee(s) or transferee(s) must notify Landlord in writing of such subletting or assignment described in this section 14.1.8 within 15 days of the transfer, and the assignee(s) or transferee(s) must expressly agree, in a written document reasonably satisfactory to Landlord, to assume all of Tenant's obligations under the Lease. A failure to do so shall not relieve such assignee(s) or transferee(s) from liability for all obligations of Tenant due under the Lease. Landlord's recapture right and right to 50% of excess rents shall not apply to a Voluntary Permitted Transfer.

14.1.9 Tenant acknowledges and agrees that the restrictions, conditions and limitations imposed by this article 14 on Tenant's ability to assign or transfer this Lease or any interest herein, to sublet the Leased Premises or any part thereof, to transfer or assign any right or privilege appurtenant to the Leased Premises, or to allow any other person to occupy or use the Leased Premises or any portion thereof, are, for the purposes of California Civil Code section 1951.4, as amended from time-to-time, and for all other purposes, reasonable at the time that the Lease was entered into, and shall be deemed to be reasonable at the time that Tenant seeks to assign or transfer this Lease or any interest herein, to sublet the Leased Premises or any part thereof, to transfer or assign any right or privilege appurtenant to the Leased Premises, or to allow any other person to occupy or use the Leased Premises or any portion thereof.

14.2 **By Landlord.** Landlord and its successors in interest shall have the right to transfer their interest in the Leased Premises and the Property at any time and to any person or entity. In event of any such transfer, the Landlord originally named herein (and in the case of any subsequent transfer, the transferor) from the date of such transfer:

(i) shall be automatically relieved, without any further act by any person or entity, of all liability for the performance of the obligations of the Landlord hereunder which may accrue after the date of such transfer; and

(vi) shall be relieved of all liability for the performance of the obligations of the Landlord hereunder which have accrued before the date of transfer only if its transferee agrees to assume and be bound by the terms of this Lease and to perform all obligations of the Landlord hereunder.

ARTICLE 15.
TERMINATION

15.1 **Surrender of the Leased Premises.** Immediately prior to the expiration or upon the sooner termination of this Lease, Tenant shall remove all of Tenant's Trade Fixtures (except if such non-removal has been previously consented to by Landlord) and other personal property, and vacate and surrender the Leased Premises to Landlord in the same condition as existed at the Commencement Date, and as improved from time-to-time as permitted by this Lease, reasonable wear and tear and damage by casualty excepted.

If Landlord so requests and provided Landlord duly delivered a Removal Notice with respect thereto, Tenant shall, not later than the expiration or sooner termination of this Lease, remove any Leasehold Improvements installed by Tenant after the Commencement Date designated by Landlord and repair all damage caused by such removal. If the Leased Premises are not so surrendered at the termination of this Lease, Tenant shall be liable to Landlord for all actual and reasonable costs incurred by Landlord in returning the Leased Premises to the required condition, plus interest on all costs incurred at the Agreed Interest Rate. Tenant shall indemnify Landlord against loss or liability resulting from delay by Tenant in so surrendering the Leased Premises, including, without limitation, any claims made by any succeeding tenant or losses to Landlord due to lost opportunities to lease to succeeding tenants, provided that Landlord gives Tenant at least 15 days' advance notice of such claims. Tenant, on or before the end of the Term or sooner termination of this Lease, shall remove all of Tenant's personal property and trade fixtures from the Premises, and all property not so removed on or before the end of the Term or sooner termination of this Lease shall be deemed abandoned by Tenant and title to same shall thereupon pass to Landlord without compensation to Tenant. Landlord may, upon termination of this Lease and five days' prior notice to Tenant, remove all moveable furniture and equipment so abandoned by

Tenant, at Tenant's sole cost, and repair any damage caused by such removal at Tenant's sole cost. Nothing contained herein shall be construed as an extension of the Term hereof or as consent by Landlord to any holding over by Tenant. The voluntary or other surrender of this Lease or the Premises by Tenant or a mutual cancellation of this Lease shall not work as a merger and, at the option of Landlord, shall either terminate all or any existing subleases or sub-tenancies or operate as an assignment to Landlord of all or any such subleases or sub-tenancies.

15.2 **Holding Over.** This Lease shall terminate without further notice at the expiration of the Lease Term. Any holding over by Tenant after expiration of the Lease Term shall not constitute a renewal or extension of the Lease or give Tenant any rights in or to the Leased Premises except as expressly provided in this Lease. Any holding over after such expiration with or without the consent of Landlord shall be construed to be a tenancy from month-to-month on the same terms and conditions herein specified insofar as applicable except that Base Monthly Rent shall be increased to an amount equal to one hundred fifty percent (150%) of the Base Monthly Rent required during the last month of the Lease Term, for a period of 60 days. Any holding over by Tenant after expiration of such initial 60-day period shall be construed as being a tenancy from month-to-month on the same terms and conditions herein specified insofar as applicable except that Base Monthly Rent shall be increased to an amount equal to two hundred percent (200%) of the Base Monthly Rent required during the last month of the Lease Term. Unless expressly consented to by Landlord, nothing in this section 15.2 shall limit Landlord's rights or remedies, or be deemed a consent to any holdover.

ARTICLE 16.
LANDLORD'S RIGHT TO ENTER

16.1 **Landlord's Right to Enter.** Tenant shall permit Landlord and its agents to enter the Leased Premises at all reasonable times following reasonable prior notice for the purpose of:

(i) inspecting the same;

(ii) posting notices of non-responsibility;

(iii) supplying any service to be provided by Landlord to Tenant;

(iv) showing the Leased Premises to prospective purchasers, mortgagees or tenants;

(v) making necessary repairs;

(vi) performing Tenant's obligation when Tenant has failed to do so after written notice from Landlord and reasonable opportunity to cure;

(vii) placing upon the Leased Premises ordinary "for lease" signs during the last six months of the Term, or "for sale" signs; or

(viii) in the case of an emergency.

Notwithstanding the above, unless Tenant is in material Default beyond applicable cure period under the provisions of section 13.1 of this Lease, Landlord may show the Leased Premises to new tenants only during the last six months of the Lease Term at reasonable times, upon reasonable advance notice to Tenant. For each of the aforesaid purposes, Landlord may enter the Leased Premises by means of a master key, and Landlord shall have the right to use any and all means Landlord may deem reasonably necessary and proper to open the doors of the Leased Premises in an emergency. Any entry to the Leased Premises or portions thereof obtained by Landlord by any of said means, or otherwise, shall not under any circumstances be construed or deemed to be a forcible or unlawful entry into, or a detainer of the Leased Premises, nor an eviction, actual or constructive, of Tenant from the Leased Premises or any portion thereof. Notwithstanding anything to the contrary contained in this Lease, any entry by Landlord and Landlord's agents shall not impair Tenant's operations more than reasonably necessary and shall comply with Tenant's reasonable security procedures, and Tenant shall have the right to have an employee accompany Landlord and/or its agents at all times that Landlord and/or its agents are present on the Leased Premises, except in the case of an emergency or Tenant's having vacated or abandoned the Leased Premises.

ARTICLE 17.
MORTGAGES AND TRANSFER

17.1 **Subordination.** This Lease is subject and subordinate to all underlying ground leases, mortgages and deeds of trust which affect the Property and are of public record as of the Effective Date of this Lease, and to all renewals, modifications, consolidations, replacements and extensions thereof. However, if the lessor under any such lease, or any Lender holding such mortgage or deed of trust, shall advise Landlord that it desires or requires this Lease to be prior and superior thereto, then, upon prior written request of Landlord to Tenant, Tenant shall promptly execute, acknowledge and deliver any and all commercially reasonable documents or instruments which Landlord or such lessor or Lender deems necessary or desirable to make this Lease prior thereto; provided further that a pre-approved form of Subordination, Non-Disturbance, Attornment and Estoppel Agreement ("SNDA") is attached to the Lease as Exhibit E such SNDA having been prepared by Landlord's Lender (Wells Fargo Bank National Association). Landlord shall use commercially reasonable efforts to deliver from Landlord's Lender an executed SNDA in the form of Exhibit E following execution of this Lease. At Landlord's election, this Lease shall become and thereafter remain subject and subordinate to any and all future ground leases, mortgages or deeds of trust affecting the Property which may hereafter be executed and placed of public record after the Effective Date of this Lease, or any renewals, modifications, consolidations, replacements or extensions thereof, for the full amount of all advances made or to be made thereunder and without regard to the time or character of such advances, so long as the lessor of such ground

lease, or the Lender holding the mortgage or deed of trust to which this Lease is to be subordinated, agrees that it will recognize Tenant's rights under this Lease and not disturb its quiet possession of the Leased Premises so long as Tenant is not in default hereunder. Tenant agrees, within 10 business days after Landlord's written request therefor, to execute, acknowledge and deliver upon request of Landlord any and all documents or instruments requested by Landlord or such lessor or mortgage holder(s) as may be necessary or proper to assure the subordination of this Lease to any such ground lease, mortgage or deed of trust. Additionally, Landlord shall use commercially reasonable efforts to obtain for Tenant's benefit a commercially reasonable non-disturbance agreement from such Lender in the form attached hereto as Exhibit E. Landlord represents that it is not required to obtain the consent of any Lender in connection with Landlord's execution of this Lease.

17.2 **Tenant's Attornment.** Tenant shall attorn:

(i) to any purchaser of the Building or Property at any foreclosure sale or private sale conducted pursuant to any security instrument encumbering the Building and/or the Property;

(ii) to any grantee or transferee designated in any deed given in lieu of foreclosure, or

(iii) to the lessor under any underlying ground lease should such ground lease be terminated.

17.3 **Mortgagee Protection.** In the event of any material Default on the part of Landlord, Tenant shall use commercially reasonable efforts to give notice by overnight courier to any Lender or lessor under any underlying ground lease whose name and address have been provided to Tenant, and Tenant shall use commercially reasonable efforts to offer such Lender or lessor a commercially reasonable opportunity to cure the default, including time to obtain possession of the Leased Premises by power of sale or judicial foreclosure or other appropriate legal proceedings, if such should prove necessary to effect a cure.

17.4 **Estoppel Certificates.** At all times during the Lease Term following any reasonable written request by Landlord, Tenant agrees to promptly execute and deliver to Landlord an estoppel certificate, except as otherwise set forth in such request,

(i) certifying that this Lease is unmodified and in full force and effect, or, if modified, stating the nature of such modification and certifying that this Lease, as so modified, is in full force and effect;

(ii) stating the date to which the rent and other charges are paid in advance, if any;

(iii) acknowledging that there is not, to Tenant's actual knowledge, any uncured default on the part of Landlord hereunder; and, if there are uncured defaults on the part of Landlord, stating the nature of such uncured defaults; and

(iv) certifying such other information about the Lease as may be reasonably required by Landlord.

Tenant's failure to deliver an estoppel certificate within 10 business days after receipt of Landlord's request therefore shall be a conclusive admission by Tenant that, as of the date of the request for such statement:

(i) this Lease is unmodified except as may be represented by Landlord in said request and is in full force and effect;

(ii) there are no uncured defaults in Landlord's performance; and

(iii) no rent has been paid in advance.

17.5 **Financial Statements**. At any time during the Lease Term (but not more than twice per calendar year unless Tenant is in Default), Tenant shall, within 15 business days after receipt of prior written notice from Landlord, provide Tenant's Financial Information for the most recent completed calendar quarter prior to such request to Landlord and to any existing Lender, potential Lender, buyer and/or potential buyer of the Premises; provided that each such recipient shall have signed a non-disclosure agreement reasonable acceptable to Tenant. The "**Financial Information**" consists of a Tenant-prepared document which states revenue, expenses and cash balance, and shall be accompanied by a photocopy of Tenant's bank statement. All such financial statements provided by Tenant to Landlord shall remain confidential; provided that Landlord may disclose such financial information to Landlord's accountants, attorneys, investors, employees, lender, prospective lender, prospective buyer(s) or others who have a bona-fide need-to-know or as required by law; provided that each such recipient shall have signed a non-disclosure agreement reasonably acceptable to Tenant.

17.6 **Landlord's Lien Waiver** Provided that Tenant is not in Default after the expiration of any applicable notice and cure periods, Landlord agrees to execute and deliver from time to time in favor of Tenant's lender(s) a landlord lien waiver and access agreement (in a form and substance mutually agreed upon between Landlord and lender and the cost of which negotiation and legal review by Landlord's attorney shall be paid for by Tenant) pursuant to which Landlord will subordinate to the interest of such Tenant's lender(s) Landlord's interest, if any, in Tenant's personal property and Trade Fixtures located in the Premises and, in accordance with the terms of such agreement, allow Tenant's lender(s) reasonable access to the Premises in accordance with the terms of such lien waiver and access agreement in order to secure, in accordance with applicable Laws and with applicable credit documents, any such personal property and Trade Fixtures Tenant may have offered as collateral. Landlord agrees that this Lease does not grant Landlord any security interest in any of personal property and Trade Fixtures located in the Premises.

ARTICLE 18.
GENERAL PROVISIONS

18.1 **Force Majeure.** The time for performance of an obligation other than the payment of money under this Lease shall be extended for the period during which a party is prevented from performing by acts of God, government, or other force or event beyond the reasonable control of that party.

18.2 **Notices.** Any notice required or desired to be given regarding this Lease shall be in writing and shall be personally served or, in lieu of personal service, may be delivered by overnight courier or certified mail or by electronic facsimile transmission. If served by mail, such notice shall be deemed to have been given:

(i) on the third business day after mailing if such notice was deposited in the United States Mail, certified mail and postage prepaid, addressed to the party to be served at its address as first above set forth, and

(ii) in all other cases, when actually received.

Either party may change its address by giving notice of same in accordance with this section 18.2. All notices, demand, requests, advices or designations by Landlord to Tenant shall be deemed sufficiently given, made or delivered:

(i) if personally served on Tenant by leaving same at the Premises; or

(ii) if sent by United States Mail through either "**certified**" or "**registered**" processes or by overnight courier, postage or courier charges prepaid, addressed to Tenant at the Premises; or

(iii) if sent to Tenant by means of electronic facsimile.

All notices, demands, requests, advices or designations by Tenant to Landlord shall be sent by United States certified or registered mail or overnight courier, postage or courier charges prepaid, addressed to Landlord at its offices at 3715 Haven Avenue, Suite 210, Menlo Park, California 94025.

18.3 **Fees and Expenses.** All sums actually and reasonably incurred by Landlord enforcing or implementing the terms of this Lease in connection with any event of Tenant Default, or holding over of possession by Tenant after the expiration or earlier termination of this Lease, including, without limitation, all reasonable costs, expenses and actual accountants, appraisers, attorneys and other professional fees, and any collection agency or other collection charges, shall be due and payable by Tenant to Landlord within 20 days after receipt of written demand. Tenant's obligation in this regard shall bear interest thereon at the Agreed Interest Rate, regardless of whether or not legal proceedings are, or

have been, commenced to enforce the Lease. Tenant's obligation in this regard includes reasonable attorneys' fees and expenses arising in or related to a case brought by Tenant, its successors, assignees or subtenant(s) under Title 11 U.S.C., commonly known as "Bankruptcy Code" provisions; provided however, that in the event of a conflict between the provisions of this section and the provisions of the Bankruptcy Code, the provisions of the Bankruptcy Code shall prevail. If either Landlord or Tenant commences or engages in, or threatens to commence or engage in, an action by or against the other party arising out of or in connection with the interpretation of or enforcement of the terms, conditions and obligations of this Lease, including, but not limited to, any action for recovery of rent due and unpaid, or to recover possession of the Premises, or for damages for breach of this Lease, then the prevailing party shall be entitled to have and recover from the losing party reasonable attorneys' fees, expert's fees and costs, arbitrator's fees and costs, discovery costs and expenses and other costs incurred in connection with the action, preparation for such action, any appeals relating thereto and enforcing any judgments rendered in connection therewith.

18.4 **Corporate Authority.** If Tenant is a corporation (or a partnership), Tenant represents and warrants that each person executing this Lease on Tenant's behalf is duly authorized to execute and deliver this Lease on behalf of said corporation in accordance with the bylaws of the said corporation (or partnership in accordance with the partnership agreement of said partnership) and that this Lease is binding upon said corporation (or partnership) in accordance with its terms. If Tenant is a corporation, Tenant does hereby covenant and warrant that Tenant is a duly authorized and existing corporation, that Tenant has and is qualified to do business in California and that the corporation has full right and authority to enter into this Lease.

18.5 **Additional Definitions.** Any term to which a special meaning is given in this Lease shall have such meaning when used in this Lease or any addendum or amendment hereto. As used herein, the following terms shall have the following meanings:

18.5.1 **Agreed Interest Rate.** The term "**Agreed Interest Rate**" shall mean an interest rate of either ten percent (10%) per annum, or the maximum applicable rate permitted by law, whichever is less.

18.5.2 **Common Area.** The term "**Common Area**" shall mean all areas and facilities within the Property that are provided and designated by Landlord, from time-to-time, for general use and convenience of the lessees and occupants of all or any part of the Property, including, without limitation, the parking areas and facilities, access and perimeter roads, pedestrian sidewalks, landscaped areas, elevator, stairs and stairwell, and the like.

18.5.3 **CPI.** Intentionally omitted.

18.5.4 **Effective Date.** The term "**Effective Date**" shall mean the Reference Date.

18.5.5 **Law.** The term "**Law**" shall mean any judicial decision, statute, constitution, ordinance, resolution, regulation, rule, administrative order, or other requirement of any municipal, county, state, federal or other government agency or authority having jurisdiction over the parties to this Lease or the Leased Premises or both, in effect either at the Effective Date of this Lease or any time during the Lease Term, including, without limitation, any regulation, order, or policy of any quasi-governmental entity or body (e.g., board of fire examiners, public utilities or special district).

18.5.6 **Leasehold Improvements.** The term "**Leasehold Improvements**" shall mean all improvements, additions, alterations, and fixtures installed in the Leased Premises by Tenant during the Term, at its expense, which are not Trade Fixtures.

18.5.7 **Lender.** The term "**Lender**" shall mean any beneficiary, mortgagee, secured party, or other holder of any deed of trust, mortgage or other written security device or agreement affecting the Property, and the note or other obligations secured by it.

18.5.8 **Private Restrictions.** The term "**Private Restrictions**" shall mean all recorded covenants, conditions and restrictions, private agreements, reciprocal easement agreements, and any other recorded instruments affecting the use of the Leased Premises as they may exist from time-to-time.

18.5.9 **Trade Fixtures.** The term "**Trade Fixtures**" shall mean anything affixed to the Leased Premises by Tenant, at its expense, for the purposes of trade, manufacture, ornament, or domestic use (except replacement of similar work or material originally installed by Landlord) which can be removed without injury to the Leased Premises unless such thing has, by the manner in which it is affixed, become an integral part of the Leased Premises; provided, however, that all of Tenant's signs shall be Trade Fixtures regardless of how affixed to the Leased Premises.

18.6 **Construction of Meaning and Other Miscellaneous Provisions.**

(1) Should any provision of this Lease prove to be invalid or illegal, such invalidity or illegality shall in no way affect, impair or invalidate any other provision hereof, and such remaining provisions shall remain in full force and effect.

(2) Time is of the essence with respect to the performance of every provision of this Lease in which time of performance is a factor.

(3) The captions used in this Lease are for convenience only and shall not be considered in the construction or interpretation of any provision hereof.**(4)** Any executed copy of this Lease shall be deemed an original for all purposes.

(5) This Lease shall, subject to the provisions regarding assignment, apply to and bind the respective heirs, successors, executors, administrators, and assigns of Landlord and Tenant.

(6) "**Party**" shall mean Landlord or Tenant, as the context implies.

(7) If Tenant consists of more than one person or entity, then all members of Tenant shall be jointly and severally liable hereunder.

(8) This Lease shall be construed and enforced in accordance with the laws of the State of California.

(9) The language in all parts of this Lease shall in all cases be construed as a whole according to its fair meaning, and not strictly for or against either Landlord or Tenant.

(10) When the context of this Lease requires, the neuter gender includes the masculine, the feminine, a partnership or corporation or joint venture, and the singular includes the plural.

(11) The terms "**shall**," "**will**" and "**agree**" are mandatory. The term "**may**" is permissive.

(12) When a party is required to do something by this Lease, it shall do so at its sole cost and expense, without right of reimbursement from the other party unless specific provision is made therefor.

(13) All measurements of gross leasable area shall be made from the outside faces of exterior walls and the centerline of joint partitions.

(14) Landlord makes no covenant nor warranty as to the exact square footage of any area.

(15) Where Tenant is obligated *not* to perform any act, Tenant is also obligated to restrain any others within its reasonable control from performing said act, including agents, invitees, contractors, subcontractors and employees.

(16) Landlord shall not become, nor be deemed to be a partner nor a joint venturer with Tenant by reason of the provisions of this Lease.

(17) Unless otherwise specifically provided in this Lease, **(a)** each party shall act in a reasonable manner in exercising and undertaking its rights, duties and obligations under this Lease, and **(b)** whenever approval, consent or satisfaction (collectively, an "approval") is required of a party pursuant to this Lease or an exhibit hereto, such approval shall not be unreasonably withheld, conditioned or delayed. Unless provision is made for a specific time period, approval (or disapproval) shall be given within 10 days after receipt of the written request for approval.

18.7 **Quiet Enjoyment.** Upon the observance and performance of all the covenants, terms, and conditions on Tenant's part to be observed and performed, and subject to the other provisions of this Lease, Tenant shall peaceably and quietly hold and enjoy the Premises for the Term without hindrance or interruption by Landlord or any other person claiming by or through Landlord. Landlord agrees to make reasonable efforts to protect Tenant from interference or disturbance by other tenants or third parties not claiming by or through Landlord; however, Landlord shall not be liable for any interference or disturbance, nor shall Tenant be released from any of the obligations of this Lease because of such interference or disturbance.

18.8 **Landlord Representations.** Landlord represents to Tenant that it is the owner in fee simple of the Property with full power and authority to enter into this Lease.

18.9 **Brokerage Commissions.** Tenant warrants that it has not had any dealings with any real estate brokers, leasing agents, salesmen, or incurred any obligations for the payment of real estate brokerage commissions or finder's fees which would be earned or due and payable by reason of the execution of this Lease other than Jones Lang LaSalle, representing Tenant. Landlord warrants that it has not had any dealings with any real estate brokers, leasing agents, salesmen, or incurred any obligations for the payment of real estate brokerage commissions or finder's fees which would be earned or due and payable by reason of the execution of this Lease other than Newmark Cornish & Carey and Deerfield Realty Corporation (collectively, the "**Brokers**"), which Brokers have represented Landlord. Landlord shall be solely responsible for the payment of Brokerage Commission to the above-identified real estate brokers pursuant to separate agreement. Landlord shall pay the brokerage commissions one-half (1/☐) upon Lease execution and the remaining one-half (1/☐) upon the Commencement Date of the Lease. Tenant hereby agrees to and shall indemnify, defend, and hold harmless Landlord from and against any and all claims, liabilities, causes of action, damages, including reasonable attorneys' fees and costs, arising out of any claims or causes of action that may be asserted against Landlord by any other broker, finder or other real estate agent with whom Tenant has purportedly dealt, in connection with the subject matter of this Lease. Landlord hereby agrees to and shall indemnify, defend and hold harmless Tenant from and against any and all claims, liabilities, causes of action, damages, including reasonable attorneys' fees and costs, arising out of any claims or causes of action which may be asserted against Tenant by any other broker, finder, or other real estate agent with whom Landlord has purportedly dealt in connection with the subject matter of this Lease.

18.10 **Entire Agreement.** The Lease, Exhibit A (Site Plan), Exhibit B (Floor Plan), Exhibit C (Rules and Regulations), Exhibit D (Commencement Date/Acceptance Agreement), Exhibit E (Wells Fargo Bank SNDA Form) and Exhibit F (Furniture) which are attached hereto and, by this reference, incorporated herein, constitute the entire agreement between the parties. There are no binding agreements or representations between the

parties, except as expressed herein. Except as expressly set forth in this Lease, Tenant acknowledges that neither Landlord nor Landlord's agent(s) has made any representation or warranty as to:

(i) whether the Leased Premises may be used for Tenant's intended use under existing law, or

(ii) the suitability of the Leased Premises or the Common Area for the conduct of Tenant's business, nor the condition of any of the improvements located thereon.

Tenant expressly waives all claims for damage by reason of any statement, representation, warranty, promise or other agreement of Landlord or Landlord's agent(s), if any, not contained in this Lease or in any addendum or amendment hereto. No subsequent change or addition to this Lease shall be binding unless in writing and signed by the parties hereto.

18.11 **Security Measures.** Tenant hereby acknowledges that the rent payable to Landlord hereunder does not include the costs of guard service or other security measures, and that Landlord shall have no obligation whatsoever to provide same. Tenant assumes all responsibility for the protection of the Leased Premises, of Tenant, of Tenant's invitees and their property from acts of third parties.

18.12 **Signatures Required/Non-Binding Offer.** Submission of this Lease for examination or signature by Tenant does not constitute an offer or option for lease, and it is not effective as a lease or otherwise until executed and delivered by both Landlord and Tenant.

18.13 **Acknowledgement of California Civil Code Section 1938 Disclosure**. Tenant acknowledges review of the provision of the Lease wherein Tenant is hereby advised by Landlord, in compliance with the provisions of California Civil Code Section 1938, that the Premises being leased to Tenant have not undergone inspection by a Certified Access Specialist (CASp) related to whether or not the site meets all applicable construction-related accessibility standards.

18.14 **Abandonment**. In the event that Tenant abandons said Premises, or become dispossessed of said Premises by process or operation of Law, then any Personal Property belonging to Tenant which is left on the Premises after Tenant's departure may, in Landlord's sole discretion, be deemed to have been abandoned by Tenant, except such Property as may be mortgaged by Tenant to a third party lien holder. Notwithstanding the above, it shall not be deemed an event of Tenant's default under the Lease if Tenant leaves all or any part of the Premises vacant, so long as (a) Tenant is performing all of its other obligations under the Lease, including, but not limited to, the obligation to pay Rent, (b) Tenant provides onsite security, during normal business hours, for those parts of the Premises left vacant, (c) Tenant continues to satisfy its maintenance and repair obligations pursuant to section 6.1 of this Lease.

18.15 **Furniture**. Landlord and Tenant acknowledge and agree that during the initial Lease Term and any extensions thereof, Landlord shall lease to Tenant, at no additional cost or expense, all of those certain furniture systems listed in Exhibit E attached hereto and made a part hereof ("**Furniture**") which such Furniture shall be delivered to Tenant in good condition and repair. Such leasing of the Furniture to Tenant is subject to all of the terms of this Lease, without recourse, representation or warranty of any kind or nature, express or implied, including without limitation, habitability, merchantability or fitness for a particular purpose, except as specifically set forth in this section 18.15. At the expiration of earlier termination of this Lease, the Furniture shall be returned and surrendered to Landlord in good condition and repair, reasonable wear and tear and damage by Landlord excepted. Landlord shall have no obligation to repair, maintain or insure any of the Furniture, which shall be the sole expense and obligation of Tenant during the Lease Term and any extensions thereof. Tenant shall not have the right or ability to (i) remove or materially modify the Furniture or (ii) assign or sublet any of the Furniture except in conjunction with this Lease and the Premises. Tenant shall pay any taxes, assessments and insurance premiums attributable to the Furniture. Tenant shall inform Landlord prior to the Commencement Date if any of the Furniture identified on Exhibit E is to be removed, in which case Landlord shall promptly remove such Furniture which Tenant identifies it does not want to utilize in the Premises.

ARTICLE 19.
ENVIRONMENTAL MATTERS

19.1 **Tenant's Covenants Regarding Hazardous Materials.**

19.1.1. Tenant shall at all times and in all respects comply with all Laws ("**Hazardous Materials Laws**") relating to industrial hygiene, environmental protection, or the use, analysis, generation, manufacturer, storage, disposal or transportation of any oil, flammable explosives, asbestos, urea formaldehyde, radioactive materials or waste, or other hazardous, toxic, contaminated or polluting materials, substances or wastes, including, without limitation, any "hazardous substances," ("**Hazardous Materials**") in connection with its use of the Leased Premises. The term Hazardous Materials shall not include consumer quantities of cleaning products carried by Tenant in its daily course of business.

19.1.2 Tenant shall at its own expense procure, maintain in effect and comply with all conditions of any and all permits, licenses and other governmental and regulatory approvals required for Tenant's use of the Leased Premises, including, without limitation, discharge of (appropriately treated) materials or waste into or through any sanitary sewer serving the Leased Premises. Except as discharged into the sanitary sewer in accordance and conformity with all applicable Hazardous Materials, Tenant shall cause any and all Hazardous Materials removed from the Leased Premises to be removed and transported solely by duly licensed haulers to duly licensed facilities for final disposal of such materials and waste. Tenant shall in all respects handle, treat, deal with and manage any and all Hazardous

Materials in, or under or about the Leased Premises in total conformity with all applicable Hazardous Materials Laws. Upon expiration or earlier termination of the term of the Lease, Tenant shall cause all Hazardous Materials which were introduced by Tenant to be removed from the Leased Premises and transported for use, storage or disposal in accordance and in compliance with all applicable Hazardous Materials Laws. Tenant shall not take any remedial action in response to the presence of any Hazardous Materials in or about the Leased Premises or any building, nor enter into any settlement agreement, consent decree or other compromise in respect to any claims relating to any Hazardous Materials in any way connected with the Leased Premises, without first notifying Landlord of Tenant's intention to do so and affording Landlord ample opportunity to appear, intervene or otherwise appropriately assert and protect Landlord's interest with respect thereto.

19.1.3 Tenant shall immediately notify Landlord in writing of:

A. any enforcement, cleanup, removal or other governmental or regulatory action instituted, completed or threatened pursuant to any Hazardous Materials Laws with respect to the Leased Premises;

B. any claim made or threatened by any person against Tenant or the Leased Premises relating to damage, contribution, cost recovery compensation, loss or injury resulting from or claimed to result from any Hazardous Materials; and

C. any reports made to any environmental agency arising out of or in connection with any Hazardous Materials in or removed from the Leased Premises, including any complaints, notices, warnings or asserted violations in connection therewith. Tenant shall also supply to Landlord as promptly as possible, and in any event within five business days after Tenant's receipt of same, copies of all claims, reports, complaints, notices, warnings or asserted violations related in any way to the Premises or Tenant's use thereof. Tenant shall promptly deliver to Landlord copies of any Hazardous waste manifest reflecting the legal and proper disposal of all Hazardous Materials removed from the Leased Premises.

19.2 **Indemnification of Landlord.** Tenant shall indemnify, protect, defend by counsel reasonably acceptable to Landlord, and hold Landlord and each of Landlord's partners, employees, agents, attorneys, successors, and assigns, free and harmless from and against any and all claims, liabilities, penalties, forfeitures, losses or reasonable expenses (including reasonable attorney's fees) or death or injury to any person, or damage to any property whatsoever arising from or caused in whole or in part, directly or indirectly by:

(A) the presence in, or under or about the Leased Premises caused by Tenant or discharge by Tenant in or from the Leased Premises of any Hazardous Materials,

or Tenant's use, analysis, storage, transportation, disposal, release, threatened release, discharge or generation of Hazardous Materials to, in, on, under, about or from the Leased Premises; or

(B) Tenant's failure to comply with any Hazardous Materials Law.

Tenant's obligations hereunder shall include, without limitation, all reasonable costs of any required or necessary repair, cleanup or detoxification or decontamination of the Leased Premises, and the preparation and implementation of any closure, remedial action or other required plans in connection therewith. Tenant's obligations under this section 19.2 shall survive the expiration or earlier termination of the Lease Term. For purposes of the release and indemnity provision set forth in this section 19.2, any actions or omissions of Tenant or by employees, agents, assignees, contractors or subcontractors of Tenant or others acting for or on behalf of Tenant shall be attributable to Tenant.

Notwithstanding anything to the contrary contained herein, under no circumstance shall Tenant be liable for any losses, costs, claims, liabilities or damages (including attorneys' and consultants' fees) of any type or nature, directly or indirectly arising out of or in connection with any Hazardous Materials present at any time on or about the Premises, the Building or the Project, or the violation of any Hazardous Materials Laws, except to the extent that any of the foregoing actually results from the storage, use, release or disposal of Hazardous Materials by Tenant or its agents, employees, assignees, contractors or subcontractors in violation of applicable Hazardous Materials Laws. Landlord specifically represents that, at the time of execution of this Lease by all parties, to the best of Landlord's actual knowledge without a duty to investigate (but Landlord has not received notice from any third party to the contrary, as of the Reference Date), there are no known areas on the Property where Hazardous Materials have been used, stored or deposited.

19.3 **Indemnification of Tenant.** Landlord shall defend, indemnify, protect, and hold Tenant and each of Tenant's partners, employees, agents, attorneys, successors, and assigns, free and harmless from and against all claims, liabilities, penalties, forfeitures, losses, expenses (including reasonable attorney's fees) or death of or injury to any person or damage to any property to the extent arising from or caused directly or indirectly by Landlord's use, analysis, storage, transportation, disposal, release, threatened release, discharge or generation of Hazardous Materials to, in, on, under, about or from the Property.

19.3.1 Notwithstanding the foregoing to the contrary, Landlord shall be responsible, at Landlord's sole cost and expense, for removing, remediating, or otherwise abating all Hazardous Materials found to be located on, in, or under the Property as of the Effective Date (collectively, the "**Pre-Existing Hazardous Materials**") with the understanding that Landlord's obligations hereunder to remove, remediate or otherwise abate, such Pre-Existing Hazardous Materials, shall be solely determined by the San Mateo County Health Department or other governmental

agency which shall order or require such removal, remediation or abatement. The mere presence of Pre-Existing Hazardous Materials shall trigger no obligation on the part of Landlord to remediate such environmental condition. If ordered by the appropriate governmental agency, Landlord shall use its reasonable efforts to remediate such Pre-Existing Hazardous Materials in a manner that does not unreasonably interfere with Tenant's use and operation of the Property.

19.3.2 Provided further, that in the event it is determined that the ambient air within the Premises or Building is contaminated by Hazardous Materials and unsafe for human occupancy, Tenant shall have the option to terminate the Lease upon providing written notice to Landlord of Tenant's election, the reason for such Lease Termination and reasonable evidence supporting Tenant's belief that the Premises are contaminated and unsafe for its employees and human occupancy.

19.4 **Prior Written Notice to Landlord & Environmental Protection Agency ("EPA").** Tenant hereby agrees to obtain both Landlord and EPA written approval of any Building and construction, design, plans and specifications, before conducting any construction activities that may create or impact potential conduits into the Building (e.g., penetration of the Building foundation slab, subsurface structures, utility vaults), and addressing any potential preferential pathways for subsurface vapors to enter into the Building through such conduits.

ARTICLE 20.
ROOF ACCESS

20.1 **Roof Access**. Tenant shall be entitled, at Tenant's sole cost and expense, to have reasonable access to the roof located immediately over the Premises for purposes of installing and maintaining satellite dishes, microwave antennae and related equipment on the roof of the Building (collectively, "**Rooftop Equipment**"), subject to and in accordance with the following:

20.1.1 The locations, size, appearance, screening and method of attachment of such Rooftop Equipment shall be subject to the prior written approval (not to be unreasonably withheld) of Landlord. Except for Rooftop Equipment so approved by Landlord, Tenant shall not install or permit any of its vendors or contractors to install any Rooftop Equipment or related equipment in, on or under the Property.

20.1.2 The installation, maintenance, repair, replacement and removal of the Rooftop Equipment must be approved by and coordinated through Landlord and shall be conducted in such a manner as to minimize interference with the operation or use of the Building by Tenant or other tenants. Any roof penetrations shall be completed only by a roofing contractor reasonably approved in writing by Landlord.

20.1.3 Tenant shall install the Rooftop Equipment in a good and workmanlike manner, shall repair all damage to the Property arising in connection with the installation,

operation, maintenance, repair and replacement of the Rooftop Equipment, and shall maintain the Rooftop Equipment in a safe, sound, clean and slightly condition. Tenant shall not, in the installation, operation, maintenance, repair or replacement of the Rooftop Equipment: (i) damage the Property or any portion thereof; (ii) interfere with the maintenance or operation of the Building or any mechanical or other systems of the Building, nor the operations of any tenants of the Building; (iii) violate the provisions of any insurance on the Building or its contents; (iv) interfere with the operation of any television, radio, radio phone, microwave, antenna, satellite or other equipment or communications operations in or on the Property; or (v) interfere with the operation of any then existing television, radio, radio phone, microwave, antenna, satellite or other equipment or communications operations in or on the Property.

20.1.4 Tenant, at its expense shall, prior to the installation of the Rooftop Equipment, secure and at all times thereafter maintain all required approvals and permits, if any, of all applicable governmental authorities, utility companies and others required in connection with the installation of the Rooftop Equipment. Landlord makes no representation that applicable laws, ordinances or regulations permit the installation or operation of the Rooftop Equipment and related equipment. Tenant shall at all times comply with all laws and ordinances and all rules and regulations of municipal, state and federal governmental authorities relating to the installation, operation, maintenance, repair and replacement of the Rooftop Equipment and Tenant shall pay all costs, expenses, fines, penalties and damages which may be incurred or imposed by reason of or arising out of Tenant's failure to fully and promptly comply with and observe all such laws, ordinances, orders, rules and regulations.

20.1.5 Tenant shall pay all costs and expenses incurred in connection with the design, installation, operation, maintenance, repair and replacement of the Rooftop Equipment. If Landlord incurs any costs resulting from Tenant's failure to perform any of its obligations with respect to the Rooftop Equipment as set forth herein, Tenant shall pay to Landlord the full amount thereof within ten (10) days following Tenant's receipt of an invoice therefor.

20.1.6 Tenant assumes all liability for, and shall indemnify and hold Landlord harmless from and against any and all claims, liabilities, liens, losses, costs and expenses (collectively, "**Claims**") to which may be sustained or incurred by Landlord (and through no fault or negligence of Landlord or Landlord's agents, employees or contractors) as a result of or in connection with the installation, operation, maintenance, repair and replacement of the Rooftop Equipment, including without limitation, any and all Claims of mechanics and materialmen furnishing labor and materials in connection with the design, installation, operation, maintenance, repair or replacement of the Rooftop Equipment, Claims for death or injury to any persons and for loss, damage or injury to any property, Claims by other tenants and service provider personnel and attorney's fees and other expenses incurred by Landlord or its agents in defending any such Claim.

20.1.7 At the termination of this Lease by lapse of time or otherwise, Tenant shall remove the Rooftop Equipment and restore any damage to the Property arising in connection therewith.

20.1.8 If Tenant fails to timely comply with any of its obligations under this Article, Landlord shall be entitled, at Tenant's sole cost and expense, to take such actions as may be required to effect such compliance, and Tenant agrees to pay to Landlord promptly on demand all reasonable out-of-pocket costs and expenses incurred by Landlord in effecting such compliance.

If an event of Default by Tenant occurs under this Lease which is not cured within applicable notice and cure periods, if any, Landlord shall be entitled to revoke Tenant's rights under this section, in which event, Tenant shall remove such Rooftop Equipment and restore the roof of the Building to the condition existing prior to installation of the Rooftop Equipment.

ARTICLE 21.
OPTION TO EXTEND LEASE

21.1 **Option to Extend Lease Term**. Landlord hereby grants to Tenant an option to extend the Lease Term for a three (3) year period ("**Option Period**") on the following terms and conditions:

A. Tenant must give Landlord notice in writing of its exercise of the option no earlier than 12 months before the date the Lease Term would end, but for the exercise of the said option, and no later than 9 months before the date the Lease Term would end, but for the exercise of the said option.

B. Tenant may not extend the Lease Term pursuant to the option granted by this paragraph if Tenant is in Default beyond any applicable notice and cure period as of the date of exercise of the option, or as of the date this Lease would have been terminated but for said exercise.

C. All terms, covenants and conditions of this Lease shall apply during the Option Period, except that the Base Monthly Rent for the Option Period shall be determined as provided in section D below.

D. The Base Monthly Rent for the Option Period shall be the greater of the Base Monthly Rent payable for the last month of the Lease Term or then fair market monthly rent determined as of the commencement of the Option Period, based upon a lease for premises of like size, quality and location in the Menlo Park area. If the parties are unable to agree upon the fair market monthly rent for the Premises for the Option Period within 30 days from Tenant's delivery of notice of exercise of the option, then the fair market monthly rent shall be determined by appraisal conducted pursuant to subsection E of this paragraph.

E. In the event it becomes necessary to determine by appraisal the fair market rent of the Premises for the purpose of establishing the Base Monthly Rent during the Option Period, then such fair market monthly rent shall be determined by three real estate appraisers, all of whom shall be members of the American Institute of Real Estate Appraisers, with not less than five years' experience appraising real property (other than residential or agricultural property) located in San Mateo County, California, in accordance with the following procedures:

(i) The party demanding an appraisal (the "**Notifying Party**") shall notify the other party (the "**Non-Notifying Party**") thereof by delivering a written demand for appraisal, which demand, to be effective, must give the name, address, and qualifications of an appraiser selected by the Notifying Party. Within 10 days of receipt of said demand, the Non-Notifying Party shall select its appraiser and notify the Notifying Party, in writing, of the name, address, and qualifications of an appraiser selected by it. Failure by the Non-Notifying Party to select a qualified appraiser within said 10 day period shall be deemed a waiver of its right to select a second appraiser on its own behalf; and the Notifying Party shall select a second appraiser on behalf of the Non-Notifying Party within five days after the expiration of said 10 day period. Within 10 days from the date the second appraiser shall have been appointed, the two appraisers so selected shall appoint a third appraiser. If the two appraisers fail to select a third qualified appraiser, the third appraiser shall be selected by the American Arbitration Association or if it shall refuse to perform this function, then at the request of either Landlord or Tenant, such third appraiser shall be promptly appointed by the American Arbitration Association or, if it shall refuse to perform this function then, at the request of either Landlord or Tenant, such third appraiser shall be promptly appointed by the then Presiding Judge of the Superior Court of the State of California, County of San Mateo.

(ii) The three appraisers so selected shall meet in Menlo Park, California, not later than 20 days following the selection of the third appraiser. At said meeting the appraisers so selected shall attempt to determine the fair market monthly rent of the Premises for the Option Period.

(iii) If the appraisers so selected are unable to complete their determinations in one meeting, they may continue to consult at such times as they deem necessary for a 15 day period from the date of the first meeting, in an attempt to have at least two of them agree. If, at the initial meeting or at any time during said 15 day period, two or more of the appraisers so selected agree on the fair market rent of the Leased Premises, such

agreement shall be determinative and binding on the parties hereto, and the agreeing appraisers shall, in simple letter form executed by the agreeing appraisers, forthwith notify both Landlord and Tenant of the amount set by such agreement.

(iv) If two or more appraisers do not so agree within said 15 day period, then each appraiser shall, within five days after the expiration of said 15 day period, submit his independent appraisal in simple letter form to Landlord and Tenant stating his determination of the fair market rent of the Premises for the Option Period. The parties shall then determine the fair market rent for the Premises by determining the average of the fair market rent set by each of the appraisers. However, if the lowest appraisal is less than ninety-five percent (95%) of the middle appraisal then such lowest appraisal shall be disregarded and/or if the highest appraisal is greater than one hundred five percent (105%) of the middle appraisal then such highest appraisal shall be disregarded. If the fair market rent set by any appraisal is so disregarded, then the average shall be determined by computing the average set by the other appraisals that have not been disregarded.

(v) Nothing contained herein shall prevent Landlord and Tenant from jointly selecting a single appraiser to determine the fair market rent of the Premises, in which event the determination of such appraisal shall be conclusively deemed the fair market rent of the Premises.

(vi) Each party shall bear the fees and expenses of the appraiser selected by or for it, and the fees and expenses of the third appraiser (or the joint appraiser if one joint appraiser if one joint appraiser is used) shall be borne fifty percent (50%) by Landlord and fifty percent (50%) by Tenant.

F. The option rights of Tenant under the within article 21 of this Lease, and the extended term thereunder, are granted solely and exclusively for Tenants' personal benefit and may not be assigned or transferred by Tenant other than as part of a Voluntary Permitted Transfer.

G. The Base Monthly Rent for the remainder of the Option Period shall be adjusted by annual increases of three (3%) percent.

ARTICLE 22.
TENANT'S RIGHT-OF-FIRST-OFFER

22.1 **Tenant's Right-of-First-Offer ("ROFO") Option**. Notwithstanding the above, and subject to the currently existing option rights of other tenants (and/or their successors) in the Building as of the date of this Lease, Tenant shall be granted a one-time (as to each suite) right-of-first-offer option throughout the Lease Term as to any available space in Suites 110 and 210 of the Building ("**ROFO Space**"), which is returned to Landlord after any existing leases affecting the Property are terminated including the waiver or completion of any extensions or renewals with such third party tenants.

22.1.1 The option rights of Tenant under this Article 22 of the Lease are granted solely and exclusively for Tenant's personal benefit and may not be transferred by Tenant without Landlord's prior consent other than as part of a Voluntary Permitted Transfer.

22.1.2 The option rights of Tenant under this Article 22 of the Lease may not be exercised at any time in which Tenant is in material default of the terms, conditions and provisions of the Lease beyond any applicable cure period.

22.1.3 Prior to negotiations with any person or entity other than Tenant for any ROFO Space, Landlord will provide Tenant with a written notice ("**ROFO Notice**") specifying the amount of space which will be available, the date of availability of such ROFO Space, and the amount of Base Monthly Rent which the Landlord is willing to accept. After its receipt of the ROFO Notice, Tenant will have five (5) business days to notify Landlord in writing that it wishes to lease all of the ROFO Space. After thirty (30) days of negotiations, should Tenant decline to execute a lease of the ROFO Space, Landlord shall be free to lease the ROFO Space to a third party; on terms and conditions with such third party that are within five percent (5%) of the Base Monthly Rent set forth in the ROFO Notice delivered to Tenant.

22.1.4 In the event Tenant exercises its ROFO option rights under the provisions of this Article 22 of the Lease, Tenant agrees that all of the ROFO Space will be taken "AS IS" with no improvements nor tenant allowance improvement monies from Landlord, except as set forth in the ROFO Notice or otherwise agreed to by the parties.

Signatures on next page

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease with the intent to be legally bound thereby, to be effective as of the Effective Date of this Lease.

LANDLORD	**TENANT**
DEERFIELD CAMPBELL LLC, a California limited liability company	**SIGHT SCIENCES, INC.,** a Delaware corporation
By: /s/ Tito J. Bianchi Tito J. Bianchi, President of DEERFIELD CAMPBELL, LLC	By: /s/ Jesse Selnick Name: Jesse Selnick
Its: Manager	Its: Chief Financial Officer
Dated: 2/5/2021	Dated: 2/5/2021

EXHIBIT A

(SEE ATTACHED SITE PLAN)

[Intentionally Omitted]

EXHIBIT B

(SEE ATTACHED FLOOR PLAN)

[Intentionally Omitted]

EXHIBIT C
RULES AND REGULATIONS

1. Sidewalks, halls, passages, exits, entrances, elevators and stairways shall not be obstructed by Tenant, nor used by Tenant for any purpose other than for ingress and egress from the Premises. Tenant, Tenant's employees and invitees shall not go upon the roof of the Building or any other buildings on the Property, except as authorized by Landlord.

2. No sign, placard, picture, name, advertisement or notice visible from the exterior of the Premises or the Building shall be inscribed, painted, affixed, installed or otherwise displayed by Tenant either on the Premises or any part of the Building or anywhere else on the Property without the prior written consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed, and Landlord shall have the right to remove any such sign, placard, picture, name, advertisement or notice without notice to and at the expense of Tenant. All approved signs or lettering on doors and walls shall be printed, painted, affixed or inscribed at the expense of Tenant by a person reasonably approved by Landlord.

3. The bulletin board or directory of the Building will be provided exclusively for the display of the name and location of tenants of the Building only and Landlord reserves the right to exclude any other names therefrom.

4. No curtains, draperies, blinds, shutters, shades, screens or other coverings, awnings, hangings or decorations shall be attached to, hung or placed in, or used in connection with any window, door or patio on the Premises without the prior written consent of Landlord. In any event with the prior written consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed, all such items shall be installed inboard of Landlord's window coverings and shall not in any way be visible from the exterior of the Building. No articles shall be placed or kept on the window sills so as to be visible from the exterior of the Building. No articles shall be placed against glass partitions or doors which might appear unsightly from outside the Building.

5. Landlord reserves the right to exclude from the Building between the hours of 6:00 p.m. and 8:00 a.m. and at all hours on Saturdays, Sundays and holidays all persons who are not clients, guests or employees of tenants of the Building.

6. Tenant shall not employ any person or persons other than the janitor of Landlord for the purpose of cleaning the Premises unless otherwise agreed to by Landlord in writing, which agreement shall not be unreasonably withheld. Except with written consent of Landlord, no person or persons other than those approved by Landlord shall be permitted to enter the Building for the purpose of cleaning the same. Tenant shall not cause any unnecessary labor by reason of Tenant's carelessness or indifference in the preservation of good order and cleanliness of the Premises.

7. Regular janitor service to common areas to be furnished Monday through Friday evenings.

8. All entrance doors in the Premises shall be locked when the Premises are not in use, and all doors opening to pubic corridors shall be kept closed except for normal ingress and egress from the Premises.

9. As more specifically provided in the Lease, Tenant shall not waste electricity, water heating or air conditioning and agrees to cooperate fully with Landlord to assure the most effective operation of the Building's heating and air conditioning, and shall refrain from attempting to adjust any controls other than room thermostats installed for Tenant's use. Landlord shall have the right to control and operate the public portions of the Building, the public facilities, and facilities furnished for the common use of the tenants, in such manner as its deems best for the benefit of the tenants generally.

10. Tenant shall keep and cause to be kept closed, as reasonable, all window coverings when reasonably necessary because of the sun's position.

11. Tenant shall not alter any lock or access device or install a new or additional lock or access device or any bolt on any door of the Premises without the prior written consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed. If Landlord shall give its consent, Tenant shall in each case furnish Landlord with a key for any such lock.

12. Tenant shall not make or have made additional copies of any keys or access devices provided by Landlord unless agreed-to by Landlord, which agreement shall not be unreasonably withheld, conditioned or delayed. Tenant, upon the termination of the tenancy, shall deliver to Landlord all the keys or access devices for the Building, offices, rooms and toilet rooms which shall have been furnished to Tenant or which Tenant shall have had made. In the event of the loss of any keys or access devices so furnished by Landlord, Tenant shall pay Landlord therefor. Tenant shall be responsible for all keys and access devices issued to Tenant's employees. Tenant shall collect all keys and access devices from employees at the time of termination of their employment and return same to Landlord's property manager. Tenant shall notify Landlord's property manager of new employees so Landlord's property manager can add their names to the security system list and issue access devices as needed (if applicable).

13. The toilet rooms, toilets, urinals, wash bowls and other apparatus shall not be used for any purpose other than that for which they were constructed and no foreign substance of any kind whatsoever shall be thrown therein, and the expense of any breakage, stoppage or damage resulting from the violation of this rule by Tenant or Tenant's employees or invitees shall be borne by Tenant.

14. Tenant shall not use or keep in the Leased Premises or the Building any kerosene, gasoline or inflammable or combustible fluid or material other than limited quantities necessary for the operation or maintenance of office equipment. Tenant shall not use any method of heating or air conditioning other than that supplied by Landlord.

15. Tenant shall not use, keep or permit to be used or kept in the Leased Premises any foul or noxious gas or substance or permit or suffer the Leased Premises to be occupied or used in a manner offensive or objectionable to Landlord or other occupants of the Building by reason of noise, odors and/or vibrations or interfere in any way with other tenants or those having

business therein, nor shall any animals or birds be brought or kept in or about the Premises or the Building (except for dogs subject to compliance with Tenant's "Bring Your Dog To Work Policy", service animals and service birds).

16. No cooking shall be done or permitted by Tenant on the Leased Premises except the use by the Tenant of approved equipment provided by Landlord in the designated kitchen area for the preparation or coffee, tea, hot chocolate and similar beverages for Tenant and its employees, as well as for the preparation of food or beverages in the microwave. Such equipment and use shall be in accordance with all applicable federal, state and city laws, codes, ordinances, rules and regulations. The Leased Premises shall not be used for lodging.

17. If Tenant requires telegraphic, telephonic, burglar alarm or similar services, it shall first obtain and comply with Landlord's reasonable instructions in their installation.

18. Landlord will direct electricians as to where and how telephone, telegraph and electrical wires are to be introduced or installed. No boring or cutting for wires or penetration of any kind will be allowed without the prior written consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed. The location of burglar alarms, telephones, call boxes, TV antennae and other office equipment affixed to the Premises shall be subject to the written approval of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed.

19. Except with the prior written consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed, Tenant shall not sell or permit the sale, at retail, of newspapers, magazines, periodicals, theater tickets or any other goods or merchandise in or on the Premises, nor shall Tenant carry on, or permit or allow any employee or other person to carry on, the business of stenography, typewriting or any similar business in or from the Premises, nor shall the Premises be used for the storage of merchandise or for manufacturing of any kind, nor shall the Premises be used for any unlawful purpose, or any business or activity other than that specifically provided for in Tenant's Lease.

20. Tenant shall not lay linoleum, tile, carpet, or any other floor covering so that the same shall be affixed to the floor of the Premises in any manner except as approved in writing by Landlord, which approval shall not be unreasonably withheld, conditioned or delayed. The expense of repairing any damage resulting from a violation of this rule by Tenant or Tenant's contractors, employees or invitees or the removal of any floor covering shall be borne by Tenant.

21. Tenant shall not place a load upon any floor of the Premises which exceeds the load per square foot which such floor was designed to carry and which is allowed by law. Tenant shall not mark or drive nails, screw or drill into the partitions, woodwork or plaster or in any way deface the Premises or any part thereof

22. Tenant shall not install, maintain or operate upon the Premises any vending machine without the written consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed.

EXHIBIT D

COMMENCEMENT DATE / ACCEPTANCE AGREEMENT

THIS COMMENCEMENT DATE/ACCEPTANCE AGREEMENT is made as of , 2021, with regard to that Lease dated as of February 5, 2021, by and between **DEERFIELD CAMPBELL LLC,** California limited liability company ("**Landlord**"), and **SIGHT SCIENCES, INC.,** a Delaware corporation ("**Tenant**"), affecting those Premises commonly known as 4040 Campbell Avenue, 1st Floor, Suites 100 and 120, Menlo Park, California. The parties agree as follows:

1. All work required under the Lease to be performed by Landlord, has been completed in accordance with the terms of the Lease, and is hereby accepted by Tenant.

2. Possession of the Premises has been delivered to Tenant, and Tenant has accepted and taken possession of the Premises.

3. The Commencement Date of the Lease Term is August 1, 2021, and the Lease Term for the Premises shall expire thirty-seven (37) full calendar months later, unless sooner terminated or extended, according to the terms of the Lease or by mutual agreement.

4. The Base Monthly Rent initially due on the first day of September after the Commencement Date, pursuant to the terms of the Lease, is in the amount of Forty-Three Thousand Two Hundred Ninety-Two Dollars ($43,292.00) per month, subject to any subsequent adjustments required by the terms of the Lease.

5. Landlord has received from Tenant a Security Deposit in the amount of One Hundred Eight Thousand Three Hundred Fifty-Eight Dollars and 44/100 ($108,358.44). In addition, Tenant has provided to Landlord prepaid rent in the amount of Forty-Nine Thousand Eight Hundred Fifty Dollars and 02/100 ($49,850.02).

6. To the best of Landlord's knowledge, and to the best of Tenant's knowledge, the Lease is in full force and effect, neither party is in default of its obligations under the Lease, and Tenant has no set-offs, claims nor defenses to the enforcement of the Lease. Landlord acknowledges that the Base Monthly Rent for the Premises has been paid current by Tenant through , 2021.

Signatures on next page

IN WITNESS WHEREOF, Landlord and Tenant have executed this Commencement Date/ Acceptance Agreement with the intent to be legally bound thereby, effective as of , 2021.

LANDLORD	**TENANT**
DEERFIELD CAMPBELL LLC, a California limited liability company	**SIGHT SCIENCES, INC.,** a Delaware corporation
By: _____ Tito J. Bianchi, President of DEERFIELD REALTY CORPORATION, a California corporation	By: _____ Name: _____
Its: Manager	Its: _____
Dated: , 2021	Dated: , 2021

EXHIBIT E

(SEE ATTACHED APPROVAL FORM OF WELLS FARGO BANK SNDA)

[Intentionally Omitted]

EXHIBIT F

SEE ATTACHED

(Furniture Inventory)

[Intentionally Omitted]

Exhibit 10.8

Execution Version

AMENDED AND RESTATED CREDIT AND SECURITY AGREEMENT (TERM LOAN)

dated as of November 23, 2020

by and among

SIGHT SCIENCES, INC.,

and any additional borrower that hereafter becomes party hereto, each as Borrower, and collectively as Borrowers,

and

MIDCAP FINANCIAL TRUST,

as Agent and as a Lender,

and

THE ADDITIONAL LENDERS

FROM TIME TO TIME PARTY HERETO

TABLE OF CONTENTS

AMENDED AND RESTATED CREDIT AND SECURITY AGREEMENT (TERM LOAN)

This **AMENDED AND RESTATED CREDIT AND SECURITY AGREEMENT (TERM LOAN)** (as the same may be amended, supplemented, restated or otherwise modified from time to time, the "**Agreement**") is dated as of November 23, 2020 by and among SIGHT SCIENCES, INC., a Delaware corporation ("**Sight Sciences**"), and any additional borrower that may hereafter be added to this Agreement (individually as a "**Borrower**", and collectively with any entities that become party hereto as Borrower and each of their successors and permitted assigns, the "**Borrowers**"), **MIDCAP FINANCIAL TRUST,** a Delaware statutory trust, individually as a Lender, and as Agent, and the financial institutions or other entities from time to time parties hereto, each as a Lender.

RECITALS

WHEREAS, Agent, Lenders and Borrowers have entered into that certain Credit and Security Agreement (Term Loan), dated as of January 25, 2019 (as amended, modified, supplemented and restated prior to the date hereof, the "**Original Credit Agreement**"), pursuant to which the Lenders have agreed to make certain advances of money and to extend certain financial accommodations to Borrowers in the amounts and manner set forth in the Original Credit Agreement;

WHEREAS, in connection with the continued working capital and other needs of the Borrowers, Borrowers have requested, among other things, that Agent and Lenders (a) make certain additional term loan facilities available to Borrowers and (b) amend certain other economic terms, covenants and other provisions of the Original Credit Agreement; and

WHEREAS, Agent and Lenders have agreed to the requests of Borrowers on the terms and conditions set forth herein and in the other Financing Documents.

AGREEMENT

NOW, THEREFORE, in consideration of the premises and the agreements, provisions and covenants herein contained, the receipt and sufficiency of which are hereby acknowledged, Borrowers, Lenders and Agent agree to amend and restate the Original Credit Agreement as follows:

ARTICLE 1 - DEFINITIONS

Section 1.1 Certain Defined Terms. The following terms have the following meanings:

"**Acceleration Event**" means the occurrence of an Event of Default (a) in respect of which Agent has declared all or any portion of the Obligations to be immediately due and payable pursuant to Section 10.2, (b) pursuant to Section 10.1(a), and in respect of which Agent has suspended or terminated the Term Loan Commitment pursuant to Section 10.2, and/or (c) pursuant to either Section 10.1(e) and/or Section 10.1(f).

"**Account Debtor**" means "account debtor", as defined in Article 9 of the UCC, and any other obligor in respect of an Account.

"**Accounts**" means, collectively, (a) any right to payment of a monetary obligation, whether or not earned by performance, (b) without duplication, any "account" (as defined in the UCC), any accounts receivable (whether in the form of payments for services rendered or goods sold, rents, license fees or otherwise), any "health-care-insurance receivables" (as defined in the UCC), any "payment intangibles" (as defined in the UCC) and all other rights to payment and/or reimbursement of every kind and

description, whether or not earned by performance, (c) all accounts, "general intangibles" (as defined in the UCC), Intellectual Property, rights, remedies, Guarantees, "supporting obligations" (as defined in the UCC), "letter-of-credit rights" (as defined in the UCC) and security interests in respect of the foregoing, all rights of enforcement and collection, all books and records evidencing or related to the foregoing, and all rights under the Financing Documents in respect of the foregoing, (d) all information and data compiled or derived by any Borrower or to which any Borrower is entitled in respect of or related to the foregoing, and (e) all proceeds of any of the foregoing.

"**Acquisition**" means any transaction or series of related transactions, including through licensing, for the purpose of or resulting, directly or indirectly, in (a) the acquisition of all or substantially all of the assets of a Person, or of any business, line of business or division or other unit of operation of a Person, (b) the acquisition of fifty percent (50%) or more of the equity interests of any Person, whether or not involving a merger or consolidation with such other Person, or otherwise causing any Person to become a Subsidiary of a Credit Party, (c) any merger or consolidation or any other combination with another Person or (d) the acquisition (including through licensing) of any business, product, Intellectual Property, business line or product line, division or other unit operation of or from any Person.

"**Acquisition Monthly Cash Burn Amount**" means, with respect to Credit Parties, an amount equal to Credit Parties' change in cash and cash equivalents attributable to operating activities, capital expenditures and/or other recurring expenditures, in each case, as determined in accordance with GAAP and without giving effect to any increase in cash and cash equivalents resulting from equity contributions or the proceeds of Debt licensing or asset sales permitted under this Agreement, for either (a) the immediately preceding six (6) month period as determined as of the last day of the month immediately preceding the proposed consummation of any applicable Acquisition for which financial statements were delivered (or required to be delivered under this Agreement) and based upon the financial statements delivered to Agent in accordance with this Agreement for such period, or (b) the immediately succeeding six (6) month period based upon the Transaction Projections, using whichever calculation as between clause (a) and clause (b) demonstrates a higher burn rate (or, in other words, more cash used), in either case, *divided* by six (6).

"**Additional Titled Agents**" has the meaning set forth in Section 11.15.

"**Affiliate**" means, with respect to any Person, (a) any Person that directly or indirectly controls such Person, (b) any Person which is controlled by or is under common control with such controlling Person, and (c) each of such Person's (other than, with respect to any Lender, any Lender's) officers or directors (or Persons functioning in substantially similar roles). As used in this definition, the term "control" of a Person means the possession, directly or indirectly, of the power to vote ten percent (10%) or more of any class of voting securities of such Person or to direct or cause the direction of the management or policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

"**Affiliated Credit Agreement**" that certain Amended and Restated Credit and Security Agreement (Revolving Loan) (as the same may be amended, restated, supplemented or otherwise modified from time to time), among MidCap Funding IV Trust, as Agent and a lender, the other lenders party thereto and Borrowers pursuant to which such Agent and lenders have extended a revolving credit facility to Borrowers.

"**Affiliated Financing Agent**" means the "Agent" under and as defined in the Affiliated Credit Agreement.

"**Affiliated Financing Documents**" means the "**Financing Documents**" as defined in the Affiliated Credit Agreement.

"**Affiliated Intercreditor Agreement**" means that certain Intercreditor Agreement dated as of the Original Closing Date between Agent and the Affiliated Financing Agent, as the same may be amended, restated, supplemented or otherwise modified from time to time.

"**Affiliated Obligations**" means all "Obligations", as such term is defined in the Affiliated Financing Documents.

"**Agent**" means MCF, in its capacity as administrative agent for itself and for Lenders hereunder, as such capacity is established in, and subject to the provisions of, Article 11, and the successors and assigns of MCF in such capacity.

"**Anti-Terrorism Laws**" means any Laws relating to terrorism or money laundering, including, without limitation, Executive Order No. 13224 (effective September 24, 2001), the USA PATRIOT Act, the Laws comprising or implementing the Bank Secrecy Act, and the Laws administered by OFAC.

"**Applicable Margin**" means seven percent (7.00%).

"**Approved Fund**" means any (a) investment company, fund, trust, securitization vehicle or conduit that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the Ordinary Course Of Business, or (b) any Person (other than a natural person) which temporarily warehouses loans for any Lender or any entity described in the preceding clause (a) and that, with respect to each of the preceding clauses (a) and (b), is administered or managed by (i) a Lender, (ii) an Affiliate of a Lender, or (iii) a Person (other than a natural person) or an Affiliate of a Person (other than a natural person) that administers or manages a Lender.

"**Asset Disposition**" means any sale, lease, license, transfer, assignment or other consensual disposition (including by merger, allocation of assets (including allocation of assets to any series of a limited liability company), division, consolidation or amalgamation) by any Credit Party or any Subsidiary thereof of any asset of such Credit Party or such Subsidiary.

"**Assignment Agreement**" means an assignment agreement in form and substance acceptable to Agent.

"**Bail-In Action**" means the exercise of any Write-Down and Conversion Powers by the applicable EEA Resolution Authority in respect of any liability of an EEA Financial Institution.

"**Bail-In Legislation**" means, 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 for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule.

"**Bankruptcy Code**" means Title 11 of the United States Code entitled "Bankruptcy", as the same may be amended, modified or supplemented from time to time, and any successor statute thereto.

"**Base LIBOR Rate**" means, for each Interest Period, the rate per annum, determined by Agent in accordance with its customary procedures, and utilizing such electronic or other quotation sources as it considers appropriate (rounded upwards, if necessary, to the next 1/100%), to be the rate at which Dollar deposits (for delivery on the first day of such Interest Period) in the amount of $1,000,000 are offered to

major banks in the London interbank market on or about 11:00 a.m. (London time) two (2) Business Days prior to the commencement of such Interest Period, for a term comparable to such Interest Period, which determination shall be conclusive in the absence of manifest error; *provided*, *however*, that if (a) the administrator responsible for determining and publishing such rate per annum, determined by Agent in accordance with its customary procedures, has made a public announcement identifying a date certain on or after which such rate shall no longer be provided or published, as the case may be; or (b) timely, adequate and reasonable means do not exist for ascertaining such rate and the circumstances giving rise to the Agent's inability to ascertain LIBOR are unlikely to be temporary as determined in Agent's reasonable discretion, then Agent may, upon prior written notice to Borrower Representative, choose, in consultation with Borrower, a reasonably comparable index or source together with corresponding adjustments to "Applicable Margin" or scale factor or floor to such index that Agent, in its reasonable discretion, has determined is necessary to preserve the current all-in yield (including interest rate margins, any interest rate floors, original issue discount and upfront fees, but without regard to future fluctuations of such alternative index, it being acknowledged and agreed that neither Agent nor any Lender shall have any liability whatsoever from such future fluctuations) to use as the basis for Base LIBOR Rate.

"**Base Rate**" means a per annum rate of interest equal to the rate of interest announced, from time to time, within Wells Fargo Bank, National Association ("**Wells Fargo**") at its principal office in San Francisco as its "prime rate," with the understanding that the "prime rate" is one of Wells Fargo's base rates (not necessarily the lowest of such rates) and serves as the basis upon which effective rates of interest are calculated for those loans making reference thereto and is evidenced by the recording thereof after its announcement in such internal publications as Wells Fargo may designate; *provided, however,* that, Agent may, upon prior written notice to Borrower, choose a reasonably comparable index or source to use as the basis for the Base Rate.

"**Blocked Person**" means any Person: (a) listed in the annex to, or is otherwise subject to the provisions of, Executive Order No. 13224, (b) 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, Executive Order No. 13224, (c) with which any Lender is prohibited from dealing or otherwise engaging in any transaction by any Anti-Terrorism Law, (d) that commits, threatens or conspires to commit or supports "terrorism" as defined in Executive Order No. 13224, or (e) that is named a "specially designated national" or "blocked person" on the most current list published by OFAC or other similar list or is named as a "listed person" or "listed entity" on other lists made under any Anti-Terrorism Law.

"**Borrower**" and "**Borrowers**" has the meaning set forth in the introductory paragraph hereto.

"**Borrower Representative**" means Sight Sciences, in its capacity as Borrower Representative pursuant to the provisions of Section 2.9, or any successor Borrower Representative selected by Borrowers and approved by Agent.

"**Borrower Consolidated Unrestricted Cash**" means as of any date of determination, unrestricted cash and cash equivalents of the Borrowers and their Consolidated Subsidiaries (taken as a whole) that (a) are not subject to any Lien (other than Permitted Liens), and (b) are not funds for the payment of a drawn or committed but unpaid draft, ACH or EFT transaction as of the applicable date of determination.

"**Borrower Unrestricted Cash**" means, as of any date of determination, unrestricted cash and cash equivalents of the Borrowers that (a) are held in the name of a Borrower in a Deposit Account or Securities Account located in the United States that is subject to a Deposit Account Control Agreement or Securities Account Control Agreement, as applicable, in favor of Agent, (b) are not subject to any Lien (other than Permitted Liens), and (c) are not funds for the payment of a drawn or committed but unpaid draft, ACH or EFT transaction as of the applicable date of determination.

"**Borrowing Base**" has the meaning set forth in the Affiliated Credit Agreement.

"**Business Day**" means any day except a Saturday, Sunday or other day on which either the New York Stock Exchange is closed, or on which commercial banks in California, Washington, DC or New York City are authorized by law to close, and, in the case of a Business Day which relates to a determination of the LIBOR Rate, a day on which dealings are carried on in the London interbank eurodollar market.

"**Capital Lease**" of any Person means any lease of any property by such Person as lessee which would, in accordance with GAAP, be required to be accounted for as a capital lease on the balance sheet of such Person.

"**CERCLA**" means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C.A. § 9601 *et seq*., as the same may be amended from time to time.

"**CFC**" means a controlled foreign corporation within the meaning of Section 957 of the Internal Revenue Code.

"**CFC Holdco**" means any Subsidiary substantially all the assets of which consist of equity interests (or equity and debt interests) of one or more CFCs and/or of one or more other CFC Holdcos and that does not engage in any business, operations or activity other than that of a holding company. For the avoidance of doubt, it is understood and agreed that no CFC Holdcos exist as of the Closing Date.

"**Change in Control**" means any event, transaction, or occurrence as a result of which: (a) any Person or two or more Persons acting in concert shall have acquired beneficial ownership, directly or indirectly, of, or shall have acquired by contract or otherwise, or shall have entered into a contract or arrangement that, upon consummation, will result in its or their acquisition of or control over, voting stock of any Borrower (or other securities convertible into such voting stock) either (i) representing fifty percent (50%) or more of the combined voting power of all voting stock of any Borrower or (ii) representing a sufficient number of shares of voting stock of any Borrower (or other securities convertible into such voting stock) empowering such Person or Persons (other than any Person who is an owner of Borrower's equity interest on the Closing Date) to elect a majority of the board of directors of any Borrower; (b) except for a change in the members of the board of directors or other equivalent body of Borrower resulting from the sale of Borrower's equity securities in a Qualified IPO, occupation of a majority of the seats (other than vacant seats) on the board of directors of Borrower by persons who were neither (i) nominated by the board of directors of the Borrower nor (ii) appointed by the directors so nominated; (c) except to the extent expressly permitted pursuant to Section 5.6 and as Agent may otherwise consent (in its reasonable discretion), any Credit Party ceases to own and control, directly or indirectly, all of the economic and voting rights associated with the outstanding securities of each of its Subsidiaries; or (d) the occurrence of any "Change of Control", "Change in Control", or terms of similar import under any Credit Party's Organizational Documents. As used herein, "beneficial ownership" shall have the meaning provided in Rule 13d-3 of the Securities and Exchange Commission under the Securities Exchange Act of 1934.

Notwithstanding the foregoing, a Qualified IPO shall not constitute a "Change in Control".

"**Closing Date**" means the date of this Agreement.

"**Code**" means the Internal Revenue Code of 1986, as amended from time to time.

"**Collateral**" means all property (other than Excluded Property), now existing or hereafter acquired, mortgaged or pledged to, or purported to be subjected to a Lien in favor of, Agent, for the benefit of Agent and Lenders, pursuant to this Agreement and the Security Documents, including, without limitation, all of the property described in Schedule 9.1 hereto.

"**Commitment Annex**" means Annex A to this Agreement.

"**Competitor**" means, at any time of determination, any Person engaged in the same or substantially the same line of business as the Borrower and the other Credit Parties and such business accounts for all or substantially all the revenue or net income of such Person at the time of such determination.

"**Compliance Certificate**" means a certificate, duly executed by a Responsible Officer of Borrower Representative, appropriately completed and substantially in the form of Exhibit B hereto.

"**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 Subsidiary**" means, at any date, any Subsidiary the accounts of which would be consolidated with those of the "parent" Borrower (or any other Person, as the context may require hereunder) in its consolidated financial statements if such statements were prepared as of such date.

"**Contingent Obligation**" means, with respect to any Person, any direct or indirect liability of such Person: (a) with respect to any Debt of another Person (a "**Third Party Obligation**") if the purpose or intent of such Person incurring such liability, or the effect thereof, is to provide assurance to the obligee of such Third Party Obligation that such Third Party Obligation will be paid or discharged, or that any agreement relating thereto will be complied with, or that any holder of such Third Party Obligation will be protected, in whole or in part, against loss with respect thereto; (b) with respect to any undrawn portion of any letter of credit issued for the account of such Person or as to which such Person is otherwise liable for the reimbursement of any drawing; (c) under any Swap Contract, to the extent not yet due and payable; (d) to make take-or-pay or similar payments if required regardless of nonperformance by any other party or parties to an agreement; or (e) for any obligations of another Person pursuant to any Guarantee or pursuant to any agreement to purchase, repurchase or otherwise acquire any obligation or any property constituting security therefor, to provide funds for the payment or discharge of such obligation or to preserve the solvency, financial condition or level of income of another Person. The amount of any Contingent Obligation shall be equal to the amount of the obligation so Guaranteed or otherwise supported or, if not a fixed and determinable amount, the maximum amount reasonably estimated by such Person in good faith.

"**Controlled Group**" means all members of a group of corporations and all members of a group of trades or businesses (whether or not incorporated) under common control which, together with the Credit Parties, are treated as a single employer under Section 414(b), (c), (m) or (o) of the Code or Section 4001(b) of ERISA and, solely for purposes of Section 412 and 436 of the Code, Section 414(m) or (o) of the Code.

"**Correction**" means repair, modification, adjustment, relabeling, destruction or inspection (including patient monitoring) of a product without its physical removal to some other location.

"**Credit Exposure**" means, at any time, any portion of the Term Loan Commitments and/or of any other Obligations that remains outstanding; *provided, however,* that no Credit Exposure shall be deemed to exist solely due to the existence of contingent indemnification liability, absent the assertion of a claim, or the known existence of a claim reasonably likely to be asserted, with respect thereto.

"**Credit Party**" means any Guarantor under a Guarantee of the Obligations or any part thereof, any Borrower and any other Person (other than Agent, a Lender or a participant of a Lender), whether now existing or hereafter acquired or formed, that becomes obligated as a borrower, guarantor, surety, indemnitor, pledgor, assignor or other obligor under any Financing Document; and "**Credit Parties**" means all such Persons, collectively.

"**Debt**" of a Person means at any date, without duplication, (a) all obligations of such Person for borrowed money, (b) all obligations of such Person evidenced by bonds, debentures, notes or other similar instruments, (c) all obligations of such Person to pay the deferred purchase price of property or services, except trade accounts payable arising and paid on a timely basis, (d) all Capital Leases of such Person, (e) all non-contingent obligations of such Person to reimburse any bank or other Person in respect of amounts paid under a letter of credit, banker's acceptance or similar instrument, (f) all equity securities of such Person subject to repurchase or redemption other than at the sole option of such Person, (g) all obligations secured by a Lien on any asset of such Person, whether or not such obligation is otherwise an obligation of such Person, (h) "earnouts", purchase price adjustments, profit sharing arrangements, deferred purchase money amounts and similar payment obligations or continuing obligations of any nature of such Person arising out of purchase and sale contracts; provided that "earnouts" and other similar payment obligations shall only constitute Debt to the extent the condition to the payment of such obligations has been met and the payment thereof is required pursuant to the terms of such contracts, (i) all Debt of others Guaranteed by such Person, (j) off-balance sheet liabilities of such Person, (k) obligations in respect of litigation settlement agreements or similar arrangements, to the extent the condition to the payment of such agreements or arrangements has been met and the payment thereof is required pursuant to the terms of such agreements or arrangements, and (l) obligations arising under bonus, deferred compensation, incentive compensation or similar arrangements, other than those arising in the Ordinary Course of Business. Without duplication of any of the foregoing, Debt of Borrowers shall include any and all Loans.

"**Default**" means any condition or event which with the giving of notice or lapse of time or both would, unless cured or waived, become an Event of Default.

"**Defaulted Lender**" means, so long as such failure shall remain in existence and uncured, any Lender which shall have failed to make any Loan or other credit accommodation, disbursement, settlement or reimbursement required pursuant to the terms of any Financing Document.

"**Defined Period**" means for any given calendar month or date of determination, the immediately preceding twelve (12) month period ending on the last day of such calendar month.

"**Deposit Account**" means a "deposit account" (as defined in Article 9 of the UCC), an investment account, or other account in which funds are held or invested for credit to or for the benefit of any Borrower.

"**Deposit Account Control Agreement**" means an agreement, in form and substance reasonably satisfactory to Agent, among Agent, any Borrower and each financial institution in which such Borrower maintains a Deposit Account, which agreement contains such terms and conditions as Agent may reasonably require.

"**Distribution**" means as to any Person (a) any dividend or other distribution (whether in cash, securities or other property) on any equity interest in such Person (except those payable solely in its equity interests of the same class), (b) any payment by such Person on account of (i) the purchase, redemption, retirement, defeasance, surrender, cancellation, termination or acquisition of any equity interests in such Person or any claim respecting the purchase or sale of any equity interest in such Person, or (ii) any option, warrant or other right to acquire any equity interests in such Person, (c) any management fees or similar fees to any Person holding an equity interest in a Borrower or a Subsidiary of a Borrower (other than reasonable and customary (i) payments of salaries to individuals, (ii) directors fees, and (iii) advances and reimbursements to employees or directors, all in the Ordinary Course of Business), an Affiliate of a Borrower or an Affiliate of any Subsidiary of a Borrower, (d) any lease or rental payments to an Affiliate or Subsidiary of a Borrower, or (e) repayments of or debt service on loans or other indebtedness held by any Person holding an equity interest in a Borrower or a Subsidiary of a Borrower, an Affiliate of a Borrower or an Affiliate of any Subsidiary of a Borrower unless permitted under and made pursuant to a Subordination Agreement applicable to such loans or other indebtedness.

"**Dollars**" or "**$**" means the lawful currency of the United States of America.

"**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.

"**Eligible Assignee**" means (a) a Lender, (b) an Affiliate of a Lender, (c) an Approved Fund, and (d) any other Person (other than a natural person) approved by Agent, and if no Event of Default has occurred and is continuing, Borrower Representative (such approval not to be unreasonably withheld, conditioned or delayed and which approval shall be deemed granted in the event Borrower does not respond within five (5) Business Days of notice of a proposed assignment); *provided*, *however*, that notwithstanding the foregoing, (x) so long as no Event of Default has occurred and is continuing, "**Eligible Assignee**" shall not include any Borrower or any Subsidiary thereof, and (y) no proposed assignee intending to assume any unfunded portion of the Term Loan Commitment shall be an Eligible Assignee unless such proposed assignee either already holds a portion of such Term Loan Commitment, or has been approved as an Eligible Assignee by Agent. Notwithstanding anything contained herein to the contrary, no consent of Borrower Representative shall be required for an assignment by a Lender in connection with any merger, consolidation, sale, transfer, or other disposition of all or a substantial portion of the business or the venture loan portfolio of such Lender (*provided* that, if no Event of Default has occurred and is continuing, no Lender shall make an assignment to (i) any hedge fund or private equity fund (other than any Affiliate of a Lender or an Approved Fund) that is primarily engaged in the business of purchasing distressed debt, or (ii) any Competitor in connection with any such sale, transfer or other disposition without Borrower Representative's approval (such approval not to be unreasonably withheld, conditioned or delayed and which approval shall be deemed granted in the event Borrower does not respond within five (5) Business Days of notice of a proposed assignment)).

"**Environmental Laws**" means any present and future federal, state and local laws, statutes, ordinances, rules, regulations, standards, policies and other governmental directives or requirements, as well as common law, pertaining to the environment, natural resources, pollution, health (including any environmental clean-up statutes and all regulations adopted by any local, state, federal or other Governmental Authority, and any statute, ordinance, code, order, decree, law rule or regulation all of which pertain to or impose liability or standards of conduct concerning medical waste or medical products, equipment or supplies), safety or clean-up that apply to any Borrower and relate to Hazardous Materials, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. § 9601 *et seq.*), the Resource Conservation and Recovery Act of 1976 (42 U.S.C. § 6901 *et seq.*), the Federal Water Pollution Control Act (33 U.S.C. § 1251 *et seq.*), the Hazardous Materials Transportation Act (49 U.S.C. § 5101 *et seq.*), the Clean Air Act (42 U.S.C. § 7401 *et seq.*), the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. § 136 *et seq.*), the Emergency Planning and Community Right-to-Know Act (42 U.S.C. § 11001 *et seq.*), the Occupational Safety and Health Act (29 U.S.C. § 651 *et seq.*), the Residential Lead-Based Paint Hazard Reduction Act (42 U.S.C. § 4851 *et seq.*), any analogous state or local laws, any amendments thereto, and the regulations promulgated pursuant to said laws, together with all amendments from time to time to any of the foregoing and judicial interpretations thereof.

"**ERISA**" means the Employee Retirement Income Security Act of 1974, as the same may be amended, modified or supplemented from time to time, and any successor statute thereto, and any and all rules or regulations promulgated from time to time thereunder.

"**ERISA Plan**" means any "employee benefit plan", as such term is defined in Section 3(3) of ERISA (other than a Multiemployer Plan), which any Credit Party or any Subsidiary maintains, sponsors or contributes to, or, in the case of an employee benefit plan which is subject to Section 412 of the Code or Title IV of ERISA, to which any Credit Party or any Subsidiary has any liability, including on account of any member of the Controlled Group, including any liability by reason of having been a substantial employer within the meaning of Section 4063 of ERISA at any time during the preceding five (5) years, or by reason of being deemed to be a contributing sponsor under Section 4069 of ERISA.

"**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.

"**Event of Default**" has the meaning set forth in Section 10.1.

"**Excluded Accounts**" has the meaning set forth in Section 5.14(b).

"**Excluded Property**" means (a) any lease, instrument, license, contract, chattel paper or agreement as to which, if and to the extent that, and only for so long as the grant of a security interest therein shall (i) constitute or result in a breach, termination or default under any such lease, license, contract, or agreement or render it unenforceable, (ii) be prohibited by any applicable law or (iii) require the consent of any third party that cannot be obtained after the use of commercially reasonable efforts to obtain such consent (in each case of clauses (i), (ii) and (iii), other than to the extent that any such breach, termination, default, prohibition or requirement for consent would be rendered ineffective pursuant to Sections 9-406, 9-407, 9-408 or 9-409 of the UCC of any relevant jurisdiction or any other applicable Law); *provided* that such security interest shall attach immediately to each portion of such lease, license, contract, or agreement that does not result in any of the consequences specified above, (b) any intent-to-use trademark application prior to the first use thereof, whether by the actual use thereof in commerce, the recording of a statement of use with the United States Patent and Trademark Office or otherwise, (c) any asset that is subject to a purchase money security interest or lease permitted pursuant to the terms of this Agreement and which derives from an agreement which prohibits any junior security interest, other than

to the extent that any such prohibition would be terminated or rendered unenforceable or otherwise deemed ineffective by the UCC or any other Law, (d) any governmental licenses or state or local franchises, charters or authorizations, to the extent security interests in such licenses, franchises, charters or authorizations are prohibited or restricted thereby, after giving effect to the applicable anti-assignment provisions of the UCC of any applicable jurisdiction or any other applicable Law notwithstanding such prohibition or restriction, (e) any leasehold interests in real estate, (f) the voting capital stock (or other voting equity interests) of any Excluded Subsidiary in excess of 65% of the issued and outstanding voting capital stock (or other voting equity interests) of such Excluded Subsidiary to the extent that Borrower has provided Agent reasonably satisfactory evidence that the grant of a security interest in excess of such percentage to secure the Obligations could reasonably be expected cause material adverse tax consequences for any Credit Party, and (g) Excluded Accounts; *provided*, that "**Excluded Property**" shall not include any proceeds, products, substitutions, receivables or replacements of Excluded Property (unless such proceeds, products, substitutions, receivables or replacements would otherwise constitute Excluded Property).

"**Excluded Subsidiary**" means any Foreign Subsidiary and any CFC Holdco.

"**Excluded Taxes**" means any of the following Taxes imposed on or with respect to Agent, any Lender or any other recipient of any payment to be made by or on behalf of any obligation of Credit Parties hereunder or the Obligations or required to be withheld or deducted from a payment to Agent, such Lender or such recipient (including any interest and penalties thereon): (a) Taxes to the extent imposed on or measured by Agent's, any Lender's or such recipient's net income (however denominated), branch profits Taxes, and franchise Taxes and similar Taxes, in each case, (i) imposed by the jurisdiction (or any political subdivision thereof) under which Agent, such Lender or such recipient is organized, has its principal office or conducts business with respect to entering into any of the Financing Documents or taking any action thereunder or (ii) that are Other Connection Taxes; (b) in the case of a Lender, United States withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in the Loans pursuant to a Law in effect on the date on which (i) such Lender becomes a party to this Agreement other than as a result of an assignment requested by a Credit Party pursuant to Section 2.8(i) hereof or (ii) such Lender changes its lending office for funding its Loan, except in each case to the extent that, pursuant to Section 2.8, amounts with respect to such Taxes were payable either to such Lender's assignor immediately before such Lender acquired the applicable interest in a Loan or Term Loan Commitment or to such Lender immediately before it changed its lending office; (c) Taxes attributable to such Lender's failure to comply with Section 2.8(c); and (d) any withholding taxes imposed under FATCA.

"**Exit Fee**" has the meaning set forth in Section 2.2(h).

"**FATCA**" means Sections 1471 through 1474 of the Code as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future U.S. Treasury 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 and implementing such Sections of the Code.

"**FDA**" means the Food and Drug Administration of the United States of America, any comparable state or local Governmental Authority, any comparable Governmental Authority in any non-United States jurisdiction, and any successor agency of any of the foregoing.

"**FDCA**" means the Federal Food, Drug and Cosmetic Act, as amended, 21 U.S.C. Section 301 et seq., and all regulations promulgated thereunder.

"**Federal Funds Rate**" means, for any day, the rate of interest per annum (rounded upwards, if necessary, to the nearest whole multiple of 1/100 of 1%) equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day, *provided*, *however*, that (a) if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day, and (b) if no such rate is so published on such next preceding Business Day, the Federal Funds Rate for such day shall be the average rate quoted to Agent on such day on such transactions as determined by Agent.

"**Fee Letter**" means each agreement, if any, between Agent and Borrower relating to fees payable to Agent in connection with this Agreement.

"**Financing Documents**" means this Agreement, any Notes, the Security Documents, each Fee Letter, the Affiliated Intercreditor Agreement, each subordination or intercreditor agreement pursuant to which any Debt and/or any Liens securing such Debt is subordinated to all or any portion of the Obligations and all other documents, instruments and agreements related to the Obligations and heretofore executed, including concurrently with the Original Credit Agreement, executed concurrently herewith or executed at any time and from time to time hereafter, as any or all of the same may be amended, supplemented, restated or otherwise modified from time to time.

"**Foreign Lender**" has the meaning set forth in Section 2.8(c)(i).

"**Foreign Subsidiary**" means, with respect to any Person, any Subsidiary of that Person that is organized under the laws of a jurisdiction other than the United States of America, any state thereof, or the District of Columbia.

"**GAAP**" means generally accepted accounting principles 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 United States accounting profession), which are applicable to the circumstances as of the date of determination.

"**General Intangible**" means any "general intangible" as defined in Article 9 of the UCC.

"**Governmental Authority**" means any nation or government, any state, local or other political subdivision thereof, and any agency, department or Person exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government and any corporation or other Person owned or controlled (through stock or capital ownership or otherwise) by any of the foregoing, whether domestic or foreign.

"**Guarantee**" by any Person means any obligation, contingent or otherwise, of such Person directly or indirectly guaranteeing any Debt or other obligation of any other Person and, without limiting the generality of the foregoing, any obligation, direct or indirect, contingent or otherwise, of such Person (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Debt or other obligation (whether arising by virtue of partnership arrangements, by agreement to keep-well, to purchase assets, goods, securities or services, to take-or-pay, or to maintain financial statement conditions or otherwise), or (b) entered into for the purpose of assuring in any other manner the obligee of such Debt or other obligation of the payment thereof or to protect such obligee against loss in respect thereof (in whole or in part), *provided*, *however*, that the term Guarantee shall not include endorsements for collection or deposit in the Ordinary Course of Business. The term "**Guarantee**" used as a verb has a corresponding meaning.

"**Guarantor**" means any Credit Party that has executed or delivered, or shall in the future execute or deliver, any Guarantee of any portion of the Obligations. Notwithstanding any other provision of this Agreement or any Financing Document, Excluded Subsidiaries shall not be, or be required to become, Guarantors.

"**Hazardous Materials**" means petroleum and petroleum products and compounds containing them, including gasoline, diesel fuel and oil; explosives, flammable materials; radioactive materials; polychlorinated biphenyls and compounds containing them; lead and lead-based paint; asbestos or asbestos-containing materials; underground or above-ground storage tanks, whether empty or containing any substance; any substance the presence of which is prohibited by any Environmental Laws; toxic mold, any substance that requires special handling; and any other material or substance now or in the future defined as a "hazardous substance," "hazardous material," "hazardous waste," "toxic substance," "toxic pollutant," "contaminant," "pollutant" or other words of similar import within the meaning of any Environmental Law, including: (a) any "hazardous substance" defined as such in (or for purposes of) CERCLA, or any so-called "superfund" or "superlien" Law, including the judicial interpretation thereof; (b) any "pollutant or contaminant" as defined in 42 U.S.C.A. § 9601(33); (c) any material now defined as "hazardous waste" pursuant to 40 C.F.R. Part 260; (d) any petroleum or petroleum by-products, including crude oil or any fraction thereof; (e) natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel; (f) any "hazardous chemical" as defined pursuant to 29 C.F.R. Part 1910; (g) any toxic or harmful substances, wastes, materials, pollutants or contaminants (including, without limitation, asbestos, polychlorinated biphenyls, flammable explosives, radioactive materials, infectious substances, materials containing lead-based paint or raw materials which include hazardous constituents); and (h) any other toxic substance or contaminant that is subject to any Environmental Laws or other past or present requirement of any Governmental Authority.

"**Hazardous Materials Contamination**" means contamination (whether now existing or hereafter occurring) of the improvements, buildings, facilities, personalty, soil, groundwater, air or other elements on or of the relevant property by Hazardous Materials, or any derivatives thereof, or on or of any other property as a result of Hazardous Materials, or any derivatives thereof, generated on, emanating from or disposed of in connection with the relevant property.

"**Healthcare Laws**" means all applicable Laws relating to the procurement, development, provision, clinical and non-clinical evaluation or investigation, product approval or clearance, manufacture, production, analysis, distribution, dispensing, importation, exportation, use, handling, quality, reimbursement, sale, labeling, advertising, promotion, or postmarket requirements of any medical device, including the Federal Food, Drug and Cosmetic Act (21 U.S.C. § 301 et seq.), the Anti-Kickback Statute (42 U.S.C. Section 1320a-7b(b)), the Civil Monetary Penalties Law (42 U.S.C. § 1320a-7a), the Physician Payment Sunshine Act (42 U.S.C. § 1320a-7h), the Civil False Claims Act (31 U.S.C. Section 3729 et seq.), the criminal False Claims Law (42 U.S.C. § 1320a-7b(a)), the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. § 1320d et seq.) as amended by the Health Information Technology for Economic and Clinical Health Act (42 U.S.C. § 17921 et seq.), the exclusion laws (42 U.S.C. § 1320a-7), Medicare, Medicaid, and any and all other comparable state, local, federal or foreign health care laws, each as amended from time to time, and the regulations promulgated pursuant to such laws.

"**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 Borrowers or any other Credit Party under any Financing Documents and (b) to the extent not otherwise described in (a), Other Taxes.

"**Instrument**" means "instrument", as defined in Article 9 of the UCC.

"**Intellectual Property**" means, with respect to any Person, (a) all copyright rights, copyright applications, copyright registrations in each work of authorship, whether published or unpublished, (b) any patents and patent applications, including divisions, continuations, renewals, reissues, extensions, and continuations-in-part of the same, as applicable, (c) trademarks, trade names, and service marks, whether registered or not, (d) domain names, (e) know-how, trade secret rights, including clinical and non-clinical data that is protectable as a trade secret under applicable laws, rights to unpatented inventions, and (f) any claims for damage by way of any past, present, or future infringement of any of the foregoing.

"**Interest Period**" means any period commencing on the first day of a calendar month and ending on the last day of such calendar month.

"**Inventory**" means "inventory" as defined in Article 9 of the UCC.

"**Investment**" means, with respect to any Person, directly or indirectly, (a) to purchase or acquire any stock or stock equivalents, or any obligations or other securities of, or any interest in, any Person, including the establishment or creation of a Subsidiary, (b) to make or otherwise consummate any Acquisition or (c) make, purchase or hold any advance, loan, extension of credit or capital contribution to or in, or any other investment in, any Person. The amount of any Investment shall be the original cost of such Investment plus the cost of all additions thereto, without any adjustments for increases or decreases in value, or write-ups, write-downs or write-offs with respect thereto.

"**IRS**" means the United States Internal Revenue Service.

"**Laws**" means any and all federal, state, provincial, territorial, local and foreign statutes, laws, judicial decisions, regulations, ordinances, rules, judgments, orders, decrees, codes, injunctions, permits, governmental agreements and governmental restrictions, whether now or hereafter in effect, which are applicable to any Credit Party in any particular circumstance. "**Laws**" includes, without limitation, Healthcare Laws and Environmental Laws.

"**Lender**" means each of (a) MCF, in its capacity as a lender hereunder, (b) each other Person party hereto in its capacity as a lender hereunder, (c) each other Person that becomes a party hereto as Lender pursuant to Section 11.17, and (d) the respective successors of all of the foregoing, and "**Lenders**" means all of the foregoing.

"**LIBOR Rate**" means, for each Loan, a per annum rate of interest equal to the greater of (a) one and three quarters percent (1.75%) and (b) the rate determined by Agent (rounded upwards, if necessary, to the next 1/100th%) by *dividing* (i) the Base LIBOR Rate for the Interest Period, *by* (ii) the sum of one *minus* the daily average during such Interest Period of the aggregate maximum reserve requirement (expressed as a decimal) then imposed under Regulation D of the Board of Governors of the Federal Reserve System (or any successor thereto) for "Eurocurrency Liabilities" (as defined therein).

"**Lien**" means, with respect to any asset, any mortgage, lien, pledge, charge, security interest or encumbrance of any kind, in respect of such asset. For the purposes of this Agreement and the other Financing Documents, any Borrower or any Subsidiary shall be deemed to own subject to a Lien any asset which it has acquired or holds subject to the interest of a vendor or lessor under any conditional sale agreement, Capital Lease or other title retention agreement relating to such asset.

"**Litigation**" means any action, suit or proceeding before any court, mediator, arbitrator or Governmental Authority.

"**Loan Account**" has the meaning set forth in Section 2.6(b).

"**Loan(s)**" means the Term Loan and each and every advance under the Term Loan. All references herein to the "making" of a Loan or words of similar import mean, with respect to the Term Loan, the making of any advance in respect of a Term Loan.

"**Margin Stock**" means "margin stock" as such term is defined in Regulation T, U, or X of the Board of Governors of the Federal Reserve System.

"**Market Withdrawal**" means a Person's Removal or Correction of a distributed product which involves a minor violation that would not be subject to legal action by the FDA or which involves no violation, e.g., normal stock rotation practices, routine equipment adjustments and repairs, etc.

"**Material Adverse Effect**" means with respect to any event, act, or condition or occurrence of whatever nature (including any adverse determination in any litigation, arbitration, or governmental investigation or proceeding), whether singly or in conjunction with any other event or events, act or acts, condition or conditions, occurrence or occurrences, whether or not related, a material adverse change in, or a material adverse effect upon, any of (a) the financial condition, operations, business, or properties of any of the Credit Parties (taken as a whole), (b) the rights and remedies of Agent or Lenders under any Financing Documents, or the ability of the Credit Parties, taken as a whole, to perform any of their payment obligations under any Financing Document to which they are a party or (c) the legality, validity or enforceability of any Financing Document, or the existence, perfection or priority of any security interest granted in any Financing Document (other than to the extent as a result of the action or inaction of Agent, the Lenders, the other secured parties under the Financing Documents or their Affiliates, officers, employees, agents, attorneys or representatives that is not the result of any action or inaction by a Credit Party or its Subsidiaries), or (d) the value of any material Collateral.

"**Material Contracts**" means any agreement or contract to which such Credit Party or its Subsidiaries is a party the termination of which could reasonably be expected to result in a Material Adverse Effect.

"**Material Intangible Assets**" means all of (a) Borrower's Intellectual Property and (b) license or sublicense agreements or other agreements with respect to rights in Intellectual Property to which a Borrower is a party, in each case that are material to the financial condition, business or operations of the Credit Parties (taken as a whole).

"**Maturity Date**" means November 1, 2025.

"**Maximum Lawful Rate**" has the meaning set forth in Section 2.7.

"**MCF**" means MidCap Financial Trust, a Delaware statutory trust, and its successors and assigns.

"**Medicaid**" means, collectively, the healthcare assistance program established by Title XIX of the Social Security Act (42 U.S.C. §§ 1396 *et seq*.) and any statutes succeeding thereto, all state statutes and plans for medical assistance enacted in connection with such program, and all laws, rules, regulations, orders, or legal requirements pertaining to such program, in each case as the same may be amended, supplemented or otherwise modified from time to time.

"**Medicare**" means, collectively, the health insurance program for the aged and disabled established by Title XVIII of the Social Security Act (42 U.S.C. §§ 1395 *et seq*.) and any statutes succeeding thereto, and all laws, rules, regulations, orders or legal requirements pertaining to such program, in each case as the same may be amended, supplemented or otherwise modified from time to time.

"**Multiemployer Plan**" means a multiemployer plan within the meaning of Section 4001(a)(3) of ERISA to which any Borrower or any other member of the Controlled Group is making or accruing an obligation to make contributions or has within the preceding five plan years (as determined on the applicable date of determination) made contributions.

"**Net Revenue**" means, for any period, the revenue of Borrowers, as determined in accordance with GAAP, generated from Product sales by Borrowers or royalty payments in respect of Products made to Borrowers; *provided* that in no event shall Net Revenue include (a) any upfront payments or milestone payments or similar non-recurring payments received by such Borrower in connection with any out-license agreement, asset purchase agreement or similar commercial contract or (b) revenue from any Products that Borrowers or their Subsidiaries acquire by way of an Acquisition following the Closing Date.

"**Non-Core Intellectual Property**" means any non-revenue generating Intellectual Property of the Borrowers. For the avoidance of doubt, Non-Core Intellectual Property shall not include any Intellectual Property arising from or relating to TearCare System or the OMNI system or any Products that Borrowers or their Subsidiaries acquire by way of an Acquisition following the Closing Date.

"**Notes**" has the meaning set forth in Section 2.3.

"**Notice of Borrowing**" means a notice of a Responsible Officer of Borrower Representative, appropriately completed and substantially in the form of Exhibit D hereto.

"**Obligations**" means all obligations, liabilities and indebtedness (monetary (including, without limitation, the payment of interest and other amounts arising after the commencement of any case with respect to any Credit Party under the Bankruptcy Code or any similar statute which would accrue and become due but for the commencement of such case, whether or not such amounts are allowed or allowable in whole or in part in such case) or otherwise) of each Credit Party under this Agreement or any other Financing Document, in each case howsoever created, arising or evidenced, whether direct or indirect, absolute or contingent, now or hereafter existing, or due or to become due. "Obligations" does not include obligations under any warrants issued to Agent or a Lender. Notwithstanding the foregoing, "Obligations" shall not include any warrants or any other equity instruments.

"**OFAC**" means the U.S. Department of Treasury Office of Foreign Assets Control.

"**OFAC Lists**" means, collectively, the Specially Designated Nationals and Blocked Persons List maintained by OFAC pursuant to Executive Order No. 13224, 66 Fed. Reg. 49079 (Sept. 25, 2001) and/or any other list of terrorists or other restricted Persons maintained pursuant to any of the rules and regulations of OFAC or pursuant to any other applicable Executive Orders.

"**Operative Documents**" means the Financing Documents and the Subordinated Debt Documents (if any).

"**Ordinary Course of Business**" means, in respect of any transaction involving any Credit Party, the ordinary course of business of such Credit Party and undertaken in good faith and in consideration of strategic growth and development of such Credit Party and not for the purpose of evading any term, provision or restriction of this Agreement or the other Financing Documents.

"**Organizational Documents**" means, with respect to any Person other than a natural person, the documents by which such Person was organized (such as a certificate of incorporation, articles of incorporation, certificate of limited partnership or articles of organization, and including, without limitation, any certificates of designation for preferred stock or other forms of preferred equity) and which relate to the internal governance of such Person (such as by-laws, a partnership agreement or an operating agreement, joint venture agreement, limited liability company agreement or members agreement), including any and all shareholder agreements or voting agreements relating to the capital stock or other equity interests of such Person.

"**Original Closing Date**" means January 25, 2019.

"**Original Credit Agreement**" has the meaning set forth in the recitals hereto.

"**Other Connection Taxes**" means taxes imposed as a result of a present or former connection between Agent or any Lender and the jurisdiction imposing such tax (other than connections arising from Agent or such Lender 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 Financing Document, or sold or assigned an interest in any Loans or any Financing 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 Financing Document, except any such taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 2.8(i)).

"**Participant Register**" has the meaning set forth in Section 11.17(a)(iii).

"**Payment Account**" means the account specified on the signature pages hereof into which all payments by or on behalf of each Borrower to Agent under the Financing Documents shall be made, or such other account as Agent shall from time to time specify by notice to Borrower Representative.

"**PBGC**" means the Pension Benefit Guaranty Corporation and any Person succeeding to any or all of its functions under ERISA.

"**Pension Plan**" means any ERISA Plan that is subject to Section 412 of the Code or Title IV of ERISA.

"**Perfection Certificate**" means the Perfection Certificate delivered to Agent as of the Closing Date.

"**Permit**" means all licenses, certificates, accreditations, product clearances or approvals, provider numbers or provider authorizations, supplier numbers, marketing authorizations, device authorizations and approvals, other authorizations, franchises, qualifications, accreditations, registrations, permits, consents and approvals of a Credit Party issued or required under Laws applicable to the business of Borrowers or any of their Subsidiaries or necessary in the manufacturing, importing, exporting, possession, ownership, warehousing, marketing, promoting, sale, labeling, furnishing, distribution or delivery of goods or services under Laws applicable to the business of Borrower or any of its Subsidiaries. Without limiting the generality of the foregoing, "**Permit**" includes any Regulatory Required Permit.

"Permitted Acquisition" means any Acquisition by a Borrower, in each case, to the extent that each of the following conditions shall have been satisfied:

(a) the Borrower Representative shall have delivered to Agent at least ten (10) Business Days (or such shorter period as may be agreed by Agent) prior to the closing of the proposed Acquisition: (i) a description of the proposed Acquisition; and (ii) copies of the respective agreements, documents or instruments pursuant to which such Acquisition is to be consummated (or substantially final drafts thereof), any schedules to such agreements, documents or instruments and all other material ancillary agreements, instruments and documents to be executed or delivered in connection therewith;

(b) the Credit Parties (including any new Subsidiary to the extent required by Section 4.11) shall execute and deliver the agreements, instruments and other documents to the extent required by the terms of this Agreement, including, without limitation, Section 4.11 hereof, including such agreements, instruments and other documents necessary to ensure that Agent receives a first priority perfected Lien (subject to the Intercreditor Agreement and Permitted Liens) in all entities and assets acquired in connection with the proposed Acquisition except for Excluded Property;

(c) (i) if the Acquisition is an equity purchase, the target and its Subsidiaries must have as its jurisdiction of formation a state within the United States, (ii) if the Acquisition is an asset purchase or a merger, not less than 85% of the fair market value of all of the assets so acquired shall be located within the United States (or, in the case of any Intellectual Property so acquired, registered or otherwise located in the United States), and (iii) if the Acquisition consists of an in-license by the Credit Parties of Intellectual Property or Products, such in-license agreements shall be governed by the laws of United States, any state thereof or the District of Columbia;

(d) at the time of such Acquisition and after giving effect thereto, no Default or Event of Default has occurred and is continuing;

(e) all transactions in connection with such Acquisition shall be consummated in accordance with applicable Law;

(f) no Debt or Liens are assumed or created (other than Permitted Liens and Permitted Debt) in connection with such Acquisition;

(g) such Acquisition does not result in a Change in Control and each Borrower remains a surviving legal entity after such Acquisition;

(h) such Acquisition shall not be hostile and shall have been approved by the board of directors (or other similar body) and/or the stockholders or other equityholders of the Person being acquired, in each case as required by such Person's organizational documents;

(i) the target so acquired or the assets of the target so acquired, as the case may be, shall be in or reasonably related or ancillary to the business of Credit Parties;

(j) Agent has received, prior to the consummation of such Acquisition, updated financial projections, in form and substance reasonably satisfactory to Agent, for the immediately succeeding twelve (12) months following the proposed consummation of the Acquisition beginning with the month during which the Acquisition is to be consummated (the "**Transaction Projections**") and such other evidence as Agent may reasonably request; and

(k) the sum of all cash and cash equivalents paid or payable as consideration in connection with all Permitted Acquisitions (including all Indebtedness, liabilities and Contingent Obligations (in each case to the extent otherwise permitted hereunder) incurred or assumed and the maximum amount of any deferred consideration, earn-out, milestone or comparable payment obligation in connection therewith, regardless of whether or not reflected on a consolidated balance sheet of Borrower and regardless of when such consideration is payable (all such consideration "**Acquisition Consideration**") shall not exceed $5,000,000 in the aggregate in any twelve (12) month period; *provided* that such Acquisition Consideration cap shall not apply to any Acquisition (or series of related Acquisitions) to the extent that, prior to the consummation of each such Acquisition, Borrower has provided evidence reasonably satisfactory to Agent demonstrating that following the consummation of such Acquisition or Acquisitions and after giving pro forma effect to the payment of all Acquisition Consideration (including all deferred Acquisition Consideration regardless of whether such Acquisition Consideration is paid upon or consummation or payable thereafter) in connection therewith, Borrowers will have Borrower Unrestricted Cash in an amount equal to the greater of (i) $25,000,000 or (ii) the sum of the positive value of the product of (x) twelve (12) multiplied by (y) the Acquisition Monthly Cash Burn Amount, as determined as of the last day of the month immediately preceding such Acquisition.

"**Permitted Asset Dispositions**" means the following Asset Dispositions, *provided, however,* that at the time of such Asset Disposition, no Event of Default exists or would result from such Asset Disposition:

(a) dispositions of Inventory in the Ordinary Course of Business and not pursuant to any bulk sale;

(b) dispositions of furniture, fixtures and equipment in the Ordinary Course of Business that the applicable Borrower or Subsidiary determines in good faith is no longer used or useful in the business of such Borrower and its Subsidiaries;

(c) dispositions consisting of, or entry into, Permitted Licenses and Permitted Liens to the extent they may constitute an Asset Disposition;

(d) the abandonment or dispositions to third parties on an arms' length basis, in each case in the Ordinary Course of Business, of Intellectual Property (other than Material Intangible Assets) that is no longer used or useful to Borrowers or their Subsidiaries and that is not necessary or required for the commercialization of any commercial Product;

(e) dispositions of Accounts to a third party in connection with the compromise, settlement or collection thereof in the Ordinary Course of Business exclusive of factoring and similar arrangements and, in each case, in accordance with Section 9.2(f) (as applicable);

(f) the termination of Swap Contracts in the Ordinary Course of Business;

(g) dispositions of tangible personal property so long as (i) the assets subject to such Asset Dispositions are sold for fair value, as determined by the Borrower in good faith, (ii) at least 75% of the consideration therefor is cash or cash equivalents and (iii) the aggregate amount of such Asset Dispositions in any 12 month period does not exceed $1,500,000;

(h) payments of cash and cash equivalents in connection with transactions not prohibited by the terms of this Agreement, including, for the avoidance of doubt, the use of cash and cash equivalents to make Permitted Investments;

(i) the making of Permitted Distributions; and

(j) dispositions approved by Agent in its reasonable discretion.

"**Permitted Contest**" means, with respect to any tax obligation or other obligation allegedly or potentially owing from any Borrower or its Subsidiary to any governmental tax authority or other third party, a contest maintained in good faith by appropriate proceedings promptly instituted and diligently conducted and with respect to which such reserve or other appropriate provision, if any, as shall be required in conformity with GAAP shall have been made on the books and records and financial statements of the applicable Credit Party(ies).

"**Permitted Contingent Obligations**" means

(a) Contingent Obligations arising in respect of the Debt under the Financing Documents;

(b) Contingent Obligations resulting from endorsements for collection or deposit in the Ordinary Course of Business;

(c) Contingent Obligations outstanding on the Closing Date and set forth on Schedule 5.1 (but not including any refinancings, extensions, increases or amendments to the indebtedness underlying such Contingent Obligations other than extensions of the maturity thereof without any other change in terms);

(d) Contingent Obligations incurred in the Ordinary Course of Business with respect to surety and appeal bonds, performance bonds and other similar obligations not to exceed $100,000 in the aggregate at any time outstanding;

(e) Contingent Obligations arising under indemnity agreements with title insurers to cause such title insurers to issue to Agent mortgagee title insurance policies;

(f) Contingent Obligations arising with respect to customary indemnification obligations in connection with commercial contracts in the Ordinary Course of Business;

(g) so long as there exists no Event of Default both immediately before and immediately after giving effect to any such transaction, Contingent Obligations existing or arising under any Swap Contract, *provided*, *however*, that such obligations are (or were) entered into by Borrower or an Affiliate in the Ordinary Course of Business for the purpose of directly mitigating risks associated with liabilities, commitments, investments, assets, or property held or reasonably anticipated by such Person and not for purposes of speculation;

(h) Contingent Obligations incurred by Borrower and its Subsidiaries in respect of letters of credit to support obligations incurred by Borrowers and their Subsidiaries in the Ordinary Course of Business in an aggregate amount not to exceed $2,000,000 in the aggregate at any time outstanding (collectively, "**L/C Obligations**"); and

(i) other Contingent Obligations not permitted by clauses (a) through (h) above, not to exceed $1,000,000 in the aggregate at any time outstanding.

"**Permitted Debt**" means:

(a) Borrowers' and its Subsidiaries' Debt to Agent and each Lender under this Agreement and the other Financing Documents;

(b) Debt incurred as a result of endorsing negotiable instruments received in the Ordinary Course of Business;

(c) purchase money Debt and Capital Leases not to exceed $500,000 in the aggregate at any time (whether in the form of a loan or a lease) used solely to acquire equipment used in the Ordinary Course of Business and secured only by such equipment;

(d) Debt existing on the Closing Date and described on Schedule 5.1;

(e) so long as there exists no Event of Default both immediately before and immediately after giving effect to any such transaction, Debt existing or arising under any Swap Contract, *provided*, *however*, that such obligations are (or were) entered into by Borrower or an Affiliate in the Ordinary Course of Business for the purpose of directly mitigating risks associated with liabilities, commitments, investments, assets, or property held or reasonably anticipated by such Person and not for purposes of speculation;

(f) Debt not to exceed $500,000 in the aggregate at any time outstanding owed to any Person providing property, casualty, liability, or other insurance to the Credit Parties, including to finance insurance premiums , so long as the amount of such Debt is not in excess of the amount of the unpaid cost of, and shall be incurred only to defer the cost of, such insurance for the policy year in which such Debt is incurred and such Debt is outstanding only during such policy year;

(g) trade accounts payable arising and paid on a timely basis or that are subject to a Permitted Contest;

(h) Debt consisting of unsecured intercompany loans and advances incurred by (1) any Borrower owing to any Borrower, and (2) any Borrower or any Guarantor owing to any Guarantor; *provided*, *however*, that upon the request of Agent at any time, any such Debt shall be evidenced by promissory notes having terms reasonably satisfactory to Agent, the sole originally executed counterparts of which shall be pledged and delivered to Agent, for the benefit of Agent and Lenders, as security for the Obligations;

(i) Debt of the Credit Parties incurred under the Affiliated Financing Documents;

(j) Subordinated Debt;

(k) Unsecured loans incurred prior to the Closing Date in reliance on the Small Business Administration's Paycheck Protection Program under the Coronavirus Aid, Relief, and Economic Stability Act (P.L. 116-136 (the "**Paycheck Protection Program**") in an aggregate principal amount of $2,245,974 (the "**SBA Loan**"); *provided* that (i) Borrower shall have submitted all required forms, applications and certificates required for, and shall have been conditionally approved to receive, the SBA Loan under the Paycheck

Protection Program and (ii) Borrower shall (w) comply with all terms applicable to the SBA Loan, including without limitation, any requirements with respect to the use of proceeds of the SBA Loan, (x) make only regularly scheduled payments of principal (to the extent any portion of the SBA Loan is not forgiven) and interest accruing on, and to the extent required under, the SBA Loan, (y) take all actions reasonably necessary to request that no less than 75% of the SBA Loan is forgiven in accordance with the loan forgiveness provisions of the Paycheck Protection Program by the date that is 150 days after the date on which the SBA Loan is incurred or such later date as permitted by the Paycheck Protection Program and (z) provide evidence reasonably satisfactory to Agent substantiating such forgiveness by the date that is 150 days after the date on which the SBA Loan is incurred or such later date as permitted by the Paycheck Protection Program;

(l) Debt under corporate credit cards issued by a financial institution and other ancillary bank services, incurred in the Ordinary Course of Business, in an amount not to exceed $500,000 in the aggregate at any given time;

(m) extensions, refinancings, modifications, amendments and restatements of any items of Permitted Debt set forth in clause (c) or clause (d) of this definition above that (i) has an aggregate outstanding principal amount not greater than the aggregate principal amount of the Debt being refinanced or extended, (ii) has a weighted average maturity (measured as of the date of such refinancing or extension) and maturity no shorter than that of the Debt being refinanced or extended, (iii) is not entered into as part of a sale leaseback transaction, (iv) is not secured by a Lien on any assets other than the collateral securing the Debt being refinanced or extended, (v) the obligors of which are the same as the obligors of the Debt being refinanced or extended and (vi) is otherwise on terms no less favorable to Credit Parties and their Subsidiaries, taken as a whole, than those of the Debt being refinanced or extended;

(n) Debt consisting of Guarantees by a Credit Party of Permitted Debt of any Credit Parties or any Subsidiaries (other than any Excluded Subsidiary) in the Ordinary Course of Business; provided, any such Guarantee shall be subordinated to the Obligations to the same extent and on the same terms and conditions as the Debt guaranteed has been subordinated to the Obligations; and

(o) Other unsecured Debt not to exceed $1,000,000 in the aggregate at any time outstanding.

"**Permitted Discretion**" means a determination made in good faith and in the exercise of reasonable (from the perspective of a secured lender) business judgment.

"**Permitted Distributions**" means the following Distributions: (a) dividends by any Subsidiary of any Borrower to such parent Borrower; (b) dividends payable solely in common stock; and (c) repurchases of stock of former employees, directors or consultants pursuant to stock purchase agreements so long as an Event of Default does not exist at the time of such repurchase and would not exist after giving effect to such repurchase, *provided, however,* that such repurchase does not exceed $500,000 in the aggregate per fiscal year.

"**Permitted Investments**" means:

(a) Investments shown on Schedule 5.7 and existing on the Closing Date;

(b) the holding of cash and cash equivalents;

(c) Investments consisting of the endorsement of negotiable instruments for deposit or collection or similar transactions in the Ordinary Course of Business;

(d) Investments consisting of (i) travel advances and employee relocation loans and other employee loans and advances in the Ordinary Course of Business, and (ii) loans to employees, officers or directors relating to the purchase of equity securities of Borrowers or their Subsidiaries pursuant to employee stock purchase plans or agreements approved by Borrowers' Board of Directors (or other governing body), but the aggregate of all such loans outstanding may not exceed $1,000,000 at any time;

(e) Investments (including debt obligations) received in connection with the bankruptcy or reorganization of customers or suppliers and in settlement of delinquent obligations of, and other disputes with, customers or suppliers arising in the Ordinary Course of Business;

(f) Investments consisting of notes receivable of, or prepaid royalties and other credit extensions, to customers and suppliers who are not Affiliates, in the Ordinary Course of Business, *provided, however*, that this subpart (f) shall not apply to Investments of Borrowers in any Subsidiary;

(g) Investments consisting of Deposit Accounts in which Agent has received a Deposit Account Control Agreement;

(h) Investments by any Credit Party or any Subsidiary thereof in (1) any Borrower, or (2) any Subsidiary now owned or hereafter created by such Borrower, which Subsidiary is a Borrower or has provided a Guarantee of the Obligations of the Borrowers which Guarantee is secured by a Lien granted by such Subsidiary to Agent in all or substantially all of its property of the type described in Schedule 9.1 hereto and otherwise made in compliance with Section 4.11(d);

(i) so long as no Event of Default exists at the time of such Investment or after giving effect to such Investment, Investments by any Borrower or any Subsidiary thereof of cash and cash equivalents in an Excluded Subsidiary but solely to the extent that the aggregate amount of such Investments made with respect to all Excluded Subsidiaries (i) prior to a Qualified IPO, does not exceed $2,000,000 in any twelve (12) month period and (ii) after a Qualified IPO, does not exceed $15,000,000 in any twelve (12) month period; *provided* that in no event shall any Investment be made pursuant to this clause (i) unless the Borrowers are in compliance with Section 5.18(a) before and after giving effect to such Investment;

(j) so long as no Event of Default exists or results therefrom, the granting of Permitted Licenses;

(k) Investments consisting of extensions of credit in the nature of Accounts or notes receivable arising from the grant of trade credit in the Ordinary Course of Business in an amount not exceeding $500,000 in the aggregate outstanding at any time;

(l) Investments consisting of intercompany Debt in accordance with and to the extent permitted by clause (h) of the definition of "Permitted Debt";

(m) Investments of cash and cash equivalents in joint ventures or strategic alliances in the Ordinary Course of Business of Borrowers' business; provided that the cash investment in all such joint ventures and strategic alliances shall not exceed $500,000 in the aggregate in any twelve (12) month period;

(n) Permitted Acquisitions; and

(o) so long as no Event of Default exists at the time of such Investment or after giving effect to such Investment, other Investments of cash and cash equivalents in an amount not exceeding $1,000,000 in the aggregate.

"**Permitted License**" means (a) any non-exclusive license of Intellectual Property of Borrower or its Subsidiaries so long as such Permitted Licenses are granted to third parties in the Ordinary Course of Business, does not result in a legal transfer of title to the licensed property, and has been granted in exchange for reasonable consideration, (b) any exclusive license of Intellectual Property of Borrower or its Subsidiaries so long as such Permitted License (i) has been granted to third parties in the Ordinary Course of Business, (ii) does not result in a legal transfer of title to the licensed property, (iii) has been granted in exchange for reasonable consideration, (iv) is exclusive solely as to discrete geographical areas outside of the United States, and (v) no Event of Default is existing at the time such license is granted or would result from the granting thereof, and (c) any exclusive license solely of Non-Core Intellectual Property of Borrower or its Subsidiaries so long as such Permitted License (i) has been granted to third parties in the Ordinary Course of Business, (ii) does not result in a legal transfer of title to the licensed property, (iii) has been granted in exchange for reasonable consideration, and (iv) no Event of Default is existing at the time such license is granted or would result from the granting thereof.

"**Permitted Liens**" means:

(a) deposits or pledges of cash arising in the Ordinary Course of Business to secure obligations under workmen's compensation claims, unemployment insurance and other social security legislation or similar laws (but excluding Liens arising under ERISA or, with respect to any Pension Plan or Multiemployer Plan, the Code) pertaining to a Borrower's or its Subsidiary's employees, if any;

(b) deposits or pledges of cash to secure bids, tenders, contracts (other than contracts for the payment of money or the deferred purchase price of property or services), leases, statutory obligations, surety and appeal bonds and other obligations of like nature arising in the Ordinary Course of Business;

(c) carrier's, warehousemen's, contractors, subcontractors, mechanic's, workmen's, materialmen's or other like Liens on Collateral arising in the Ordinary Course of Business with respect to obligations which are not due, or which are being contested pursuant to a Permitted Contest;

(d) Liens for taxes, assessments or other governmental charges not at the time delinquent or thereafter payable without penalty or the subject of a Permitted Contest;

(e) attachments, appeal bonds, judgments and other similar Liens on Collateral for sums not exceeding $250,000 in the aggregate arising in connection with court proceedings; *provided, however*, that the execution or other enforcement of such Liens is effectively stayed and the claims secured thereby are the subject of a Permitted Contest;

(f) with respect to real estate, easements, rights of way, restrictions, minor defects or irregularities of title, none of which, individually or in the aggregate, materially interfere with the benefits of the security intended to be provided by the Security Documents, materially affect the value or marketability of the Collateral, impair the use or operation of the Collateral for the use currently being made thereof or impair Borrowers' ability to pay the Obligations in a timely manner or impair the use of the Collateral or the ordinary conduct of the business of any Borrower or any Subsidiary and which, in the case of any real estate that is part of the Collateral, are set forth as exceptions to or subordinate matters in the title insurance policy accepted by Agent insuring the lien of the Security Documents;

(g) Liens and encumbrances in favor of Agent under the Financing Documents;

(h) Liens existing on the date hereof and set forth on Schedule 5.2;

(i) any Lien on any equipment securing Debt permitted under subpart (c) of the definition of Permitted Debt, *provided*, *however*, that such Lien attaches concurrently with or within twenty (20) days after the acquisition thereof;

(j) the interests of lessors or sublessors under operating leases to the extent such lease or sublease is otherwise permitted under this Agreement;

(k) Liens and encumbrances in favor of the holders of the Affiliated Financing Documents;

(l) Liens arising out of consignment for the sale of goods entered into by any Borrower or any of its Subsidiaries in the Ordinary Course of Business;

(m) Liens granted in the Ordinary Course of Business on the unearned portion of insurance premiums securing the financing of insurance premiums to the extent the financing is permitted under clause (f) of the definition of Permitted Debt;

(n) Liens of the applicable depository bank on cash and cash equivalents held in an Excluded Account in an aggregate amount not to exceed 105% of the aggregate outstanding L/C Obligations at any time; and

(o) banker's liens, rights of set-off and other non-consensual Liens in favor of financial institutions incurred in the Ordinary Course of Business arising in connection with a Credit Party's Deposit Accounts and Securities Accounts; *provided* that such Deposit Accounts and Securities Accounts are subject to a Deposit Account Control Agreement or Securities Account Control Agreement, as applicable, to the extent required under this Agreement; and

(p) Liens (other than Liens arising under ERISA, Liens on any Intellectual Property or Liens that secure obligations in respect of Debt for borrowed money) not otherwise permitted pursuant to this definition that secure obligations permitted under this Agreement not exceeding $250,000 in the aggregate at any one time outstanding.

"**Permitted Modifications**" means (a) such amendments or other modifications to a Borrower's or Subsidiary's Organizational Documents as are required under this Agreement or by applicable Law and fully disclosed to Agent within thirty (30) days after such amendments or modifications have become effective, and (b) such amendments or modifications to a Borrower's or Subsidiary's Organizational

Documents (other than those involving a change in the name of a Borrower or Subsidiary or involving a reorganization of a Borrower or Subsidiary under the laws of a different jurisdiction) that would not materially and adversely affect the rights and interests of Agent or Lenders and fully disclosed to Agent within thirty (30) days after such amendments or modifications have become effective.

"**Person**" means any natural person, corporation, limited liability company, professional association, limited partnership, general partnership, joint stock company, joint venture, association, company, trust, bank, trust company, land trust, business trust or other organization, whether or not a legal entity, and any Governmental Authority.

"**Prepayment Fee**" has the meaning set forth in Section 2.2(i).

"**Products**" means, from time to time, any products currently manufactured, sold, developed, tested or marketed by any Borrower or any of its Subsidiaries.

"**Pro Rata Share**" means (a) with respect to a Lender's obligation to make advances in respect of a Term Loan and such Lender's right to receive payments of principal and interest with respect to the Term Loans, the Term Loan Commitment Percentage of such Lender in respect of such Term Loan, and (b) for all other purposes (including, without limitation, the indemnification obligations arising under Section 11.6) with respect to any Lender, the percentage obtained by *dividing* (i) the Term Loan Commitment Amount of such Lender (or, in the event the Term Loan Commitment shall have been terminated or fully funded, such Lender's then outstanding principal advances of such Lender under the Term Loan), *by* (ii) the sum of the Term Loan Commitment (or, in the event the Term Loan Commitment shall have been terminated or fully funded, the then outstanding principal advances of such Lenders under the Term Loan) of all Lenders.

"**Qualified IPO**" means the issuance and sale by Sight Sciences of its common stock in an underwritten public offering (other than a public offering pursuant to a registration statement on Form S-8) pursuant to an effective registration statement (whether alone or in connection with a secondary public offering) filed with the SEC in accordance with the Securities Act of 1933, as amended, following which Sight Sciences's common stock is listed on the New York Stock Exchange or the Nasdaq Stock Market and in respect of which Sight Sciences has delivered evidence satisfactory to Agent that Sight Sciences has received unrestricted net cash proceeds of not less than $60,000,000 (subject to no clawback, escrow or other terms limiting the Sight Sciences's ability to freely use such proceeds). "**Reaffirmation Agreement**" means that certain Reaffirmation Agreement and Omnibus Joinder and Amendment, dated as of the Closing Date, by and among the Borrowers and the Agent, as amended, restated, supplemented or modified from time to time.

"**Recall**" means a Person's Removal or Correction of a marketed product that the FDA considers to be in violation of the laws it administers and against which the FDA would initiate legal action, e.g., seizure.

"**Registered Intellectual Property**" means any patent, registered trademark or servicemark, registered copyright, or any pending application for any of the foregoing.

"**Regulatory Reporting Event**" has the meaning set forth in Section 4.1(l).

"**Regulatory Required Permit**" means any and all Permits issued by the FDA or any other applicable Governmental Authority necessary for the testing, manufacture, marketing or sale of any Product by any applicable Borrower(s) or its Subsidiaries as such activities are being conducted by such Borrower and its Subsidiaries with respect to such Product at such time, and those issued by state governments for the conduct of Borrower's or any Subsidiary's business.

"**Removal**" means the physical removal of a Product from its point of use to some other location for repair, modification, adjustment, relabeling, destruction, or inspection.

"**Required Lenders**" means at any time Lenders holding (a) sixty percent (60%) or more of the sum of the Term Loan Commitments (taken as a whole), or (b) if the applicable Term Loan Commitments have been terminated or expired, sixty percent (60%) or more of the then aggregate outstanding principal balance of the applicable tranche of Term Loans.

"**Responsible Officer**" means any of the Chief Executive Officer, Chief Financial Officer or any other officer of the applicable Borrower reasonably acceptable to Agent.

"**Revolving Loans**" has the meaning set forth in the Affiliated Credit Agreement.

"**SEC**" means the United States Securities and Exchange Commission.

"**Securities Account**" means a "securities account" (as defined in Article 9 of the UCC), an investment account, or other account in which investment property or securities are held or invested for credit to or for the benefit of any Borrower.

"**Securities Account Control Agreement**" means an agreement, in form and substance reasonably satisfactory to Agent, among Agent, any applicable Borrower and each securities intermediary in which such Borrower maintains a Securities Account pursuant to which Agent shall obtain "control" (as defined in Article 9 of the UCC) over such Securities Account.

"**Security Document**" means this Agreement, the Reaffirmation Agreement and any other agreement, document or instrument executed concurrently with the Original Credit Agreement or at any time thereafter, including on the Closing Date, pursuant to which one or more Credit Parties or any other Person either (a) Guarantees payment or performance of all or any portion of the Obligations, and/or (b) provides, as security for all or any portion of the Obligations, a Lien on any of its assets in favor of Agent for its own benefit and the benefit of the Lenders, as any or all of the same may be amended, supplemented, restated or otherwise modified from time to time.

"**Solvent**" means, with respect to any Person, that such Person (a) owns and will own assets the fair saleable value of which are (i) greater than the total amount of its debts and liabilities (including subordinated and Contingent Obligations), and (ii) greater than the amount that will be required to pay the probable liabilities of its then existing debts as they become absolute and matured considering all financing alternatives and potential asset sales reasonably available to it; (b) has capital that is not unreasonably small in relation to its business as presently conducted or after giving effect to any contemplated transaction, in each case of clauses (a) and (b) to the extent applicable, as calculated in accordance with applicable bankruptcy laws; and (c) does not intend to incur and does not believe that it will incur debts beyond its ability to pay such debts as they become due.

"**Stated Rate**" has the meaning set forth in Section 2.7.

"**Subordinated Debt**" means any Debt of Borrowers incurred pursuant to the terms of the Subordinated Debt Documents. As of the Closing Date, there is no Subordinated Debt.

"**Subordinated Debt Documents**" means any documents evidencing and/or securing Debt governed by a Subordination Agreement, all of which documents must be in form and substance acceptable to Agent in its reasonable discretion. As of the Closing Date, there are no Subordinated Debt Documents.

"**Subordination Agreement**" means each agreement between Agent and another creditor of Borrowers, as the same may be amended, supplemented, restated or otherwise modified from time to time in accordance with the terms thereof, pursuant to which the Debt owing from any Borrower(s) and/or the Liens securing such Debt granted by any Borrower(s) to such creditor are subordinated in any way to the Obligations and the Liens created under the Security Documents, the terms and provisions of such Subordination Agreements to have been agreed to by and be acceptable to Agent in the exercise of its reasonable discretion.

"**Subsidiary**" means, with respect to any Person, (a) any corporation (or any foreign equivalent thereof) of which an aggregate of more than fifty percent (50%) of the outstanding capital stock having ordinary voting power to elect a majority of the board of directors of such corporation (irrespective of whether, at the time, capital stock of any other 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, directly or indirectly, owned legally or beneficially by such Person or one or more Subsidiaries of such Person, or with respect to which any such Person has the right to vote or designate the vote of more than fifty percent (50%) of such capital stock whether by proxy, agreement, operation of law or otherwise, and (b) any partnership or limited liability company (or any foreign equivalent thereof) in which such Person and/or one or more Subsidiaries of such Person shall have an interest (whether in the form of voting or participation in profits or capital contribution) of more than fifty percent (50%) or of which any such Person is a general partner or may exercise the powers of a general partner. Unless the context otherwise requires, each reference to a Subsidiary shall be a reference to a Subsidiary of a Borrower.

"**Swap Contract**" means any "swap agreement", as defined in Section 101 of the Bankruptcy Code, that is obtained by Borrower to provide protection against fluctuations in interest or currency exchange rates, but only if Agent provides its prior written consent to the entry into such "swap agreement".

"**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.

"**Termination Date**" means the earliest to occur of (a) the Maturity Date, (b) any date on which the maturity of the Loans is accelerated pursuant to Section 10.2, or (c) the termination date stated in any notice of termination of this Agreement provided by Borrowers in accordance with Section 2.12.

"**Term Loan**" means, collectively, the Term Loan Tranche 1, the Term Loan Tranche 2 and the Term Loan Tranche 3.

"**Term Loan Commitment**" means the sum of each Lender's Term Loan Commitment Amount.

"**Term Loan Commitment Amount**" means, with respect to each Lender, the sum of such Lender's Term Loan Tranche 1 Commitment Amount, Term Loan Tranche 2 Commitment Amount and Term Loan Tranche 3 Commitment Amount.

"**Term Loan Commitment Percentage**" means, as to any Lender with respect to each of such Lender's Term Loan Commitments, (a) on the Closing Date, with respect to each tranche of the Term Loan, the applicable percentage set forth opposite such Lender's name on the Commitment Annex under the column "Term Loan Tranche 1 Commitment Percentage", "Term Loan Tranche 2 Commitment percentage" and "Term Loan Tranche 3 Commitment Percentage" (if such Lender's name is not so set forth thereon, then, on the Closing Date, such percentage for such Lender shall be deemed to be zero), and (b) on any date following the Closing Date, as applicable to each tranche of Term Loan, the percentage equal to (i) the Term Loan Tranche 1 Commitment of such Lender on such date *divided by* the aggregate Term Loan Tranche 1 Commitments on such date, (ii) the Term Loan Tranche 2 Commitment of such Lender on such date *divided by* the aggregate Term Loan Tranche 2 Commitments on such date, or (iii) the Term Loan Tranche 3 Commitment of such Lender on such date divided by the aggregate Term Loan Tranche 3 Commitments on such date.

"**Term Loan Tranche 1**" has the meaning set forth in Section 2.1(a)(i)(A).

"**Term Loan Tranche 1 Commitment Amount**" means, with respect to each Lender, the amount set forth opposite such Lender's name on Annex A hereto under the caption "Term Loan Tranche 1 Commitment Amount", which, as of the Closing Date evidences the amount of the Existing Term Loans advanced by such Lender in respect of the "Term Loan Tranche 1" under the Original Credit Agreement, as amended from time to time to reflect any permitted and effective assignments and as such amount may be reduced or terminated pursuant to this Agreement.

"**Term Loan Tranche 1 Commitments**" means the sum of each Lender's Term Loan Tranche 1 Commitment Amount.

"**Term Loan Tranche 2**" has meaning set forth in Section 2.1(a)(ii)(A).

"**Term Loan Tranche 2 Commitment Amount**" means, with respect to each Lender, the amount set forth opposite such Lender's name on Annex A hereto under the caption "Term Loan Tranche 2 Commitment Amount", which, as of the Closing Date evidences the amount of the Existing Term Loans advanced by such Lender in respect of the "Term Loan Tranche 2" under the Original Credit Agreement as amended from time to time to reflect any permitted and effective assignments and as such amount may be reduced or terminated pursuant to this Agreement.

"**Term Loan Tranche 2 Commitments**" means the sum of each Lender's Term Loan Tranche 2 Commitment Amount.

"**Term Loan Tranche 3**" has meaning set forth in Section 2.1(a)(ii)(B).

"**Term Loan Tranche 3 Commitment Amount**" means, with respect to each Lender, the amount set forth opposite such Lender's name on Annex A hereto under the caption "Term Loan Tranche 3 Commitment Amount", as amended from time to time to reflect any permitted and effective assignments and as such amount may be reduced or terminated pursuant to this Agreement.

"**Term Loan Tranche 3 Commitments**" means the sum of each Lender's Term Loan Tranche 3 Commitment Amount.

"**Testing Date**" has the meaning provided in Section 6.1.

"**TRICARE**" means the program administered pursuant to 10 U.S.C. Section 1071 et. seq), Sections 1320a-7 and 1320a-7a of Title 42 of the United States Code and the regulations promulgated pursuant to such statutes.

"**UCC**" means the Uniform Commercial Code of the State of New York or of any other state the laws of which are required to be applied in connection with the perfection of security interests in any Collateral.

"**United States**" means the United States of America.

"**U.S. Tax Compliance Certificate**" has the meaning set forth in Section 2.8(c)(i).

"**Withholding Agent**" means any Borrower or Agent.

"**Write-Down and Conversion Powers"** means, 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.

Section 1.2 Accounting Terms and Determinations. Unless otherwise specified herein, all accounting terms used herein shall be interpreted, all accounting determinations hereunder (including, without limitation, determinations made pursuant to the exhibits hereto) shall be made, and all financial statements required to be delivered hereunder shall be prepared on a consolidated basis in accordance with GAAP applied on a basis consistent with the most recent audited consolidated financial statements of each Borrower and its Consolidated Subsidiaries delivered to Agent and each of the Lenders on or prior to the Closing Date. If at any time any change in GAAP would affect the computation of any financial ratio or financial requirement set forth in any Financing Document, and either Borrowers or the Required Lenders shall so request, Agent, the Lenders and Borrowers shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP (subject to the approval of the Required Lenders); *provided*, *however*, that until so amended, (a) such ratio or requirement shall continue to be computed in accordance with GAAP prior to such change therein and (b) Borrowers shall provide to Agent and the Lenders financial statements and other documents required under this Agreement which include a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP. 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 herein shall be made, without giving effect to any election under Statement of Financial Accounting Standards 159 (or any other Financial Accounting Standard having a similar result or effect) to value any Debt or other liabilities of any Credit Party or any Subsidiary of any Credit Party at "fair value", as defined therein. Any obligations of a Person under a lease (whether existing now or entered into the future) that is not (or would not be) a capital lease obligation under GAAP shall not be treated as a capital lease obligation solely as a result of the adoption of changes in GAAP.

Section 1.3 Other Definitional and Interpretive Provisions. References in this Agreement to "Articles", "Sections", "Annexes", "Exhibits", or "Schedules" shall be to Articles, Sections, Annexes, Exhibits or Schedules of or to this Agreement unless otherwise specifically provided. Any term defined herein may be used in the singular or plural. "Include", "includes" and "including" shall be deemed to be followed by "without limitation". Except as otherwise specified or limited herein, references to any Person include the successors and assigns of such Person. References "from" or "through" any date mean, unless otherwise specified, "from and including" or "through and including", respectively. References to any statute or act shall include all related current regulations and all amendments and any

successor statutes, acts and regulations. All amounts used for purposes of financial calculations required to be made herein shall be without duplication. References to any statute or act, without additional reference, shall be deemed to refer to federal statutes and acts of the United States. References to any agreement, instrument or document shall include all schedules, exhibits, annexes and other attachments thereto. References to capitalized terms that are not defined herein, but are defined in the UCC, shall have the meanings given them in the UCC. All references herein to times of day shall be references to daylight or standard time, as applicable. All references herein to a merger, transfer, consolidation, amalgamation, assignment, sale or transfer, or analogous term, will be construed to mean also a division of or by a limited liability company, as if it were a merger, transfer, consolidation, amalgamation, assignment, sale or transfer, or similar term, as applicable. Any series of limited liability company shall be considered a separate Person.

Section 1.4 Settlement and Funding Mechanics. Unless otherwise specified herein, the settlement of all payments and fundings hereunder between or among the parties hereto shall be made in lawful money of the United States and in immediately available funds.

Section 1.5 Time is of the Essence. Time is of the essence in Borrower's and each other Credit Party's performance under this Agreement and all other Financing Documents.

Section 1.6 Time of Day. Unless otherwise specified, all references herein to times of day shall be references to Eastern time (daylight savings or standard, as applicable).

ARTICLE 2 - LOANS

Section 2.1 Loans.

(a) Term Loans.

(A) Under the Original Credit Agreement, the Lenders thereunder made term loans to Borrowers in the principal amounts of (1) Twelve Million Dollars ($12,000,000) ("**Existing Term Loan 1**") and (2) Two Million Dollars ($2,000,000) ("**Existing Term Loan 2**", and together with Existing Term Loan 1, the "**Existing Term Loans**") and, following the making of each such Existing Term Loan, the Term Loan Tranche 1 Commitment (as defined in the Original Credit Agreement) and the Term Loan Tranche 2 Commitment (as defined in the Original Credit Agreement), as applicable, were reduced to zero ($0). Immediately prior to the effectiveness of this Agreement, the outstanding principal balance of the Existing Term Loan 1 is $12,000,000, which amount shall be deemed to have been, and hereby is, converted to the "**Term Loan Tranche 1**" under this Agreement, and hereby is deemed to be outstanding in the amount set forth with respect to each Lender's Term Loan Tranche 1 Commitment Amount hereto without constituting a novation. Immediately prior to the effectiveness of this Agreement, the outstanding principal balance of the Existing Term Loan 2 is $2,000,000, which amount shall be deemed to have been, and hereby is, converted to the "**Term Loan Tranche 2**" under this Agreement, and hereby is deemed to be outstanding in the amount set forth with respect to each Lender's Term Loan Tranche 2 Commitment Amount hereto without constituting a novation. Each Borrower hereby (x) represents, warrants, agrees, covenants and reaffirms that it has no defense, set off, claim or counterclaim against the Agent and the Lenders with regard to its Obligations in respect of each such Existing Term Loan and (y) reaffirms its obligation to repay each of Term Loan Tranche 1 and Term Loan Tranche 2 in accordance with the terms and provisions of this Agreement and the other Financing Documents.

(B) On the terms and subject to the conditions set forth herein and in the other Financing Documents, each Lender with a Term Loan Tranche 3 Commitment severally hereby agrees to make to Borrowers a term loan on the Closing Date in an original aggregate principal amount equal to the Term Loan Tranche 3 Commitment (the "**Term Loan Tranche 3**"). Each such Lender's obligation to fund the Term Loan Tranche 3 shall be limited to such Lender's Term Loan Tranche 3 Commitment Percentage, and no Lender shall have any obligation to fund any portion of any Term Loan required to be funded by any other Lender, but not so funded.

(C) No Borrower shall have any right to reborrow any portion of the Term Loan that is repaid or prepaid from time to time. Borrowers shall deliver to Agent a Notice of Borrowing with respect to each proposed Term Loan advance, such Notice of Borrowing to be delivered, in the case of a Term Loan Tranche 3 borrowing, no later than 12:00 P.M. (Eastern time) on the Closing Date.

(ii) Scheduled Repayments; Mandatory Prepayments; Optional Prepayments.

(A) There shall become due and payable, and Borrowers shall repay each Term Loan through, scheduled payments as set forth on Schedule 2.1 attached hereto. Notwithstanding the payment schedule set forth above, the outstanding principal amount of each Term Loan shall become immediately due and payable in full on the Termination Date.

(B) There shall become due and payable and Borrowers shall prepay the Term Loan in the following amounts and at the following times:

(i) Unless Agent shall otherwise consent in writing, on the date on which any Credit Party (or Agent as loss payee or assignee) receives any casualty proceeds in excess of $500,000 with respect to assets upon which Agent maintained a Lien, an amount equal to one hundred percent (100%) of such proceeds (net of out-of-pocket expenses and repayment of secured debt permitted under clause (c) of the definition of Permitted Debt and encumbering the property that suffered such casualty), or such lesser portion of such proceeds as Agent shall elect to apply to the Obligations;

(ii) an amount equal to any interest that is deemed to be in excess of the Maximum Lawful Rate (as defined below) and is required to be applied to the reduction of the principal balance of the Loans by any Lender as provided for in Section 2.7;

(iii) without limiting Section 5.6(b) and unless Agent shall otherwise consent in writing, upon receipt by any Credit Party of the proceeds of any Asset Disposition that is not made in the Ordinary Course of Business, an amount equal to one hundred percent (100%) of the net cash proceeds of such asset disposition (net of out-of-pocket expenses and repayment of secured debt permitted under clause (c) of the definition of Permitted Debt and encumbering such asset), to the extent that the aggregate amount of net cash proceeds received by all Credit Parties (and not paid to the Agent as a prepayment of the Loans) shall exceed, for all Asset Dispositions, $500,000 in any fiscal year, or such lesser portion as Agent shall elect to apply to the Obligations; and

(iv) upon the termination of all Revolving Loan Commitments (as defined in the Affiliated Credit Agreement) and the payment of the then existing aggregate outstanding principal amount of the Revolving Loans, the aggregate outstanding Obligations;

Notwithstanding the foregoing and so long as no Event of Default then exists: (1) any such casualty proceeds in excess of $500,000 (other than with respect to Inventory and any real property, unless Agent shall otherwise elect) may be used by Borrowers within three hundred sixty (360) days from the receipt of such proceeds to replace or repair any assets in respect of which such proceeds were paid so long as such proceeds are deposited into a Deposit Account that is subject to a Deposit Account Control Agreement promptly upon receipt by such Borrower; and (2) proceeds of personal property asset dispositions that are not made in the Ordinary Course of Business (other than Collateral upon which the Borrowing Base is calculated or consisting of Intellectual Property, unless Agent shall otherwise elect) may be used by Borrowers within three hundred sixty (360) days from the receipt of such proceeds to purchase new or replacement assets of comparable value, provided, however, that such proceeds are deposited into a Deposit Account that is subject to a Deposit Account Control Agreement promptly upon receipt by such Borrower. All sums held by Agent pending reinvestment as described in subsections (1) and (2) above shall be deemed additional collateral for the Obligations and may be commingled with the general funds of Agent.

(C) Borrowers may from time to time, with at least two (2) Business Days prior written notice to Agent, prepay the Term Loan in whole but not in part; *provided*, that such prepayment shall be accompanied by any prepayment fees and exit fees required hereunder; *provided*, *further* that such notice may provide that it is conditioned upon the consummation of another financing or the consummation of a sale of equity interests, in which case, such notice may be revoked or extended by Borrowers if any such condition is not satisfied prior to the date of prepayment given in such notice.

(iii) All Prepayments. Except as this Agreement may specifically provide otherwise, all prepayments of the Term Loan shall be applied by Agent to the Obligations in inverse order of maturity. The monthly payments required under Schedule 2.1 shall continue in the same amount (for so long as the Term Loan and/or (if applicable) any advance thereunder shall remain outstanding) notwithstanding any partial prepayment, whether mandatory or optional, of the Term Loan. Notwithstanding anything to the contrary contained in the foregoing, in the event that there have been multiple advances under the Term Loan each of which such advances has a separate amortization schedule of principal payments under Schedule 2.1 attached hereto, each prepayment of the Term Loan shall be applied by Agent to reduce and prepay the principal balance of the earliest-made advance then outstanding in the inverse order of maturity of the scheduled payments with respect to such advance until such earliest-made advance is paid in full (and to the extent the total amount of any such partial prepayment shall exceed the outstanding principal balance of such earliest-made advance, the remainder of such prepayment shall be applied successively to the remaining advances under the Term Loan in the direct order of the respective advance dates in the manner provided for in this sentence).

(iv) LIBOR Rate.

(A) Except as provided in subsection (C) below, the Term Loan shall accrue interest at the LIBOR Rate *plus* the Applicable Margin.

(B) The LIBOR Rate may be adjusted by Agent with respect to any Lender on a prospective basis to take into account any additional or increased costs to such Lender of maintaining or obtaining any eurodollar deposits or increased costs, in each case, due to changes in applicable Law occurring subsequent to the commencement of the then applicable Interest Period, including changes which subject any Lender to any Taxes (other than (A) Indemnified Taxes, (B) Taxes described in clauses (b) through (d) of the definition of Excluded Taxes and (C) Connection Income Taxes) imposed on its loans, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto, and changes in the reserve requirements imposed by the Board of Governors of the Federal Reserve System (or any successor), which additional or increased costs would increase the cost of funding loans bearing interest based upon the LIBOR Rate; *provided*, *however*, that notwithstanding anything in this Agreement to the contrary, (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, shall in each case be deemed to be a "change in applicable Law", regardless of the date enacted, adopted or issued. In any such event, the affected Lender shall give Borrowers and Agent notice of such a determination and adjustment and Agent promptly shall transmit the notice to each other Lender and, upon its receipt of the notice from the affected Lender, Borrowers may, by notice to such affected Lender (I) require such Lender to furnish to Borrowers a statement setting forth the basis for adjusting such LIBOR Rate and the method for determining the amount of such adjustment, or (II) repay the Loans bearing interest based upon the LIBOR Rate with respect to which such adjustment is made.

(C) In the event that any change in market conditions or any law, regulation, treaty, or directive, or any change therein or in the interpretation of application thereof, shall at any time after the date hereof, in the reasonable opinion of any Lender, make it unlawful or impractical for such Lender to fund or maintain Loans bearing interest based upon the LIBOR Rate or to continue such funding or maintaining, or to determine or charge interest rates at the LIBOR Rate, such Lender shall give notice of such changed circumstances to Agent and Borrowers and Agent promptly shall transmit the notice to each other Lender, (I) in the case of the pro rata share of the Term Loan held by such Lender and then outstanding, the date specified in such Lender's notice shall be deemed to be the last day of the Interest Period of such portion of the Term Loan, and interest upon such portion thereafter shall accrue interest at the Base Rate *plus* the Applicable Margin, and (II) such portion of the Term Loan shall continue to accrue interest at the Base Rate *plus* the Applicable Margin until such Lender determines that it would no longer be unlawful or impractical to maintain such Term Loan at the LIBOR Rate.

(D) Anything to the contrary contained herein notwithstanding, neither Agent nor any Lender is required actually to acquire eurodollar deposits to fund or otherwise match fund any Obligation as to which interest accrues based on the LIBOR Rate.

(b) Reserved.

Section 2.2 Interest, Interest Calculations and Certain Fees.

(a) Interest. From and following the Closing Date, except as expressly set forth in this Agreement, Loans and the other Obligations shall bear interest at the sum of the LIBOR Rate *plus* the Applicable Margin. Interest on the Loans shall be paid monthly in arrears on the first (1st) day of each month and on the maturity of such Loans, whether by acceleration or otherwise. Interest on all other Obligations shall be payable within two (2) Business Days upon written and invoiced demand. The Borrowers hereby agree that all accrued and unpaid interest due and owing to the "Lenders" (as defined in the Original Credit Agreement) due and payable pursuant to the Original Credit Agreement as of the Closing Date shall be paid in cash by the Borrowers to the Agent, for the benefit of such Lenders or Agent, on the first (1st) day of the first calendar month following the Closing Date. For the avoidance of doubt, all Loans, including the Term Loan Tranche 1 and the Term Loan Tranche 2, shall bear interest at the sum of the LIBOR Rate plus the Applicable Margin starting on and at all times after the Closing Date.

(b) Reserved.

(c) Fee Letter. In addition to the other fees set forth herein, the Borrowers agree to pay Agent the fees set forth in the Fee Letter.

(d) Reserved.

(e) Reserved.

(f) Origination Fee. Contemporaneous with Borrowers execution of this Agreement, Borrowers shall pay Agent, for the benefit of all Lenders committed to make Term Loans on the Closing Date in accordance with their respective Pro Rata Shares, a fee in an amount equal to $175,000. For the avoidance of doubt, the origination fee provided for in the preceding sentence is in addition to any origination fee paid under the Original Credit Agreement. All fees payable pursuant to this paragraph shall be deemed fully earned when due and payable and non-refundable as of the Closing Date. Each origination fee shall be deemed fully earned when due and payable and, once paid, shall be non-refundable.

(g) Reserved.

(h) Exit Fee. Borrowers shall pay to Agent, for the benefit of all Lenders committed to make Term Loan advances of such tranche of Term Loans, as compensation for the costs of making funds available to Borrowers under this Agreement an exit fee (the "**Exit Fee**") calculated in accordance with this subsection and upon the date or dates required under this subsection. The Exit Fee shall be an amount equal to six percent (6.00%) *multiplied* by the aggregate principal amount of all Term Loans advanced to Borrower under this Agreement (regardless of any repayment or prepayment thereof but without duplication of any portion of the Exit Fee paid in connection with any repayment or prepayment thereof). Upon any repayment of any portion of any Term Loan (whether by voluntary prepayment by Borrower, by mandatory prepayment by Borrower, by reason of the occurrence of an Event of Default or the acceleration of the Obligations (including any automatic acceleration due to the occurrence of an Event of Default described in Section 10.1(f)) or otherwise) other than scheduled amortization payments (if any), a portion of the Exit Fee shall be due in the following amount: that percentage which is obtained by dividing the amount prepaid by the then outstanding principal balance of such tranche of Term Loans. Any remaining unpaid amount of the Exit Fee shall be due and payable on the Termination Date. All fees payable pursuant to this paragraph shall be deemed fully accrued and earned as of the Closing Date.

(i) Prepayment Fee. If any advance under the Term Loan is prepaid at any time, in whole or in part, for any reason (whether by voluntary prepayment by Borrower, by mandatory prepayment by Borrower, by reason of the occurrence of an Event of Default or otherwise, or if the Term Loan shall become accelerated (including any automatic acceleration due to the occurrence of an Event of Default described in Section 10.1(f)) or otherwise) and due and payable in full, or if the Lenders' funding obligations in respect of any unfunded portion of the Term Loan shall terminate prior to the Maturity Date, Borrowers shall pay to Agent, for the benefit of all Lenders committed to make Term Loan advances, as compensation for the costs of such Lenders making funds available to Borrowers under this Agreement, a prepayment fee (the "**Prepayment Fee**") calculated in accordance with this subsection. The Prepayment Fee in respect of the Term Loan Tranche 1, Term Loan Tranche 2 or Term Loan Tranche 3 shall be equal to an amount determined by *multiplying* the amount being prepaid (or required to be prepaid, if such amount is greater) *by* the following applicable percentage amount: (x) three percent (3.0%) for the first year following the Closing Date, (y) two percent (2.0%) for the second year following the Closing Date and (z) one percent (1.0%) thereafter. The Prepayment Fee shall not apply to or be assessed upon any prepayment made by Borrowers if such payments were required by Agent to be made pursuant to Section 2.1(a)(ii)(B) subpart (i) (relating to casualty proceeds), or subpart (ii) (relating to payments exceeding the Maximum Lawful Rate). All fees payable pursuant to this paragraph shall be deemed fully-earned and non-refundable as of the Closing Date.

(j) Audit Fees. Subject to the provisions of Section 4.6, as applicable, Borrowers shall pay to Agent, for its own account and not for the benefit of any other Lenders, all reasonable fees and expenses in connection with audits and inspections of Borrowers' books and records, audits, valuations or appraisals of the Collateral, audits of Borrowers' compliance with applicable Laws and such other matters as Agent shall deem appropriate, which shall be due and payable on the first Business Day of the month following the date of issuance by Agent of a written request for payment thereof to Borrowers.

(k) Wire Fees. Borrowers shall pay to Agent, for its own account and not for the account of any other Lenders, on written demand, fees for incoming and outgoing wires made for the account of Borrowers, such fees to be based on Agent's then current wire fee schedule (available upon written request of the Borrowers).

(l) Late Charges. If payments of principal (other than a final installment of principal upon the Termination Date), interest due on the Obligations, or any other amounts due hereunder or under the other Financing Documents are not timely made and remain overdue for a period of five (5) days, Borrowers, without notice or demand by Agent, promptly shall pay to Agent, for its own account and not for the benefit of any other Lenders, as additional compensation to Agent in administering the Obligations, an amount equal to two percent (2.0%) of each delinquent payment.

(m) Computation of Interest and Related Fees. All interest and fees under each Financing Document shall be calculated on the basis of a 360-day year for the actual number of days elapsed. The date of funding of a Loan shall be included in the calculation of interest. The date of payment of a Loan shall be excluded from the calculation of interest. If a Loan is repaid on the same day that it is made, one (1) day's interest shall be charged.

(n) Automated Clearing House Payments. If Agent (or its designated servicer or trustee on behalf of a securitization vehicle) so elects, monthly payments of principal, interest, fees, expenses or any other amounts due and owing from Borrower to Agent hereunder shall be paid to Agent by Automated Clearing House debit of immediately available funds from the financial institution account designated by Borrower Representative in the Automated Clearing House debit authorization executed by Borrowers or Borrower Representative in connection with this Agreement, and shall be effective upon receipt. Borrowers shall execute any and all forms and documentation necessary from time to time to effectuate such automatic debiting. In no event shall any such payments be refunded to Borrowers.

Section 2.3 Notes. The portion of the Loans made by each Lender shall be evidenced, if so requested by such Lender, by one or more promissory notes executed by Borrowers on a joint and several basis (each, a "**Note**") in an original principal amount equal to such Lender's Term Loan Commitments.

Section 2.4 Reserved.

Section 2.5 Reserved.

Section 2.6 General Provisions Regarding Payment; Loan Account.

(a) All payments to be made by each Borrower under any Financing Document, including payments of principal and interest made hereunder and pursuant to any other Financing Document, and all fees, expenses, indemnities and reimbursements, shall be made without set-off, recoupment or counterclaim. If any payment hereunder becomes due and payable on a day other than a Business Day, such payment shall be extended to the next succeeding Business Day and, with respect to payments of principal, interest thereon shall be payable at the then applicable rate during such extension (it being understood and agreed that, solely for purposes of calculating financial covenants and computations contained herein and determining compliance therewith, if payment is made, in full, on any such extended due date, such payment shall be deemed to have been paid on the original due date without giving effect to any extension thereto). Any payments received in the Payment Account before 12:00 Noon (Eastern time) on any date shall be deemed received by Agent on such date, and any payments received in the Payment Account at or after 12:00 Noon (Eastern time) on any date shall be deemed received by Agent on the next succeeding Business Day.

(b) Agent shall maintain a loan account (the "**Loan Account**") on its books to record Loans and other extensions of credit made by the Lenders hereunder or under any other Financing Document, and all payments thereon made by each Borrower. All entries in the Loan Account shall be made in accordance with Agent's customary accounting practices as in effect from time to time. The balance in the Loan Account, as recorded in Agent's books and records at any time shall be conclusive and binding evidence of the amounts due and owing to Agent by each Borrower absent manifest error; *provided, however*, that any failure to so record or any error in so recording shall not limit or otherwise affect any Borrower's duty to pay all amounts owing hereunder or under any other Financing Document. Agent shall endeavor to provide Borrowers with a monthly statement regarding the Loan Account (but neither Agent nor any Lender shall have any liability if Agent shall fail to provide any such statement). Unless any Borrower notifies Agent of any objection to any such statement (specifically describing the basis for such objection) within ninety (90) days after the date of receipt thereof, it shall be deemed final, binding and conclusive upon Borrowers in all respects as to all matters reflected therein.

Section 2.7 Maximum Interest. In no event shall the interest charged with respect to the Loans or any other Obligations of any Borrower under any Financing Document exceed the maximum amount permitted under the laws of the State of New York or of any other applicable jurisdiction. Notwithstanding anything to the contrary herein or elsewhere, if at any time the rate of interest payable hereunder or under any Note or other Financing Document (the "**Stated Rate**") would exceed the highest rate of interest permitted under any applicable law to be charged (the "**Maximum Lawful Rate**"), then

for so long as the Maximum Lawful Rate would be so exceeded, the rate of interest payable shall be equal to the Maximum Lawful Rate; *provided*, *however*, that if at any time thereafter the Stated Rate is less than the Maximum Lawful Rate, each Borrower shall, to the extent permitted by law, continue to pay interest at the Maximum Lawful Rate until such time as the total interest received is equal to the total interest which would have been received had the Stated Rate been (but for the operation of this provision) the interest rate payable. Thereafter, the interest rate payable shall be the Stated Rate unless and until the Stated Rate again would exceed the Maximum Lawful Rate, in which event this provision shall again apply. In no event shall the total interest received by any Lender exceed the amount which it could lawfully have received had the interest been calculated for the full term hereof at the Maximum Lawful Rate. If, notwithstanding the prior sentence, any Lender has received interest hereunder in excess of the Maximum Lawful Rate, such excess amount shall be applied to the reduction of the principal balance of the Loans or to other amounts (other than interest) payable hereunder, and if no such principal or other amounts are then outstanding, such excess or part thereof remaining shall be paid to Borrowers. In computing interest payable with reference to the Maximum Lawful Rate applicable to any Lender, such interest shall be calculated at a daily rate equal to the Maximum Lawful Rate *divided by* the number of days in the year in which such calculation is made.

Section 2.8 Taxes; Capital Adequacy.

(a) All payments of principal and interest on the Loans and all other amounts payable hereunder 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 any such withholding or deduction is in respect of any Indemnified Taxes, then the Borrowers shall pay such additional amount or amounts as is necessary to ensure that the net amount actually received by Agent and each Lender will equal the full amount Agent and such Lender would have received had no such withholding or deduction been required (including, without limitation, such withholdings and deductions applicable to additional sums payable under this Section 2.8). After payment of any Tax by a Borrower to a Governmental Authority pursuant to this Section 2.8, such Borrower shall promptly forward to Agent the original or a certified copy of an official receipt or other documentation evidencing such payment to such authority. Borrowers shall timely pay to the relevant Governmental Authority in accordance with applicable Law, or at the option of Agent timely reimburse it for the payment of, any Other Taxes.

(b) The Borrowers shall indemnify Agent and Lenders, within ten (10) Business Days after demand thereof, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section 2.8) payable or paid by Agent or any Lender or required to be withheld or deducted from a payment to Agent or any Lender and any reasonable and documented 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 in reasonable detail as to the amount of such payment or liability delivered to Borrowers by a Lender (with a copy to Agent), or by Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.

(c) Any Lender that is entitled to an exemption from or reduction of withholding tax with respect to payments made under any Financing Document shall deliver to Borrower Representative and Agent, at the time or times prescribed by applicable Law or reasonably requested by Borrower Representative or Agent, such properly completed and executed documentation reasonably requested by Borrower Representative or 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 Borrower Representative or Agent, shall deliver such other documentation prescribed by applicable Law or reasonably requested by Borrowers or Agent as will enable Borrowers or 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 2.8(c)(i), 2.8(c)(ii) and 2.8(e) below) shall not be required if in such 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.

(i) Each Lender that is not a "United States person" (as such term is defined in Section 7701(a)(30) of the Code) for U.S. federal income tax purposes and is a party hereto on the Closing Date or purports to become an assignee of an interest pursuant to Section 11.17(a) after the Closing Date (unless such Lender was already a Lender hereunder immediately prior to such assignment) (each such Lender a "**Foreign Lender**") shall, to the extent permitted by Law, execute and deliver to Borrower Representative and 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 Agreement (and from time to time thereafter upon the reasonable request of the Borrower Representative or Agent) whichever of the following is applicable: (A) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party, (x) with respect to payments of interest under any Financing Document, two (2) properly completed and executed originals of IRS Forms W-8BEN or W-8BEN-E (or successor form) establishing an exemption from, or reduction of, U.S. federal withholding tax pursuant to the "interest" article of such tax treaty and (y) with respect to any other applicable payments under any Financing Documents, two (2) properly completed and executed originals of IRS Forms W-8BEN or W-8BEN-E (or successor form) 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; (B) two (2) executed originals of IRS Form W-8ECI (or successor form); (C) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate substantially in the form of Exhibit E-1 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 any 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 (y) two (2) executed originals of IRS Forms W-8BEN or W-8BEN-E (or successor form); (D) to the extent a Foreign Lender is not the beneficial owner, two (2) executed originals of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN or W-8BEN-E (or successor form), a U.S. Tax Compliance Certificate substantially in the form of Exhibit E-2 or Exhibit E-3, IRS Form W-9 (or successor form), 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 substantially in the form of Exhibit E-4 on behalf of each such direct and indirect partner; or (E) other applicable forms, certificates or documents prescribed by the IRS. 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 Borrower Representative and Agent in writing of its legal inability to do so. In addition, to the extent permitted by applicable Law, such forms shall be delivered by each Foreign Lender upon the obsolescence or invalidity of any form previously delivered by such Foreign Lender. Each Foreign Lender shall promptly notify Borrower Representative at any time it determines that it is no longer in a position to provide any previously delivered certificate to Borrower Representative (or any other form of certification adopted by the U.S. taxing authorities for such purpose).

(ii) Each Lender that is a "United States person" (as such term is defined in Section 7701(a)(30) of the Code) for U.S. federal income tax purposes and is a party hereto on the Closing Date or purports to become an assignee of an interest pursuant to Section 11.17(a) after the Closing Date (unless such Lender was already a Lender hereunder immediately prior to such assignment) shall, to the extent permitted by Law, provide to Borrower Representative and Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower Representative or Agent), a properly completed and executed IRS Form W-9 or any successor form certifying as to such Lender's entitlement to an exemption from U.S. backup withholding and other applicable forms, certificates or documents prescribed by the IRS or reasonably requested by Borrower Representative or Agent. Each such Lender shall promptly notify Borrower Representative and Agent at any time it determines that any certificate previously delivered to Borrower Representative and Agent (or any other form of certification adopted by the U.S. Governmental Authorities for such purposes) is no longer valid.

(iii) Any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to Borrower Representative and 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 Agreement (and from time to time thereafter upon the reasonable request of the Borrower Representative or 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 Borrowers or Agent to determine the withholding or deduction required to be made.

(d) If any Lender or Agent determines, in its sole discretion exercised in good faith, that it has received a refund in respect of any Taxes as to which it has been indemnified by any Credit Party pursuant to this Section 2.8 (including by the payment of additional amounts pursuant to this Section 2.8), then it shall promptly pay an amount equal to such refund to such Credit Party, net of all reasonable out-of-pocket expenses of such Lender or of Agent with respect thereto, including any Taxes; *provided*, *however*, that the applicable Credit Party, upon the written request of such Lender or Agent, agrees to repay any amount paid over to such Credit Party to such Lender or to Agent (plus any related penalties, interest or other charges imposed by the relevant Governmental Authority) in the event such Lender or Agent is required, for any reason, to disgorge or otherwise repay such refund. Notwithstanding anything to the contrary in this Section 2.8, in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this Section 2.8(d) 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 Section 2.8 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.

(e) If a payment made to a Lender under any Financing 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 Borrower Representative and Agent at the time or times prescribed by Law and at such time or times reasonably requested by Borrower Representative or 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 Borrower Representative or Agent as may be necessary for Borrowers and 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 (e), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

(f) Each Lender shall severally indemnify Agent, within ten (10) days after demand therefor, for (i) any Indemnified Taxes attributable to such Lender (but only to the extent that any Credit Party has not already indemnified Agent for such Indemnified Taxes and without limiting the obligation of the Credit Parties to do so), (ii) any Taxes attributable to such Lender's failure to comply with the provisions of Section 11.17 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 Agent in connection with any Financing 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 Agent shall be conclusive absent manifest error. Each Lender hereby authorizes Agent to set off and apply any and all amounts at any time owing to such Lender under any Financing Document or otherwise payable by Agent to such Lender from any other source against any amount due to Agent under this paragraph (f).

(g) Each party's obligations under Section 2.8(a) through (f) shall survive the resignation or replacement of Agent or any assignment of rights by, or the replacement of, a Lender, and the repayment, satisfaction or discharge of all Obligations hereunder.

(h) If any Lender shall reasonably determine that the adoption or taking effect of, or any change in, any applicable Law regarding capital adequacy, in each instance, after the Closing Date, or any change after the Closing Date in the interpretation, administration or application thereof by any Governmental Authority, central bank or comparable agency charged with the interpretation, administration or application thereof, or the compliance by any Lender or any Person controlling such Lender with any request, guideline or directive regarding capital adequacy (whether or not having the force of Law) of any such Governmental Authority, central bank or comparable agency adopted or otherwise taking effect after the Closing Date, has or would have the effect of reducing the rate of return on such Lender's or such controlling Person's capital as a consequence of such Lender's obligations hereunder to a level below that which such Lender or such controlling Person could have achieved but for such adoption, taking effect, change, interpretation, administration, application or compliance (taking into consideration such Lender's or such controlling Person's policies with respect to capital adequacy) then from time to time, upon demand by such Lender (which demand shall be accompanied by a certificate setting forth the basis for such demand and a calculation of the amount thereof in reasonable detail, a copy of which shall be furnished to Agent), Borrowers shall promptly pay to such Lender such additional amount as will compensate such Lender or such controlling Person for such reduction, so long as such amounts have accrued on or after the day which is two hundred seventy (270) days prior to the date on which such Lender first made demand therefor; *provided* that notwithstanding anything in this Agreement to the contrary, for all purposes of this Section (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, shall in each case be deemed to be a "change in applicable Law", regardless of the date enacted, adopted or issued.

(i) If any Lender requests compensation under either Section 2.1(a)(iv) or Section 2.8(h), or requires Borrowers to pay any Indemnified Taxes or additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.8, then, upon the written request of Borrower Representative, such Lender shall use reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder (subject to the provisions of Section 11.17) to another of its offices, branches or affiliates, if, in the reasonable judgment of such Lender, such designation or assignment (i) would eliminate or materially reduce amounts payable pursuant to any such Section, as the case may be, in the future, (ii) would not subject such Lender to any unreimbursed cost or expense and (iii) would not otherwise be disadvantageous to such Lender (as determined in its good faith discretion). Without limitation of the provisions of Section 12.14, each Borrower hereby agrees to pay all reasonable and documented, out-of-pocket costs and expenses incurred by any Lender in connection with any such designation or assignment.

Section 2.9 Appointment of Borrower Representative.

(a) Each Borrower hereby irrevocably appoints and constitutes Borrower Representative as its agent and attorney-in-fact to request and receive Loans in the name or on behalf of such Borrower and any other Borrowers, deliver Notices of Borrowing, give instructions with respect to the disbursement of the proceeds of the Loans , giving and receiving all other notices and consents hereunder or under any of the other Financing Documents and taking all other actions (including in respect of compliance with covenants) in the name or on behalf of any Borrower or Borrowers pursuant to this Agreement and the other Financing Documents. Agent and Lenders may disburse the Loans to such bank account of Borrower Representative or a Borrower or otherwise make such Loans to a Borrower, in each case as Borrower Representative may designate or direct, without notice to any other Borrower. Notwithstanding anything to the contrary contained herein, Agent may at any time and from time to time require that Loans to or for the account of any Borrower be disbursed directly to an operating account of such Borrower.

(b) Borrower Representative hereby accepts the appointment by Borrowers to act as the agent and attorney-in-fact of Borrowers pursuant to this Section 2.9. Borrower Representative shall ensure that the disbursement of any Loans that are at any time requested by or to be remitted to or for the account of a Borrower, shall be remitted or issued to or for the account of such Borrower.

(c) Each Borrower hereby irrevocably appoints and constitutes Borrower Representative as its agent to receive statements on account and all other notices from Agent, Lenders with respect to the Obligations or otherwise under or in connection with this Agreement and the other Financing Documents.

(d) Any notice, election, representation, warranty, agreement or undertaking made or delivered by or on behalf of any Borrower by Borrower Representative shall be deemed for all purposes to have been made or delivered by such Borrower, as the case may be, and shall be binding upon and enforceable against such Borrower to the same extent as if made or delivered directly by such Borrower.

(e) No resignation by or termination of the appointment of Borrower Representative as agent and attorney-in-fact as aforesaid shall be effective, except after ten (10) Business Days' prior written notice to Agent. If the Borrower Representative resigns under this Agreement, Borrowers shall be entitled to appoint a successor Borrower Representative (which shall be a Borrower and shall be reasonably acceptable to Agent as such successor). Upon the acceptance of its appointment as successor Borrower Representative hereunder, such successor Borrower Representative shall succeed to all the rights, powers and duties of the retiring Borrower Representative and the term "Borrower Representative" means such successor Borrower Representative for all purposes of this Agreement and the other Financing Documents, and the retiring or terminated Borrower Representative's appointment, powers and duties as Borrower Representative shall be thereupon terminated.

Section 2.10 Joint and Several Liability; Rights of Contribution; Subordination and Subrogation.

(a) Borrowers are defined collectively to include all Persons named as one of the Borrowers herein; *provided, however*, that any references herein to "any Borrower", "each Borrower" or similar references, shall be construed as a reference to each individual Person named as one of the Borrowers herein. Each Person so named shall be jointly and severally liable for all of the obligations of Borrowers under this Agreement. Each Borrower, individually, expressly understands, agrees and acknowledges, that the credit facilities would not be made available on the terms herein in the absence of the collective credit of all of the Persons named as the Borrowers herein, the joint and several liability of all such Persons, and the cross-collateralization of the collateral of all such Persons. Accordingly, each Borrower individually acknowledges that the benefit to each of the Persons named as one of the Borrowers as a whole constitutes reasonably equivalent value, regardless of the amount of the credit facilities actually borrowed by, advanced to, or the amount of collateral provided by, any individual Borrower. In addition, each entity named as one of the Borrowers herein hereby acknowledges and agrees that all of the representations, warranties, covenants, obligations, conditions, agreements and other terms contained in this Agreement shall be applicable to and shall be binding upon and measured and enforceable individually against each Person named as one of the Borrowers herein as well as all such Persons when taken together. By way of illustration, but without limiting the generality of the foregoing, the terms of Section 10.1 of this Agreement are to be applied to each individual Person named as one of the Borrowers herein (as well as to all such Persons taken as a whole), such that the occurrence of any of the events described in Section 10.1 of this Agreement as to any Person named as one of the Borrowers herein shall constitute an Event of Default even if such event has not occurred as to any other Persons named as the Borrowers or as to all such Persons taken as a whole.

(b) Notwithstanding any provisions of this Agreement to the contrary, it is intended that the joint and several nature of the liability of each Borrower for the Obligations and the Liens granted by Borrowers to secure the Obligations, not constitute a Fraudulent Conveyance (as defined below). Consequently, Agent, Lenders and each Borrower agree that if the liability of a Borrower for the Obligations, or any Liens granted by such Borrower securing the Obligations would, but for the application of this sentence, constitute a Fraudulent Conveyance, the liability of such Borrower and the Liens securing such liability shall be valid and enforceable only to the maximum extent that would not cause such liability or such Lien to constitute a Fraudulent Conveyance, and the liability of such Borrower and this Agreement shall automatically be deemed to have been amended accordingly. For purposes hereof, the term "**Fraudulent Conveyance**" means a fraudulent conveyance under Section 548 of Chapter 11 of Title II of the Bankruptcy Code or a fraudulent conveyance or fraudulent transfer under the applicable provisions of any fraudulent conveyance or fraudulent transfer law or similar law of any state, nation or other governmental unit, as in effect from time to time.

(c) Agent is hereby authorized, without notice or demand (except as otherwise specifically required under this Agreement) and without affecting the liability of any Borrower hereunder, at any time and from time to time, to (i) renew, extend or otherwise increase the time for payment of the Obligations; (ii) with the written agreement of all Borrowers, change the terms relating to the Obligations or otherwise modify, amend or change the terms of any Note or other agreement, document or instrument now or hereafter executed by any Borrower and delivered to Agent for any Lender; (iii) accept partial payments of the Obligations; (iv) take and hold any Collateral for the payment of the Obligations or for the payment of any guaranties of the Obligations and exchange, enforce, waive and release any such Collateral; (v) apply any such Collateral and direct the order or manner of sale thereof as Agent, in its sole discretion, may determine; and (vi) settle, release, compromise, collect or otherwise liquidate the Obligations and any Collateral therefor in any manner, all guarantor and surety defenses being hereby waived by each Borrower. Except as specifically provided in this Agreement or

any of the other Financing Documents, Agent shall have the exclusive right to determine the time and manner of application of any payments or credits, whether received from any Borrower or any other source, and such determination shall be binding on all Borrowers. All such payments and credits may be applied, reversed and reapplied, in whole or in part, to any of the Obligations that Agent shall determine, in its sole discretion, without affecting the validity or enforceability of the Obligations of any other Borrower.

(d) Each Borrower hereby agrees that, except as hereinafter provided, its obligations hereunder shall be unconditional, irrespective of (i) the absence of any attempt to collect the Obligations from any obligor or other action to enforce the same; (ii) the waiver or consent by Agent with respect to any provision of any instrument evidencing the Obligations, or any part thereof, or any other agreement heretofore, now or hereafter executed by a Borrower and delivered to Agent; (iii) failure by Agent to take any steps to perfect and maintain its security interest in, or to preserve its rights to, any security or collateral for the Obligations; (iv) the institution of any proceeding under the Bankruptcy Code, or any similar proceeding, by or against a Borrower or Agent's election in any such proceeding of the application of Section 1111(b)(2) of the Bankruptcy Code; (v) any borrowing or grant of a security interest by a Borrower as debtor-in-possession, under Section 364 of the Bankruptcy Code; (vi) the disallowance, under Section 502 of the Bankruptcy Code, of all or any portion of Agent's claim(s) for repayment of any of the Obligations; or (vii) any other circumstance other than payment in full of the Obligations which might otherwise constitute a legal or equitable discharge or defense of a guarantor or surety.

(e) Borrowers hereby agree, as between themselves, that to the extent that Agent, on behalf of Lenders, shall have received from any Borrower any Recovery Amount (as defined below), then the paying Borrower shall have a right of contribution against each other Borrower in an amount equal to such other Borrower's contributive share of such Recovery Amount; *provided*, *however*, that in the event any Borrower suffers a Deficiency Amount (as defined below), then the Borrower suffering the Deficiency Amount shall be entitled to seek and receive contribution from and against the other Borrowers in an amount equal to the Deficiency Amount; and *provided*, *further*, that in no event shall the aggregate amounts so reimbursed by reason of the contribution of any Borrower equal or exceed an amount that would, if paid, constitute or result in Fraudulent Conveyance. Until all Obligations have been paid and satisfied in full, no payment made by or for the account of a Borrower including, without limitation, (i) a payment made by such Borrower on behalf of the liabilities of any other Borrower, or (ii) a payment made by any other Guarantor under any Guarantee, shall entitle such Borrower, by subrogation or otherwise, to any payment from such other Borrower or from or out of such other Borrower's property. The right of each Borrower to receive any contribution under this Section 2.10(e) or by subrogation or otherwise from any other Borrower shall be subordinate in right of payment to the Obligations and such Borrower shall not exercise any right or remedy against such other Borrower or any property of such other Borrower by reason of any performance of such Borrower of its joint and several obligations hereunder, until the Obligations have been paid and satisfied in full, and no Borrower shall exercise any right or remedy with respect to this Section 2.10(e) until the Obligations have been paid and satisfied in full. As used in this Section 2.10(e), the term "**Recovery Amount**" means the amount of proceeds received by or credited to Agent from the exercise of any remedy of the Lenders under this Agreement or the other Financing Documents, including, without limitation, the sale of any Collateral. As used in this Section 2.10(e), the term "**Deficiency Amount**" means any amount that is less than the entire amount a Borrower is entitled to receive by way of contribution or subrogation from, but that has not been paid by, the other Borrowers in respect of any Recovery Amount attributable to the Borrower entitled to contribution, until the Deficiency Amount has been reduced to Zero Dollars ($0) through contributions and reimbursements made under the terms of this Section 2.10(e) or otherwise.

Section 2.11 Reserved.

Section 2.12 Termination; Restriction on Termination.

(a) Termination by Lenders. In addition to the rights set forth in Section 10.2, Agent may, and at the direction of Required Lenders shall, terminate this Agreement upon or after the occurrence and during the continuance of an Event of Default by giving notice to the Borrower Representative.

(b) Termination by Borrowers. Upon at least ten (10) days prior written notice (provided that such notice may provide that it is conditioned upon the consummation of a Change in Control, the consummation of another financing or the consummation of a sale of equity interests, in which case, such noticed may be revoked or extended by the Borrowers if any such condition is not satisfied prior to the date of termination of this Agreement given in such notice) and pursuant to payoff documentation in form and substance satisfactory to Agent and Lenders, Borrowers may, at its option, terminate this Agreement; *provided, however,* that no such termination shall be effective until Borrowers have complied with Section 2.12(c) and paid in full all of the Affiliated Obligations in immediately available funds and terminated the Affiliated Financing Documents. Except as otherwise provided above in this clause (b), any notice of termination given by Borrowers shall be irrevocable unless all Lenders otherwise agree in writing and no Lender shall have any obligation to make any Loans on or after the termination date stated in such notice. Borrowers may elect to terminate this Agreement in its entirety only. No section of this Agreement or type of Loan available hereunder may be terminated singly.

(c) Effectiveness of Termination. All of the Obligations shall be immediately due and payable upon the Termination Date. All undertakings, agreements, covenants, warranties and representations of Borrowers contained in the Financing Documents shall survive any such termination and Agent shall retain its Liens in the Collateral and Agent and each Lender shall retain all of its rights and remedies under the Financing Documents notwithstanding such termination until all Obligations and Affiliated Obligations have been discharged or paid, in full (other than contingent indemnification for obligations for which no claim has been asserted or the known existence of a claim is reasonably likely to be asserted), in immediately available funds, including, without limitation, all Obligations under Section 2.2(g) and the terms of any Fee Letter resulting from such termination. Notwithstanding the foregoing or the payment in full of the Obligations, Agent shall not be required to terminate its Liens in the Collateral unless, with respect to any loss or damage Agent may incur as a result of dishonored checks or other items of payment received by Agent from Borrower or any Account Debtor and applied to the Obligations, Agent shall, at its option, (a) have received a written agreement satisfactory to Agent, executed by Borrowers and by any Person whose loans or other advances to Borrowers are used in whole or in part to satisfy the Obligations, indemnifying Agent and each Lender from any such loss or damage or (b) have retained cash Collateral or other Collateral for such period of time as Agent, in its Permitted Discretion, may deem necessary to protect Agent and each Lender from any such loss or damage.

ARTICLE 3 - REPRESENTATIONS AND WARRANTIES

To induce Agent and Lenders to enter into this Agreement and to make the Loans and other credit accommodations contemplated hereby, each Borrower hereby represents and warrants to Agent and each Lender that:

Section 3.1 Existence and Power. Each Credit Party (a) is an entity as specified on Schedule 3.1, (b) is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, as specified on Schedule 3.1, (c) has the same legal name as it appears in such Credit Party's Organizational Documents and an organizational identification number (if any), in each case as specified on Schedule 3.1, (d) has all powers to own its assets and has powers and all Permits necessary in the operation of its business as presently conducted or as proposed to be conducted, except where the failure to have such Permits could not reasonably be expected to have a Material Adverse Effect, and (e) is qualified to do business as a foreign entity in each jurisdiction in which it is required to be so qualified, which jurisdictions as of the Closing Date are specified on Schedule 3.1, except in the case of this clause (e) where the failure to be so qualified could not reasonably be expected to have a Material Adverse Effect. Except as set forth on Schedule 3.1, no Credit Party (x) has had, over the five (5) year period preceding the Closing Date, any name other than its current name, or (y) was incorporated or organized under the laws of any jurisdiction other than its current jurisdiction of incorporation or organization.

Section 3.2 Organization and Governmental Authorization; No Contravention. The execution, delivery and performance by each Credit Party of the Operative Documents to which it is a party (a) are within its powers, (b) have been duly authorized by all necessary action pursuant to its Organizational Documents, (c) require no further action by or in respect of, or filing with, any Governmental Authority and (d) do not violate, conflict with or cause a breach or a default under (i) any material requirement of any Law applicable to any Credit Party, (ii) any of the Organizational Documents of any Credit Party, or (iii) any agreement or instrument binding upon it, except for such violations, conflicts, breaches or defaults as could not, with respect to this clause (iii), reasonably be expected to have a Material Adverse Effect.

Section 3.3 Binding Effect. Each of the Operative Documents to which any Credit Party is a party constitutes a valid and binding agreement or instrument of such Credit Party, enforceable against such Credit Party in accordance with its respective terms, except as the enforceability thereof may be limited by bankruptcy, insolvency or other similar laws relating to the enforcement of creditors' rights generally and by general equitable principles. Each Financing Document has been duly executed and delivered by each Credit Party party thereto.

Section 3.4 Capitalization. The authorized equity securities of each of the Credit Parties as of the Closing Date are as set forth on Schedule 3.4. All issued and outstanding equity securities of each of the Credit Parties are duly authorized and validly issued, fully paid, nonassessable, free and clear of all Liens other than Permitted Liens, and such equity securities were issued in compliance with all applicable Laws. The identity of the holders of the equity securities of each of the Credit Parties and the percentage of their fully-diluted ownership of the equity securities of each of the Credit Parties as of the Closing Date is set forth on Schedule 3.4. No shares of the capital stock or other equity securities of any Credit Party, other than those described above, are issued and outstanding as of the Closing Date. Except as set forth on Schedule 3.4, as of the Closing Date there are no preemptive or other outstanding rights, options, warrants, conversion rights or similar agreements or understandings for the purchase or acquisition from any Credit Party of any equity securities of any such entity.

Section 3.5 Financial Information. All information delivered to Agent and pertaining to the financial condition of any Credit Party fairly presents the financial position of such Credit Party as of such date in conformity with GAAP (and as to unaudited financial statements, subject to normal year-end adjustments and the absence of footnote disclosures). Since December 31, 2019, there has been no Material Adverse Effect.

Section 3.6 Litigation. Except as set forth on Schedule 3.6 as of the Closing Date, and except as hereafter disclosed to Agent in writing, there is no Litigation pending against, or to such Borrower's knowledge threatened in writing against, any Credit Party that would be reasonably expected to result in liability to any Credit Party in an amount in excess of $2,500,000 (regardless of whether covered by insurance). There is no Litigation pending in which an adverse decision could reasonably be expected to have a Material Adverse Effect or which in any manner draws into question the validity of any of the Operative Documents.

Section 3.7 Ownership of Property. Each Borrower and each of its Subsidiaries is the lawful owner of, has good and marketable title to and is in lawful possession of, or has valid leasehold interests in, all properties, accounts and other assets (real or personal, tangible, intangible or mixed) purported or reported to be owned or leased (as the case may be) by such Person.

Section 3.8 No Default. No Event of Default, or to such Borrower's knowledge, Default, has occurred and is continuing. No Credit Party is in breach or default under or with respect to any contract, agreement, lease or other instrument to which it is a party or by which its property is bound or affected, which breach or default could reasonably be expected to have a Material Adverse Effect.

Section 3.9 Labor Matters. As of the Closing Date, there are no strikes or other labor disputes pending or, to any Borrower's knowledge, threatened in writing against any Credit Party. Hours worked and payments made to the employees of the Credit Parties have not been in violation of the Fair Labor Standards Act or any other applicable Law dealing with such matters, except for any such violation that could not reasonably be expected to have a Material Adverse Effect. All payments due from the Credit Parties, or for which any claim may be made against any of them, on account of wages and employee and retiree health and welfare insurance and other benefits have been paid or accrued as a liability on their books, as the case may be except for any such violation that could not reasonably be expected to have a Material Adverse Effect. The consummation of the transactions contemplated by the Financing Documents will not give rise to a right of termination or right of renegotiation on the part of any union under any collective bargaining agreement to which it is a party or by which it is bound.

Section 3.10 Investment Company Act. No Credit Party is an "investment company" or a company "controlled" by an "investment company" or a "subsidiary" of an "investment company," all within the meaning of the Investment Company Act of 1940.

Section 3.11 Margin Regulations.

(a) The Credit Parties and their Subsidiaries do not own any stock, partnership interest or other equity securities, except for Permitted Investments. Without limiting the foregoing, the Credit Parties and their Subsidiaries do not own or hold any Margin Stock.

(b) None of the proceeds from the Loans have been or will be used, directly or indirectly, for the purpose of purchasing or carrying any "margin stock" (as defined in Regulation U of the Federal Reserve Board), for the purpose of reducing or retiring any indebtedness which was originally incurred to purchase or carry any "margin stock" or for any other purpose which might cause any of the Loans to be considered a "purpose credit" within the meaning of Regulation T, U or X of the Federal Reserve Board.

Section 3.12 Compliance With Laws; Anti-Terrorism Laws.

(a) Each Credit Party is in compliance with the requirements of all applicable Laws, except for such instances of noncompliance with such applicable Laws which, whether individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect.

(b) None of the Credit Parties and, to the knowledge of the Credit Parties, none of their controlled Affiliates (i) is in violation of any Anti-Terrorism Law, (ii) 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 any Anti-Terrorism Law, (iii) is a Blocked Person, or is controlled by a Blocked Person, (iv) is acting or will act for or on behalf of a Blocked Person, (v) is associated with, or will become associated with, a Blocked Person or (vi) is providing, or will provide, material, financial or technical support or other services to or in support of acts of terrorism of a Blocked Person. No Credit Party nor, to the knowledge of any Credit Party, any of its controlled Affiliates or agents acting or benefiting in any capacity in connection with the transactions contemplated by this Agreement, (A) conducts any business or engages in making or receiving any contribution of funds, goods or services to or for the benefit of any Blocked Person, or (B) deals in, or otherwise engages in any transaction relating to, any property or interest in property blocked pursuant to Executive Order No. 13224, any similar executive order or other Anti-Terrorism Law.

Section 3.13 Taxes. All federal and material state and material foreign and local income tax returns, reports and all other material tax returns, and statements required to be filed by or on behalf of each Credit Party have been filed with the appropriate Governmental Authorities in all jurisdictions in which such returns, reports and statements are required to be filed and, except to the extent subject to a Permitted Contest, all material Taxes (including real property Taxes) and other charges shown to be due and payable in respect thereof have been timely paid prior to the date on which any fine, penalty, interest, late charge or loss may be added thereto for nonpayment thereof. Except to the extent subject to a Permitted Contest, all material state, and local sales and use Taxes required to be paid by each Credit Party have been paid. All federal income and other material federal and state returns have been filed by each Credit Party for all periods for which returns were due with respect to employee income tax withholding, social security and unemployment taxes, and, except to the extent subject to a Permitted Contest, the amounts shown thereon to be due and payable have been paid in full or adequate provisions therefor have been made. For purposes of this Section 3.13, any federal (other than federal income), foreign, state or local tax, assessment, deposit or contribution, and any return with respect thereto, shall not be considered "material" if it is equal to or less than $100,000 in the aggregate for all taxes and the nonpayment thereof or failure to file could not reasonably be expected to have a Material Adverse Effect.

Section 3.14 Compliance with ERISA.

(a) Each ERISA Plan (and the related trusts and funding agreements) complies in form and in operation with, has been administered in compliance with, and the terms of each ERISA Plan satisfy, the applicable requirements of ERISA and the Code in all material respects. Except as would not reasonably be expected to have a Material Adverse Effect, each ERISA Plan which is intended to be qualified under Section 401(a) of the Code is so qualified, and the United States Internal Revenue Service has issued a favorable determination letter or opinion letter with respect to each such ERISA Plan which may be relied on currently. Except as would not reasonably be expected to have a Material Adverse Effect, no Credit Party has incurred liability for any material excise tax under any of Sections 4971 through 5000 of the Code.

(b) Except as could not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect, each Borrower and each Subsidiary is in compliance with the applicable provisions of ERISA and the provision of the Code relating to ERISA Plans and the regulations and published interpretations therein. During the thirty-six (36) month period prior to the Closing Date or the making of any Loan (i) no steps have been taken to terminate any Pension Plan, and (ii) no contribution failure has occurred with respect to any Pension Plan sufficient to give rise to a Lien under Section 303(k) of ERISA or Section 430(k) of the Code and no event has occurred that would give rise to a Lien under Section 4068 of ERISA. No condition exists or event or transaction has occurred with respect to any Pension Plan which would reasonably be expected to result in the incurrence by any Credit Party of any material liability, fine or penalty. No Credit Party has incurred liability to the PBGC

(other than for current premiums) with respect to any employee Pension Plan. All contributions (if any) have been made on a timely basis to any Multiemployer Plan that are required to be made by any Credit Party or any other member of the Controlled Group under the terms of the plan or of any collective bargaining agreement or by applicable Law; no Credit Party nor any member of the Controlled Group has withdrawn or partially withdrawn from any Multiemployer Plan, incurred any withdrawal liability with respect to any such plan or received notice of any claim or demand for withdrawal liability or partial withdrawal liability from any such plan, and no condition has occurred which, if continued, could result in a withdrawal or partial withdrawal from any such plan, and no Credit Party nor any member of the Controlled Group has received any notice that any Multiemployer Plan is in reorganization, that increased contributions may be required to avoid a reduction in plan benefits or the imposition of any excise tax, that any such plan is or has been funded at a rate less than that required under Section 412 of the Code, that any such plan is or may be terminated, or that any such plan is or may become insolvent.

Section 3.15 Consummation of Operative Documents; Brokers. Except for fees payable to Agent and/or Lenders, no broker, finder or other intermediary has brought about the obtaining, making or closing of the transactions contemplated by the Operative Documents, and no Credit Party has or will have any obligation to any Person in respect of any finder's or brokerage fees, commissions or other expenses in connection herewith or therewith.

Section 3.16 Reserved.

Section 3.17 Material Contracts. Except for the Operative Documents and the agreements set forth on Schedule 3.17, as of the Closing Date there are no Material Contracts. The consummation of the transactions contemplated by the Financing Documents will not give rise to a right of termination in favor of any party to any Material Contract (other than any Credit Party), except for such Material Contracts the noncompliance with which would not reasonably be expected to have a Material Adverse Effect.

Section 3.18 Compliance with Environmental Requirements; No Hazardous Materials. Except in each case as set forth on Schedule 3.18:

(a) no notice, notification, demand, request for information, citation, summons, complaint or order has been issued, no complaint has been filed, no penalty has been assessed and no investigation or review is pending, or to such Borrower's knowledge, threatened in writing by any Governmental Authority or other Person with respect to any (i) alleged material violation by any Credit Party of any Environmental Law, (ii) alleged failure by any Credit Party to have any Permits required in connection with the conduct of its business or to comply with the material terms and conditions thereof, (iii) any generation, treatment, storage, recycling, transportation or disposal of any Hazardous Materials, or (iv) release of Hazardous Materials; and

(b) no property now owned or leased by any Credit Party and, to the knowledge of each Borrower, no such property previously owned or leased by any Credit Party, to which any Credit Party has, directly or indirectly, transported or arranged for the transportation of any Hazardous Materials, is listed or, to such Borrower's knowledge, proposed for listing, on the National Priorities List promulgated pursuant to CERCLA, or CERCLIS (as defined in CERCLA) or any similar state list or is the subject of federal, state or local enforcement actions or, to the knowledge of such Borrower, other investigations which may lead to claims against any Credit Party for clean-up costs, remedial work, damage to natural resources or personal injury claims, including, without limitation, claims under CERCLA, except in the case of the foregoing as would not reasonably be expected to result in a Material Adverse Effect.

For purposes of this Section 3.18, each Credit Party shall be deemed to include any business or business entity (including a corporation) that is, in whole or in part, a predecessor of such Credit Party.

Section 3.19 Intellectual Property and License Agreements. A list of (a) all Registered Intellectual Property owned by each Credit Party, (b) all in-bound license or sublicense agreements that are material to a Credit Party's business, and (c) all exclusive out-bound license or sublicense agreements, in each case, to which a Credit Party is party (but excluding agreements for in-bound licenses for (i) off-the-shelf software or services that are commercially available to the public, and (ii) open source software), as of the Closing Date and, as updated pursuant to Section 4.15, is set forth on Schedule 3.19. Except for Permitted Liens, each Borrower is the sole owner of the material Intellectual Property purported to be owned by such Borrower, free and clear of any Liens other than Permitted Liens. Each material patent owned by a Borrower is valid and, to the best of Borrower's knowledge, enforceable and no part of the Material Intangible Assets owned by each Borrower has been judged by a court or Governmental Authority of competent jurisdiction invalid or unenforceable, in whole or in part, and to the best of Borrower's knowledge, no written claim has been made to a Borrower that any part of the Intellectual Property owned by such Borrower infringes or misappropriates the Intellectual Property rights of any third party.

Section 3.20 Solvency. After giving effect to the Loan advance and the liabilities and obligations of each Borrower and each additional Credit Party under the Operative Documents, (x) each Borrower is Solvent and (y) the Credit Parties (taken as a whole) are Solvent.

Section 3.21 Full Disclosure. None of the written information (financial or otherwise) relating to the Credit Parties (other than projections, other forward- looking information and industry information) furnished by or on behalf of any Credit Party to Agent or any Lender in connection with the consummation of the transactions contemplated by the Operative Documents, when taken as a whole, is accurate and complete in all material respects and does not and will not, when taken as a whole, contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements contained herein or therein not materially misleading in light of the circumstances under which such statements were made. All financial projections delivered to Agent and Lenders by Borrowers (or their agents) have been prepared on the basis of the assumptions stated therein. Such projections represent each Borrower's good faith estimate of such Borrower's future financial performance and such assumptions are believed by such Borrower to be fair and reasonable in light of current business conditions; it being understood that projections are as to future events and are not to be viewed as facts, projections are subject to significant uncertainties and contingencies, many of which are beyond Borrowers' control; *provided*, *however*, that Borrowers can give no assurance that such projections will be attained and that actual results during the period.

Section 3.22 Reserved.

Section 3.23 Subsidiaries. Borrowers do not own any stock, partnership interests, limited liability company interests or other equity securities or Subsidiaries except for Permitted Investments. As of the Closing Date, Borrower has no Subsidiaries.

Section 3.24 Regulatory Matters.

(a) With respect to each Product and except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, (i) Borrower and its Subsidiaries have received, and such Product is the subject of, all Regulatory Required Permits needed in connection with the testing, manufacture, marketing or sale of such Product as currently being conducted by or on behalf of Borrower, and (ii) such Product has been and is being tested, manufactured, marketed, promoted, sold, imported, possessed, owned, warehoused, promoted, labeled, furnished or distributed as the case may be, by Borrowers (or to Borrower's actual knowledge, by any applicable third parties) in compliance with all applicable Healthcare Laws and Regulatory Required Permits.

(b) Except as would not reasonably be expected to have a Material Adverse Effect, none of the Borrowers or any Subsidiary thereof are in violation of any applicable Healthcare Law.

(c) No Borrower or any Subsidiary thereof receives any payments directly (including through any third party payment processor) from Medicare, Medicaid, or TRICARE.

(d) To Borrower's knowledge, none of the Borrower's or its Subsidiaries' officers, directors or employees has made an untrue statement of material fact or fraudulent statement to the FDA or failed to disclose a material fact required to be disclosed to the FDA, committed an act, made a statement, or failed to make a statement that could reasonably be expected to provide a basis for the FDA to invoke its policy respecting "Fraud, Untrue Statements of Material Facts, Bribery, and Illegal Gratuities," set forth in 56 Fed. Regulation 46191 (September 10, 1991).

(e) No Borrower, nor any Subsidiary thereof, is subject to any proceeding, suit or, to any Borrower's knowledge, investigation by any Governmental Authority, which would reasonably be expected to result in the revocation, transfer, surrender, suspension of any material Permits of Borrower or any Subsidiary, in each case, that would reasonably be expected to result in a Material Adverse Effect.

(f) As of the Closing Date, there have been no Regulatory Reporting Events.

ARTICLE 4 - AFFIRMATIVE COVENANTS

Each Borrower agrees that, so long as any Credit Exposure exists:

Section 4.1 Financial Statements and Other Reports. Each Borrower will deliver to Agent:

(a) as soon as available, but no later than thirty (30) days after the last day of each month, a company prepared consolidated and consolidating (if applicable and requested in advance by Agent) balance sheet, cash flow and income statement (including year-to-date results) covering Borrowers' and its Consolidated Subsidiaries' consolidated operations during the period, prepared under GAAP, consistently applied (setting forth in comparative form the corresponding figures as at the end of the corresponding month of the previous fiscal year and the projected figures for such period based upon the projections required hereunder), all in reasonable detail, certified by a Responsible Officer and in a form reasonably acceptable to Agent;

(b) together with the financial reporting package described in (a) above, evidence of payment and satisfaction of all payroll, withholding and similar taxes due and owing by all Borrowers with respect to the payroll period(s) occurring during such month;

(c) as soon as available, but no later than one hundred and eighty (180) days after the last day of each of Borrower's fiscal year, audited consolidated and consolidating (if applicable and requested in advance by Agent) financial statements prepared under GAAP, consistently applied, together with an unqualified opinion (other than a going concern qualification based solely on the upcoming maturity date of the Debt under this Agreement occurring within 12 months of the date of such audit, any Credit Party having negative profits or a determination that any Credit Party has less than 12 months liquidity) on the financial statements from an independent certified public accounting firm acceptable to Agent in its reasonable discretion;

(d) within five (5) days of delivery or filing thereof, copies of all material statements, reports and notices made available to Borrower's security holders or to any holders of Subordinated Debt and copies of all reports and other filings made by Borrower with any stock exchange on which any securities of any Borrower are traded and/or the SEC;

(e) a prompt written report of any legal actions pending or threatened in writing against any Borrower or any of its Subsidiaries that could reasonably be expected to result in damages or costs to any Borrower or any of its Subsidiaries of One Million Dollars ($1,000,000) or more;

(f) prompt written notice of an event that has a Material Adverse Effect on the value of any Material Intangible Asset;

(g) within sixty (60) days after the start of each fiscal year, projections for the forthcoming two fiscal years, on a quarterly basis for the current year and on an annual basis for the subsequent year;

(h) promptly (but in any event within ten (10) days of any request therefor) such readily available other budgets, sales projections, operating plans and other financial information and information, reports or statements regarding the Borrowers, their business and the Collateral as Agent may from time to time reasonably request;

(i) together with the monthly financial statements described in (a) above, a duly completed Compliance Certificate signed by a Responsible Officer setting forth calculations showing monthly cash and cash equivalents of Borrowers, Borrowers and their Consolidated Subsidiaries, and the Excluded Subsidiaries and compliance with the financial covenants set forth in this Agreement.

(j) Reserved.

(k) Reserved.

(l) written notice to Agent promptly, but in any event within ten (10) Business Days of a Responsible Officer of a Borrower receiving written notice or otherwise becoming aware of:

(i) any development and/or manufacturing of any Product that is material to Borrowers' business should cease;

(ii) the marketing or sales of a Product, which is material to Borrowers' business, should cease or such Product should be withdrawn in a material quantity from the marketplace;

(iii) any Governmental Authority provides any Borrower or any Subsidiary with written notice of the threatened or actual revocation, termination or suspension of any Regulatory Required Permit the loss of which would be reasonably expected to result in a Material Adverse Effect;

(iv) any Regulatory Required Permit, the loss of which could be reasonably expected to result in a Material Adverse Effect, has been revoked or withdrawn;

(v) any Governmental Authority, including without limitation the FDA, the Office of the Inspector General of HHS or the United States Department of Justice, has commenced (A) any action against a Credit Party or a Subsidiary thereof that could be reasonably expected to have a Material Adverse Effect, or (B) any action to enjoin a Credit Party or a Subsidiary thereof from conducting their businesses at any facility owned or used by them or for any material civil penalty, injunction, seizure or criminal action;

(vi) receipt by Borrower or any Subsidiary thereof from the FDA of a warning letter, "untitled letter," other written correspondence or written notice setting forth alleged material violations of laws and regulations enforced by the FDA, or any comparable written correspondence from any state or local authority responsible for regulating medical device products, or any comparable written correspondence from any foreign Governmental Authority exercising authority comparable to the FDA alleging material noncompliance with any applicable Healthcare Laws the result of which would be reasonably expected to result in a Material Adverse Effect;

(vii) any material failures in the manufacturing of any material Product have occurred such that the amount of such Product successfully manufactured in accordance with all specifications thereof shall materially decrease; or

(viii) any Borrower or any Subsidiary thereof engaging in any material Recalls, Market Withdrawals, or other forms of product retrieval from the marketplace of any Products (other than discrete batches or lots that are not material in quantity or amount and are not made in conjunction with a larger recall) (each of the events set forth in clauses (i)-(viii) a "**Regulatory Reporting Event**");

(m) promptly after the request by any Lender, all documentation and other information that such Lender reasonably requests in order to comply with its ongoing obligations under applicable "know your customer" and anti-money laundering rules and regulations, including, without limitation, the USA PATRIOT Act; and

(n) promptly, but in any event within ten (10) Business Days, after any Responsible Officer of any Borrower obtains knowledge of the occurrence of any event or change (including, without limitation, any written notice of any violation of applicable Healthcare Laws) that has resulted or would reasonably be expected to result in, either in any case or in the aggregate, a Material Adverse Effect, a certificate of a Responsible Officer specifying the nature and period of existence of any such event or change, or specifying the notice given or action taken by such holder or Person and the nature of such event or change, and what action the applicable Credit Party or Subsidiary has taken, is taking or proposes to take with respect thereto.

Borrower may deliver any of the documents set forth in clauses (a), (c) and (d) of this Section 4.1 by posting such documents on Borrower's website or to the SEC's EDGAR system, and such documents shall be deemed to have been delivered on the date on which Borrower posts such documents.

Section 4.2 Payment and Performance of Obligations. Each Borrower (a) will pay and discharge, and cause each Subsidiary to pay and discharge, on a timely basis as and when due, all of their respective obligations and liabilities, except for such obligations and/or liabilities (i) that may be the subject of a Permitted Contest, and (ii) the nonpayment or nondischarge of which could not reasonably be expected to have a Material Adverse Effect or result in a Lien against any Collateral, except for Permitted Liens, (b) without limiting anything contained in the foregoing clause (a), pay all amounts due and owing in respect of Taxes (including without limitation, payroll and withholdings tax liabilities) on a timely basis as and when due, and in any case prior to the date on which any fine, penalty, interest, late charge or loss may be added thereto for nonpayment thereof, except for such Taxes that may be the subject of a Permitted Contest and except as the nonpayment of such amounts is less than $100,000 in the aggregate

at any one time outstanding, (c) will maintain, and cause each Subsidiary to maintain, in accordance with GAAP, appropriate reserves for the accrual of all of their respective obligations and liabilities, and (d) will not breach or permit any Subsidiary to breach, or permit to exist any default under, the terms of any lease, commitment, contract, instrument or obligation to which it is a party, or by which its properties or assets are bound, except for such breaches or defaults which could not reasonably be expected to have a Material Adverse Effect.

Section 4.3 Maintenance of Existence. Except as otherwise provided in Section 9.2(e), each Borrower will preserve, renew and keep in full force and effect and in good standing, and will cause each Subsidiary to preserve, renew and keep in full force and effect and in good standing, (a) their respective existence; *provided*, *however*, that the foregoing shall not prohibit any merger or consolidation, otherwise expressly permitted pursuant to this Agreement and (b) their respective rights, privileges and franchises necessary in the normal conduct of business, except, in the case of this clause (b), where a failure to do so would not reasonably be expected to result in a Material Adverse Effect.

Section 4.4 Maintenance of Property; Insurance.

(a) Each Borrower will keep, and will cause each Subsidiary to keep, all property useful and necessary in its business in good working order and condition, ordinary wear and tear excepted. If all or any part of the tangible Collateral useful or necessary in its business becomes damaged or destroyed, each Borrower will, and will cause each Subsidiary to, promptly repair and/or restore the affected Collateral in a good and workmanlike manner.

(b) Upon completion of any Permitted Contest, Borrowers shall, and will cause each Subsidiary to, promptly pay the amount due, if any, and deliver to Agent proof of the completion of the contest and payment of the amount due, if any.

(c) Each Borrower will maintain (i) casualty insurance on all real and personal property on an all risks basis (including the perils of windstorm), covering the repair and replacement cost of all such property and coverage, business interruption and rent loss coverages with extended period of indemnity (for the period required by Agent from time to time) and indemnity for extra expense, in each case without application of coinsurance and with agreed amount endorsements, (ii) general and professional liability insurance (including products/completed operations liability coverage), and (iii) such other insurance coverage, in each case against loss or damage of the kinds customarily insured against by Persons engaged in the same or similar business, of such types and in such amounts as are customarily carried under similar circumstances by such other Persons; *provided*, *however*, that, unless otherwise agreed by Agent in writing, in no event shall such insurance be in amounts or with coverage less than, or with carriers with qualifications inferior to, any of the insurance or carriers in existence as of the Closing Date (or required to be in existence after the Closing Date under a Financing Document). All such insurance shall be provided by insurers having an A.M. Best policyholders rating reasonably acceptable to Agent.

(d) On or prior to the Closing Date, and at all times thereafter, each Borrower will cause Agent to be named as an additional insured, assignee and lender loss payee (which shall include, as applicable, identification as mortgagee), as applicable, on each insurance policy required to be maintained pursuant to this Section 4.4 pursuant to endorsements in form and substance acceptable to Agent. Borrowers shall deliver to Agent and the Lenders (i) on the Closing Date, a certificate from Borrowers' insurance broker dated such date showing the amount of coverage as of such date, and that such policies will include effective waivers (whether under the terms of any such policy or otherwise) by the insurer of all claims for insurance premiums against all loss payees and additional insureds and all rights of subrogation against all loss payees and additional insureds, and that if all or any part of such

policy is canceled, terminated or expires, will endeavor to give notice thereof to each additional insured, assignee and loss payee and that no cancellation, reduction in amount or material change in coverage thereof shall be effective until at least thirty (30) days (ten (10) days for nonpayment of premium) after receipt by each additional insured, assignee and loss payee of written notice thereof, (ii) on an annual basis, and upon the request of any Lender through Agent from time to time full information as to the insurance carried, (iii) within five (5) days of receipt of notice from any insurer, a copy of any notice of cancellation, nonrenewal or material change in coverage from that existing on the date of this Agreement, (iv) forthwith, notice of any cancellation or nonrenewal of coverage by any Borrower, and (v) at least ten (10) Business Days prior to expiration of any policy of insurance, evidence of renewal of such insurance upon the terms and conditions herein required.

(e) In the event any Borrower fails to provide Agent with evidence of the insurance coverage required by this Agreement, Agent may purchase insurance at Borrowers' expense to protect Agent's interests in the Collateral. This insurance may, but need not, protect such Borrower's interests. The coverage purchased by Agent may not pay any claim made by such Borrower or any claim that is made against such Borrower in connection with the Collateral. Such Borrower may later cancel any insurance purchased by Agent, but only after providing Agent with evidence that such Borrower has obtained insurance as required by this Agreement. If Agent purchases insurance for the Collateral, Borrowers will be responsible for the documented costs of that insurance to the fullest extent provided by law, including interest and other charges imposed by Agent in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. Such documented costs of the insurance may be added to the Obligations. The costs of the insurance may be more than the cost of insurance such Borrower is able to obtain on its own.

Section 4.5 Compliance with Laws and Material Contracts. Each Borrower will comply, and cause each Subsidiary to comply, with the requirements of all applicable Laws and Material Contracts, except to the extent that failure to so comply could not reasonably be expected to (a) have a Material Adverse Effect, or (b) result in any Lien (other than a Permitted Lien) upon a material portion of the assets of any such Person in favor of any Governmental Authority.

Section 4.6 Inspection of Property, Books and Records. Each Borrower will keep, and will cause each Subsidiary to keep, proper books of record substantially in accordance with GAAP in which full, true and correct entries shall be made of all dealings and transactions in relation to its business and activities; and will permit, and will cause each Subsidiary to permit, at the sole cost of the applicable Borrower or any applicable Subsidiary, representatives of Agent and of any Lender to visit and inspect any of their respective properties, to examine and make abstracts or copies from any of their respective books and records, to conduct a collateral audit and analysis of their respective operations and the Collateral, to evaluate and make physical verifications and appraisals of the Inventory and other Collateral in any commercially reasonable manner and through any commercially reasonable medium that Agent considers advisable, to verify the amount and age of the Accounts, the identity and credit of the respective Account Debtors, to review the billing practices of Borrowers and to discuss their respective affairs, finances and accounts with their respective officers, employees and independent public accountants as often as may reasonably be desired. In the absence of an Event of Default, Agent or any Lender exercising any rights pursuant to this Section 4.6 shall give the applicable Borrower or any applicable Subsidiary commercially reasonable prior notice (a) during normal business hours, and (b) not more than twice per calendar year at the Borrower's expense and the aggregate amount Borrowers shall be required to pay in respect of such audits and inspections in any calendar year shall not exceed $75,000 in the aggregate under this Agreement and the Affiliated Credit Agreement; *provided*, *however,* that the restrictions set forth in clauses (a)-(b) shall not apply during the existence and continuance of any Event of Default. No notice shall be required during the existence and continuance of any Default or any time during which Agent reasonably believes a Default exists.

Section 4.7 Use of Proceeds. Borrowers shall use the proceeds of the Loans solely for (a) transaction fees incurred in connection with the Financing Documents and (b) for working capital needs of Borrowers and their Subsidiaries. No portion of the proceeds of the Loans will be used for family, personal, agricultural or household use.

Section 4.8 [Reserved].

Section 4.9 Notices of Material Contracts, Litigation and Defaults.

(a) (i) Borrowers shall promptly (but in any event within five (5) Business Days) provide written notice to Agent after any Borrower or Subsidiary receives or delivers any notice of termination or default or similar notice in connection with any Material Contract, and (ii) Borrower shall provide, together with the next quarterly Compliance Certificate required to be delivered under this Agreement, written notice to Agent after any Borrower or Subsidiary (1) executes and delivers any material amendment, consent, waiver or other modification to any Material Contract or (2) enters into new Material Contract and shall, upon request of Agent, promptly provide Agent a copy thereof.

(b) Borrowers shall promptly (but in any event within ten (10) days) provide written notice to Agent (i) of any litigation or governmental proceedings pending or threatened (in each case, in writing) against Borrowers or other Credit Party which if determined adversely to such Borrower or other Credit Party, would reasonably be expected to have a Material Adverse Effect with respect to such Borrower or any other Credit Party or which in any manner calls into question the validity or enforceability of any Financing Document, (ii) of any strikes or other labor disputes pending or, to any Borrower's knowledge, threatened in writing against any Credit Party, if such strike or labor dispute would reasonably be expected to have a Material Adverse Effect, (iii) if there is any infringement or written claim of infringement by any other Person with respect to any Intellectual Property rights of any Credit Party that could reasonably be expected to have a Material Adverse Effect, or if there is any claim by any other Person that any Credit Party in the conduct of its business is infringing on the Intellectual Property rights of others that could reasonably be expected to have a Material Adverse Effect, (iv) of all returns, recoveries, disputes and claims that involve more than $1,000,000, and (v) any change of Borrower's chief executive officer or chief financial officer. Borrowers shall promptly (but in any event within five (5) Business Days) provide written notice to Agent upon any Borrower becoming aware of the existence of any Default or Event of Default. Borrowers represent and warrant that Schedule 4.9 sets forth a complete list of all matters existing as of the Closing Date for which notice could be required under this Section and all litigation or governmental proceedings pending or threatened (in writing) against Borrowers or other Credit Party as of the Closing Date.

(c) Borrower shall, and shall cause each Credit Party, to provide such further information (including copies of such documentation) as Agent or any Lender shall reasonably request with respect to any of the events or notices described in clauses (a) and (b) above and any notice given in respect of a Regulatory Reporting Event. From the date hereof and continuing through the termination of this Agreement, Borrower shall, and shall cause each Credit Party to, use commercially reasonable efforts to make available to Agent and each Lender, without expense to Agent or any Lender, each Credit Party's officers, employees and agents and books, to the extent that Agent or any Lender may deem them reasonably necessary to prosecute or defend any third-party suit or proceeding instituted by or against Agent or any Lender with respect to any Collateral or relating to a Credit Party.

Section 4.10 Hazardous Materials; Remediation.

(a) If any release or disposal of Hazardous Materials shall occur or shall have occurred on any real property or any other assets of any Borrower or any other Credit Party, such Borrower will cause, or direct the applicable Credit Party to cause, the prompt containment and removal of such Hazardous Materials and the remediation of such real property or other assets as is necessary to comply with all Environmental Laws and to preserve the value of such real property or other assets. Without limiting the generality of the foregoing, each Borrower shall, and shall cause each other Credit Party to, comply with each Environmental Law requiring the performance at any real property by any Borrower or any other Credit Party of activities in response to the release or threatened release of a Hazardous Material.

(b) Upon reasonable request, Borrowers will provide Agent within thirty (30) days after written demand therefor with a bond, letter of credit or similar financial assurance evidencing to the reasonable satisfaction of Agent that sufficient funds are available to pay the cost of removing, treating and disposing of any Hazardous Materials or Hazardous Materials Contamination and discharging any assessment which may be established on any property as a result thereof, such demand to be made, if at all, upon Agent's reasonable business determination that the failure to remove, treat or dispose of any Hazardous Materials or Hazardous Materials Contamination, or the failure to discharge any such assessment could reasonably be expected to have a Material Adverse Effect.

Section 4.11 Further Assurances.

(a) Each Borrower will, and will cause each Subsidiary to, at its own cost and expense, promptly and duly take, execute, acknowledge and deliver all such further acts, documents and assurances as may from time to time be reasonably necessary or as Agent or the Required Lenders may from time to time reasonably request in order to carry out the intent and purposes of the Financing Documents and the transactions contemplated thereby, including all such actions to (i) establish, create, preserve, protect and perfect a first priority Lien (subject only to the Affiliated Intercreditor Agreement and to Permitted Liens) in favor of Agent for itself and for the benefit of the Lenders on the Collateral (including Collateral acquired after the Original Closing Date), and (ii) unless Agent shall agree otherwise in writing, cause all Subsidiaries of Borrowers to be jointly and severally obligated with the other Borrowers under all covenants and obligations under this Agreement, including the obligation to repay the Obligations.

(b) Upon receipt of an affidavit of an authorized representative of Agent or a Lender as to the loss, theft, destruction or mutilation of any Note or any other Financing Document which is not of public record, and, in the case of any such mutilation, upon surrender and cancellation of such Note or other applicable Financing Document, Borrowers will issue, in lieu thereof, a replacement Note or other applicable Financing Document, dated the date of such lost, stolen, destroyed or mutilated Note or other Financing Document in the same principal amount thereof and otherwise of like tenor.

(c) Upon the request of Agent, Borrowers shall use commercially reasonable efforts to obtain a landlord's agreement or mortgagee agreement, as applicable, from the lessor of each leased property or mortgagee of owned property with respect to its headquarters location and any other business location where Collateral with an aggregate value in excess of $500,000 is stored or located, which agreement or letter shall be reasonably satisfactory in form and substance to Agent. Borrowers shall timely and fully pay and perform its material obligations under all leases and other agreements with respect to each leased location where any Collateral, or any records related thereto, is or may be located.

(d) Borrower shall provide Agent with at least ten (10) Business Days (or such shorter period as Agent may accept in its reasonable discretion) prior written notice of its intention to create (or to the extent permitted under this Agreement, acquire) a new Subsidiary. Upon the formation (or to the extent permitted under this Agreement, acquisition) of a new Subsidiary, Borrowers shall within ten (10) Business Days (i) pledge, have pledged or cause or have caused to be pledged to Agent

pursuant to a pledge agreement in form and substance satisfactory to Agent, all of the outstanding shares of equity interests or other equity interests of such Subsidiary (to the extent not constituting Excluded Property) owned directly or indirectly by any Borrower, along with undated stock or equivalent powers for such certificates, executed in blank; (ii) unless Agent shall agree otherwise in writing, cause the new Subsidiary (other than any Excluded Subsidiary) to take such other actions (including entering into or joining any Security Documents) as are necessary or advisable in the reasonable opinion of Agent in order to grant Agent, acting on behalf of the Lenders, a first priority Lien (subject to the Affiliated Intercreditor Agreement) on all real and personal property (other than Excluded Property) of such Subsidiary in existence as of such date and in all after acquired property, which first priority Liens are required to be granted pursuant to this Agreement; (iii) unless Agent shall agree otherwise in writing, cause such new Subsidiary (other than any Excluded Subsidiary) to either (at the election of Agent) become a Borrower hereunder with joint and several liability for all obligations of Borrowers hereunder and under the other Financing Documents pursuant to a joinder agreement or other similar agreement in form and substance satisfactory to Agent or to become a Guarantor of the obligations of Borrowers hereunder and under the other Financing Documents pursuant to a guaranty and suretyship agreement in form and substance reasonably satisfactory to Agent; and (iv) cause the new Subsidiary to deliver certified copies of such Subsidiary's certificate or articles of incorporation, together with good standing certificates, by-laws (or other operating agreement or governing documents), resolutions of the Board of Directors or other governing body, approving and authorizing the execution and delivery of the Security Documents, incumbency certificates and to execute and/or deliver such other documents and legal opinions or to take such other actions as may be reasonably requested by Agent, in each case, in form and substance reasonably satisfactory to Agent.

Section 4.12 Reserved.

Section 4.13 Power of Attorney. Each of the authorized representatives of Agent is hereby irrevocably made, constituted and appointed the true and lawful attorney for Borrowers (without requiring any of them to act as such) with full power of substitution to do the following, following the occurrence and continuation of an Event of Default: (a) endorse the name of Borrowers upon any and all checks, drafts, money orders, and other instruments for the payment of money that are payable to Borrowers and constitute collections on Borrowers' Accounts; (b) so long as Agent has provided not less than three (3) Business Days' prior written notice to Borrower to perform the same and Borrower has failed to take such action, execute in the name of Borrowers any schedules, assignments, instruments, documents, and statements that Borrowers are obligated to give Agent under this Agreement; (c) take any action Borrowers are required to take under this Agreement; (d) so long as Agent has provided not less than three (3) Business Days' prior written notice to Borrower to perform the same and Borrower has failed to take such action, do such other and further acts and deeds in the name of Borrowers that Agent may deem necessary or desirable to enforce any Account or other Collateral or perfect Agent's security interest or Lien in any Collateral; and (e) do such other and further acts and deeds in the name of Borrowers that Agent may deem necessary or desirable to enforce its rights with regard to any Account or other Collateral. This power of attorney shall be irrevocable and coupled with an interest.

Section 4.14 Reserved.

Section 4.15 Schedule Updates. Borrower shall, in the event of any information in the Schedules (other than Schedules required to be delivered solely on the Closing Date) becoming inaccurate, incomplete or misleading, deliver to Agent, together with the next quarterly Compliance Certificate required to be delivered under this Agreement after such event a proposed update to the Schedules correcting all outdated, inaccurate, incomplete or misleading information; *provided* that updates to Schedule 3.19 shall be required only on such dates as are provided in Section 4.16 and updates to Schedule 4.17 shall be required only on such dates as are required pursuant to Section 4.17(e).

Section 4.16 Intellectual Property and Licensing.

(a) Together with each Compliance Certificate required to be delivered pursuant to Section 4.1 with respect to the months ending on June 30th and December 31st of each year, to the extent (A) Borrower acquires and/or registers any new Registered Intellectual Property, (B) Borrower enters into or becomes bound by any additional in-bound license or sublicense agreement that is material to Borrower's business or any additional exclusive out-bound license or sublicense agreement (excluding agreements for in-bound licenses for (a) off-the-shelf software or services that are commercially available to the public, and (b) open source software), or (C) there occurs (i) any other material change in the registration status of Borrower's Registered Intellectual Property or (ii) any termination of any in-bound license or sublicense agreement that is material to Borrower's business or any exclusive out-bound license or sublicense agreement (excluding agreements for in-bound licenses for (a) off-the-shelf software or services that are commercially available to the public, and (b) open source software) listed on Schedule 3.19, deliver to Agent an updated Schedule 3.19 reflecting such updated information; provided, that in the case of clause (i) above, for the first three quarters of each fiscal year, Borrower shall be required to provide information regarding such new Registered Intellectual Property solely to the extent it is registered in North America.

(b) If Borrower obtains any Registered Intellectual Property, Borrower shall execute such documents and provide such other information (including, without limitation, copies of applications) and take such other actions as Agent shall reasonably request to perfect and maintain a first priority perfected security interest in favor of Agent, for the ratable benefit of Lenders, in such Registered Intellectual Property.

(c) [Reserved].

(d) Borrower shall own, or be licensed to use or otherwise have the right to use, all Material Intangible Assets. Borrower shall cause all Registered Intellectual Property to be duly and properly registered, filed or issued in the appropriate office and jurisdictions for such registrations, filings or issuances, except where the failure to do so would not reasonably be expected to result in a Material Adverse Effect. Borrower shall at all times conduct its business without knowingly infringing any Intellectual Property rights of others. Borrower shall (i) protect, defend and maintain the validity and enforceability of Material Intangible Assets owned by Borrower, (ii) promptly advise Agent in writing if Borrower discovers of material infringements of Material Intangible Assets owned by Borrower by a third party, or if Borrower receives a material written claim of infringement by Borrower on the Intellectual Property rights of others, in each case where such infringement would be reasonably expected to have a Material Adverse Effect; and (iii) not allow any of Material Intangible Assets owned by Borrower to be abandoned, invalidated, forfeited or dedicated to the public or to become unenforceable. Borrower shall not become a party to, nor become bound by, any material license or other agreement with respect to which Borrower is the licensee that prohibits or otherwise restricts Borrower from granting a security interest in Borrower's interest in such license or agreement or other property (other than pursuant to reasonable and customary anti-assignment provisions).

Section 4.17 Regulatory Reporting and Covenants.

(a) Borrowers shall have, and shall ensure that it and each of its Subsidiaries has, each material Permit and other material rights from, and have made all material declarations and filings with, all applicable Governmental Authorities, all self-regulatory authorities and all courts and other tribunals necessary to engage in all material respects in the ownership, management and operation of the business or the assets of any Borrower except where failure to do so would not reasonably be expected to have a Material Adverse Effect. Borrower shall ensure that all Permits are valid and in full force and effect and Borrowers are in material compliance with the terms and conditions of all such Permits, except where failure to be in such compliance or for a Permit to be valid and in full force and effect would not reasonably be expected to have a Material Adverse Effect.

(b) Borrowers will maintain in full force and effect, and free from restrictions, probations, conditions or known conflicts which would materially impair the use or operation of Borrowers' business and assets, all Permits necessary under Healthcare Laws to carry on the business of Borrowers as it is conducted on the Closing Date, except where failure to do so would not reasonably be expected to have a Material Adverse Effect.

(c) If, after the Closing Date, Borrowers determine to sell or market any new Product commercially (excluding for the avoidance of doubt any revisions to the Borrower's existing Products) that could be reasonably expected to generate at least $1,000,000 per year in Net Revenue, Borrowers shall deliver, together with delivery of the next Compliance Certificate, an updated Schedule 4.17 reflecting updates related to such determination (which shall also include a brief description of such Product).

Section 4.18 Board Observation Rights.

Agent and/or its designees (including any Lender) shall have the right, on behalf of itself and/or the other Lenders, to: (a) receive notice of all meetings (both regular and special) of the board of directors (or other comparable body) and/or the equity holders of each Credit Party, and each committee of any such board of directors (or other comparable body) (such notice to be delivered or mailed to Agent as specified in this Agreement at the same time as notice is given to the members of any such board of directors (or other comparable body) and/or committee and/or equity holders); (b) be entitled to attend all such meetings (telephonically or in person, at Agent's or its designee's discretion) in a nonvoting capacity; and (c) receive all notices, information, reports and minutes of meetings, which are furnished (or made available) to the members of any such board of directors (or other comparable body) and/or committee and/or equity holders at the same time and in the same manner as the same is furnished (or made available) to such members. Each Credit Party shall provide Agent or its applicable designees with a copy of any action that is taken by such board of directors (or other comparable body) and/or committee by written consent in lieu of a meeting not later than ten (10) Business Days after it has been signed by a sufficient number of signatories to make it effective. Agent or, as applicable, Agent's designees shall not constitute a member of any such board of directors (or other comparable body) and/or committee and shall not be entitled to vote on any matters presented at meetings of any such board of directors (or other comparable body) and/or committee or to consent to any matter as to which the consent of any such board of directors (or other comparable body) and/or committee shall have been requested. Notwithstanding the foregoing, Agent, and or its designee may be excluded from receiving any such information and materials (or the relevant portions thereof) or from attending such meetings (or the relevant portions thereof) pursuant to this Section 4.18 to avoid a conflict of interest, to protect attorney-client privilege or with respect to highly confidential information.

ARTICLE 5 - NEGATIVE COVENANTS

Each Borrower agrees that, so long as any Credit Exposure exists:

Section 5.1 Debt; Contingent Obligations. No Borrower will, or will permit any Subsidiary to, directly or indirectly, create, incur, assume, guarantee or otherwise become or remain directly or indirectly liable with respect to, any Debt, except for Permitted Debt. No Borrower will, or will permit any Subsidiary to, directly or indirectly, create, assume, incur or suffer to exist any Contingent Obligations, except for Permitted Contingent Obligations.

Section 5.2 Liens. No Borrower will, or will permit any Subsidiary to, directly or indirectly, create, assume or suffer to exist any Lien on any asset now owned or hereafter acquired by it, except for Permitted Liens.

Section 5.3 Distributions. No Borrower will, or will permit any Subsidiary to, directly or indirectly, declare, order, pay, make or set apart any sum for any Distribution, except for Permitted Distributions.

Section 5.4 Restrictive Agreements. No Borrower will, or will permit any Subsidiary to, directly or indirectly (a) enter into or assume any agreement (other than the Financing Documents, the Affiliated Financing Documents, and any agreements for purchase money debt permitted under clause (c) of the definition of Permitted Debt) prohibiting the creation or assumption of any Lien upon its properties or assets, whether now owned or hereafter acquired, or (b) create or otherwise cause or suffer to exist or become effective any consensual encumbrance or restriction of any kind (except as provided by the Financing Documents and the Affiliated Financing Documents) on the ability of any Subsidiary to: (i) pay or make Distributions to any Borrower or any Subsidiary; (ii) pay any Debt owed to any Borrower or any Subsidiary; (iii) make loans or advances to any Borrower or any Subsidiary; or (iv) transfer any of its property or assets to any Borrower or any Subsidiary.

Section 5.5 Payments and Modifications of Subordinated Debt. No Borrower will, or will permit any Subsidiary to, directly or indirectly (a) declare, pay, make or set aside any amount for payment in respect of Subordinated Debt, except for payments made in full compliance with and expressly permitted under the Subordination Agreement, (b) amend or otherwise modify the terms of any Subordinated Debt, except for amendments or modifications made in full compliance with the Subordination Agreement, (c) declare, pay, make or set aside any amount for payment in respect of any Debt hereinafter incurred that, by its terms, or by separate agreement, is subordinated to the Obligations, except for payments made in full compliance with and expressly permitted under the subordination provisions applicable thereto, or (d) amend or otherwise modify the terms of any such Subordinated Debt in a manner prohibited by the applicable Subordination Agreement.

Section 5.6 Consolidations, Mergers and Sales of Assets. No Borrower will, or will permit any Subsidiary to, directly or indirectly (a) consolidate or merge or amalgamate with or into any other Person other than (i) consolidations or mergers among Borrowers so long as a Borrower is the surviving entity and, in any consolidation or merger involving Sight Sciences, Sight Sciences is the surviving entity, (ii) consolidations or mergers among a Guarantor and a Borrower so long as the Borrower is the surviving entity, (iii) consolidations or mergers among Guarantors where a Guarantor is the surviving entity, and (iv) consolidations or mergers among Subsidiaries that are not Credit Parties, or (b) consummate any Asset Dispositions other than Permitted Asset Dispositions.

Section 5.7 Purchase of Assets, Investments. No Borrower will, or will permit any Subsidiary to, directly or indirectly (a) acquire, make or own any Investment other than Permitted Investments, (b) without limiting clause (a), acquire any assets other than in the Ordinary Course of Business or as permitted under the definition of Permitted Investments; or (c) engage in any joint venture or partnership with any other Person other than as permitted by clause (m) of Permitted Investment. Without limiting the foregoing, no Credit Party shall, nor will any Credit Party permit any Subsidiary to, purchase or carry Margin Stock.

Section 5.8 Transactions with Affiliates. No Borrower will, or will permit any Subsidiary to, directly or indirectly, enter into or permit to exist any transaction (including the purchase, sale, lease or exchange of any property or the rendering of any service) with any Affiliate of any Borrower except for (a) transactions otherwise disclosed on Schedule 5.8 on the Closing Date, (b) Permitted Distributions, (c) transactions among the Credit Parties and their Subsidiaries that are expressly permitted by the Financing Documents, (d) customary indemnification arrangements and normal and reasonable compensation (including equity-based compensation), benefits and reimbursement of expenses of, and other employment arrangements with, employees, officers and directors in the Ordinary Course of Business, (e) debt and equity financing transactions otherwise permitted pursuant to the terms of this Agreement and entered into with Affiliates on commercially reasonable terms approved by the applicable Borrower's or Subsidiary's board of directors, and (f) transactions entered into and which contain terms that are no less favorable to the applicable Borrower or any Subsidiary, as the case may be, than those which might be obtained from a third party not an Affiliate of any Credit Party.

Section 5.9 Modification of Organizational Documents. No Borrower will, or will permit any Subsidiary to, directly or indirectly, amend or otherwise modify any Organizational Documents of such Person, except for Permitted Modifications.

Section 5.10 Modification of Certain Agreements. No Borrower will, or will permit any Subsidiary to, directly or indirectly, amend or otherwise modify any Material Contract, which amendment or modification in any case: (i) is contrary to the terms of this Agreement or any other Financing Document; (ii) could reasonably be expected to materially adversely effect the rights, interests or privileges of Agent or the Lenders or their ability to enforce the same; or (iii) without the prior written consent of Agent, amend or otherwise modify any Affiliated Financing Document as required pursuant to the pursuant to the Affiliated Intercreditor Agreement.

Section 5.11 Conduct of Business. No Borrower will, or will permit any Subsidiary to, directly or indirectly, (a) engage in any line of business other than those businesses engaged in on the Closing Date and described on Schedule 5.11 and businesses reasonably related or complimentary thereto, or (b) other than in the Ordinary Course of Business, change its normal billing payment and reimbursement policies and procedures with respect to its Accounts (including, without limitation, the amount and timing of finance charges, fees and write-offs).

Section 5.12 Reserved.

Section 5.13 Limitation on Sale and Leaseback Transactions. No Borrower will, or will permit any Subsidiary to, directly or indirectly, enter into any arrangement with any Person whereby, in a substantially contemporaneous transaction, any Borrower or any Subsidiaries sells or transfers all or substantially all of its right, title and interest in an asset and, in connection therewith, acquires or leases back the right to use such asset.

Section 5.14 Deposit Accounts and Securities Accounts; Payroll and Benefits Accounts.

(a) No Borrower will, or will permit any Subsidiary to, directly or indirectly, establish any new Deposit Account or Securities Account without prior written notice to Agent, and unless Agent, such Borrower or such Subsidiary and the bank, financial institution or securities intermediary at which the account is to be opened enter into a Deposit Account Control Agreement or Securities Account Control Agreement prior to or concurrently with the establishment of such Deposit Account or Securities Account. Without limiting the foregoing, except for Excluded Accounts, no Borrower will permit any Deposit Account or Securities Account of any Credit Party to exist unless such Deposit Account or Securities Account is subject to a Deposit Account Control Agreement or Securities Account Control Agreement, as applicable.

(b) Borrowers represent and warrant that Schedule 5.14 lists all of the Deposit Accounts and Securities Accounts of each Borrower as of the Closing Date and on each other date such schedule is required to be updated pursuant to Section 4.15. The provisions of this Section 5.14 requiring Deposit Account Control Agreements shall not apply to (i) Deposit Accounts exclusively used for payroll, payroll taxes and other employee wage and benefit payments to or for the benefit of Borrowers' employees and identified to Agent by Borrowers as such, (ii) other petty cash deposit accounts holding deposits in an amount not in excess of $100,000 in the aggregate with respect to all such deposit accounts, (iii) segregated Deposit Accounts holding only cash and cash equivalents in an amount that is necessary to secure the L/C Obligations outstanding at such time and, in any event, not containing cash or cash equivalents greater than an amount equal to 105% of the outstanding LC Obligations at any time and (iv) Deposit Accounts of any Excluded Subsidiary in each case, subject to the restrictions of Section 5.18 (clauses (i)-(iv), collectively, "**Excluded Accounts**").

(c) At all times that any Obligations or Affiliated Obligations remain outstanding, Borrower shall maintain one or more separate Deposit Accounts to hold any and all amounts to be used for payroll, payroll taxes and other employee wage and benefit payments, and shall not commingle any monies allocated for such purposes with funds in any other Deposit Account; *provided, however*, that the aggregate balance in such accounts does not exceed the amount necessary to make the next two (2) immediately succeeding payroll, payroll tax or benefit payments (or such minimum amounts as may be required by any requirement of Law with respect to such accounts).

Section 5.15 Compliance with Anti-Terrorism Laws. Agent hereby notifies Borrowers that pursuant to the requirements of Anti-Terrorism Laws, and Agent's policies and practices, Agent is required to obtain, verify and record certain information and documentation that identifies Borrowers and their principals, which information includes the name and address of each Borrower and its principals and such other information that will allow Agent to identify such party in accordance with Anti-Terrorism Laws. No Borrower will, or will permit any Subsidiary to, directly or indirectly, knowingly enter into any contracts or other agreements with any Blocked Person or any Person listed on the OFAC Lists. Each Borrower shall immediately notify Agent if such Borrower has knowledge that any Borrower, any additional Credit Party or any of their respective Affiliates or agents acting or benefiting in any capacity in connection with the transactions contemplated by this Agreement is or becomes a Blocked Person or (a) is convicted on, (b) pleads nolo contendere to, (c) is indicted on, or (d) is arraigned and held over on charges involving money laundering or predicate crimes to money laundering. No Borrower will, or will permit any Subsidiary to, directly or indirectly, (i) conduct any business or engage in any transaction or dealing with any Blocked Person, including, without limitation, the making or receiving of any contribution of funds, goods or services to or for the benefit of any Blocked Person, (ii) deal in, or otherwise engage in any transaction relating to, any property or interests in property blocked pursuant to Executive Order No. 13224, any similar executive order or other Anti-Terrorism Law, or (iii) engage in or conspire 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 Executive Order No. 13224 or other Anti-Terrorism Law.

Section 5.16 Change in Accounting. No Borrower shall, and no Borrower shall suffer or permit any of its Subsidiaries to, without the prior written consent of Agent, (i) make any significant change in accounting treatment or reporting practices, except as required by GAAP or (ii) change the fiscal year or method for determining fiscal quarters of any Credit Party or of any consolidated Subsidiary of any Credit Party.

Section 5.17 [Reserved].

Section 5.18 Excluded Subsidiaries; Joint Ventures.

(a) Borrowers shall not, at any time, permit the aggregate amount of cash and cash equivalents held by Excluded Subsidiaries (collectively) to exceed ten percent (10%) of the Borrower Consolidated Unrestricted Cash at such time.

(b) No Credit Party shall make any Asset Disposition to or Investment in any Excluded Subsidiary or any joint venture entity other than Investments of cash and Cash Equivalents permitted to be made pursuant to the definition of "Permitted Investment".

(c) No Borrowers will permit any Excluded Subsidiary or any other entity which is not a Credit Party to commingle any of its assets (including any bank accounts, cash or cash equivalents) with the assets of a Credit Party.

ARTICLE 6 - FINANCIAL COVENANTS

Section 6.1 Minimum Net Revenue. Borrower shall not permit its consolidated Net Revenue for any Defined Period, as tested monthly on the last day of the applicable Defined Period (each such date, a "**Testing Date**"), to be less than the minimum amount set forth on Schedule 6.1 for such Testing Date. A breach of a financial covenant contained in this Section 6.1 shall be deemed to have occurred as of any date of determination by Agent or as of the last day of any specified Defined Period, regardless of when the financial statements reflecting such breach are delivered to Agent.

Section 6.2 Evidence of Compliance. Borrowers shall furnish to Agent, as required by Section 4.1, a Compliance Certificate as evidence of (x) the monthly cash and cash equivalents of Borrowers and Borrowers and their Consolidated Subsidiaries, (y) as applicable, of Borrowers' compliance with the covenants in this Article, and (z) that no Event of Default specified in this Article has occurred and is continuing. The Compliance Certificate shall include, without limitation, (a) a statement and report, in form and substance reasonably satisfactory to Agent, detailing Borrowers' calculations, and (b) if requested by Agent, back-up documentation (including, without limitation, bank statements, invoices, receipts and other evidence of costs incurred during such month as Agent shall reasonably require) evidencing the propriety of the calculations.

ARTICLE 7 - CONDITIONS

Section 7.1 Conditions to Closing. The obligation of each Lender to make the initial Loans on the Closing Date shall be subject to the receipt by Agent of each agreement, document and instrument set forth on the closing checklist prepared by Agent or its counsel, each in form and substance satisfactory to Agent, and such other closing deliverables reasonably requested by Agent and Lenders, and to the satisfaction of the following conditions precedent, each to the reasonable satisfaction of Agent and Lenders:

(a) the receipt by Agent of executed counterparts of this Agreement, the other Financing Documents and the Affiliated Financing Documents;

(b) the payment of all fees, expenses and other amounts due and payable under each Financing Document; and

(c) since December 31, 2019, the absence of any Material Adverse Effect.

Each Lender, by delivering its signature page to this Agreement, shall be deemed to have acknowledged receipt of, and consented to and approved, each Financing Document, each additional Operative Document and each other document, agreement and/or instrument required to be approved by Agent, Required Lenders or Lenders, as applicable, on the Closing Date.

Section 7.2 Conditions to Each Loan. The obligation of the Lenders to make a Loan or an advance in respect of any Loan (including the initial Loans), is subject to the satisfaction of the following additional conditions:

(a) receipt by Agent of a Notice of Borrowing;

(b) the fact that, immediately before and after such advance or issuance, no Default or Event of Default shall have occurred and be continuing;

(c) the fact that the representations and warranties of each Credit Party contained in the Financing Documents shall be true, correct and complete in all material respects on and as of the date of such borrowing, except to the extent that any such representation or warranty relates to 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*, *however*, in each case, such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof; and

(d) the absence of any fact, event, or circumstance that would reasonably be expected to result in a Material Adverse Effect.

Each giving of a Notice of Borrowing hereunder and each acceptance by any Borrower of the proceeds of any Loan made hereunder shall be deemed to be (y) a representation and warranty by each Borrower on the date of such notice or acceptance as to the facts specified in this Section, and (z) a restatement by each Borrower that each and every one of the representations made by it in any of the Financing Documents is true and correct as of such date in all material respects (except to the extent that such representations and warranties expressly relate solely to an earlier date), *provided* that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof.

Section 7.3 Searches. Before the Closing Date, and thereafter (as and when determined by Agent in its reasonable discretion), Agent shall have the right to perform, all at Borrowers' expense, the searches described in clauses (a), (b), and (c) below against Borrowers and any other Credit Party, the results of which are to be reasonably satisfactory to Agent, which shall be a condition precedent to all advances of Loan proceeds: (a) UCC searches with the Secretary of State of the jurisdiction in which the applicable Person is organized; (b) judgment, pending litigation, federal tax lien, personal property tax lien, and corporate and partnership tax lien searches, in each jurisdiction searched under clause (a) above; and (c) searches of applicable corporate, limited liability company, partnership and related records to confirm the continued existence, organization and good standing of the applicable Person and the exact legal name under which such Person is organized.

Section 7.4 Post-Closing Requirements. Borrowers shall complete each of the post-closing obligations and/or provide to Agent each of the documents, instruments, agreements and information listed on Schedule 7.4 attached hereto on or before the date set forth for each such item thereon (or such later date as Agent may agree in its sole discretion), each of which shall be completed or provided in form and substance reasonably satisfactory to Agent.

ARTICLE 8 – RESERVED

ARTICLE 9 - SECURITY AGREEMENT

Section 9.1 Generally. As security for the payment and performance of the Obligations, and for the payment and performance of all obligations under the Affiliated Financing Documents (if any) and without limiting any other grant of a Lien and security interest in any Security Document, each Borrower hereby assigns, grants and pledges to Agent, for the benefit of itself and Lenders, subject only to the Affiliated Intercreditor Agreement, a continuing first priority Lien on and security interest in, upon, and to the property set forth on Schedule 9.1 attached hereto and made a part hereof.

Section 9.2 Representations and Warranties and Covenants Relating to Collateral.

(a) The security interest granted pursuant to this Agreement constitutes a valid and, to the extent such security interest is required to be perfected by this Agreement and any other Financing Document, continuing perfected security interest in favor of Agent in all Collateral subject, for the following Collateral, to the occurrence of the following: (i) in the case of all Collateral in which a security interest may be perfected by filing a financing statement under the UCC, the completion of the filings and other actions specified on Schedule 9.2(b) (which, in the case of all filings and other documents referred to on such schedule, have been delivered to Agent in completed and duly authorized form), (ii) with respect to any Deposit Account, the execution of Deposit Account Control Agreements, (iii) in the case of letter-of-credit rights that are not supporting obligations of Collateral, the execution of a contractual obligation granting control to Agent over such letter-of-credit rights, (iv) in the case of electronic chattel paper, the completion of all steps necessary to grant control to Agent over such electronic chattel paper, (v) in the case of all certificated stock, debt instruments and investment property, the delivery thereof to Agent of such certificated stock, debt instruments and investment property consisting of instruments and certificates, in each case properly endorsed for transfer to Agent or in blank, (vi) in the case of all investment property not in certificated form, the execution of control agreements with respect to such investment property and (vii) in the case of all other instruments and tangible chattel paper that are not certificated stock, debt instructions or investment property, the delivery thereof to Agent of such instruments and tangible chattel paper. Such security interest shall be prior to all other Liens on the Collateral except for Permitted Liens. Except to the extent not required pursuant to the terms of this Agreement, all actions by each Credit Party necessary or desirable to protect and perfect the Lien granted hereunder on the Collateral have been duly taken.

(b) Schedule 9.2(b) sets forth (i) each chief executive office and principal place of business of each Borrower and each of their respective Subsidiaries, and (ii) all of the addresses (including all warehouses) at which any of the Collateral is located and/or books and records of Borrowers regarding any Collateral are kept, which such Schedule 9.2(b) indicates in each case which Borrower(s) have Collateral and/or books located at such address, and, in the case of any such address not owned by one or more of the Borrowers(s), indicates the nature of such location (e.g., leased business location operated by Borrower(s), third party warehouse, consignment location, processor location, etc.) and the name and address of the third party owning and/or operating such location.

(c) Without limiting the generality of Section 3.2, except as indicated on Schedule 3.19 with respect to any rights of any Borrower as a licensee under any license of Intellectual Property owned by another Person, and except for the filing of financing statements under the UCC, no authorization, approval or other action by, and no notice to or filing with, any Governmental Authority or consent of any other Person is required for (i) the grant by each Borrower to Agent of the security interests and Liens in the Collateral provided for under this Agreement and the other Security Documents (if any), or (ii) the exercise by Agent of its rights and remedies with respect to the Collateral provided for under this Agreement and the other Security Documents or under any applicable Law, including the UCC and neither any such grant of Liens in favor of Agent or exercise of rights by Agent shall violate or cause a default under any agreement between any Borrower and any other Person relating to any such collateral, including any license to which a Borrower is a party, whether as licensor or licensee, with respect to any Intellectual Property, whether owned by such Borrower or any other Person.

(d) As of the Closing Date, except as set forth on Schedule 9.2(d), no Borrower has any ownership interest in any Chattel Paper (as defined in Article 9 of the UCC), letter of credit rights, commercial tort claims, Instruments, documents or investment property (other than equity interests in any Subsidiaries of such Borrower disclosed on Schedule 3.4), and Borrowers shall give notice to Agent promptly (but in any event not later than the delivery by Borrowers of the next Compliance Certificate required pursuant to Section 4.1 above for the last month of a fiscal quarter) upon the acquisition by any Borrower of any such Chattel Paper, letter of credit rights, commercial tort claims, Instruments, documents, investment property. Subject to the terms of the Affiliated Intercreditor Agreement, no Person other than Agent or (if applicable) any Lender has "control" (as defined in Article 9 of the UCC) over any Deposit Account (other than any Excluded Account), investment property (including Securities Accounts and commodities account), letter of credit rights or electronic chattel paper in which any Borrower has any interest (except for such control arising by operation of law in favor of any bank or securities intermediary or commodities intermediary with whom any Deposit Account, Securities Account or commodities account of Borrowers is maintained).

(e) Borrowers shall not, and shall not permit any Credit Party to, take any of the following actions or make any of the following changes unless Borrowers have given at least ten (10) Business Days prior written notice to Agent of Borrowers' intention to take any such action (which such written notice shall include an updated version of any Schedule impacted by such change) and have executed any and all documents, instruments and agreements and taken any other actions which Agent may reasonably request after receiving such written notice in order to protect and preserve the Liens, rights and remedies of Agent with respect to the Collateral: (i) change the legal name or organizational identification number of any Borrower as it appears in official filings in the jurisdiction of its organization, (ii) change the jurisdiction of incorporation or formation of any Borrower or Credit Party or allow any Borrower or Credit Party to designate any jurisdiction as an additional jurisdiction of incorporation for such Borrower or Credit Party, or change the type of entity that it is; *provided* that in no event shall a Borrower organized under the laws of the United States or any state thereof be reorganized under the laws of a jurisdictions other than the United States or any state thereof, or (iii) change its chief executive office, principal place of business, or the location of its books and records or move any Collateral to or place any Collateral with an aggregate value in excess of $500,000 on any location that is not then listed on the Schedules and/or establish any business location at any location that is not then listed on the Schedules.

(f) Borrowers shall not adjust, settle or compromise the amount or payment of any Account, or release wholly or partly any Account Debtor, or allow any credit or discount thereon (other than adjustments, settlements, compromises, credits and discounts in the Ordinary Course of Business, made while no Event of Default exists and in amounts which are not material with respect to the Account) without the prior written consent of Agent. Without limiting the generality of this Agreement or any other provisions of any of the Financing Documents relating to the rights of Agent after the occurrence and during the continuance of an Event of Default, Agent shall have the right at any time after the occurrence and during the continuance of an Event of Default to: (i) exercise the rights of Borrowers with respect to the obligation of any Account Debtor to make payment or otherwise render performance to Borrowers and with respect to any property that secures the obligations of any Account Debtor or any other Person obligated on the Collateral, and (ii) adjust, settle or compromise the amount or payment of such Accounts.

(g) Without limiting the generality of Sections 9.2(c) and 9.2(e):

(i) Subject to the terms and conditions of the Affiliated Intercreditor Agreement, Borrowers shall deliver to Agent all tangible Chattel Paper and all Instruments and documents owned by any Borrower and constituting part of the Collateral with an aggregate value in excess of $1,000,000 duly endorsed and accompanied by duly executed instruments of transfer or assignment, all in form and substance reasonably satisfactory to Agent. Borrowers shall provide Agent with "control" (as defined in Article 9 of the UCC) of all electronic Chattel Paper with a value in excess of $1,000,000 in the aggregate for all such electronic Chattel Paper owned by any Borrower and constituting part of the Collateral by having Agent identified as the assignee on the records pertaining to the single authoritative copy thereof and otherwise complying with the applicable elements of control set forth in the UCC. Borrowers also shall deliver to Agent all security agreements securing any such Chattel Paper and securing any such Instruments. Borrowers shall comply with all the provisions of Section 5.14 with respect to the Deposit Accounts and Securities Accounts of Borrowers.

(ii) Borrowers shall deliver to Agent all letters of credit with a face value in excess of $1,000,000 on which any Borrower is the beneficiary and which give rise to letter of credit rights owned by such Borrower which constitute part of the Collateral in each case duly endorsed and accompanied by duly executed instruments of transfer or assignment, all in form and substance satisfactory to Agent. Borrowers shall take any and all actions as may be necessary or desirable, or that Agent may request, from time to time, to cause Agent to obtain exclusive "control" (as defined in Article 9 of the UCC) of any such letter of credit rights in a manner acceptable to Agent.

(iii) Borrowers shall promptly notify Agent upon any Borrower becoming aware that it has any interests in any commercial tort claim in excess of $1,000,000 that constitutes part of the Collateral, which such notice shall include descriptions of the events and circumstances giving rise to such commercial tort claim and the dates such events and circumstances occurred, the potential defendants with respect such commercial tort claim and any court proceedings that have been instituted with respect to such commercial tort claims, and Borrowers shall, with respect to any such commercial tort claim, execute and deliver to Agent such documents as Agent shall request to perfect, preserve or protect the Liens, rights and remedies of Agent with respect to any such commercial tort claim.

(iv) Without limiting Section 4.11(c), except for Accounts and Inventory in an aggregate amount of $1,000,000, no Accounts or Inventory or other Collateral and no books and records and/or software and equipment of the Borrowers regarding any of the Collateral shall at any time be located at any leased location or in the possession or control of any warehouse, consignee, bailee or any of Borrowers' agents or processors, without prior written notice to Agent

and Borrowers' use of commercially reasonable efforts to obtain receipt by Agent, of warehouse receipts, consignment agreements, landlord waivers, or bailee waivers (as applicable) satisfactory to Agent prior to the commencement of such lease or of such possession or control (as applicable). Borrower has notified Agent that Collateral and books and records are currently located at the locations set forth on Schedule 9.2(b). Borrowers shall, upon the reasonable request of Agent, notify any such landlord, warehouse, consignee, bailee, agent or processor of the security interests and Liens in favor of Agent created pursuant to this Agreement and the Security Documents, instruct such Person to hold all such Collateral for Agent's account subject to Agent's instructions and, without limiting the first sentence of this clause (iv), shall use commercially reasonable efforts to obtain an acknowledgement from such Person that such Person holds the Collateral for Agent's benefit.

(v) Borrowers shall cause all equipment and other tangible Personal Property other than Inventory to be maintained and preserved in the same condition, repair and in working order as when new, ordinary wear and tear excepted, and shall promptly make or cause to be made all repairs, replacements and other improvements in connection therewith that are necessary to such end. Upon request of Agent, Borrowers shall promptly deliver to Agent any and all certificates of title, applications for title or similar evidence of ownership of all such tangible Personal Property with a value greater than $1,000,000 in the aggregate and shall cause Agent to be named as lienholder on any such certificate of title or other evidence of ownership. Borrowers shall not permit any such tangible Personal Property to become fixtures to real estate unless such real estate is subject to a Lien in favor of Agent.

(vi) Each Borrower hereby authorizes Agent to file without the signature of such Borrower one or more UCC financing statements relating to liens on personal property relating to all or any part of the Collateral, which financing statements may list Agent as the "secured party" and such Borrower as the "debtor" and which describe and indicate the collateral covered thereby as all or any part of the Collateral under the Financing Documents (including an indication of the collateral covered by any such financing statement as "all assets" of such Borrower now owned or hereafter acquired), in such jurisdictions as Agent from time to time determines are appropriate, and to file without the signature of such Borrower any continuations of or corrective amendments to any such financing statements, in any such case in order for Agent to perfect, preserve or protect the Liens, rights and remedies of Agent with respect to the Collateral. Each Borrower also ratifies its authorization for Agent to have filed in any jurisdiction any initial financing statements or amendments thereto if filed prior to the date hereof.

(vii) As of the Closing Date, no Borrower holds, and after the Closing Date Borrowers shall promptly notify Agent in writing upon creation or acquisition by any Borrower of, any Collateral which constitutes a claim against any Governmental Authority, including, without limitation, the federal government of the United States or any instrumentality or agency thereof, the assignment of which claim is restricted by any applicable Law, including, without limitation, the federal Assignment of Claims Act and any other comparable Law. Upon the reasonable request of Agent, Borrowers shall take such steps as may be necessary, or that Agent may reasonably request, to comply with any such applicable Law.

(viii) Borrowers shall furnish to Agent from time to time any statements and schedules further identifying or describing the Collateral and any other information, reports or evidence concerning the Collateral as Agent may reasonably request from time to time.

(h) Any obligation of any Credit Party in this Agreement that requires (or any representation or warranty hereunder to the extent that it would have the effect of requiring) delivery of Collateral (including any endorsements related thereto) to, or the possession of Collateral with, Agent shall be deemed to have complied with and satisfied (or, in the case of any representation or warranty hereunder, shall be deemed to be true) if such delivery of Collateral is made to, or such possession of Collateral is with, the Affiliated Financing Agent.

ARTICLE 10 - EVENTS OF DEFAULT

Section 10.1 Events of Default. For purposes of the Financing Documents, the occurrence of any of the following conditions and/or events, whether voluntary or involuntary, by operation of law or otherwise, shall constitute an "**Event of Default**":

(a) (i) any Credit Party shall fail to pay when due (x) any scheduled principal, interest, premium or fee under any Financing Document or (y) any other amount payable under any Financing Document within three (3) Business Days after such amount is due or declared due in accordance with the terms of this Agreement or under any Financing Document or (ii) there shall occur any default in the performance of or compliance with any of the following sections or articles of this Agreement: Section 4.1, Section 4.2(b), Section 4.4(c), Section 4.6, Section 4.9, Section 4.16, Section 4.17, Section 4.18, Article 5, Article 6, or Section 7.4;

(b) any Credit Party defaults in the performance of or compliance with any term contained in this Agreement or in any other Financing Document (other than occurrences described in other provisions of this Section 10.1 for which a different grace or cure period is specified or for which no grace or cure period is specified and thereby constitute immediate Events of Default) and such default is not remedied by the Credit Party or waived by Agent within thirty (30) days after the earlier of (i) receipt by Borrower Representative of notice from Agent or Required Lenders of such default, or (ii) actual knowledge of any Borrower or any other Credit Party of such default;

(c) any representation, warranty, certification or statement made by any Credit Party or any other Person in any Financing Document or in any certificate, financial statement or other document delivered pursuant to any Financing Document is incorrect in any respect (or in any material respect if such representation, warranty, certification or statement is not by its terms already qualified as to materiality) when made (or deemed made);

(d) (i) failure of any Credit Party to pay when due or within any applicable grace period any principal, interest or other amount on Debt (other than the Loans), or the occurrence of any breach, default, condition or event with respect to any Debt (other than the Loans), if the effect of such failure or occurrence is to cause or to permit the holder or holders of any such Debt, or to cause, Debt or other liabilities having an individual principal amount in excess of $1,000,000 or having an aggregate principal amount in excess of $1,000,000 to become or be declared due prior to its stated maturity, or (ii) the occurrence of any breach or default under any terms or provisions of any Subordinated Debt Document or under any agreement subordinating the Subordinated Debt to all or any portion of the Obligations or the occurrence of any event requiring the prepayment of any Subordinated Debt;

(e) any Credit Party or any Subsidiary of a Borrower shall commence a voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to itself or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its property, or shall consent to any such relief or to the appointment of or taking possession by any such official in an involuntary case or other proceeding commenced against it, or shall make a general assignment for the benefit of creditors, or shall fail generally to pay its debts as they become due, or shall take any corporate action to authorize any of the foregoing;

(f) an involuntary case or other proceeding shall be commenced against any Credit Party or any Subsidiary of a Borrower seeking liquidation, reorganization or other relief with respect to it or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its property, and such involuntary case or other proceeding shall remain undismissed and unstayed for a period of sixty (60) days; or an order for relief shall be entered against any Credit Party or any Subsidiary of a Borrower under applicable federal bankruptcy, insolvency or other similar law in respect of (i) bankruptcy, liquidation, winding-up, dissolution or suspension of general operations, (ii) composition, rescheduling, reorganization, arrangement or readjustment of, or other relief from, or stay of proceedings to enforce, some or all of the debts or obligations, or (iii) possession, foreclosure, seizure or retention, sale or other disposition of, or other proceedings to enforce security over, all or any substantial part of the assets of such Credit Party or Subsidiary;

(g) (i) institution of any steps by any Person to terminate a Pension Plan if as a result of such termination any Credit Party or any member of the Controlled Group could be required to make a contribution to such Pension Plan, or could incur a liability or obligation to such Pension Plan, in excess of $500,000, (ii) a contribution failure occurs with respect to any Pension Plan sufficient to give rise to a Lien under Section 303(k) of ERISA or Section 430(k) of the Code or an event occurs that could reasonably be expected to give rise to a Lien under Section 4068 of ERISA, or (iii) there shall occur any withdrawal or partial withdrawal from a Multiemployer Plan and the withdrawal liability (without unaccrued interest) to Multiemployer Plans as a result of such withdrawal (including any outstanding withdrawal liability that any Credit Party or any member of the Controlled Group have incurred on the date of such withdrawal) exceeds $500,000;

(h) one or more judgments or orders for the payment of money (not paid or fully covered by insurance maintained in accordance with the requirements of this Agreement and as to which the relevant insurance company has not rejected coverage) aggregating in excess of $500,000 shall be rendered against any or all Credit Parties and either (i) enforcement proceedings shall have been commenced by any creditor upon any such judgments or orders, or (ii) there shall be any period of forty-five (45) consecutive days during which a stay of enforcement of any such judgments or orders, by reason of a pending appeal, bond or otherwise, shall not be in effect;

(i) any Lien created by any of the Security Documents shall at any time fail to constitute a valid and perfected Lien on all of the Collateral purported to be encumbered thereby (other than any immaterial portion thereof), subject to no prior or equal Lien except Permitted Liens (other than as a result of any action or inaction of Agent or Required Lenders provided that such action or inaction is not caused by any Credit Parties failure to comply with the terms of the Financing Documents), or any Credit Party shall so assert;

(j) the institution by any Governmental Authority of non-frivolous criminal proceedings against any Credit Party;

(k) an event of default occurs under any Guarantee of any portion of the Obligations;

(l) any Borrower makes any payment on account of any Debt that has been subordinated to any of the Obligations, other than payments specifically permitted by the terms of such subordination;

(m) if any Borrower is or becomes an entity whose equity is registered with the SEC, and/or is publicly traded on and/or registered with a public securities exchange, such Borrower’s equity fails to remain registered with the SEC in good standing, and/or such equity fails to remain publicly traded on and registered with a public securities exchange;

(n) the occurrence of a Material Adverse Effect;

(o) (i) the voluntary withdrawal or institution of any action or proceeding by the FDA or similar Governmental Authority to order the withdrawal of any Product or Product category from the market or to enjoin Borrower, its Subsidiaries or any representative of Borrower or its Subsidiaries from manufacturing, marketing, selling or distributing any Product or Product category, which, in each case, has had or could reasonably be expected to result in a Material Adverse Effect, (ii) the institution of any action or proceeding by any FDA or any other Governmental Authority to revoke, suspend, reject, withdraw, limit, or restrict any Regulatory Required Permit held by Borrower, its Subsidiaries or any representative of Borrower or its Subsidiaries, which, in each case, has or could reasonably be expected to result in Material Adverse Effect, or (iii) the commencement of any enforcement action against Borrower, its Subsidiaries or any representative of Borrower or its Subsidiaries (with respect to the business of Borrower or its Subsidiaries) by FDA any other Governmental Authority which has or could reasonably be expected to result in a Material Adverse Effect;

(p) the occurrence of any material defaults under or breaches of any Material Contracts (after any applicable grace period contained therein) by any Credit Party, or a Material Contract shall be terminated by a third party or parties party thereto prior to the expiration thereof, or there is a loss of a material right of a Credit Party under any Material Contract to which it is a party, in each case, if the loss of such Material Contract could reasonably be expected to result in a Material Adverse Effect; or

(q) there shall occur any "Event of Default" (as defined in the Affiliated Credit Agreement) under the Affiliated Financing Documents;

(r) the occurrence of a Change in Control; or

(s) any of the Financing Documents shall for any reason fail to constitute the valid and binding agreement of any party thereto, or any Credit Party shall so assert, in each case, unless such Financing Document terminates pursuant to the terms and conditions thereof without any breach or default thereunder by any Credit Party thereto.

All cure periods provided for in this Section 10.1 shall run concurrently with any cure period provided for in any applicable Financing Documents under which the default occurred.

Section 10.2 Acceleration and Suspension or Termination of Term Loan Commitment. Upon the occurrence and during the continuance of an Event of Default, Agent may, and shall if requested by Required Lenders, (a) by notice to Borrower Representative suspend or terminate the Term Loan Commitment and the obligations of Agent and the Lenders with respect thereto, in whole or in part (and, if in part, each Lender's Term Loan Commitment shall be reduced in accordance with its Pro Rata Share), and/or (b) by notice to Borrower Representative declare all or any portion of the Obligations to be, and the Obligations shall thereupon become, immediately due and payable, with accrued interest thereon, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by each Borrower and Borrowers will pay the same; *provided*, *however*, that in the case of any of the Events of Default specified in Section 10.1(e) or 10.1(f) above, without any notice to any Borrower or any other act by Agent or the Lenders, the Term Loan Commitment and the obligations of Agent and the Lenders with respect thereto shall thereupon immediately and automatically terminate and all of the Obligations shall become immediately and automatically due and payable without presentment, demand, protest or other notice of any kind, all of which are hereby waived by each Borrower and Borrowers will pay the same.

Section 10.3 UCC Remedies.

(a) Upon the occurrence of and during the continuance of an Event of Default under this Agreement or the other Financing Documents, Agent, in addition to all other rights, options, and remedies granted to Agent under this Agreement or at law or in equity, may exercise, either directly or through one or more assignees or designees, all rights and remedies granted to it under all Financing Documents and under the UCC in effect in the applicable jurisdiction(s) and under any other applicable law; including, without limitation:

(i) the right to take possession of, send notices regarding, and collect directly the Collateral, with or without judicial process;

(ii) the right to (by its own means or with judicial assistance) enter any of Borrowers' premises and take possession of the Collateral, or render it unusable, or to render it usable or saleable, or dispose of the Collateral on such premises in compliance with subsection (iii) below and to take possession of Borrowers' original books and records, to obtain access to Borrowers' data processing equipment, computer hardware and software relating to the Collateral and to use all of the foregoing and the information contained therein in any manner Agent deems appropriate, without any liability for rent, storage, utilities, or other sums, and Borrowers shall not resist or interfere with such action (if Borrowers' books and records are prepared or maintained by an accounting service, contractor or other third party agent, Borrowers hereby irrevocably authorize such service, contractor or other agent, upon notice by Agent to such Person that an Event of Default has occurred and is continuing, to deliver to Agent or its designees such books and records, and to follow Agent's instructions with respect to further services to be rendered);

(iii) the right to require Borrowers at Borrowers' expense to assemble all or any part of the Collateral and make it available to Agent at any place designated by Lender;

(iv) the right to notify postal authorities to change the address for delivery of Borrowers' mail to an address designated by Agent and to receive, open and dispose of all mail addressed to any Borrower; and/or

(v) the right to enforce Borrowers' rights against Account Debtors and other obligors, including, without limitation, (i) the right to collect Accounts directly in Agent's own name (as agent for Lenders) and to charge the collection costs and expenses, including attorneys' fees, to Borrowers, and (ii) the right, in the name of Agent or any designee of Agent or Borrowers, to verify the validity, amount or any other matter relating to any Accounts by mail, telephone, telegraph or otherwise, including, without limitation, verification of Borrowers' compliance with applicable Laws. Borrowers shall cooperate fully with Agent in an effort to facilitate and promptly conclude such verification process. Such verification may include contacts between Agent and applicable federal, state and local regulatory authorities having jurisdiction over the Borrowers' affairs, all of which contacts Borrowers hereby irrevocably authorize.

(b) Each Borrower agrees that a notice received by it at least ten (10) days before the time of any intended public sale, or the time after which any private sale or other disposition of the Collateral is to be made, shall be deemed to be reasonable notice of such sale or other disposition. If permitted by applicable law, any perishable Collateral which threatens to speedily decline in value or which is sold on a recognized market may be sold immediately by Agent without prior notice to Borrowers. At any sale or disposition of Collateral, Agent may (to the extent permitted by applicable law) purchase all or any part of the Collateral, free from any right of redemption by Borrowers, which right is hereby waived and released. Each Borrower covenants and agrees not to interfere with or impose any obstacle to Agent's exercise of its rights and remedies with respect to the Collateral. Agent shall have no obligation to clean-up or otherwise prepare the Collateral for sale. Agent may comply with any applicable state or federal law requirements in connection with a disposition of the Collateral and compliance will not be considered to adversely affect the commercial reasonableness of any sale of the Collateral. Agent may sell the Collateral without giving any warranties as to the Collateral. Agent may specifically disclaim any warranties of title or the like. This procedure will not be considered to adversely affect the commercial reasonableness of any sale of the Collateral. If Agent sells any of the Collateral upon credit, Borrowers will be credited only with payments actually made by the purchaser, received by Agent and applied to the indebtedness of the purchaser. In the event the purchaser fails to pay for the Collateral, Agent may resell the Collateral and Borrowers shall be credited with the proceeds of the sale. Borrowers shall remain liable for any deficiency if the proceeds of any sale or disposition of the Collateral are insufficient to pay all Obligations.

(c) Without restricting the generality of the foregoing and for the purposes aforesaid, upon the occurrence and during the continuance of an Event of Default, each Borrower hereby appoints and constitutes Agent its lawful attorney-in-fact with full power of substitution in the Collateral to (i) use unadvanced funds remaining under this Agreement or which may be reserved, escrowed or set aside for any purposes hereunder at any time, or to advance funds in excess of the face amount of the Notes, (ii) pay, settle or compromise all existing bills and claims, which may be Liens or security interests, or to avoid such bills and claims becoming Liens against the Collateral, (iii) execute all applications and certificates in the name of such Borrower and to prosecute and defend all actions or proceedings in connection with the Collateral, and (iv) do any and every act which such Borrower might do in its own behalf; it being understood and agreed that this power of attorney in this subsection (c) shall be a power coupled with an interest and cannot be revoked.

(d) Upon the occurrence and during the continuance of an Event of Default, subject to any right of any third parties and/or any agreement between any Borrower and any third party to the extent not granted or entered into in contravention of the terms of this Agreement, Agent and each Lender is hereby granted a non-exclusive, royalty-free license or other right to use, without charge, Borrowers' labels, rights of use of any name, any other Intellectual Property and advertising matter, and any similar property as it pertains to the Collateral, in each case as owned by a Borrower, in completing production of, advertising for sale, and selling any Collateral and, in connection with Agent's exercise of its rights under this Article, Borrowers' rights under all licenses (whether as licensor or licensee) and all franchise agreements inure to Agent's and each Lender's benefit.

Section 10.4 Reserved.

Section 10.5 Default Rate of Interest. At the election of Agent or Required Lenders, after the occurrence of an Event of Default and for so long as it continues, the Loans and other Obligations shall bear interest at rates that are two percent (2.0%) per annum in excess of the rates otherwise payable under this Agreement; *provided*, *however*, that in the case of any Event of Default specified in Section 10.1(e) or 10.1(f) above, such default rates shall apply immediately and automatically without the need for any election or action of any kind on the part of Agent or any Lender.

Section 10.6 Setoff Rights. During the continuance of any Event of Default, each Lender is hereby authorized by each Borrower at any time or from time to time, with reasonably prompt subsequent notice to such Borrower (any prior or contemporaneous notice being hereby expressly waived) to set off and to appropriate and to apply any and all (a) balances held by such Lender or any of such Lender's Affiliates at any of its offices for the account of such Borrower or any of its Subsidiaries (regardless of whether such balances are then due to such Borrower or its Subsidiaries), and (b) other property at any time held or owing by such Lender to or for the credit or for the account of such Borrower or any of its Subsidiaries, against and on account of any of the Obligations; except that no Lender shall exercise any such right without the prior written consent of Agent. Any Lender exercising a right to set off shall purchase for cash (and the other Lenders shall sell) interests in each of such other Lender's Pro Rata Share of the Obligations as would be necessary to cause all Lenders to share the amount so set off with each other Lender in accordance with their respective Pro Rata Share of the Obligations. Each Borrower agrees, to the fullest extent permitted by law, that any Lender and any of such Lender's Affiliates may exercise its right to set off with respect to the Obligations as provided in this Section 10.6.

Section 10.7 Application of Proceeds.

(a) Notwithstanding anything to the contrary contained in this Agreement, upon the occurrence and during the continuance of an Event of Default, each Borrower irrevocably waives the right to direct the application of any and all payments at any time or times thereafter received by Agent from or on behalf of such Borrower or any Guarantor of all or any part of the Obligations, and, as between Borrowers on the one hand and Agent and Lenders on the other, Agent shall have the continuing and exclusive right to apply and to reapply any and all payments received against the Obligations in such manner as Agent may deem advisable notwithstanding any previous application by Agent.

(b) Following the occurrence and continuance of an Event of Default, but absent the occurrence and continuance of an Acceleration Event, Agent shall apply any and all payments received by Agent in respect of the Obligations, and any and all proceeds of Collateral received by Agent, in such order as Agent may from time to time elect.

(c) Notwithstanding anything to the contrary contained in this Agreement, if an Acceleration Event shall have occurred, and so long as it continues, Agent shall apply any and all payments received by Agent in respect of the Obligations, and any and all proceeds of Collateral received by Agent, in the following order: *first*, to all fees, costs, indemnities, liabilities, obligations and expenses incurred by or owing to Agent with respect to this Agreement, the other Financing Documents or the Collateral; *second*, to all fees, costs, indemnities, liabilities, obligations and expenses incurred by or owing to any Lender with respect to this Agreement, the other Financing Documents or the Collateral; *third*, to accrued and unpaid interest on the Obligations (including any interest which, but for the provisions of the Bankruptcy Code, would have accrued on such amounts); *fourth*, to the principal amount of the Obligations outstanding; and *fifth* to any other indebtedness or obligations of Borrowers owing to Agent or any Lender under the Financing Documents. Any balance remaining shall be delivered to Borrowers or to whomever may be lawfully entitled to receive such balance or as a court of competent jurisdiction may direct. In carrying out the foregoing, (y) amounts received shall be applied in the numerical order provided until exhausted prior to the application to the next succeeding category, and (z) each of the Persons entitled to receive a payment in any particular category shall receive an amount equal to its Pro Rata Share of amounts available to be applied pursuant thereto for such category.

Section 10.8 Waivers.

(a) Except as otherwise provided for in this Agreement and to the fullest extent permitted by applicable law, each Borrower waives: (i) presentment, demand and protest, and notice of presentment, dishonor, intent to accelerate, acceleration, protest, default, nonpayment, maturity, release, compromise, settlement, extension or renewal of any or all Financing Documents, the Notes or any other notes, commercial paper, accounts, contracts, documents, Instruments, Chattel Paper and Guarantees at any time held by Lenders on which any Borrower may in any way be liable, and hereby ratifies and confirms whatever Lenders may do in this regard; (ii) all rights to notice and a hearing prior to Agent's or any Lender's taking possession or control of, or to Agent's or any Lender's replevy, attachment or levy upon, any Collateral or any bond or security which might be required by any court prior to allowing Agent or any Lender to exercise any of its remedies; and (iii) the benefit of all valuation, appraisal and exemption Laws. Each Borrower acknowledges that it has been advised by counsel of its choices and decisions with respect to this Agreement, the other Financing Documents and the transactions evidenced hereby and thereby.

(b) Each Borrower for itself and all its successors and assigns, (i) agrees that its liability shall not be in any manner affected by any indulgence, extension of time, renewal, waiver, or modification granted or consented to by Lender; (ii) consents to any indulgences and all extensions of time, renewals, waivers, or modifications that may be granted by Agent or any Lender with respect to the payment or other provisions of the Financing Documents, and to any substitution, exchange or release of the Collateral, or any part thereof, with or without substitution, and agrees to the addition or release of any Borrower, endorsers, guarantors, or sureties, or whether primarily or secondarily liable, without notice to any other Borrower and without affecting its liability hereunder; (iii) agrees that its liability shall be unconditional and without regard to the liability of any other Borrower, Agent or any Lender for any tax on the indebtedness; and (iv) to the fullest extent permitted by law, expressly waives the benefit of any statute or rule of law or equity now provided, or which may hereafter be provided, which would produce a result contrary to or in conflict with the foregoing.

(c) To the extent that Agent or any Lender may have acquiesced in any noncompliance with any requirements or conditions precedent to the closing of the Loans or to any subsequent disbursement of Loan proceeds, such acquiescence shall not be deemed to constitute a waiver by Agent or any Lender of such requirements with respect to any future disbursements of Loan proceeds and Agent may at any time after such acquiescence require Borrowers to comply with all such requirements. Any forbearance by Agent or Lender in exercising any right or remedy under any of the Financing Documents, or otherwise afforded by applicable law, including any failure to accelerate the maturity date of the Loans, shall not be a waiver of or preclude the exercise of any right or remedy nor shall it serve as a novation of the Notes or as a reinstatement of the Loans or a waiver of such right of acceleration or the right to insist upon strict compliance of the terms of the Financing Documents. Agent's or any Lender's acceptance of payment of any sum secured by any of the Financing Documents after the due date of such payment shall not be a waiver of Agent's and such Lender's right to either require prompt payment when due of all other sums so secured or to declare a default for failure to make prompt payment. The procurement of insurance or the payment of taxes or other Liens or charges by Agent as the result of an Event of Default shall not be a waiver of Agent's right to accelerate the maturity of the Loans, nor shall Agent's receipt of any condemnation awards, insurance proceeds, or damages under this Agreement operate to cure or waive any Credit Party's default in payment of sums secured by any of the Financing Documents.

(d) Without limiting the generality of anything contained in this Agreement or the other Financing Documents, each Borrower agrees that if an Event of Default is continuing (i) Agent and Lenders shall not be subject to any "one action" or "election of remedies" law or rule, and (ii) all Liens and other rights, remedies or privileges provided to Agent or Lenders shall remain in full force and effect until Agent or Lenders have exhausted all remedies against the Collateral and any other properties owned by Borrowers and the Financing Documents and other security instruments or agreements securing the Loans have been foreclosed, sold and/or otherwise realized upon in satisfaction of Borrowers' obligations under the Financing Documents.

(e) Nothing contained herein or in any other Financing Document shall be construed as requiring Agent or any Lender to resort to any part of the Collateral for the satisfaction of any of Borrowers' obligations under the Financing Documents in preference or priority to any other Collateral, and Agent may seek satisfaction out of all of the Collateral or any part thereof, in its absolute discretion in respect of Borrowers' obligations under the Financing Documents. In addition, Agent shall have the right from time to time to partially foreclose upon any Collateral in any manner and for any amounts secured by the Financing Documents then due and payable as determined by Agent in its sole discretion, including, without limitation, the following circumstances: (i) in the event any Borrower defaults beyond any applicable grace period in the payment of one or more scheduled payments of principal and/or interest, Agent may foreclose upon all or any part of the Collateral to recover such delinquent payments, or (ii) in the event Agent elects to accelerate less than the entire outstanding principal balance of the Loans, Agent may foreclose all or any part of the Collateral to recover so much of the principal balance of the Loans as Lender may accelerate and such other sums secured by one or more of the Financing Documents as Agent may elect. Notwithstanding one or more partial foreclosures, any unforeclosed Collateral shall remain subject to the Financing Documents to secure payment of sums secured by the Financing Documents and not previously recovered.

(f) To the fullest extent permitted by law, each Borrower, for itself and its successors and assigns, waives in the event of foreclosure of any or all of the Collateral any equitable right otherwise available to any Credit Party which would require the separate sale of any of the Collateral or require Agent or Lenders to exhaust their remedies against any part of the Collateral before proceeding against any other part of the Collateral; and further in the event of such foreclosure each Borrower does hereby expressly consent to and authorize, at the option of Agent, the foreclosure and sale either separately or together of each part of the Collateral.

Section 10.9 Injunctive Relief. The parties acknowledge and agree that, in the event of a breach or threatened breach of any Credit Party's obligations under any Financing Documents, Agent and Lenders may have no adequate remedy in money damages and, accordingly, shall be entitled to an injunction (including, without limitation, a temporary restraining order, preliminary injunction, writ of attachment, or order compelling an audit) against such breach or threatened breach, including, without limitation, maintaining any cash management and collection procedure described herein. However, no specification in this Agreement of a specific legal or equitable remedy shall be construed as a waiver or prohibition against any other legal or equitable remedies in the event of a breach or threatened breach of any provision of this Agreement. Each Credit Party waives, to the fullest extent permitted by law, the requirement of the posting of any bond in connection with such injunctive relief. By joining in the Financing Documents as a Credit Party, each Credit Party specifically joins in this Section as if this Section were a part of each Financing Document executed by such Credit Party.

Section 10.10 Marshalling; Payments Set Aside. Neither Agent nor any Lender shall be under any obligation to marshal any assets in payment of any or all of the Obligations. To the extent that Borrower makes any payment or Agent enforces its Liens or Agent or any Lender exercises its right of set-off, and such payment or the proceeds of such enforcement or set-off is subsequently invalidated, declared to be fraudulent or preferential, set aside, or required to be repaid by anyone, then to the extent of such recovery, the Obligations or part thereof originally intended to be satisfied, and all Liens, rights and remedies therefor, shall be revived and continued in full force and effect as if such payment had not been made or such enforcement or set-off had not occurred.

ARTICLE 11 - AGENT

Section 11.1 Appointment and Authorization. Each Lender hereby irrevocably appoints and authorizes Agent to enter into each of the Financing Documents to which it is a party (other than this Agreement) on its behalf and to take such actions as Agent on its behalf and to exercise such powers under the Financing Documents as are delegated to Agent by the terms thereof, together with all such powers as are reasonably incidental thereto. Subject to the terms of Section 11.16 and to the terms of the other Financing Documents, Agent is authorized and empowered to amend, modify, or waive any provisions of this Agreement or the other Financing Documents on behalf of Lenders. The provisions of this Article 11 are solely for the benefit of Agent and Lenders and neither any Borrower nor any other Credit Party shall have any rights as a third party beneficiary of any of the provisions hereof other than Section 11.17. In performing its functions and duties under this Agreement, Agent shall act solely as agent of Lenders and does not assume and shall not be deemed to have assumed any obligation toward or relationship of agency or trust with or for any Borrower or any other Credit Party. Agent may perform any of its duties hereunder, or under the Financing Documents, by or through its agents, servicers, trustees, investment managers or employees.

Section 11.2 Agent and Affiliates. Agent shall have the same rights and powers under the Financing Documents as any other Lender and may exercise or refrain from exercising the same as though it were not Agent, and Agent and its Affiliates may lend money to, invest in and generally engage in any kind of business with each Credit Party or Affiliate of any Credit Party as if it were not Agent hereunder.

Section 11.3 Action by Agent. The duties of Agent shall be mechanical and administrative in nature. Agent shall not have by reason of this Agreement a fiduciary relationship in respect of any Lender. Nothing in this Agreement or any of the Financing Documents is intended to or shall be construed to impose upon Agent any obligations in respect of this Agreement or any of the Financing Documents except as expressly set forth herein or therein.

Section 11.4 Consultation with Experts. Agent may consult with legal counsel, independent public accountants and other experts selected by it and shall not be liable for any action taken or omitted to be taken by it in good faith in accordance with the advice of such counsel, accountants or experts.

Section 11.5 Liability of Agent. Neither Agent nor any of its directors, officers, agents, trustees, investment managers, servicers or employees shall be liable to any Lender for any action taken or not taken by it in connection with the Financing Documents, except that Agent shall be liable with respect to its specific duties set forth hereunder but only to the extent of its own gross negligence or willful misconduct in the discharge thereof as determined by a final non-appealable judgment of a court of competent jurisdiction. Neither Agent nor any of its directors, officers, agents, trustees, investment managers, servicers or employees shall be responsible for or have any duty to ascertain, inquire into or verify (a) any statement, warranty or representation made in connection with any Financing Document or any borrowing hereunder; (b) the performance or observance of any of the covenants or agreements specified in any Financing Document; (c) the satisfaction of any condition specified in any Financing Document; (d) the validity, effectiveness, sufficiency or genuineness of any Financing Document, any Lien purported to be created or perfected thereby or any other instrument or writing furnished in connection therewith; (e) the existence or non-existence of any Default or Event of Default; or (f) the financial condition of any Credit Party. Agent shall not incur any liability by acting in reliance upon any notice, consent, certificate, statement, or other writing (which may be a bank wire, facsimile or electronic transmission or similar writing) believed by it to be genuine or to be signed by the proper party or parties. Agent shall not be liable for any apportionment or distribution of payments made by it in good faith and if any such apportionment or distribution is subsequently determined to have been made in error the sole recourse of any Lender to whom payment was due but not made, shall be to recover from other Lenders any payment in excess of the amount to which they are determined to be entitled (and such other Lenders hereby agree to return to such Lender any such erroneous payments received by them).

Section 11.6 Indemnification. Each Lender shall, in accordance with its Pro Rata Share, indemnify Agent (to the extent not reimbursed by Borrowers) upon demand against any cost, expense (including counsel fees and disbursements), claim, demand, action, loss or liability (except such as result from Agent's gross negligence or willful misconduct as determined by a final non-appealable judgment of a court of competent jurisdiction) that Agent may suffer or incur in connection with the Financing Documents or any action taken or omitted by Agent hereunder or thereunder. If any indemnity furnished to Agent for any purpose shall, in the opinion of Agent, be insufficient or become impaired, Agent may call for additional indemnity and cease, or not commence, to do the acts indemnified against even if so directed by Required Lenders until such additional indemnity is furnished.

Section 11.7 Right to Request and Act on Instructions. Agent may at any time request instructions from Lenders with respect to any actions or approvals which by the terms of this Agreement or of any of the Financing Documents Agent is permitted or desires to take or to grant, and if such instructions are promptly requested, Agent shall be absolutely entitled to refrain from taking any action or to withhold any approval and shall not be under any liability whatsoever to any Person for refraining from any action or withholding any approval under any of the Financing Documents until it shall have received such instructions from Required Lenders or all or such other portion of the Lenders as shall be prescribed by this Agreement. Without limiting the foregoing, no Lender shall have any right of action whatsoever against Agent as a result of Agent acting or refraining from acting under this Agreement or any of the other Financing Documents in accordance with the instructions of Required Lenders (or all or such other portion of the Lenders as shall be prescribed by this Agreement) and, notwithstanding the instructions of Required Lenders (or such other applicable portion of the Lenders), Agent shall have no obligation to take any action if it believes, in good faith, that such action would violate applicable Law or exposes Agent to any liability for which it has not received satisfactory indemnification in accordance with the provisions of Section 11.6.

Section 11.8 Credit Decision. Each Lender acknowledges that it has, independently and without reliance upon Agent or any other Lender, and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender also acknowledges that it will, independently and without reliance upon Agent or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking any action under the Financing Documents.

Section 11.9 Collateral Matters. Lenders irrevocably authorize Agent, at its option and in its reasonable discretion, to (a) release any Lien granted to or held by Agent under any Security Document (i) upon termination of the Term Loan Commitment and payment in full of all Obligations (other than contingent indemnification obligations for which no claim has been asserted or the known existence of a claim is reasonably likely to be asserted); or (ii) constituting property sold or disposed of as part of or in connection with any disposition permitted under any Financing Document (it being understood and agreed that Agent may conclusively rely without further inquiry on a certificate of a Responsible Officer as to the sale or other disposition of property being made in full compliance with the provisions of the Financing Documents); and (b) subordinate any Lien granted to or held by Agent under any Security Document to a Permitted Lien that is allowed to have priority over the Liens granted to or held by Agent pursuant to the definition of "Permitted Liens". Upon request by Agent at any time, Lenders will confirm Agent's authority to release and/or subordinate particular types or items of Collateral pursuant to this Section 11.9.

Section 11.10 Agency for Perfection. Agent and each Lender hereby appoint each other Lender as agent for the purpose of perfecting Agent's security interest in assets which, in accordance with the Uniform Commercial Code in any applicable jurisdiction, can be perfected by possession or control. Should any Lender (other than Agent) obtain possession or control of any such assets, such Lender shall

notify Agent thereof, and, promptly upon Agent's request therefor, shall deliver such assets to Agent or in accordance with Agent's instructions or transfer control to Agent in accordance with Agent's instructions. Each Lender agrees that it will not have any right individually to enforce or seek to enforce any Security Document or to realize upon any Collateral for the Loan unless instructed to do so by Agent (or consented to by Agent), it being understood and agreed that such rights and remedies may be exercised only by Agent.

Section 11.11 Notice of Default. Agent shall not be deemed to have knowledge or notice of the occurrence of any Default or Event of Default except with respect to defaults in the payment of principal, interest and fees required to be paid to Agent for the account of Lenders, unless Agent shall have received written notice from a Lender or a Borrower referring to this Agreement, describing such Default or Event of Default and stating that such notice is a "notice of default". Agent will notify each Lender of its receipt of any such notice. Agent shall take such action with respect to such Default or Event of Default as may be requested by Required Lenders (or all or such other portion of the Lenders as shall be prescribed by this Agreement) in accordance with the terms hereof. Unless and until Agent has received any such request, 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 it shall deem advisable or in the best interests of Lenders.

Section 11.12 Assignment by Agent; Resignation of Agent; Successor Agent.

(a) Agent may at any time assign its rights, powers, privileges and duties hereunder to (i) another Lender or an Affiliate of Agent or any Approved Fund, or (ii) any Person to whom Agent, in its capacity as a Lender, has assigned (or will assign, in conjunction with such assignment of agency rights hereunder) 50% or more of its Loan, in each case without the consent of the Lenders or Borrowers. Following any such assignment, Agent shall endeavor to give notice to the Lenders and Borrowers. Failure to give such notice shall not affect such assignment in any way or cause the assignment to be ineffective. An assignment by Agent pursuant to this subsection (a) shall not be deemed a resignation by Agent for purposes of subsection (b) below.

(b) Without limiting the rights of Agent to designate an assignee pursuant to subsection (a) above, Agent may at any time give notice of its resignation to the Lenders and Borrowers. Upon receipt of any such notice of resignation, Required Lenders shall have the right to appoint a successor Agent. If no such successor shall have been so appointed by Required Lenders and shall have accepted such appointment within ten (10) Business Days after the retiring Agent gives notice of its resignation, then the retiring Agent may on behalf of the Lenders, appoint a successor Agent; *provided, however,* that if Agent shall notify Borrowers and the Lenders that no Person has accepted such appointment, then such resignation shall nonetheless become effective in accordance with such notice from Agent that no Person has accepted such appointment and, from and following delivery of such notice, (i) the retiring Agent shall be discharged from its duties and obligations hereunder and under the other Financing Documents, and (ii) all payments, communications and determinations provided to be made by, to or through Agent shall instead be made by or to each Lender directly, until such time as Required Lenders appoint a successor Agent as provided for above in this paragraph.

(c) Upon (i) an assignment permitted by subsection (a) above, or (ii) the acceptance of a successor's appointment as Agent pursuant to subsection (b) above, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or retired) Agent, and the retiring Agent shall be discharged from all of its duties and obligations hereunder and under the other Financing Documents (if not already discharged therefrom as provided above in this paragraph). The fees payable by Borrowers to a successor Agent shall be the same as those payable to its predecessor unless otherwise agreed between Borrowers and such successor. After the retiring Agent's resignation

hereunder and under the other Financing Documents, the provisions of this Article and Section 11.12 shall continue in effect for the benefit of such retiring Agent and its sub-agents in respect of any actions taken or omitted to be taken by any of them while the retiring Agent was acting or was continuing to act as Agent.

Section 11.13 Payment and Sharing of Payment.

(a) Reserved.

(b) Term Loan Payments. Payments of principal, interest and fees in respect of the Term Loans will be settled on the date of receipt if received by Agent on the last Business Day of a month or on the Business Day immediately following the date of receipt if received on any day other than the last Business Day of a month; *provided*, *however*, that, in the case such Lender is a Defaulted Lender, Agent shall be entitled to set off the funding short-fall against that Defaulted Lender's respective share of all payments received from any Borrower.

(c) Return of Payments.

(i) If Agent pays an amount to a Lender under this Agreement in the belief or expectation that a related payment has been or will be received by Agent from a Borrower and such related payment is not received by Agent, then Agent will be entitled to recover such amount from such Lender on demand without setoff, counterclaim or deduction of any kind, together with interest accruing on a daily basis at the Federal Funds Rate.

(ii) If Agent determines at any time that any amount received by Agent under this Agreement must be returned to any Borrower or paid to any other Person pursuant to any insolvency law or otherwise, then, notwithstanding any other term or condition of this Agreement or any other Financing Document, Agent will not be required to distribute any portion thereof to any Lender. In addition, each Lender will repay to Agent on demand any portion of such amount that Agent has distributed to such Lender, together with interest at such rate, if any, as Agent is required to pay to any Borrower or such other Person, without setoff, counterclaim or deduction of any kind.

(d) Defaulted Lenders. The failure of any Defaulted Lender to make any payment required by it hereunder shall not relieve any other Lender of its obligations to make payment, but neither any other Lender nor Agent shall be responsible for the failure of any Defaulted Lender to make any payment required hereunder. Notwithstanding anything set forth herein to the contrary, a Defaulted Lender shall not have any voting or consent rights under or with respect to any Financing Document or constitute a "Lender" (or be included in the calculation of "Required Lenders" hereunder) for any voting or consent rights under or with respect to any Financing Document.

(e) Sharing of Payments. If any Lender shall obtain any payment or other recovery (whether voluntary, involuntary, by application of setoff or otherwise) on account of any Loan (other than pursuant to the terms of Section 2.8(d)) in excess of its Pro Rata Share of payments entitled pursuant to the other provisions of this Section 11.13, such Lender shall purchase from the other Lenders such participations in extensions of credit made by such other Lenders (without recourse, representation or warranty) as shall be necessary to cause such purchasing Lender to share the excess payment or other recovery ratably with each of them; *provided*, *however*, that if all or any portion of the excess payment or other recovery is thereafter required to be returned or otherwise recovered from such purchasing Lender, such portion of such purchase shall be rescinded and each Lender which has sold a participation to the purchasing Lender shall repay to the purchasing Lender the purchase price to the ratable extent of

such return or recovery, without interest. Each Borrower agrees that any Lender so purchasing a participation from another Lender pursuant to this clause (e) may, to the fullest extent permitted by law, exercise all its rights of payment (including pursuant to Section 10.6) with respect to such participation as fully as if such Lender were the direct creditor of Borrowers in the amount of such participation). If under any applicable bankruptcy, insolvency or other similar law, any Lender receives a secured claim in lieu of a setoff to which this clause (e) applies, such Lender shall, to the extent practicable, exercise its rights in respect of such secured claim in a manner consistent with the rights of the Lenders entitled under this clause (e) to share in the benefits of any recovery on such secured claim.

Section 11.14 Right to Perform, Preserve and Protect. If any Credit Party fails to perform any obligation hereunder or under any other Financing Document, Agent itself may, but shall not be obligated to, cause such obligation to be performed at Borrowers' expense. Agent is further authorized by Borrowers and the Lenders to make expenditures from time to time which Agent, in its reasonable business judgment, deems necessary or desirable to (a) preserve or protect the business conducted by Borrowers, the Collateral, or any portion thereof, and/or (b) enhance the likelihood of, or maximize the amount of, repayment of the Loan and other Obligations. Each Borrower hereby agrees to reimburse Agent on demand for any and all costs, liabilities and obligations incurred by Agent pursuant to this Section 11.14. Each Lender hereby agrees to indemnify Agent upon demand for any and all costs, liabilities and obligations incurred by Agent pursuant to this Section 11.14, in accordance with the provisions of Section 11.6.

Section 11.15 Additional Titled Agents. Except for rights and powers, if any, expressly reserved under this Agreement to any bookrunner, arranger or to any titled agent named on the cover page of this Agreement, other than Agent (collectively, the "**Additional Titled Agents**"), and except for obligations, liabilities, duties and responsibilities, if any, expressly assumed under this Agreement by any Additional Titled Agent, no Additional Titled Agent, in such capacity, has any rights, powers, liabilities, duties or responsibilities hereunder or under any of the other Financing Documents. Without limiting the foregoing, no Additional Titled Agent shall have nor be deemed to have a fiduciary relationship with any Lender. At any time that any Lender serving as an Additional Titled Agent shall have transferred to any other Person (other than any Affiliates) all of its interests in the Loan, such Lender shall be deemed to have concurrently resigned as such Additional Titled Agent.

Section 11.16 Amendments and Waivers.

(a) No provision of this Agreement or any other Financing Document may be amended, waived or otherwise modified unless such amendment, waiver or other modification is in writing and is signed or otherwise approved by Borrowers, the Required Lenders and any other Lender to the extent required under Section 11.16(b); *provided*, *however*, the Fee Letter may be amended, or rights or privileges thereunder waived, in a writing executed only by the parties thereto.

(b) In addition to the required signatures under Section 11.16(a), no provision of this Agreement or any other Financing Document may be amended, waived or otherwise modified unless such amendment, waiver or other modification is in writing and is signed or otherwise approved by the following Persons:

(i) if any amendment, waiver or other modification would increase a Lender's funding obligations in respect of any Loan, by such Lender; and/or

(ii) if the rights or duties of Agent are affected thereby, by Agent;

provided, *however*, that, in each of (i) and (ii) above, no such amendment, waiver or other modification shall, unless signed or otherwise approved in writing by all the Lenders directly affected thereby, (A) reduce the principal of, rate of interest on or any fees with respect to any Loan or forgive any principal, interest (other than default interest) or fees (other than late charges) with respect to any Loan; (B) postpone the date fixed for, or waive, any payment (other than any mandatory prepayment pursuant to Section 2.1(a)(ii)) of principal of any Loan, or of interest on any Loan (other than default interest) or any fees provided for hereunder (other than late charges) or postpone the date of termination of any commitment of any Lender hereunder; (C) change the definition of the term Required Lenders or the percentage of Lenders which shall be required for Lenders to take any action hereunder; (D) release all or substantially all of the Collateral, authorize any Borrower to sell or otherwise dispose of all or substantially all of the Collateral, release any Guarantor of all or any portion of the Obligations or its Guarantee obligations with respect thereto, or consent to a transfer of any of the Intellectual Property, except, in each case with respect to this clause (D), as otherwise may be provided in this Agreement or the other Financing Documents (including in connection with any disposition permitted hereunder); (E) amend, waive or otherwise modify this Section 11.16(b) or the definitions of the terms used in this Section 11.16(b) insofar as the definitions affect the substance of this Section 11.16(b); (F) consent to the assignment, delegation or other transfer by any Credit Party of any of its rights and obligations under any Financing Document or release any Borrower of its payment obligations under any Financing Document, except, in each case with respect to this clause (F), pursuant to a merger or consolidation permitted pursuant to this Agreement; or (G) amend any of the provisions of Section 10.7 or amend any of the definitions Pro Rata Share, Term Loan Commitment, Term Loan Tranche 1 Commitments, Term Loan Tranche 2 Commitments, Term Loan Tranche 3 Commitments, Term Loan Commitment Amount, Term Loan Commitment Percentage or that provide for the Lenders to receive their Pro Rata Shares of any fees, payments, setoffs or proceeds of Collateral hereunder. It is hereby understood and agreed that all Lenders shall be deemed directly affected by an amendment, waiver or other modification of the type described in the preceding clauses (C), (D), (E), (F) and (G) of the preceding sentence.

Section 11.17 Assignments and Participations.

(a) Assignments.

(i) Any Lender may at any time assign to one or more Eligible Assignees all or any portion of such Lender's Loan together with all related obligations of such Lender hereunder. Except as Agent may otherwise agree, the amount of any such assignment (determined as of the date of the applicable Assignment Agreement or, if a "Trade Date" is specified in such Assignment Agreement, as of such Trade Date) shall be in a minimum aggregate amount equal to $1,000,000 or, if less, the assignor's entire interests in the outstanding Loan; *provided*, *however,* that, in connection with simultaneous assignments to two or more related Approved Funds, such Approved Funds shall be treated as one assignee for purposes of determining compliance with the minimum assignment size referred to above. Borrowers and Agent shall be entitled to continue to deal solely and directly with such Lender in connection with the interests so assigned to an Eligible Assignee until Agent shall have received and accepted an effective Assignment Agreement executed, delivered and fully completed by the applicable parties thereto and a processing fee of $3,500 to be paid by the assigning Lender; *provided*, *however,* that only one processing fee shall be payable in connection with simultaneous assignments to two or more related Approved Funds.

(ii) From and after the date on which the conditions described above have been met, (A) such Eligible Assignee shall be deemed automatically to have become a party hereto and, to the extent of the interests assigned to such Eligible Assignee pursuant to such Assignment Agreement, shall have the rights and obligations of a Lender hereunder (including,

for the avoidance of doubt, the obligation to deliver applicable documentation pursuant to Section 2.8(c) which such Eligible Assignee shall deliver to Borrower Representative and Agent on or prior to the date of such Assignment Agreement), and (B) the assigning Lender, to the extent that rights and obligations hereunder have been assigned by it pursuant to such Assignment Agreement, shall be released from its rights and obligations hereunder (other than those that survive termination pursuant to Section 2.8(g) or Section 12.1). Upon the request of the Eligible Assignee (and, as applicable, the assigning Lender) pursuant to an effective Assignment Agreement, each Borrower shall execute and deliver to Agent for delivery to the Eligible Assignee (and, as applicable, the assigning Lender) Notes in the aggregate principal amount of the Eligible Assignee's Loan (and, as applicable, Notes in the principal amount of that portion of the principal amount of the Loan retained by the assigning Lender). Upon receipt by the assigning Lender of such Note, the assigning Lender shall return to Borrower Representative any prior Note held by it.

(iii) Agent, acting solely for this purpose as an agent of Borrower, shall maintain at the office of its servicer located in Bethesda, Maryland a copy of each Assignment Agreement delivered to it and a register for the recordation of the names and addresses of each Lender, and the commitments of, and principal amount of the Loan owing to, such Lender pursuant to the terms hereof (the "**Register**"). The entries in such Register shall be conclusive, absent manifest error, and Borrower, Agent and Lenders may treat each Person whose name is recorded therein pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. Such Register shall be available for inspection by Borrower and any Lender, at any reasonable time upon reasonable prior notice to Agent. Each Lender that sells a participation shall, acting solely for this purpose as an agent of Borrower maintain 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 the Obligations (each, a "Participant Register"). The entries in the Participant Registers shall be conclusive, absent manifest error. Each Participant Register shall be available for inspection by Borrower and Agent at any reasonable time upon reasonable prior notice to the applicable Lender; provided, that 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 Financing Document) to any Person (including Borrower) 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. For the avoidance of doubt, Agent (in its capacity as Agent) shall have no responsibility for maintaining a Participant Register.

(iv) Notwithstanding the foregoing provisions of this Section 11.17(a) or any other provision of this Agreement, any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; *provided*, *however*, that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(v) Notwithstanding the foregoing provisions of this Section 11.17(a) or any other provision of this Agreement, Agent has the right, but not the obligation, to effectuate assignments of Loan via an electronic settlement system acceptable to Agent as designated in writing from time to time to the Lenders by Agent (the "**Settlement Service**"). At any time when Agent elects, in its sole discretion, to implement such Settlement Service, each such assignment shall be effected by the assigning Lender and proposed assignee pursuant to the procedures then

in effect under the Settlement Service, which procedures shall be consistent with the other provisions of this Section 11.17(a). Each assigning Lender and proposed Eligible Assignee shall comply with the requirements of the Settlement Service in connection with effecting any assignment of Loan pursuant to the Settlement Service. With the prior written approval of Agent, Agent's approval of such Eligible Assignee shall be deemed to have been automatically granted with respect to any transfer effected through the Settlement Service. Assignments and assumptions of the Loan shall be effected by the provisions otherwise set forth herein until Agent notifies Lenders of the Settlement Service as set forth herein.

(b) Participations. Any Lender may at any time, without the consent of, or notice to, any Borrower or Agent, sell to one or more Persons (other than any Borrower or any Borrower's Affiliates) participating interests in its Loan, commitments or other interests hereunder (any such Person, a "**Participant**"). In the event of a sale by a Lender of a participating interest to a Participant, (i) such Lender's obligations hereunder shall remain unchanged for all purposes, (ii) Borrowers and Agent shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations hereunder, and (iii) all amounts payable by each Borrower shall be determined as if such Lender had not sold such participation and shall be paid directly to such Lender. Each Borrower agrees that if amounts outstanding under this Agreement are due and payable (as a result of acceleration or otherwise), each Participant shall be deemed to have the right of set-off in respect of its participating interest in amounts owing under this Agreement to the same extent as if the amount of its participating interest were owing directly to it as a Lender under this Agreement; *provided, however*, that such right of set-off shall be subject to the obligation of each Participant to share with Lenders, and Lenders agree to share with each Participant, as provided in Section 11.5. Notwithstanding the foregoing, (i) no Participant shall be entitled to receive any greater payment under Section 2.8 with respect to any participation than its participating Lender would have been entitled to receive and (ii) any Participant shall deliver applicable documentation pursuant to Section 2.8(c) to its participating Lender.

(c) Replacement of Lenders. Within thirty (30) days after: (i) receipt by Agent of notice and demand from any Lender for payment of additional costs as provided in Section 2.8(h), which demand shall not have been revoked, (ii) any Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.8(a) through (h), (iii) any Lender is a Defaulted Lender, and the circumstances causing such status shall not have been cured or waived; or (iv) any failure by any Lender to consent to a requested amendment, waiver or modification to any Financing Document in which Required Lenders have already consented to such amendment, waiver or modification but the consent of each Lender, or each Lender affected thereby, is required with respect thereto (each relevant Lender in the foregoing clauses (i) through (iv) being an "**Affected Lender**") each of Borrower Representative and Agent may, at its option, notify such Affected Lender and, in the case of Borrowers' election, Agent, of such Person's intention to obtain, at Borrowers' expense, a replacement Lender ("**Replacement Lender**") for such Lender, which Replacement Lender shall be an Eligible Assignee and, in the event the Replacement Lender is to replace an Affected Lender described in the preceding clause (iv), such Replacement Lender consents to the requested amendment, waiver or modification making the replaced Lender an Affected Lender. In the event Borrowers or Agent, as applicable, obtains a Replacement Lender within ninety (90) days following notice of its intention to do so, the Affected Lender shall sell, at par, and assign all of its Loan and funding commitments hereunder to such Replacement Lender in accordance with the procedures set forth in Section 11.17(a); *provided, however,* that (A) Borrowers shall have reimbursed such Lender for its increased costs and additional payments for which it is entitled to reimbursement under Section 2.8(a) through (h), as applicable, of this Agreement through the date of such sale and assignment, and (B) Borrowers shall pay to Agent the $3,500 processing fee in respect of such assignment. In the event that a replaced Lender does not execute an Assignment Agreement pursuant to Section 11.17(a) within five (5) Business Days after receipt by such replaced Lender of notice of replacement pursuant to this

Section 11.17(c) and presentation to such replaced Lender of an Assignment Agreement evidencing an assignment pursuant to this Section 11.17(c), such replaced Lender shall be deemed to have consented to the terms of such Assignment Agreement, and any such Assignment Agreement executed by Agent, the Replacement Lender and, to the extent required pursuant to Section 11.17(a), Borrowers, shall be effective for purposes of this Section 11.17(c) and Section 11.17(a). Upon any such assignment and payment, such replaced Lender shall no longer constitute a "**Lender**" for purposes hereof, other than with respect to such rights and obligations that survive termination as set forth in Section 2.8(g) or Section 12.1.

(d) Credit Party Assignments. No Credit Party may assign, delegate or otherwise transfer any of its rights or other obligations hereunder or under any other Financing Document without the prior written consent of Agent and each Lender.

Section 11.18 Funding and Settlement Provisions Applicable When Non-Funding Lenders Exist. So long as Agent has not waived the conditions to the funding of Loans set forth in Section 7.2 or Section 2.1, any Lender may deliver a notice to Agent stating that such Lender shall not fund any tranche of the Term Loan due to the non-satisfaction of one or more conditions to funding Loans set forth in Section 7.2 or Section 2.1, and specifying any such non-satisfied conditions. Any Lender delivering any such notice shall become a non-funding Lender (a "**Non-Funding Lender**") for purposes of this Agreement commencing on the Business Day following receipt by Agent of such notice, and shall cease to be a Non-Funding Lender on the date on which such Lender has either revoked the effectiveness of such notice or acknowledged in writing to each of Agent the satisfaction of the condition(s) specified in such notice, or Required Lenders waive the conditions to the funding of such Loans giving rise to such notice by Non-Funding Lender. Each Non-Funding Lender shall remain a Lender for purposes of this Agreement to the extent that such Non-Funding Lender has Term Loans outstanding in excess of Zero Dollars ($0); *provided*, *however*, that during any period of time that any Non-Funding Lender exists, and notwithstanding any provision to the contrary set forth herein, the following provisions shall apply:

(a) For purposes of determining the Pro Rata Share of each Lender under clause (a) of the definition of such term, each Non-Funding Lender shall be deemed to have a Term Loan Commitment Amount as in effect immediately before such Lender became a Non-Funding Lender.

(b) Except as provided in clause (a) above, the Term Loan Commitment Amount of each Non-Funding Lender shall be deemed to be Zero Dollars ($0).

(c) The Term Loan Commitment at any date of determination during such period shall be deemed to be equal to the sum of (i) the aggregate Term Loan Commitment Amounts of all Lenders, other than the Non-Funding Lenders as of such date *plus* (ii) the aggregate principal amount outstanding under the Term Loans of all Non-Funding Lenders as of such date.

ARTICLE 12 - MISCELLANEOUS

Section 12.1 Survival. All agreements, representations and warranties made herein and in every other Financing Document shall survive the execution and delivery of this Agreement and the other Financing Documents and the other Operative Documents. The provisions of Section 2.10 and Articles 11 and 12 shall survive the payment of the Obligations (both with respect to any Lender and all Lenders collectively) and any termination of this Agreement and any judgment with respect to any Obligations, including any final foreclosure judgment with respect to any Security Document, and no unpaid or unperformed, current or future, Obligations will merge into any such judgment.

Section 12.2 No Waivers. No failure or delay by Agent or any Lender in exercising any right, power or privilege under any Financing Document 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, power or privilege. The rights and remedies herein and therein provided shall be cumulative and not exclusive of any rights or remedies provided by law. Any reference in any Financing Document to the "continuing" nature of any Event of Default shall not be construed as establishing or otherwise indicating that any Borrower or any other Credit Party has the independent right to cure any such Event of Default, but is rather presented merely for convenience should such Event of Default be waived in accordance with the terms of the applicable Financing Documents.

Section 12.3 Notices.

(a) All notices, requests and other communications to any party hereunder shall be in writing (including prepaid overnight courier, facsimile transmission, email or similar writing) and shall be given to such party at its address, facsimile number or e-mail address set forth on the signature pages hereof (or, in the case of any such Lender who becomes a Lender after the date hereof, in an assignment agreement or in a notice delivered to Borrower Representative and Agent by the assignee Lender forthwith upon such assignment) or at such other address, facsimile number or e-mail address as such party may hereafter specify for the purpose by notice to Agent and Borrower Representative; *provided*, *however*, that notices, requests or other communications shall be permitted by electronic means only in accordance with the provisions of Section 12.3(b) and (c). Each such notice, request or other communication shall be effective (i) if given by facsimile, when such notice is transmitted to the facsimile number specified by this Section and the sender receives a confirmation of transmission from the sending facsimile machine, or (ii) if given by mail, prepaid overnight courier or any other means, when received or when receipt is refused at the applicable address specified by this Section 12.3(a).

(b) Notices and other communications to the parties hereto may be delivered or furnished by electronic communication (including e-mail and internet or intranet websites) pursuant to procedures approved from time to time by Agent, *provided*, *however*, that the foregoing shall not apply to notices sent directly to any Lender if such Lender has notified Agent that it is incapable of receiving notices by electronic communication. Agent or Borrower Representative may, in their reasonable discretion, agree to accept notices and other communications to them hereunder by electronic communications pursuant to procedures approved by it, *provided*, *however*, that approval of such procedures may be limited to particular notices or communications.

(c) Unless Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgment from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgment), and (ii) notices or communications posted to an internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor, *provided*, *however*, that if any such notice or other communication is not sent or posted during normal business hours, such notice or communication shall be deemed to have been sent at the opening of business on the next Business Day.

Section 12.4 Severability. In case any provision of or obligation under this Agreement or any other Financing Document shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

Section 12.5 Headings. Headings and captions used in the Financing Documents (including the Exhibits, Schedules and Annexes hereto and thereto) are included for convenience of reference only and shall not be given any substantive effect.

Section 12.6 Confidentiality.

(a) Each Credit Party agrees (i) not to transmit or disclose provisions of any Financing Document to any Person (other than to Borrowers' agents, employees, Subsidiaries, Affiliates, attorneys, auditors, professional consultants, rating agencies, insurance industry associations and portfolio management services or as otherwise may be required by Law, subpoena, judicial order or similar order and in connection with any litigation) without Agent's prior written consent, (ii) to inform all Persons of the confidential nature of the Financing Documents and to direct them not to disclose the same to any other Person and to require each of them to be bound by these provisions.

(b) Agent and each Lender shall hold all non-public information regarding the Credit Parties and their respective businesses in accordance with such Person's customary procedures for handling information of such nature, except that disclosure of such information may be made (i) to their respective agents, employees, Subsidiaries, Affiliates, attorneys, auditors, professional consultants, rating agencies, insurance industry associations and portfolio management services, (ii) to prospective transferees or purchasers of any interest in the Loans, Agent or a Lender, *provided*, *however*, that any such Persons are bound by obligations of confidentiality, (iii) as required by Law, subpoena, judicial order or similar order and in connection with any litigation, (iv) as may be required in connection with the examination, audit or similar investigation of such Person; *provided*, *however*, that any such persons are bound by obligations of confidentiality, and (v) to a Person that is a trustee, investment advisor or investment manager, collateral manager, servicer, noteholder or secured party in a Securitization (as hereinafter defined) in connection with the administration, servicing and reporting on the assets serving as collateral for such Securitization; *provided*, *however*, that any such persons are bound by obligations of confidentiality. For the purposes of this Section, "**Securitization**" means (A) the pledge of the Loans as collateral security for loans to a Lender, or (B) a public or private offering by a Lender or any of its Affiliates or their respective successors and assigns, of securities which represent an interest in, or which are collateralized, in whole or in part, by the Loans. Confidential information shall not include information that either: (y) is in the public domain, or becomes part of the public domain after disclosure to such Person through no fault of such Person, or (z) is disclosed to such Person by a Person other than a Credit Party, *provided*, *however*, Agent does not have actual knowledge that such Person is prohibited from disclosing such information. The obligations of Agent and Lenders under this Section 12.6 shall supersede and replace the obligations of Agent and Lenders under any confidentiality agreement in respect of this financing executed and delivered by Agent or any Lender prior to the date hereof.

Section 12.7 Waiver of Consequential and Other Damages. To the fullest extent permitted by applicable law, no Borrower shall assert, and each Borrower hereby waives, any claim against any Indemnitee (as defined below), on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of this Agreement, any other Financing Document or any agreement or instrument contemplated hereby or thereby, the transactions contemplated hereby or thereby, any Loan or the use of the proceeds thereof. No Indemnitee 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 Agreement or the other Financing Documents or the transactions contemplated hereby or thereby.

Section 12.8 GOVERNING LAW; SUBMISSION TO JURISDICTION.

(a) THIS AGREEMENT, EACH NOTE AND EACH OTHER FINANCING DOCUMENT, AND ALL DISPUTES AND OTHER MATTERS RELATING HERETO OR THERETO OR ARISING THEREFROM (WHETHER SOUNDING IN CONTRACT LAW, TORT LAW OR OTHERWISE), SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO CONFLICTS OF LAWS PRINCIPLES (OTHER THAN SECTION 5-1401 OF THE GENERAL OBLIGATIONS LAW).

(b) EACH PARTY HERETO HEREBY CONSENTS TO THE JURISDICTION OF ANY STATE OR FEDERAL COURT LOCATED IN THE STATE OF NEW YORK IN THE CITY OF NEW YORK, BOROUGH OF MANHATTAN, AND IRREVOCABLY AGREES THAT ALL ACTIONS OR PROCEEDINGS ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE OTHER FINANCING DOCUMENTS SHALL BE LITIGATED IN SUCH COURTS. EACH PARTY HERETO EXPRESSLY SUBMITS AND CONSENTS TO THE JURISDICTION OF THE AFORESAID COURTS AND WAIVES ANY DEFENSE OF FORUM NON CONVENIENS. EACH PARTY HERETO HEREBY WAIVES PERSONAL SERVICE OF ANY AND ALL PROCESS AND AGREES THAT ALL SUCH SERVICE OF PROCESS MAY BE MADE UPON SUCH PARTY BY CERTIFIED OR REGISTERED MAIL, RETURN RECEIPT REQUESTED, ADDRESSED TO SUCH PARTY AT THE ADDRESS SET FORTH IN THIS AGREEMENT AND SERVICE SO MADE SHALL BE COMPLETE TEN (10) DAYS AFTER THE SAME HAS BEEN POSTED.

Section 12.9 **WAIVER OF JURY TRIAL**.

(a) EACH BORROWER, AGENT AND THE LENDERS HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THE FINANCING DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED THEREBY AND AGREES THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY. EACH BORROWER, AGENT AND EACH LENDER ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO A BUSINESS RELATIONSHIP, THAT EACH HAS RELIED ON THE WAIVER IN ENTERING INTO THIS AGREEMENT AND THE OTHER FINANCING DOCUMENTS, AND THAT EACH WILL CONTINUE TO RELY ON THIS WAIVER IN THEIR RELATED FUTURE DEALINGS. EACH BORROWER, AGENT AND EACH LENDER WARRANTS AND REPRESENTS THAT IT HAS HAD THE OPPORTUNITY OF REVIEWING THIS JURY WAIVER WITH LEGAL COUNSEL, AND THAT IT KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS.

(b) In the event any such action or proceeding is brought or filed in any United States federal court sitting in the State of California or in any state court of the State of California, and the waiver of jury trial set forth in Section 12.9(a) hereof is determined or held to be ineffective or unenforceable, the parties agree that all actions or proceedings shall be resolved by reference to a private judge sitting without a jury, pursuant to California Code of Civil Procedure Section 638, before a mutually acceptable referee or, if the parties cannot agree, a referee selected by the Presiding Judge of the Los Angeles County, California. Such proceeding shall be conducted in Los Angeles County, California, with California rules of evidence and discovery applicable to such proceeding. In the event any actions or proceedings are to be resolved by judicial reference, any party may seek from any court having jurisdiction thereover any prejudgment order, writ or other relief and have such prejudgment order, writ or other relief enforced to the fullest extent permitted by Law notwithstanding that all actions or proceedings are otherwise subject to resolution by judicial reference.

Section 12.10 Publication; Advertisement.

(a) Publication. No Credit Party will directly or indirectly publish, disclose or otherwise use in any public disclosure, advertising material, promotional material, press release or interview, any reference to the name, logo or any trademark of MCF or any of its Affiliates or any reference to this Agreement or the financing evidenced hereby, in any case except (i) as required by Law, subpoena or judicial or similar order, in which case the applicable Credit Party shall give Agent prior written notice of such publication or other disclosure, or (ii) with MCF's prior written consent.

(b) Advertisement. Each Lender and each Credit Party hereby authorizes MCF to publish the name of such Lender and Credit Party, the existence of the financing arrangements referenced under this Agreement, the primary purpose and/or structure of those arrangements, the amount of credit extended under each facility, the title and role of each party to this Agreement, and the total amount of the financing evidenced hereby in any "tombstone", comparable advertisement or press release which MCF elects to submit for publication. In addition, each Lender and each Credit Party agrees that MCF may provide lending industry trade organizations with information necessary and customary for inclusion in league table measurements after the Closing Date. With respect to any of the foregoing, MCF shall provide Borrowers with an opportunity to review and confer with MCF regarding the contents of any such tombstone, advertisement or information, as applicable, prior to its submission for publication and, following such review period, MCF may, from time to time, publish such information in any media form desired by MCF, until such time that Borrowers shall have requested MCF cease any such further publication.

Section 12.11 Counterparts; Integration. This Agreement and the other Financing Documents may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument. Signatures by facsimile or by electronic mail delivery of an electronic version of any executed signature page shall bind the parties hereto. This Agreement and the other Financing Documents constitute the entire agreement and understanding among the parties hereto and supersede any and all prior agreements and understandings, oral or written, relating to the subject matter hereof.

Section 12.12 No Strict Construction. The parties hereto have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties hereto and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provisions of this Agreement.

Section 12.13 Lender Approvals. Unless expressly provided herein to the contrary, any approval, consent, waiver or satisfaction of Agent or Lenders with respect to any matter that is the subject of this Agreement, the other Financing Documents may be granted or withheld by Agent and Lenders in their sole and absolute discretion and credit judgment.

Section 12.14 Expenses; Indemnity

(a) Except with respect to Indemnified Taxes, Other Taxes, and Excluded Taxes which shall be governed exclusively by Section 2.8, Borrowers hereby agree to promptly pay (i) all reasonable and documented costs and expenses of Agent (including, without limitation, the reasonable and documented fees, costs and expenses of one primary counsel and one counsel in each applicable specialty or jurisdiction to, and independent appraisers and consultants retained by, Agent; *provided* that no such restriction on the use of a single counsel shall apply if an Event of Default has occurred and is continuing) in connection with the examination, review, due diligence investigation, documentation,

negotiation, closing and syndication of the transactions contemplated by the Financing Documents, in connection with the performance by Agent of its rights and remedies under the Financing Documents and in connection with the continued administration of the Financing Documents including (A) any amendments, modifications, consents and waivers to and/or under any and all Financing Documents, and (B) any periodic public record searches conducted by or at the request of Agent (including, without limitation, title investigations, UCC searches, fixture filing searches, judgment, pending litigation and tax lien searches and searches of applicable corporate, limited liability, partnership and related records concerning the continued existence, organization and good standing of certain Persons); (ii) without limitation of the preceding clause (i), all reasonable and documented costs and expenses of Agent in connection with the creation, perfection and maintenance of Liens pursuant to the Financing Documents; (iii) without limitation of the preceding clause (i), (A) all reasonable and documented costs and expenses of Agent in connection with protecting, storing, insuring, handling, maintaining or selling any Collateral, and (B) all documented costs and expenses of Agent in connection with (I) any litigation, dispute, suit or proceeding relating to any Financing Document, and (II) any workout, collection, bankruptcy, insolvency and other enforcement proceedings under any and all of the Financing Documents; (iv) without limitation of the preceding clause (i), all reasonable and documented costs and expenses of Agent in connection with Agent's reservation of funds in anticipation of the funding of the initial Loans to be made hereunder; and (v) all documented costs and expenses incurred by Lenders in connection with any litigation, dispute, suit or proceeding relating to any Financing Document and in connection with any workout, collection, bankruptcy, insolvency and other enforcement proceedings under any and all Financing Documents, whether or not Agent or Lenders are a party thereto; *provided* that so long as no Event of Default has occurred and is continuing, the Lenders shall be limited to one primary counsel (except in the case of any conflict of interest) and one counsel in each applicable specialty or jurisdiction and Agent shall be limited to one primary counsel and one counsel in each applicable specialty or jurisdiction.

(b) Each Borrower hereby agrees to indemnify, pay and hold harmless Agent and Lenders and the officers, directors, employees, trustees, agents, investment advisors and investment managers, collateral managers, servicers, and counsel of Agent and Lenders (collectively called the "**Indemnitees**") from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, claims, costs, expenses and disbursements of any kind or nature whatsoever (including the fees and disbursements of counsel for such Indemnitee) in connection with any investigative, response, remedial, administrative or judicial matter or proceeding, whether or not such Indemnitee shall be designated a party thereto and including any such proceeding initiated by or on behalf of a Credit Party, and the reasonable expenses of investigation by engineers, environmental consultants and similar technical personnel and any commission, fee or compensation claimed by any broker (other than any broker retained by Agent or Lenders) asserting any right to payment for the transactions contemplated hereby, which may be imposed on, incurred by or asserted against such Indemnitee as a result of or in connection with the transactions contemplated hereby or by the other Operative Documents (including (i)(A) as a direct or indirect result of the presence on or under, or escape, seepage, leakage, spillage, discharge, emission or release from, any property now or previously owned, leased or operated by Borrower, any Subsidiary or any other Person of any Hazardous Materials, (B) arising out of or relating to the offsite disposal of any materials generated or present on any such property, or (C) arising out of or resulting from the environmental condition of any such property or the applicability of any governmental requirements relating to Hazardous Materials, whether or not occasioned wholly or in part by any condition, accident or event caused by any act or omission of Borrower or any Subsidiary, and (ii) proposed and actual extensions of credit under this Agreement) and the use or intended use of the proceeds of the Loans, except that Borrower shall have no obligation hereunder to an Indemnitee with respect to any liability resulting from (x) the gross negligence or willful misconduct of such Indemnitee, as determined by a final non-appealable judgment of a court of competent jurisdiction, (y) a material breach by any such Indemnitee or any of such Indemnitee's Affiliates of the obligations under this

Agreement or any other Financing Document, as determined in a final, non-appealable judgment of a court of competent jurisdiction or (z) disputes solely among any Indemnitees (other than any claims against an Indemnitee in its capacity or in fulfilling its role as Agent, arranger or any similar role hereunder) to the extent such disputes do not arise from any act or omission of any Credit Party or of any of any Credit Party's Affiliates, unless such claims arise from the bad faith, gross negligence or willful misconduct of any such person. To the extent that the undertaking set forth in the immediately preceding sentence may be unenforceable, Borrower shall contribute the maximum portion which it is permitted to pay and satisfy under applicable Law to the payment and satisfaction of all such indemnified liabilities incurred by the Indemnitees or any of them.

(c) Notwithstanding any contrary provision in this Agreement, the obligations of Borrowers under this Section 12.14 shall survive the payment in full of the Obligations and the termination of this Agreement. NO INDEMNITEE SHALL BE RESPONSIBLE OR LIABLE TO THE BORROWERS OR TO ANY OTHER PARTY TO ANY FINANCING DOCUMENT, ANY SUCCESSOR, ASSIGNEE OR THIRD PARTY BENEFICIARY OR ANY OTHER PERSON ASSERTING CLAIMS DERIVATIVELY THROUGH SUCH PARTY, FOR INDIRECT, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES WHICH MAY BE ALLEGED AS A RESULT OF CREDIT HAVING BEEN EXTENDED, SUSPENDED OR TERMINATED UNDER THIS AGREEMENT OR ANY OTHER FINANCING DOCUMENT OR AS A RESULT OF ANY OTHER TRANSACTION CONTEMPLATED HEREUNDER OR THEREUNDER.

(d) This Section 12.14 shall not apply with respect to Taxes other than any Taxes that represent losses, claims, damages, etc. arising from any non-Tax claim.

(e) Each Borrower for itself and all endorsers, guarantors and sureties and their heirs, legal representatives, successors and assigns, hereby further specifically waives any rights that it may have under Section 1542 of the California Civil Code (to the extent applicable), which provides as follows: "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR," and further waives any similar rights under applicable Laws.

Section 12.15 Reserved.

Section 12.16 Reinstatement. This Agreement shall remain in full force and effect and continue to be effective should any petition or other proceeding be filed by or against any Credit Party for liquidation or reorganization, should any Credit Party become insolvent or make an assignment for the benefit of any creditor or creditors or should an interim receiver, receiver, receiver and manager or trustee be appointed for all or any significant part of any Credit Party's assets, and shall continue to be effective or to be reinstated, as the case may be, if at any time payment and performance of the Obligations, or any part thereof, is, pursuant to applicable law, rescinded or reduced in amount, or must otherwise be restored or returned by any obligee of the Obligations, whether as a fraudulent preference reviewable transaction or otherwise, all as though such payment or performance had not been made. In the event that any payment, or any part thereof, is rescinded, reduced, restored or returned, the Obligations shall be reinstated and deemed reduced only by such amount paid and not so rescinded, reduced, restored or returned.

Section 12.17 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of Borrowers and Agent and each Lender and their respective successors and permitted assigns.

Section 12.18 USA PATRIOT Act Notification. Agent (for itself and not on behalf of any Lender) and each Lender hereby notifies Borrowers that pursuant to the requirements of the USA PATRIOT Act, it is required to obtain, verify and record certain information and documentation that identifies Borrowers, which information includes the name and address of Borrower and such other information that will allow Agent or such Lender, as applicable, to identify Borrowers in accordance with the USA PATRIOT Act.

Section 12.19 Warrants. Notwithstanding anything to the contrary herein, any warrants issued to the Lenders (or any designated Affiliate thereof) by any Credit Party, the stock issuable thereunder, any equity securities purchased by Lenders, any amounts paid thereunder, any dividends, and any other rights in connection therewith shall not be subject to the terms and conditions of this Agreement. Nothing herein shall affect any Lender's rights under any such warrants, stock, or other equity securities to administer, manage, transfer, assign, or exercise such warrants, stock, or other equity securities for its own account.

Section 12.20 Acknowledgement and Consent to Bail-In of EEA Financial Institutions. Notwithstanding anything to the contrary in any Financing Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any EEA Financial Institution arising under any Financing Document, to the extent such liability is unsecured, may be subject to the write-down and conversion powers of an EEA 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 an EEA Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an EEA 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 EEA 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 Agreement or any other Financing 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 EEA Resolution Authority.

Section 12.21 Cross Default and Cross Collateralization.

(a) Cross-Default. As stated under Section 10.1 hereof, an Event of Default under any of the Affiliated Financing Documents shall be an Event of Default under this Agreement.

(b) Cross Collateralization. Borrowers acknowledge and agree that the Collateral securing this Loan, also secures the Affiliated Obligations.

(c) Consent. Each Borrower authorizes Agent, without giving notice to any Borrower or obtaining the consent of any Borrower and without affecting the liability of any Borrower for the Affiliated Obligations directly incurred by the Borrowers, from time to time to:

(i) compromise, settle, renew, extend the time for payment, change the manner or terms of payment, discharge the performance of, decline to enforce, or release all or any of the Affiliated Obligations; grant other indulgences to any Borrowers in respect thereof; or modify in any manner any documents relating to the Affiliated Obligations;

(ii) declare all Affiliated Obligations due and payable upon the occurrence and during the continuance of an Event of Default;

(iii) take and hold security for the performance of the Affiliated Obligations of any Borrowers and exchange, enforce, waive and release any such security;

(iv) apply and reapply such security and direct the order or manner of sale thereof as Agent, in its sole discretion, may determine;

(v) release, surrender or exchange any deposits or other property securing the Affiliated Obligations or on which Agent at any time may have a Lien; release, substitute or add any one or more endorsers or guarantors of the Affiliated Obligations of any Borrowers; or compromise, settle, renew, extend the time for payment, discharge the performance of, decline to enforce, or release all or any obligations of any such endorser or guarantor or other Person who is now or may hereafter be liable on any Affiliated Obligations or release, surrender or exchange any deposits or other property of any such Person;

(vi) apply payments received by Lender from Borrower to any Obligations or Affiliated Obligations, in such order as Lender shall determine, in its sole discretion (in accordance with the terms of this Agreement and the Affiliated Credit Agreement, as applicable); and

(vii) assign the Affiliated Financing Documents in whole or in part in accordance with the terms thereof.

Section 12.22 Existing Agreements Superseded; Exhibits and Schedules.

(a) The Original Credit Agreement, including the schedules thereto, is superseded by this Agreement, including the schedules hereto, which has been executed in amendment, restatement and modification of, but not in novation or extinguishment of, the obligations under the Original Credit Agreement. It is the express intention of the parties hereto to reaffirm the indebtedness and other obligations created under the Original Credit Agreement. Any and all outstanding amounts under the Original Credit Agreement including, but not limited to principal, accrued interest, fees (except as otherwise provided herein) and other charges, as of the Closing Date shall be carried over and deemed outstanding under this Agreement, including as specifically set forth in Section 2.1.

(b) Each Credit Party reaffirms its obligations under each Financing Document to which it is a party, including but not limited to the Security Documents and the schedules thereto.

(c) Each Credit Party acknowledges and confirms that (i) the Liens and security interests granted pursuant to the Financing Documents secure the indebtedness, liabilities and obligations of the Borrowers and the other Credit Parties to Agent and the Lenders under the Original Credit Agreement, as amended and restated hereby, and that the term “Obligations” as used in the Financing Documents (or any other term used therein to describe or refer to the indebtedness, liabilities and obligations of the Borrowers to Agent and the Lenders) includes, without limitation, the indebtedness, liabilities and obligations of the Borrowers under this Agreement and the Notes to be delivered

hereunder, if any, and under the Original Credit Agreement, as amended and restated hereby, as the same may be further amended, restated, supplemented and/or modified from time to time, and (ii) the grants of Liens under and pursuant to the Financing Documents shall continue unaltered, and each other Financing Document shall continue in full force and effect in accordance with its terms unless otherwise amended by the parties thereto, and the parties hereto hereby ratify and confirm the terms thereof as being in full force and effect and unaltered by this Agreement and all references in the any of the Financing Documents to the "Credit Agreement" shall be deemed to refer to this Amended and Restated Credit Agreement.

(d) Nothing herein contained shall be construed as a substitution or novation of the obligations outstanding under the Original Credit Agreement or the other Financing Documents. Nothing in this Agreement shall be construed as a release or other discharge of any Borrower or any other Credit Party from its obligations and liabilities under the Original Credit Agreement or the other Financing Documents. On the Closing Date, any and all references in any Financing Documents to the Original Credit Agreement shall be deemed to be amended to refer to this Agreement.

[SIGNATURES APPEAR ON FOLLOWING PAGE(S)]

IN WITNESS WHEREOF, intending to be legally bound, each of the parties have caused this Agreement to be executed under seal the day and year first above mentioned.

BORROWERS:

SIGHT SCIENCES, INC.

By: /s/ Jesse Selnick
Name: Jesse Selnick
Title: CFO

Address:

4040 Campbell, Suite 100
Menlo Park, CA 94025
Attn: Jesse Selnick
E-Mail: XXX@sightsciences.com
Robert Geronimo
E-Mail: XXX@sightsciences.com
Facsimile: 650-352-2509

AGENT:

MIDCAP FINANCIAL TRUST

By: Apollo Capital Management, L.P.,
its investment manager

By: Apollo Capital Management GP, LLC,
its general partner

By: /s/ Maurice Amsellem
Name: Maurice Amsellem
Title: Authorized Signatory

Address:

c/o MidCap Financial Services, LLC, as servicer
7255 Woodmont Avenue, Suite 300
Bethesda, Maryland 20814
Attn: Account Manager for Sight Sciences transaction
Facsimile: 301-941-1450
E-mail: notices@midcapfinancial.com

with a copy to:

c/o MidCap Financial Services, LLC, as servicer
7255 Woodmont Avenue, Suite 300
Bethesda, Maryland 20814
Attn: General Counsel
Facsimile: 301-941-1450
E-mail: legalnotices@midcapfinancial.com

Payment Account Designation:

SunTrust Bank, N.A.
ABA #: XXX
Account Name: MidCap Financial Trust – Collections
Account #: XXX
Attention: Sight Sciences Facility

LENDER: **MIDCAP FINANCIAL TRUST**

By: Apollo Capital Management, L.P.,
its investment manager

By: Apollo Capital Management GP, LLC,
its general partner

By: /s/ Maurice Amsellem
Name: Maurice Amsellem
Title: Authorized Signatory

Address:

c/o MidCap Financial Services, LLC, as servicer
7255 Woodmont Avenue, Suite 300
Bethesda, Maryland 20814
Attn: Account Manager for Sight Sciences transaction
Facsimile: 301-941-1450
E-mail: notices@midcapfinancial.com

with a copy to:

c/o MidCap Financial Services, LLC, as servicer
7255 Woodmont Avenue, Suite 300
Bethesda, Maryland 20814
Attn: General Counsel
Facsimile: 301-941-1450
E-mail: legalnotices@midcapfinancial.com

LENDER: **ELM 2020-3 TRUST**

By: MidCap Financial Services Capital Management, LLC, as Servicer

By: /s/ John O'Dea
Name: John O'Dea
Title: Authorized Signatory

LENDER: **ELM 2020-4 TRUST**

By: MidCap Financial Services Capital Management, LLC, as Servicer

By: /s/ John O'Dea
Name: John O'Dea
Title: Authorized Signatory

ANNEXES, EXHIBITS AND SCHEDULES

ANNEXES

Annex A	Commitment Annex

EXHIBITS

Exhibit A	[Reserved]
Exhibit B	Form of Compliance Certificate
Exhibit C	[Reserved]
Exhibit D	Form of Notice of Borrowing
Exhibit E-1	Form of U.S. Tax Compliance Certificate
Exhibit E-2	Form of U.S. Tax Compliance Certificate
Exhibit E-3	Form of U.S. Tax Compliance Certificate
Exhibit E-4	Form of U.S. Tax Compliance Certificate

SCHEDULES

Schedule 2.1	Scheduled Principal Payments for Term Loan
Schedule 3.1	Existence, Organizational ID Numbers, Foreign Qualification, Prior Names
Schedule 3.4	Capitalization
Schedule 3.6	Litigation
Schedule 3.17	Material Contracts
Schedule 3.18	Environmental Compliance
Schedule 3.19	Intellectual Property
Schedule 4.9	Litigation, Governmental Proceedings and Other Notice Events
Schedule 4.17	Products
Schedule 5.1	Debt; Contingent Obligations
Schedule 5.2	Liens
Schedule 5.7	Permitted Investments
Schedule 5.8	Affiliate Transactions
Schedule 5.11	Business Description
Schedule 5.14	Deposit Accounts and Securities Accounts
Schedule 6.1	Net Revenue
Schedule 7.4	Post-Closing Obligations
Schedule 9.1	Collateral
Schedule 9.2(b)	Location of Collateral
Schedule 9.2(d)	Chattel Paper, Letter of Credit Rights, Commercial Tort Claims, Instruments, Documents, Investment Property

Exhibit 10.9

Execution Version

AMENDED AND RESTATED CREDIT AND SECURITY AGREEMENT (REVOLVING LOAN)

dated as of November 23, 2020

by and among

SIGHT SCIENCES, INC.,

and any additional borrower that hereafter becomes party hereto, each as Borrower, and collectively as Borrowers,

and

MIDCAP FUNDING IV TRUST,

as Agent and as a Lender,

and

THE ADDITIONAL LENDERS

FROM TIME TO TIME PARTY HERETO

TABLE OF CONTENTS

AMENDED AND RESTATED CREDIT AND SECURITY AGREEMENT (REVOLVING LOAN)

This **AMENDED AND RESTATED CREDIT AND SECURITY AGREEMENT (REVOLVING LOAN)** (as the same may be amended, supplemented, restated or otherwise modified from time to time, the "**Agreement**") is dated as of November 23, 2020 by and among SIGHT SCIENCES, INC., a Delaware corporation ("**Sight Sciences**"), and any additional borrower that may hereafter be added to this Agreement (individually as a "**Borrower**", and collectively with any entities that become party hereto as Borrower and each of their successors and permitted assigns, the "**Borrowers**"), **MIDCAP FUNDING IV TRUST,** a Delaware statutory trust, individually as a Lender, and as Agent, and the financial institutions or other entities from time to time parties hereto, each as a Lender.

RECITALS

WHEREAS, Agent, Lenders and Borrowers have entered into that certain Credit and Security Agreement (Revolving Loan), dated as of January 25, 2019 (as amended, modified, supplemented and restated prior to the date hereof, the "**Original Credit Agreement**"), pursuant to which the Lenders have agreed to make certain advances of money and to extend certain financial accommodations to Borrowers in the amounts and manner set forth in the Original Credit Agreement;

WHEREAS, in connection with the continued working capital of the Borrowers, Borrowers have requested, among other things, that Agent and Lenders amend certain other economic terms, covenants and other provisions of the Original Credit Agreement; and

WHEREAS, Agent and Lenders have agreed to the requests of Borrowers on the terms and conditions set forth herein and in the other Financing Documents.

AGREEMENT

NOW, THEREFORE, in consideration of the premises and the agreements, provisions and covenants herein contained, the receipt and sufficiency of which are hereby acknowledged, Borrowers, Lenders and Agent agree to amend and restate the Original Credit Agreement as follows:

ARTICLE 1 - DEFINITIONS

Section 1.1 Certain Defined Terms. The following terms have the following meanings:

"**Acceleration Event**" means the occurrence of an Event of Default (a) in respect of which Agent has declared all or any portion of the Obligations to be immediately due and payable pursuant to Section 10.2, (b) pursuant to Section 10.1(a), and in respect of which Agent has suspended or terminated the Revolving Loan Commitment pursuant to Section 10.2, and/or (c) pursuant to either Section 10.1(e) and/or Section 10.1(f).

"**Account Debtor**" means "account debtor", as defined in Article 9 of the UCC, and any other obligor in respect of an Account.

"**Accounts**" means, collectively, (a) any right to payment of a monetary obligation, whether or not earned by performance, (b) without duplication, any "account" (as defined in the UCC), any accounts receivable (whether in the form of payments for services rendered or goods sold, rents, license fees or otherwise), any "health-care-insurance receivables" (as defined in the UCC), any "payment intangibles" (as defined in the UCC) and all other rights to payment and/or reimbursement of every kind and

description, whether or not earned by performance, (c) all accounts, "general intangibles" (as defined in the UCC), Intellectual Property, rights, remedies, Guarantees, "supporting obligations" (as defined in the UCC), "letter-of-credit rights" (as defined in the UCC) and security interests in respect of the foregoing, all rights of enforcement and collection, all books and records evidencing or related to the foregoing, and all rights under the Financing Documents in respect of the foregoing, (d) all information and data compiled or derived by any Borrower or to which any Borrower is entitled in respect of or related to the foregoing, and (e) all proceeds of any of the foregoing.

"**Acquisition**" means any transaction or series of related transactions, including through licensing, for the purpose of or resulting, directly or indirectly, in (a) the acquisition of all or substantially all of the assets of a Person, or of any business, line of business or division or other unit of operation of a Person, (b) the acquisition of fifty percent (50%) or more of the equity interests of any Person, whether or not involving a merger or consolidation with such other Person, or otherwise causing any Person to become a Subsidiary of a Credit Party, (c) any merger or consolidation or any other combination with another Person or (d) the acquisition (including through licensing) of any business, product, Intellectual Property, business line or product line, division or other unit operation of or from any Person.

"**Acquisition Monthly Cash Burn Amount**" means, with respect to Credit Parties, an amount equal to Credit Parties' change in cash and cash equivalents attributable to operating activities, capital expenditures and/or other recurring expenditures, in each case, as determined in accordance with GAAP and without giving effect to any increase in cash and cash equivalents resulting from equity contributions or the proceeds of Debt licensing or asset sales permitted under this Agreement, for either (a) the immediately preceding six (6) month period as determined as of the last day of the month immediately preceding the proposed consummation of any applicable Acquisition for which financial statements were delivered (or required to be delivered under this Agreement) and based upon the financial statements delivered to Agent in accordance with this Agreement for such period, or (b) the immediately succeeding six (6) month period based upon the Transaction Projections, using whichever calculation as between clause (a) and clause (b) demonstrates a higher burn rate (or, in other words, more cash used), in either case, *divided* by six (6).

"**Additional Titled Agents**" has the meaning set forth in Section 11.15.

"**Additional Tranche**" means an additional amount of Revolving Loan Commitments equal to $10,000,000 (it being acknowledged that two (2) Additional Tranches are permitted pursuant to Section 2.1(c) in amounts of $5,000,000 each up to, in the aggregate, the amount of the Additional Tranche).

"**Affiliate**" means, with respect to any Person, (a) any Person that directly or indirectly controls such Person, (b) any Person which is controlled by or is under common control with such controlling Person, and (c) each of such Person's (other than, with respect to any Lender, any Lender's) officers or directors (or Persons functioning in substantially similar roles). As used in this definition, the term "control" of a Person means the possession, directly or indirectly, of the power to vote ten percent (10%) or more of any class of voting securities of such Person or to direct or cause the direction of the management or policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

"**Affiliated Credit Agreement**" that certain Amended and Restated Credit and Security Agreement (Term Loan) (as the same may be amended, restated, supplemented or otherwise modified from time to time), among MCF, as Agent and a lender, the other lenders party thereto and Borrowers pursuant to which such Agent and lenders have extended a term credit facility to Borrowers.

"**Affiliated Financing Agent**" means the "Agent" under and as defined in the Affiliated Credit Agreement.

"**Affiliated Financing Documents**" means the "**Financing Documents**" as defined in the Affiliated Credit Agreement.

"**Affiliated Intercreditor Agreement**" means that certain Intercreditor Agreement dated as of the Original Closing Date between Agent and the Affiliated Financing Agent, as the same may be amended, restated, supplemented or otherwise modified from time to time.

"**Affiliated Obligations**" means all "Obligations", as such term is defined in the Affiliated Financing Documents.

"**Agent**" means MidCap Funding IV Trust, in its capacity as administrative agent for itself and for Lenders hereunder, as such capacity is established in, and subject to the provisions of, Article 11, and the successors and assigns of MidCap Funding IV Trust in such capacity.

"**Anti-Terrorism Laws**" means any Laws relating to terrorism or money laundering, including, without limitation, Executive Order No. 13224 (effective September 24, 2001), the USA PATRIOT Act, the Laws comprising or implementing the Bank Secrecy Act, and the Laws administered by OFAC.

"**Applicable Margin**" means four and one half percent (4.50%).

"**Approved Fund**" means any (a) investment company, fund, trust, securitization vehicle or conduit that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the Ordinary Course Of Business, or (b) any Person (other than a natural person) which temporarily warehouses loans for any Lender or any entity described in the preceding clause (a) and that, with respect to each of the preceding clauses (a) and (b), is administered or managed by (i) a Lender, (ii) an Affiliate of a Lender, or (iii) a Person (other than a natural person) or an Affiliate of a Person (other than a natural person) that administers or manages a Lender.

"**Asset Disposition**" means any sale, lease, license, transfer, assignment or other consensual disposition (including by merger, allocation of assets (including allocation of assets to any series of a limited liability company), division, consolidation or amalgamation) by any Credit Party or any Subsidiary thereof of any asset of such Credit Party or such Subsidiary.

"**Assignment Agreement**" means an assignment agreement in form and substance acceptable to Agent.

"**Bail-In Action**" means the exercise of any Write-Down and Conversion Powers by the applicable EEA Resolution Authority in respect of any liability of an EEA Financial Institution.

"**Bail-In Legislation**" means, 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 for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule.

"**Bankruptcy Code**" means Title 11 of the United States Code entitled "Bankruptcy", as the same may be amended, modified or supplemented from time to time, and any successor statute thereto.

"**Base LIBOR Rate**" means, for each Interest Period, the rate per annum, determined by Agent in accordance with its customary procedures, and utilizing such electronic or other quotation sources as it considers appropriate (rounded upwards, if necessary, to the next 1/100%), to be the rate at which Dollar deposits (for delivery on the first day of such Interest Period) in the amount of $1,000,000 are offered to major banks in the London interbank market on or about 11:00 a.m. (London time) two (2) Business Days prior to the commencement of such Interest Period, for a term comparable to such Interest Period, which determination shall be conclusive in the absence of manifest error; *provided*, *however*, that if (a) the administrator responsible for determining and publishing such rate per annum, determined by Agent in accordance with its customary procedures, has made a public announcement identifying a date certain on or after which such rate shall no longer be provided or published, as the case may be; or (b) timely, adequate and reasonable means do not exist for ascertaining such rate and the circumstances giving rise to the Agent's inability to ascertain LIBOR are unlikely to be temporary as determined in Agent's reasonable discretion, then Agent may, upon prior written notice to Borrower Representative, choose, in consultation with Borrower, a reasonably comparable index or source together with corresponding adjustments to "Applicable Margin" or scale factor or floor to such index that Agent, in its reasonable discretion, has determined is necessary to preserve the current all-in yield (including interest rate margins, any interest rate floors, original issue discount and upfront fees, but without regard to future fluctuations of such alternative index, it being acknowledged and agreed that neither Agent nor any Lender shall have any liability whatsoever from such future fluctuations) to use as the basis for Base LIBOR Rate.

"**Base Rate**" means a per annum rate of interest equal to the rate of interest announced, from time to time, within Wells Fargo Bank, National Association ("**Wells Fargo**") at its principal office in San Francisco as its "prime rate," with the understanding that the "prime rate" is one of Wells Fargo's base rates (not necessarily the lowest of such rates) and serves as the basis upon which effective rates of interest are calculated for those loans making reference thereto and is evidenced by the recording thereof after its announcement in such internal publications as Wells Fargo may designate; *provided*, *however*, that, Agent may, upon prior written notice to Borrower, choose a reasonably comparable index or source to use as the basis for the Base Rate.

"**Blocked Person**" means any Person: (a) listed in the annex to, or is otherwise subject to the provisions of, Executive Order No. 13224, (b) 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, Executive Order No. 13224, (c) with which any Lender is prohibited from dealing or otherwise engaging in any transaction by any Anti-Terrorism Law, (d) that commits, threatens or conspires to commit or supports "terrorism" as defined in Executive Order No. 13224, or (e) that is named a "specially designated national" or "blocked person" on the most current list published by OFAC or other similar list or is named as a "listed person" or "listed entity" on other lists made under any Anti-Terrorism Law.

"**Borrower**" and "**Borrowers**" has the meaning set forth in the introductory paragraph hereto.

"**Borrower Representative**" means Sight Sciences, in its capacity as Borrower Representative pursuant to the provisions of Section 2.9, or any successor Borrower Representative selected by Borrowers and approved by Agent.

"**Borrower Consolidated Unrestricted Cash**" means as of any date of determination, unrestricted cash and cash equivalents of the Borrowers and their Consolidated Subsidiaries (taken as a whole) that (a) are not subject to any Lien (other than Permitted Liens), and (b) are not funds for the payment of a drawn or committed but unpaid draft, ACH or EFT transaction as of the applicable date of determination.

"**Borrower Unrestricted Cash**" means, as of any date of determination, unrestricted cash and cash equivalents of the Borrowers that (a) are held in the name of a Borrower in a Deposit Account or Securities Account located in the United States that is subject to a Deposit Account Control Agreement or Securities Account Control Agreement, as applicable, in favor of Agent, (b) are not subject to any Lien (other than Permitted Liens), and (c) are not funds for the payment of a drawn or committed but unpaid draft, ACH or EFT transaction as of the applicable date of determination.

"**Borrowing Base**" means:

(a) the product of (i) eighty-five percent (85%) *multiplied by* (ii) the aggregate net amount (as determined in accordance with the definition of Eligible Accounts) at such time of the Eligible Accounts; *plus*

(b) forty percent (40%) *multiplied by* the value of the Eligible Inventory, valued at the lower of first-in-first-out cost or market cost, and after factoring in all rebates, discounts and other incentives or rewards associated with the purchase of the applicable Inventory; *minus*

(c) the amount of any reserves and/or adjustments provided for in this Agreement;

provided, that (i) the portion of the Borrowing Base constituting Eligible Inventory shall be automatically adjusted down, if necessary, such that the aggregate availability from Eligible Inventory shall never exceed the lesser of (x) an amount equal to, as of any applicable date of determination, twenty percent (20%) of the Revolving Loan Commitment Amount and (y) thirty percent (30%) of the total Borrowing Base and (ii) the portion of the Borrowing Base constituting Eligible Accounts shall be automatically adjusted down, if necessary, such that the aggregate availability from Eligible Foreign Accounts shall never exceed the lesser of (x) Five Hundred Thousand Dollars ($500,000) and (y) ten percent (10%) of the total Borrowing Base.

"**Borrowing Base Certificate**" means a certificate, duly executed by a Responsible Officer of Borrower Representative, appropriately completed and substantially in the form of Exhibit C hereto.

"**Business Day**" means any day except a Saturday, Sunday or other day on which either the New York Stock Exchange is closed, or on which commercial banks in California, Washington, DC or New York City are authorized by law to close, and, in the case of a Business Day which relates to a determination of the LIBOR Rate, a day on which dealings are carried on in the London interbank eurodollar market.

"**Capital Lease**" of any Person means any lease of any property by such Person as lessee which would, in accordance with GAAP, be required to be accounted for as a capital lease on the balance sheet of such Person.

"**CERCLA**" means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C.A. § 9601 *et seq.*, as the same may be amended from time to time.

"**CFC**" means a controlled foreign corporation within the meaning of Section 957 of the Internal Revenue Code.

"**CFC Holdco**" means any Subsidiary substantially all the assets of which consist of equity interests (or equity and debt interests) of one or more CFCs and/or of one or more other CFC Holdcos and that does not engage in any business, operations or activity other than that of a holding company. For the avoidance of doubt, it is understood and agreed that no CFC Holdcos exist as of the Closing Date.

"**Change in Control**" means any event, transaction, or occurrence as a result of which: (a) any Person or two or more Persons acting in concert shall have acquired beneficial ownership, directly or indirectly, of, or shall have acquired by contract or otherwise, or shall have entered into a contract or arrangement that, upon consummation, will result in its or their acquisition of or control over, voting stock of any Borrower (or other securities convertible into such voting stock) either (i) representing fifty percent (50%) or more of the combined voting power of all voting stock of any Borrower or (ii) representing a sufficient number of shares of voting stock of any Borrower (or other securities convertible into such voting stock) empowering such Person or Persons (other than any Person who is an owner of Borrower's equity interest on the Closing Date) to elect a majority of the board of directors of any Borrower; (b) except for a change in the members of the board of directors or other equivalent body of Borrower resulting from the sale of Borrower's equity securities in a Qualified IPO, occupation of a majority of the seats (other than vacant seats) on the board of directors of Borrower by persons who were neither (i) nominated by the board of directors of the Borrower nor (ii) appointed by the directors so nominated; (c) except to the extent expressly permitted pursuant to Section 5.6 and as Agent may otherwise consent (in its reasonable discretion), any Credit Party ceases to own and control, directly or indirectly, all of the economic and voting rights associated with the outstanding securities of each of its Subsidiaries; or (d) the occurrence of any "Change of Control", "Change in Control", or terms of similar import under any Credit Party's Organizational Documents. As used herein, "beneficial ownership" shall have the meaning provided in Rule 13d-3 of the Securities and Exchange Commission under the Securities Exchange Act of 1934.

Notwithstanding the foregoing, a Qualified IPO shall not constitute a "Change in Control".

"**Closing Date**" means the date of this Agreement.

"**Code**" means the Internal Revenue Code of 1986, as amended from time to time.

"**Collateral**" means all property (other than Excluded Property), now existing or hereafter acquired, mortgaged or pledged to, or purported to be subjected to a Lien in favor of, Agent, for the benefit of Agent and Lenders, pursuant to this Agreement and the Security Documents, including, without limitation, all of the property described in Schedule 9.1 hereto.

"**Commitment Annex**" means Annex A to this Agreement.

"**Competitor**" means, at any time of determination, any Person engaged in the same or substantially the same line of business as the Borrower and the other Credit Parties and such business accounts for all or substantially all the revenue or net income of such Person at the time of such determination.

"**Compliance Certificate**" means a certificate, duly executed by a Responsible Officer of Borrower Representative, appropriately completed and substantially in the form of Exhibit B hereto.

"**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 Subsidiary**" means, at any date, any Subsidiary the accounts of which would be consolidated with those of the "parent" Borrower (or any other Person, as the context may require hereunder) in its consolidated financial statements if such statements were prepared as of such date.

"**Contingent Obligation**" means, with respect to any Person, any direct or indirect liability of such Person: (a) with respect to any Debt of another Person (a "**Third Party Obligation**") if the purpose or intent of such Person incurring such liability, or the effect thereof, is to provide assurance to the obligee of such Third Party Obligation that such Third Party Obligation will be paid or discharged, or that any agreement relating thereto will be complied with, or that any holder of such Third Party Obligation will be protected, in whole or in part, against loss with respect thereto; (b) with respect to any undrawn portion of any letter of credit issued for the account of such Person or as to which such Person is otherwise liable for the reimbursement of any drawing; (c) under any Swap Contract, to the extent not yet due and payable; (d) to make take-or-pay or similar payments if required regardless of nonperformance by any other party or parties to an agreement; or (e) for any obligations of another Person pursuant to any Guarantee or pursuant to any agreement to purchase, repurchase or otherwise acquire any obligation or any property constituting security therefor, to provide funds for the payment or discharge of such obligation or to preserve the solvency, financial condition or level of income of another Person. The amount of any Contingent Obligation shall be equal to the amount of the obligation so Guaranteed or otherwise supported or, if not a fixed and determinable amount, the maximum amount reasonably estimated by such Person in good faith.

"**Controlled Group**" means all members of a group of corporations and all members of a group of trades or businesses (whether or not incorporated) under common control which, together with the Credit Parties, are treated as a single employer under Section 414(b), (c), (m) or (o) of the Code or Section 4001(b) of ERISA and, solely for purposes of Section 412 and 436 of the Code, Section 414(m) or (o) of the Code.

"**Correction**" means repair, modification, adjustment, relabeling, destruction or inspection (including patient monitoring) of a product without its physical removal to some other location.

"**Credit Exposure**" means, at any time, any portion of the Revolving Loan Commitment and/or of any other Obligations that remains outstanding; *provided, however,* that no Credit Exposure shall be deemed to exist solely due to the existence of contingent indemnification liability, absent the assertion of a claim, or the known existence of a claim reasonably likely to be asserted, with respect thereto.

"**Credit Party**" means any Guarantor under a Guarantee of the Obligations or any part thereof, any Borrower and any other Person (other than Agent, a Lender or a participant of a Lender), whether now existing or hereafter acquired or formed, that becomes obligated as a borrower, guarantor, surety, indemnitor, pledgor, assignor or other obligor under any Financing Document; and "**Credit Parties**" means all such Persons, collectively.

"**Debt**" of a Person means at any date, without duplication, (a) all obligations of such Person for borrowed money, (b) all obligations of such Person evidenced by bonds, debentures, notes or other similar instruments, (c) all obligations of such Person to pay the deferred purchase price of property or services, except trade accounts payable arising and paid on a timely basis, (d) all Capital Leases of such Person, (e) all non-contingent obligations of such Person to reimburse any bank or other Person in respect of amounts paid under a letter of credit, banker's acceptance or similar instrument, (f) all equity securities of such Person subject to repurchase or redemption other than at the sole option of such Person, (g) all obligations secured by a Lien on any asset of such Person, whether or not such obligation is otherwise an obligation of such Person, (h) "earnouts", purchase price adjustments, profit sharing arrangements, deferred purchase money amounts and similar payment obligations or continuing obligations of any nature of such Person arising out of purchase and sale contracts; provided that "earnouts" and other similar payment obligations shall only constitute Debt to the extent the condition to the payment of such obligations has been met and the payment thereof is required pursuant to the terms of such contracts, (i) all Debt of others Guaranteed by such Person, (j) off-balance sheet liabilities of such Person, (k) obligations in respect of litigation settlement agreements or similar arrangements, to the extent the condition to the payment of such agreements or arrangements has been met and the payment thereof is

required pursuant to the terms of such agreements or arrangements, and (l) obligations arising under bonus, deferred compensation, incentive compensation or similar arrangements, other than those arising in the Ordinary Course of Business. Without duplication of any of the foregoing, Debt of Borrowers shall include any and all Loans.

"**Default**" means any condition or event which with the giving of notice or lapse of time or both would, unless cured or waived, become an Event of Default.

"**Defaulted Lender**" means, so long as such failure shall remain in existence and uncured, any Lender which shall have failed to make any Loan or other credit accommodation, disbursement, settlement or reimbursement required pursuant to the terms of any Financing Document.

"**Defined Period**" means for any given calendar month or date of determination, the immediately preceding twelve (12) month period ending on the last day of such calendar month.

"**Deposit Account**" means a "deposit account" (as defined in Article 9 of the UCC), an investment account, or other account in which funds are held or invested for credit to or for the benefit of any Borrower.

"**Deposit Account Control Agreement**" means an agreement, in form and substance reasonably satisfactory to Agent, among Agent, any Borrower and each financial institution in which such Borrower maintains a Deposit Account, which agreement contains such terms and conditions as Agent may reasonably require, including as to any such agreement pertaining to any Lockbox Account, providing that such financial institution shall wire, or otherwise transfer, in immediately available funds, on a daily basis to the Payment Account (or, prior to the time of the initial borrowing of the Revolving Loans, such Deposit Account of Borrower, as Agent may direct in its sole discretion) all funds received or deposited into such Lockbox or Lockbox Account.

"**Distribution**" means as to any Person (a) any dividend or other distribution (whether in cash, securities or other property) on any equity interest in such Person (except those payable solely in its equity interests of the same class), (b) any payment by such Person on account of (i) the purchase, redemption, retirement, defeasance, surrender, cancellation, termination or acquisition of any equity interests in such Person or any claim respecting the purchase or sale of any equity interest in such Person, or (ii) any option, warrant or other right to acquire any equity interests in such Person, (c) any management fees or similar fees to any Person holding an equity interest in a Borrower or a Subsidiary of a Borrower (other than reasonable and customary (i) payments of salaries to individuals, (ii) directors fees, and (iii) advances and reimbursements to employees or directors, all in the Ordinary Course of Business), an Affiliate of a Borrower or an Affiliate of any Subsidiary of a Borrower, (d) any lease or rental payments to an Affiliate or Subsidiary of a Borrower, or (e) repayments of or debt service on loans or other indebtedness held by any Person holding an equity interest in a Borrower or a Subsidiary of a Borrower, an Affiliate of a Borrower or an Affiliate of any Subsidiary of a Borrower unless permitted under and made pursuant to a Subordination Agreement applicable to such loans or other indebtedness.

"**Dollars**" or "**$**" means the lawful currency of the United States of America.

"**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.

"**Eligible Account**" means, subject to the criteria below, an account receivable of a Borrower, which was generated in the Ordinary Course of Business, which was generated originally in the name of a Borrower and not acquired via assignment or otherwise. The net amount of an Eligible Account at any time shall be (a) the face amount of such Eligible Account as originally billed *minus* all cash collections and other proceeds of such Account received from or on behalf of the Account Debtor thereunder as of such date and any and all returns, rebates, discounts (which may, at Agent's option, be calculated on shortest terms), credits, allowances or excise taxes of any nature at any time issued, owing, claimed by Account Debtors, granted, outstanding or payable in connection with such Accounts at such time, and (b) adjusted by applying percentages (known as "**liquidity factors**") by payor and/or payor class based upon the applicable Borrower's actual recent collection history for each such payor and/or payor class in a manner consistent with Agent's underwriting practices and procedures and determined on the basis of borrowing base audits conducted by Agent in accordance with the terms of this Agreement. Such liquidity factors may be adjusted by Agent from time to time as warranted by Agent's underwriting practices and procedures and determined based on borrowing base audits conducted by Agent in accordance with the terms of this Agreement. Without limiting the generality of the foregoing, no Account shall be an Eligible Account if:

(a) the Account remains unpaid more than one hundred and twenty (120) days past the claim or invoice date (but in no event more than one hundred and fifty (150) days after the applicable goods or services have been rendered or delivered);

(b) the Account is subject to any defense, set-off, recoupment, counterclaim, deduction, discount, credit, chargeback, freight claim, allowance, or adjustment of any kind (but only to the extent of such defense, set-off, recoupment, counterclaim, deduction, discount, credit, chargeback, freight claim, allowance, or adjustment), or the applicable Borrower is not able to bring suit or otherwise enforce its remedies against the Account Debtor through judicial process;

(c) if the Account arises from the sale of goods, any part of any goods the sale of which has given rise to the Account has been returned, rejected, lost, or damaged (but only to the extent that such goods have been so returned, rejected, lost or damaged);

(d) if the Account arises from the sale of goods, the sale was not an absolute, bona fide sale, or the sale was made on consignment or on approval or on a sale-or-return or bill-and-hold or progress billing basis, or the sale was made subject to any other repurchase or return agreement, or the goods have not been shipped to the Account Debtor or its designee or the sale was not made in compliance with applicable Laws;

(e) if the Account arises from the performance of services, the services have not actually been performed or the services were undertaken in violation of any Law or the Account represents a progress billing for which services have not been fully and completely rendered;

(f) the Account is subject to a Lien (other than Liens in favor of Agent, Liens in favor of the Affiliated Financing Agent or Liens that have been expressly subordinated to the Liens of Agent and Liens described in paragraphs (c) and (d) of the definition of Permitted Liens to the extent such Liens arise by operation of Law), or Agent does not have a first priority, perfected Lien on such Account;

(g) the Account is evidenced by Chattel Paper or an Instrument of any kind, or has been reduced to judgment, unless such Chattel Paper or Instrument has been delivered to Agent;

(h) the Account Debtor is an Affiliate or Subsidiary of a Credit Party, or if the Account Debtor holds any Debt of a Credit Party;

(i) more than fifty percent (50%) of the aggregate balance of all Accounts owing from the Account Debtor obligated on the Account are ineligible under subclause (a) above (in which case all Accounts from such Account Debtor shall be ineligible);

(j) without limiting the provisions of clause (i) above, fifty percent (50%) or more of the aggregate unpaid Accounts from the Account Debtor obligated on the Account are not deemed Eligible Accounts under this Agreement for any reason;

(k) the total unpaid Accounts of the Account Debtor obligated on the Account exceed twenty percent (20%) of the net amount of all Eligible Accounts owing from all Account Debtors (but only the amount of the Accounts of such Account Debtor exceeding such twenty percent (20%) limitation shall be considered ineligible);

(l) any covenant, representation or warranty contained in the Financing Documents with respect to such Account has been breached in any material respect and any applicable cure period for herein with respect to such breach (if any) has expired;

(m) the Account is unbilled or has not been invoiced to the Account Debtor in accordance with the procedures and requirements of the applicable Account Debtor

(n) the Account is an obligation of an Account Debtor that is the federal, state or local government or any political subdivision thereof, unless Agent has agreed to the contrary in writing and Agent has received from the Account Debtor the acknowledgement of Agent's notice of assignment of such obligation pursuant to this Agreement;

(o) the Account is an obligation of an Account Debtor that has suspended business, made a general assignment for the benefit of creditors, is unable to pay its debts as they become due or as to which a petition has been filed (voluntary or involuntary) under any law relating to bankruptcy, insolvency, reorganization or relief of debtors;

(p) except for Eligible Foreign Accounts, the Account Debtor has its principal place of business or executive office outside the United States;

(q) the Account is payable in a currency other than Dollars;

(r) the Account Debtor is an individual;

(s) the Borrower owning such Account has not signed and delivered to Agent notices, in the form reasonably requested by Agent, directing the Account Debtors to make payment to the applicable Lockbox Account;

(t) the Account includes late charges or finance charges (but only such portion of the Account that includes such charges shall be ineligible);

(u) the Account arises out of the sale of any Inventory upon which any other Person holds, claims or asserts a Lien (other than Liens in favor of Agent, Liens in favor of the Affiliated Financing Agent or Liens that have been expressly subordinated to the Liens of Agent); or

(v) the Account or Account Debtor fails to meet such other specifications and requirements which may from time to time be established by Agent in its Permitted Discretion and determined on the basis of borrowing base audits conducted by Agent in accordance with the terms of this Agreement or other information supplied by Borrower to Agent relating to the Borrowing Base or the Collateral included therein.

"**Eligible Assignee**" means (a) a Lender, (b) an Affiliate of a Lender, (c) an Approved Fund, and (d) any other Person (other than a natural person) approved by Agent, and if no Event of Default has occurred and is continuing, Borrower Representative (such approval not to be unreasonably withheld, conditioned or delayed and which approval shall be deemed granted in the event Borrower does not respond within five (5) Business Days of notice of a proposed assignment); *provided*, *however*, that notwithstanding the foregoing, (x) so long as no Event of Default has occurred and is continuing, "**Eligible Assignee**" shall not include any Borrower or any Subsidiary thereof, and (y) no proposed assignee intending to assume all or any portion of the Revolving Loan Commitment shall be an Eligible Assignee unless such proposed assignee either already holds a portion of such Revolving Loan Commitment, or has been approved as an Eligible Assignee by Agent. Notwithstanding anything contained herein to the contrary, no consent of Borrower Representative shall be required for an assignment by a Lender in connection with any merger, consolidation, sale, transfer, or other disposition of all or a substantial portion of the business or the venture loan portfolio of such Lender (*provided* that, if no Event of Default has occurred and is continuing, no Lender shall make an assignment to (i) any hedge fund or private equity fund (other than any Affiliate of a Lender or an Approved Fund) that is primarily engaged in the business of purchasing distressed debt, or (ii) any Competitor in connection with any such sale, transfer or other disposition without Borrower Representative's approval (such approval not to be unreasonably withheld, conditioned or delayed and which approval shall be deemed granted in the event Borrower does not respond within five (5) Business Days of notice of a proposed assignment)).

"**Eligible Foreign Accounts**" means Accounts of Borrower which (a) the Account Debtor of such Account is Iris Eye GmbH, A.M.R. Srl, or OICS GmbH and (b) such other Account Debtors that Agent approves in its Permitted Discretion, in each case, that would be excluded from Eligible Accounts under clause (p) of the definition of "Eligible Account" solely because the Account Debtor has its principal place of business or executive office outside the United States, but otherwise constitutes an "Eligible Account".

"**Eligible Inventory**" means, subject to the criteria below, Inventory owned by a Borrower and acquired and dispensed by such Borrower in the Ordinary Course of Business. Without limiting the generality of the foregoing, no Inventory shall be Eligible Inventory if:

(a) such Inventory is not owned by a Borrower free and clear of all Liens and rights of any other Person (including the rights of a purchaser that has made progress payments and the rights of a surety that has issued a bond to assure such Borrower's performance with respect to that Inventory) except for Liens in favor of Agent, the Affiliated Financing Agent, Liens that have been expressly subordinated to the Liens of Agent, or Liens described in paragraphs (c) and (d) of the definition of Permitted Liens to the extent such Liens arise by operation of Law;

(b) such Inventory is placed on consignment or is in transit;

(c) such Inventory is covered by a negotiable document of title, unless such document has been delivered to Agent with all necessary endorsements, free and clear of all Liens except those in favor of Agent or the Affiliated Financing Agent;

(d) such Inventory is obsolete, unsalable, shopworn, seconds, damaged, unfit for sale, unfit for further processing, is of substandard quality or is not of good and merchantable quality, free from any defects;

(e) such Inventory consists of marketing materials, display items or packing or shipping materials, manufacturing supplies or Work-In-Process;

(f) such Inventory is not subject to a first priority Lien in favor of Agent (or Liens described in paragraphs (c) and (d) of the definition of Permitted Liens to the extent such Liens arise by operation of Law);

(g) such Inventory consists of goods that can be transported or sold only with licenses that are not readily available or of any substances defined or designated as hazardous or toxic waste, hazardous or toxic material, hazardous or toxic substance, or similar term, by any environmental law or any Governmental Authority applicable to Borrowers or their business, operations or assets;

(h) such Inventory is not covered by casualty insurance in compliance with Section 4.4(c);

(i) any covenant, representation or warranty contained in the Financing Documents with respect to such Inventory has been breached in any material respect and any applicable cure period for herein with respect to such breach (if any) has expired;

(j) such Inventory is located (i) outside of the continental United States or (ii) on premises where the aggregate amount of all Inventory (valued at cost) of Borrowers located thereon is less than $10,000;

(k) such Inventory is located on premises with respect to which Agent has not received a landlord, warehouseman, bailee or mortgagee letter reasonably acceptable in form and substance to Agent;

(l) such Inventory consists of (A) discontinued items or (B) used items held for resale;

(m) such Inventory does not consist of finished goods;

(n) such Inventory does not meet all material standards imposed by any Governmental Authority, including with respect to its production, acquisition or importation (as the case may be);

(o) such Inventory has an expiration date within the next six (6) months;

(p) such Inventory consists of products for which (i) Borrowers have a greater than six (6) month supply on hand or (ii) in the case of any Products pertaining to the TearCare System, greater than six (6) month supply on hand based on Borrower’s reasonable forecast of the sale of such Products, in each case, solely to the extent of the excess of such six (6) month supply;

(q) such Inventory is held for rental or lease by or on behalf of Borrowers;

(r) such Inventory is subject to any licensing, patent, royalty, trademark, trade name or copyright agreement with any third parties, which agreement restricts the ability of Agent or any Lender to sell or otherwise dispose of such Inventory; or

(s) such Inventory fails to meet such other specifications and requirements which may from time to time be established by Agent in its Permitted Discretion and determined on the basis of borrowing base audits conducted by Agent in accordance with the terms of this Agreement or other information supplied by Borrower to Agent relating to the Borrowing Base or the Collateral included therein. Agent and Borrowers agree that Inventory shall be subject to periodic appraisal by Agent and that valuation of Inventory shall be subject to adjustment pursuant to the results of such appraisal. Notwithstanding the foregoing, the valuation of Inventory shall be subject to any legal limitations on sale and transfer of such Inventory.

"**Environmental Laws**" means any present and future federal, state and local laws, statutes, ordinances, rules, regulations, standards, policies and other governmental directives or requirements, as well as common law, pertaining to the environment, natural resources, pollution, health (including any environmental clean-up statutes and all regulations adopted by any local, state, federal or other Governmental Authority, and any statute, ordinance, code, order, decree, law rule or regulation all of which pertain to or impose liability or standards of conduct concerning medical waste or medical products, equipment or supplies), safety or clean-up that apply to any Borrower and relate to Hazardous Materials, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. § 9601 *et seq.*), the Resource Conservation and Recovery Act of 1976 (42 U.S.C. § 6901 *et seq.*), the Federal Water Pollution Control Act (33 U.S.C. § 1251 *et seq.*), the Hazardous Materials Transportation Act (49 U.S.C. § 5101 *et seq.*), the Clean Air Act (42 U.S.C. § 7401 *et seq.*), the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. § 136 *et seq.*), the Emergency Planning and Community Right-to-Know Act (42 U.S.C. § 11001 *et seq.*), the Occupational Safety and Health Act (29 U.S.C. § 651 *et seq.*), the Residential Lead-Based Paint Hazard Reduction Act (42 U.S.C. § 4851 *et seq.*), any analogous state or local laws, any amendments thereto, and the regulations promulgated pursuant to said laws, together with all amendments from time to time to any of the foregoing and judicial interpretations thereof.

"**ERISA**" means the Employee Retirement Income Security Act of 1974, as the same may be amended, modified or supplemented from time to time, and any successor statute thereto, and any and all rules or regulations promulgated from time to time thereunder.

"**ERISA Plan**" means any "employee benefit plan", as such term is defined in Section 3(3) of ERISA (other than a Multiemployer Plan), which any Credit Party or any Subsidiary maintains, sponsors or contributes to, or, in the case of an employee benefit plan which is subject to Section 412 of the Code or Title IV of ERISA, to which any Credit Party or any Subsidiary has any liability, including on account of any member of the Controlled Group, including any liability by reason of having been a substantial employer within the meaning of Section 4063 of ERISA at any time during the preceding five (5) years, or by reason of being deemed to be a contributing sponsor under Section 4069 of ERISA.

"**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.

"**Event of Default**" has the meaning set forth in Section 10.1.

"**Excluded Accounts**" has the meaning set forth in Section 5.14(b).

"**Excluded Property**" means (a) any lease, instrument, license, contract, chattel paper or agreement as to which, if and to the extent that, and only for so long as the grant of a security interest therein shall (i) constitute or result in a breach, termination or default under any such lease, license, contract, or agreement or render it unenforceable, (ii) be prohibited by any applicable law or (iii) require the consent of any third party that cannot be obtained after the use of commercially reasonable efforts to obtain such consent (in each case of clauses (i), (ii) and (iii), other than to the extent that any such breach, termination, default, prohibition or requirement for consent would be rendered ineffective pursuant to Sections 9-406, 9-407, 9-408 or 9-409 of the UCC of any relevant jurisdiction or any other applicable Law); *provided* that such security interest shall attach immediately to each portion of such lease, license, contract, or agreement that does not result in any of the consequences specified above, (b) any intent-to-use trademark application prior to the first use thereof, whether by the actual use thereof in commerce, the recording of a statement of use with the United States Patent and Trademark Office or otherwise, (c) any asset that is subject to a purchase money security interest or lease permitted pursuant to the terms of this Agreement and which derives from an agreement which prohibits any junior security interest, other than to the extent that any such prohibition would be terminated or rendered unenforceable or otherwise deemed ineffective by the UCC or any other Law, (d) any governmental licenses or state or local franchises, charters or authorizations, to the extent security interests in such licenses, franchises, charters or authorizations are prohibited or restricted thereby, after giving effect to the applicable anti-assignment provisions of the UCC of any applicable jurisdiction or any other applicable Law notwithstanding such prohibition or restriction, (e) any leasehold interests in real estate, (f) the voting capital stock (or other voting equity interests) of any Excluded Subsidiary in excess of 65% of the issued and outstanding voting capital stock (or other voting equity interests) of such Excluded Subsidiary to the extent that Borrower has provided Agent reasonably satisfactory evidence that the grant of a security interest in excess of such percentage to secure the Obligations could reasonably be expected cause material adverse tax consequences for any Credit Party, and (g) Excluded Accounts; *provided*, that "**Excluded Property**" shall not include any proceeds, products, substitutions, receivables or replacements of Excluded Property (unless such proceeds, products, substitutions, receivables or replacements would otherwise constitute Excluded Property).

"**Excluded Subsidiary**" means any Foreign Subsidiary and any CFC Holdco.

"**Excluded Taxes**" means any of the following Taxes imposed on or with respect to Agent, any Lender or any other recipient of any payment to be made by or on behalf of any obligation of Credit Parties hereunder or the Obligations or required to be withheld or deducted from a payment to Agent, such Lender or such recipient (including any interest and penalties thereon): (a) Taxes to the extent imposed on or measured by Agent's, any Lender's or such recipient's net income (however denominated), branch profits Taxes, and franchise Taxes and similar Taxes, in each case, (i) imposed by the jurisdiction (or any political subdivision thereof) under which Agent, such Lender or such recipient is organized, has its principal office or conducts business with respect to entering into any of the Financing Documents or taking any action thereunder or (ii) that are Other Connection Taxes; (b) in the case of a Lender, United States withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in the Loans pursuant to a Law in effect on the date on which (i) such Lender becomes a party to this Agreement other than as a result of an assignment requested by a Credit Party pursuant to Section 2.8(i) hereof or (ii) such Lender changes its lending office for funding its Loan, except in each case to the extent that, pursuant to Section 2.8, amounts with respect to such Taxes were payable either to such Lender's assignor immediately before such Lender acquired the applicable interest in a Loan or Revolving Loan Commitment or to such Lender immediately before it changed its lending office; (c) Taxes attributable to such Lender's failure to comply with Section 2.8(c); and (d) any withholding taxes imposed under FATCA.

"**FATCA**" means Sections 1471 through 1474 of the Code as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future U.S. Treasury 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 and implementing such Sections of the Code.

"**FDA**" means the Food and Drug Administration of the United States of America, any comparable state or local Governmental Authority, any comparable Governmental Authority in any non-United States jurisdiction, and any successor agency of any of the foregoing.

"**FDCA**" means the Federal Food, Drug and Cosmetic Act, as amended, 21 U.S.C. Section 301 et seq., and all regulations promulgated thereunder.

"**Federal Funds Rate**" means, for any day, the rate of interest per annum (rounded upwards, if necessary, to the nearest whole multiple of 1/100 of 1%) equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day, *provided*, *however*, that (a) if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day, and (b) if no such rate is so published on such next preceding Business Day, the Federal Funds Rate for such day shall be the average rate quoted to Agent on such day on such transactions as determined by Agent.

"**Fee Letter**" means each agreement, if any, between Agent and Borrower relating to fees payable to Agent in connection with this Agreement.

"**Financing Documents**" means this Agreement, any Notes, the Security Documents, each Fee Letter, the Affiliated Intercreditor Agreement, each subordination or intercreditor agreement pursuant to which any Debt and/or any Liens securing such Debt is subordinated to all or any portion of the Obligations and all other documents, instruments and agreements related to the Obligations and heretofore executed, including concurrently with the Original Credit Agreement, executed concurrently herewith or executed at any time and from time to time hereafter, as any or all of the same may be amended, supplemented, restated or otherwise modified from time to time.

"**Foreign Lender**" has the meaning set forth in Section 2.8(c)(i).

"**Foreign Subsidiary**" means, with respect to any Person, any Subsidiary of that Person that is organized under the laws of a jurisdiction other than the United States of America, any state thereof, or the District of Columbia.

"**GAAP**" means generally accepted accounting principles 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 United States accounting profession), which are applicable to the circumstances as of the date of determination.

"**General Intangible**" means any "general intangible" as defined in Article 9 of the UCC.

"**Governmental Authority**" means any nation or government, any state, local or other political subdivision thereof, and any agency, department or Person exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government and any corporation or other Person owned or controlled (through stock or capital ownership or otherwise) by any of the foregoing, whether domestic or foreign.

"**Guarantee**" by any Person means any obligation, contingent or otherwise, of such Person directly or indirectly guaranteeing any Debt or other obligation of any other Person and, without limiting the generality of the foregoing, any obligation, direct or indirect, contingent or otherwise, of such Person (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Debt or other obligation (whether arising by virtue of partnership arrangements, by agreement to keep-well, to purchase assets, goods, securities or services, to take-or-pay, or to maintain financial statement conditions or otherwise), or (b) entered into for the purpose of assuring in any other manner the obligee of such Debt or other obligation of the payment thereof or to protect such obligee against loss in respect thereof (in whole or in part), *provided, however*, that the term Guarantee shall not include endorsements for collection or deposit in the Ordinary Course of Business. The term "**Guarantee**" used as a verb has a corresponding meaning.

"**Guarantor**" means any Credit Party that has executed or delivered, or shall in the future execute or deliver, any Guarantee of any portion of the Obligations. Notwithstanding any other provision of this Agreement or any Financing Document, Excluded Subsidiaries shall not be, or be required to become, Guarantors.

"**Hazardous Materials**" means petroleum and petroleum products and compounds containing them, including gasoline, diesel fuel and oil; explosives, flammable materials; radioactive materials; polychlorinated biphenyls and compounds containing them; lead and lead-based paint; asbestos or asbestos-containing materials; underground or above-ground storage tanks, whether empty or containing any substance; any substance the presence of which is prohibited by any Environmental Laws; toxic mold, any substance that requires special handling; and any other material or substance now or in the future defined as a "hazardous substance," "hazardous material," "hazardous waste," "toxic substance," "toxic pollutant," "contaminant," "pollutant" or other words of similar import within the meaning of any Environmental Law, including: (a) any "hazardous substance" defined as such in (or for purposes of) CERCLA, or any so-called "superfund" or "superlien" Law, including the judicial interpretation thereof; (b) any "pollutant or contaminant" as defined in 42 U.S.C.A. § 9601(33); (c) any material now defined as "hazardous waste" pursuant to 40 C.F.R. Part 260; (d) any petroleum or petroleum by-products, including crude oil or any fraction thereof; (e) natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel; (f) any "hazardous chemical" as defined pursuant to 29 C.F.R. Part 1910; (g) any toxic or harmful substances, wastes, materials, pollutants or contaminants (including, without limitation, asbestos, polychlorinated biphenyls, flammable explosives, radioactive materials, infectious substances, materials containing lead-based paint or raw materials which include hazardous constituents); and (h) any other toxic substance or contaminant that is subject to any Environmental Laws or other past or present requirement of any Governmental Authority.

"**Hazardous Materials Contamination**" means contamination (whether now existing or hereafter occurring) of the improvements, buildings, facilities, personalty, soil, groundwater, air or other elements on or of the relevant property by Hazardous Materials, or any derivatives thereof, or on or of any other property as a result of Hazardous Materials, or any derivatives thereof, generated on, emanating from or disposed of in connection with the relevant property.

"**Healthcare Laws**" means all applicable Laws relating to the procurement, development, provision, clinical and non-clinical evaluation or investigation, product approval or clearance, manufacture, production, analysis, distribution, dispensing, importation, exportation, use, handling, quality, reimbursement, sale, labeling, advertising, promotion, or postmarket requirements of any medical device, including the Federal Food, Drug and Cosmetic Act (21 U.S.C. § 301 et seq.), the Anti-Kickback Statute (42 U.S.C. Section 1320a-7b(b)), the Civil Monetary Penalties Law (42 U.S.C. § 1320a-7a), the Physician Payment Sunshine Act (42 U.S.C. § 1320a-7h), the Civil False Claims Act (31 U.S.C. Section 3729 et seq.), the criminal False Claims Law (42 U.S.C. § 1320a-7b(a)), the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. § 1320d et seq.) as amended by the Health Information Technology for Economic and Clinical Health Act (42 U.S.C. § 17921 et seq.), the exclusion laws (42 U.S.C. § 1320a-7), Medicare, Medicaid, and any and all other comparable state, local, federal or foreign health care laws, each as amended from time to time, and the regulations promulgated pursuant to such laws.

"**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 Borrowers or any other Credit Party under any Financing Documents and (b) to the extent not otherwise described in (a), Other Taxes.

"**Instrument**" means "instrument", as defined in Article 9 of the UCC.

"**Intellectual Property**" means, with respect to any Person, (a) all copyright rights, copyright applications, copyright registrations in each work of authorship, whether published or unpublished, (b) any patents and patent applications, including divisions, continuations, renewals, reissues, extensions, and continuations-in-part of the same, as applicable, (c) trademarks, trade names, and service marks, whether registered or not, (d) domain names, (e) know-how, trade secret rights, including clinical and non-clinical data that is protectable as a trade secret under applicable laws, rights to unpatented inventions, and (f) any claims for damage by way of any past, present, or future infringement of any of the foregoing.

"**Interest Period**" means any period commencing on the first day of a calendar month and ending on the last day of such calendar month.

"**Inventory**" means "inventory" as defined in Article 9 of the UCC.

"**Investment**" means, with respect to any Person, directly or indirectly, (a) to purchase or acquire any stock or stock equivalents, or any obligations or other securities of, or any interest in, any Person, including the establishment or creation of a Subsidiary, (b) to make or otherwise consummate any Acquisition or (c) make, purchase or hold any advance, loan, extension of credit or capital contribution to or in, or any other investment in, any Person. The amount of any Investment shall be the original cost of such Investment plus the cost of all additions thereto, without any adjustments for increases or decreases in value, or write-ups, write-downs or write-offs with respect thereto.

"**IRS**" means the United States Internal Revenue Service.

"**Laws**" means any and all federal, state, provincial, territorial, local and foreign statutes, laws, judicial decisions, regulations, ordinances, rules, judgments, orders, decrees, codes, injunctions, permits, governmental agreements and governmental restrictions, whether now or hereafter in effect, which are applicable to any Credit Party in any particular circumstance. "**Laws**" includes, without limitation, Healthcare Laws and Environmental Laws.

"**Lender**" means each of (a) MidCap Funding IV Trust, in its capacity as a lender hereunder, (b) each other Person party hereto in its capacity as a lender hereunder, (c) each other Person that becomes a party hereto as Lender pursuant to Section 11.17, and (d) the respective successors of all of the foregoing, and "**Lenders**" means all of the foregoing.

"**LIBOR Rate**" means, for each Loan, a per annum rate of interest equal to the greater of (a) one and three quarters percent (1.75%) and (b) the rate determined by Agent (rounded upwards, if necessary, to the next 1/100th%) by *dividing* (i) the Base LIBOR Rate for the Interest Period, *by* (ii) the sum of one *minus* the daily average during such Interest Period of the aggregate maximum reserve requirement (expressed as a decimal) then imposed under Regulation D of the Board of Governors of the Federal Reserve System (or any successor thereto) for "Eurocurrency Liabilities" (as defined therein).

"**Lien**" means, with respect to any asset, any mortgage, lien, pledge, charge, security interest or encumbrance of any kind, in respect of such asset. For the purposes of this Agreement and the other Financing Documents, any Borrower or any Subsidiary shall be deemed to own subject to a Lien any asset which it has acquired or holds subject to the interest of a vendor or lessor under any conditional sale agreement, Capital Lease or other title retention agreement relating to such asset.

"**Litigation**" means any action, suit or proceeding before any court, mediator, arbitrator or Governmental Authority.

"**Loan Account**" has the meaning set forth in Section 2.6(b).

"**Loan(s)**" means the Revolving Loans.

"**Lockbox**" has the meaning set forth in Section 2.11.

"**Lockbox Account**" means an account or accounts maintained at the Lockbox Bank into which collections of Accounts are paid.

"**Lockbox Bank**" has the meaning set forth in Section 2.11.

"**Margin Stock**" means "margin stock" as such term is defined in Regulation T, U, or X of the Board of Governors of the Federal Reserve System.

"**Market Withdrawal**" means a Person's Removal or Correction of a distributed product which involves a minor violation that would not be subject to legal action by the FDA or which involves no violation, e.g., normal stock rotation practices, routine equipment adjustments and repairs, etc.

"**Material Adverse Effect**" means with respect to any event, act, or condition or occurrence of whatever nature (including any adverse determination in any litigation, arbitration, or governmental investigation or proceeding), whether singly or in conjunction with any other event or events, act or acts, condition or conditions, occurrence or occurrences, whether or not related, a material adverse change in, or a material adverse effect upon, any of (a) the financial condition, operations, business, or properties of any of the Credit Parties (taken as a whole), (b) the rights and remedies of Agent or Lenders under any Financing Documents, or the ability of the Credit Parties, taken as a whole, to perform any of their payment obligations under any Financing Document to which they are a party or (c) the legality, validity or enforceability of any Financing Document, or the existence, perfection or priority of any security interest granted in any Financing Document (other than to the extent as a result of the action or inaction of Agent, the Lenders, the other secured parties under the Financing Documents or their Affiliates, officers, employees, agents, attorneys or representatives that is not the result of any action or inaction by a Credit Party or its Subsidiaries), or (d) the value of any material Collateral.

"**Material Contracts**" means any agreement or contract to which such Credit Party or its Subsidiaries is a party the termination of which could reasonably be expected to result in a Material Adverse Effect.

"**Material Intangible Assets**" means all of (a) Borrower's Intellectual Property and (b) license or sublicense agreements or other agreements with respect to rights in Intellectual Property to which a Borrower is a party, in each case that are material to the financial condition, business or operations of the Credit Parties (taken as a whole).

"**Maturity Date**" means November 1, 2025.

"**Maximum Lawful Rate**" has the meaning set forth in Section 2.7.

"**MCF**" means MidCap Financial Trust, a Delaware statutory trust, and its successors and assigns.

"**Medicaid**" means, collectively, the healthcare assistance program established by Title XIX of the Social Security Act (42 U.S.C. §§ 1396 *et seq.*) and any statutes succeeding thereto, all state statutes and plans for medical assistance enacted in connection with such program, and all laws, rules, regulations, orders, or legal requirements pertaining to such program, in each case as the same may be amended, supplemented or otherwise modified from time to time.

"**Medicare**" means, collectively, the health insurance program for the aged and disabled established by Title XVIII of the Social Security Act (42 U.S.C. §§ 1395 *et seq.*) and any statutes succeeding thereto, and all laws, rules, regulations, orders or legal requirements pertaining to such program, in each case as the same may be amended, supplemented or otherwise modified from time to time.

"**Minimum Balance**" means, at any time, an amount that equals the product of: (a) the average Borrowing Base (or, if less on any given day, the Revolving Loan Commitment) during the immediately preceding month *multiplied by* (b) the Minimum Balance Percentage for such month.

"**Minimum Balance Fee**" means a fee equal to (a) the positive difference, if any, remaining after subtracting (i) the average end-of-day principal balance of Revolving Loans outstanding during the immediately preceding month (without giving effect to the clearance day calculations referenced above or in Section 2.2(a)) from (ii) the Minimum Balance *multiplied by* (b) the highest interest rate applicable to the Revolving Loans during such month (or, during the existence of an Event of Default, the default rate of interest set forth in Section 10.5(a)).

"**Minimum Balance Percentage**" means thirty percent (30.0%).

"**Multiemployer Plan**" means a multiemployer plan within the meaning of Section 4001(a)(3) of ERISA to which any Borrower or any other member of the Controlled Group is making or accruing an obligation to make contributions or has within the preceding five plan years (as determined on the applicable date of determination) made contributions.

"**Net Revenue**" means, for any period, the revenue of Borrowers, as determined in accordance with GAAP, generated from Product sales by Borrowers or royalty payments in respect of Products made to Borrowers; *provided* that in no event shall Net Revenue include (a) any upfront payments or milestone payments or similar non-recurring payments received by such Borrower in connection with any out-license agreement, asset purchase agreement or similar commercial contract or (b) revenue from any Products that Borrowers or their Subsidiaries acquire by way of an Acquisition following the Closing Date.

"**Non-Core Intellectual Property**" means any non-revenue generating Intellectual Property of the Borrowers. For the avoidance of doubt, Non-Core Intellectual Property shall not include any Intellectual Property arising from or relating to TearCare System or the OMNI system or any Products that Borrowers or their Subsidiaries acquire by way of an Acquisition following the Closing Date.

"**Notes**" has the meaning set forth in Section 2.3.

"**Notice of Borrowing**" means a notice of a Responsible Officer of Borrower Representative, appropriately completed and substantially in the form of Exhibit D hereto.

"**Obligations**" means all obligations, liabilities and indebtedness (monetary (including, without limitation, the payment of interest and other amounts arising after the commencement of any case with respect to any Credit Party under the Bankruptcy Code or any similar statute which would accrue and become due but for the commencement of such case, whether or not such amounts are allowed or allowable in whole or in part in such case) or otherwise) of each Credit Party under this Agreement or any other Financing Document, in each case howsoever created, arising or evidenced, whether direct or indirect, absolute or contingent, now or hereafter existing, or due or to become due. Notwithstanding the foregoing, "Obligations" shall not include any warrants or any other equity instruments.

"**OFAC**" means the U.S. Department of Treasury Office of Foreign Assets Control.

"**OFAC Lists**" means, collectively, the Specially Designated Nationals and Blocked Persons List maintained by OFAC pursuant to Executive Order No. 13224, 66 Fed. Reg. 49079 (Sept. 25, 2001) and/or any other list of terrorists or other restricted Persons maintained pursuant to any of the rules and regulations of OFAC or pursuant to any other applicable Executive Orders.

"**Operative Documents**" means the Financing Documents and the Subordinated Debt Documents (if any).

"**Ordinary Course of Business**" means, in respect of any transaction involving any Credit Party, the ordinary course of business of such Credit Party and undertaken in good faith and in consideration of strategic growth and development of such Credit Party and not for the purpose of evading any term, provision or restriction of this Agreement or the other Financing Documents.

"**Organizational Documents**" means, with respect to any Person other than a natural person, the documents by which such Person was organized (such as a certificate of incorporation, articles of incorporation, certificate of limited partnership or articles of organization, and including, without limitation, any certificates of designation for preferred stock or other forms of preferred equity) and which relate to the internal governance of such Person (such as by-laws, a partnership agreement or an operating agreement, joint venture agreement, limited liability company agreement or members agreement), including any and all shareholder agreements or voting agreements relating to the capital stock or other equity interests of such Person.

"**Original Closing Date**" means January 25, 2019.

"**Original Credit Agreement**" has the meaning set forth in the recitals hereto.

"**Other Connection Taxes**" means taxes imposed as a result of a present or former connection between Agent or any Lender and the jurisdiction imposing such tax (other than connections arising from Agent or such Lender 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 Financing Document, or sold or assigned an interest in any Loans or any Financing 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 Financing Document, except any such taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 2.8(i)).

"**Participant Register**" has the meaning set forth in Section 11.17(a)(iii).

"**Payment Account**" means the account specified on the signature pages hereof into which all payments by or on behalf of each Borrower to Agent under the Financing Documents shall be made, or such other account as Agent shall from time to time specify by notice to Borrower Representative.

"**PBGC**" means the Pension Benefit Guaranty Corporation and any Person succeeding to any or all of its functions under ERISA.

"**Pension Plan**" means any ERISA Plan that is subject to Section 412 of the Code or Title IV of ERISA.

"**Perfection Certificate**" means the Perfection Certificate delivered to Agent as of the Closing Date.

"**Permit**" means all licenses, certificates, accreditations, product clearances or approvals, provider numbers or provider authorizations, supplier numbers, marketing authorizations, device authorizations and approvals, other authorizations, franchises, qualifications, accreditations, registrations, permits, consents and approvals of a Credit Party issued or required under Laws applicable to the business of Borrowers or any of their Subsidiaries or necessary in the manufacturing, importing, exporting, possession, ownership, warehousing, marketing, promoting, sale, labeling, furnishing, distribution or delivery of goods or services under Laws applicable to the business of Borrower or any of its Subsidiaries. Without limiting the generality of the foregoing, "**Permit**" includes any Regulatory Required Permit.

"Permitted Acquisition" means any Acquisition by a Borrower, in each case, to the extent that each of the following conditions shall have been satisfied:

(a) the Borrower Representative shall have delivered to Agent at least ten (10) Business Days (or such shorter period as may be agreed by Agent) prior to the closing of the proposed Acquisition: (i) a description of the proposed Acquisition; and (ii) copies of the respective agreements, documents or instruments pursuant to which such Acquisition is to be consummated (or substantially final drafts thereof), any schedules to such agreements, documents or instruments and all other material ancillary agreements, instruments and documents to be executed or delivered in connection therewith;

(b) the Credit Parties (including any new Subsidiary to the extent required by Section 4.11) shall execute and deliver the agreements, instruments and other documents to the extent required by the terms of this Agreement, including, without limitation, Section 4.11 hereof, including such agreements, instruments and other documents necessary to ensure that Agent receives a first priority perfected Lien (subject to the Intercreditor Agreement and Permitted Liens) in all entities and assets acquired in connection with the proposed Acquisition except for Excluded Property;

(c) (i) if the Acquisition is an equity purchase, the target and its Subsidiaries must have as its jurisdiction of formation a state within the United States, (ii) and if the Acquisition is an asset purchase or a merger, not less than 85% of the fair market value of all of the assets so acquired shall be located within the United States (or, in the case of any Intellectual Property so acquired, registered or otherwise located in the United States), and (iii) if the Acquisition consists of an in-license by the Credit Parties of Intellectual Property or Products, such in-license agreements shall be governed by the laws of United States, any state thereof or the District of Columbia;

(d) at the time of such Acquisition and after giving effect thereto, no Default or Event of Default has occurred and is continuing;

(e) all transactions in connection with such Acquisition shall be consummated in accordance with applicable Law;

(f) no Debt or Liens are assumed or created (other than Permitted Liens and Permitted Debt) in connection with such Acquisition;

(g) such Acquisition does not result in a Change in Control and each Borrower remains a surviving legal entity after such Acquisition;

(h) such Acquisition shall not be hostile and shall have been approved by the board of directors (or other similar body) and/or the stockholders or other equityholders of the Person being acquired, in each case as required by such Person's organizational documents;

(i) the target so acquired or the assets of the target so acquired, as the case may be, shall be in or reasonably related or ancillary to the business of Credit Parties;

(j) Agent has received, prior to the consummation of such Acquisition, updated financial projections, in form and substance reasonably satisfactory to Agent, for the immediately succeeding twelve (12) months following the proposed consummation of the Acquisition beginning with the month during which the Acquisition is to be consummated (the "**Transaction Projections**") and such other evidence as Agent may reasonably request; and

(k) the sum of all cash and cash equivalents paid or payable as consideration in connection with all Permitted Acquisitions (including all Indebtedness, liabilities and Contingent Obligations (in each case to the extent otherwise permitted hereunder) incurred or assumed and the maximum amount of any deferred consideration, earn-out, milestone or comparable payment obligation in connection therewith, regardless of whether or not reflected on a consolidated balance sheet of Borrower and regardless of when such consideration is payable (all such consideration "**Acquisition Consideration**") shall not exceed $5,000,000 in the aggregate in any twelve (12) month period; *provided* that such Acquisition Consideration cap shall not apply to any Acquisition (or series of related Acquisitions) to the extent that, prior to the consummation of each such Acquisition, Borrower has provided evidence reasonably satisfactory to Agent demonstrating that following the consummation of such Acquisition or Acquisitions and after giving pro forma effect to the payment of all Acquisition Consideration (including all deferred Acquisition Consideration regardless of whether such Acquisition Consideration is paid upon or consummation or payable thereafter) in connection

therewith, Borrowers will have Borrower Unrestricted Cash in an amount equal to the greater of (i) $25,000,000 or (ii) the sum of the positive value of the product of (x) twelve (12) multiplied by (y) the Acquisition Monthly Cash Burn Amount, as determined as of the last day of the month immediately preceding such Acquisition.

Notwithstanding the foregoing, no Accounts or Inventory acquired by a Credit Party in a Permitted Acquisition shall be included as Eligible Accounts or Eligible Inventory until a field examination (and, if required by Agent, an Inventory appraisal) with respect thereto has been completed to the reasonable satisfaction of Agent, including the establishment of reserves required in Agent's reasonable discretion; *provided* that field examinations and appraisals in connection with Permitted Acquisitions shall not count against the limited number of field examinations or appraisals for which expense reimbursement may be sought.

"**Permitted Asset Dispositions**" means the following Asset Dispositions, *provided, however,* that at the time of such Asset Disposition, no Event of Default exists or would result from such Asset Disposition:

(a) dispositions of Inventory in the Ordinary Course of Business and not pursuant to any bulk sale;

(b) dispositions of furniture, fixtures and equipment in the Ordinary Course of Business that the applicable Borrower or Subsidiary determines in good faith is no longer used or useful in the business of such Borrower and its Subsidiaries;

(c) dispositions consisting of, or entry into, Permitted Licenses and Permitted Liens to the extent they may constitute an Asset Disposition;

(d) the abandonment or dispositions to third parties on an arms' length basis, in each case in the Ordinary Course of Business, of Intellectual Property (other than Material Intangible Assets) that is no longer used or useful to Borrowers or their Subsidiaries and that is not necessary or required for the commercialization of any commercial Product;

(e) dispositions of Accounts (other than Eligible Accounts included in the Borrowing Base) to a third party in connection with the compromise, settlement or collection thereof in the Ordinary Course of Business exclusive of factoring and similar arrangements and, in each case, in accordance with Section 9.2(f) (as applicable);

(f) the termination of Swap Contracts in the Ordinary Course of Business;

(g) dispositions of tangible personal property so long as (i) the assets subject to such Asset Dispositions are sold for fair value, as determined by the Borrower in good faith, (ii) at least 75% of the consideration therefor is cash or cash equivalents and (iii) the aggregate amount of such Asset Dispositions in any 12 month period does not exceed $1,500,000; *provided that*, with respect to any such Asset Disposition under this clause (g) involving Collateral that is included in the Borrowing Base, Borrower shall have provided Agent with a Borrowing Base Certificate at least five (5) Business Days prior to such Asset Disposition evidencing to Agent's reasonable satisfaction that the Revolving Loan Outstandings shall not exceed the Revolving Loan Limit after giving effect to such disposition;

(h) payments of cash and cash equivalents in connection with transactions not prohibited by the terms of this Agreement, including, for the avoidance of doubt, the use of cash and cash equivalents to make Permitted Investments;

(i) the making of Permitted Distributions; and

(j) dispositions approved by Agent in its reasonable discretion.

"**Permitted Contest**" means, with respect to any tax obligation or other obligation allegedly or potentially owing from any Borrower or its Subsidiary to any governmental tax authority or other third party, a contest maintained in good faith by appropriate proceedings promptly instituted and diligently conducted and with respect to which such reserve or other appropriate provision, if any, as shall be required in conformity with GAAP shall have been made on the books and records and financial statements of the applicable Credit Party(ies).

"**Permitted Contingent Obligations**" means

(a) Contingent Obligations arising in respect of the Debt under the Financing Documents;

(b) Contingent Obligations resulting from endorsements for collection or deposit in the Ordinary Course of Business;

(c) Contingent Obligations outstanding on the Closing Date and set forth on Schedule 5.1 (but not including any refinancings, extensions, increases or amendments to the indebtedness underlying such Contingent Obligations other than extensions of the maturity thereof without any other change in terms);

(d) Contingent Obligations incurred in the Ordinary Course of Business with respect to surety and appeal bonds, performance bonds and other similar obligations not to exceed $100,000 in the aggregate at any time outstanding;

(e) Contingent Obligations arising under indemnity agreements with title insurers to cause such title insurers to issue to Agent mortgagee title insurance policies;

(f) Contingent Obligations arising with respect to customary indemnification obligations in connection with commercial contracts in the Ordinary Course of Business;

(g) so long as there exists no Event of Default both immediately before and immediately after giving effect to any such transaction, Contingent Obligations existing or arising under any Swap Contract, *provided, however*, that such obligations are (or were) entered into by Borrower or an Affiliate in the Ordinary Course of Business for the purpose of directly mitigating risks associated with liabilities, commitments, investments, assets, or property held or reasonably anticipated by such Person and not for purposes of speculation;

(h) Contingent Obligations incurred by Borrower and its Subsidiaries in respect of letters of credit to support obligations incurred by Borrowers and their Subsidiaries in the Ordinary Course of Business in an aggregate amount not to exceed $2,000,000 in the aggregate at any time outstanding (collectively, "L/C Obligations"); and

(i) other Contingent Obligations not permitted by clauses (a) through (h) above, not to exceed $1,000,000 in the aggregate at any time outstanding.

"**Permitted Debt**" means:

(a) Borrowers' and its Subsidiaries' Debt to Agent and each Lender under this Agreement and the other Financing Documents;

(b) Debt incurred as a result of endorsing negotiable instruments received in the Ordinary Course of Business;

(c) purchase money Debt and Capital Leases not to exceed $500,000 in the aggregate at any time (whether in the form of a loan or a lease) used solely to acquire equipment used in the Ordinary Course of Business and secured only by such equipment;

(d) Debt existing on the Closing Date and described on Schedule 5.1;

(e) so long as there exists no Event of Default both immediately before and immediately after giving effect to any such transaction, Debt existing or arising under any Swap Contract, *provided*, *however*, that such obligations are (or were) entered into by Borrower or an Affiliate in the Ordinary Course of Business for the purpose of directly mitigating risks associated with liabilities, commitments, investments, assets, or property held or reasonably anticipated by such Person and not for purposes of speculation;

(f) Debt not to exceed $500,000 in the aggregate at any time outstanding owed to any Person providing property, casualty, liability, or other insurance to the Credit Parties, including to finance insurance premiums , so long as the amount of such Debt is not in excess of the amount of the unpaid cost of, and shall be incurred only to defer the cost of, such insurance for the policy year in which such Debt is incurred and such Debt is outstanding only during such policy year;

(g) trade accounts payable arising and paid on a timely basis or that are subject to a Permitted Contest;

(h) Debt consisting of unsecured intercompany loans and advances incurred by (1) any Borrower owing to any Borrower, and (2) any Borrower or any Guarantor owing to any Guarantor; *provided*, *however*, that upon the request of Agent at any time, any such Debt shall be evidenced by promissory notes having terms reasonably satisfactory to Agent, the sole originally executed counterparts of which shall be pledged and delivered to Agent, for the benefit of Agent and Lenders, as security for the Obligations;

(i) Debt of the Credit Parties incurred under the Affiliated Financing Documents;

(j) Subordinated Debt;

(k) Unsecured loans incurred prior to the Closing Date in reliance on the Small Business Administration's Paycheck Protection Program under the Coronavirus Aid, Relief, and Economic Stability Act (P.L. 116-136 (the "**Paycheck Protection Program**") in an aggregate principal amount of $2,245,974 (the "**SBA Loan**"); *provided* that (i) Borrower shall have submitted all required forms, applications and certificates required for, and shall have been conditionally approved to receive, the SBA Loan under the Paycheck

Protection Program and (ii) Borrower shall (w) comply with all terms applicable to the SBA Loan, including without limitation, any requirements with respect to the use of proceeds of the SBA Loan, (x) make only regularly scheduled payments of principal (to the extent any portion of the SBA Loan is not forgiven) and interest accruing on, and to the extent required under, the SBA Loan, (y) take all actions reasonably necessary to request that no less than 75% of the SBA Loan is forgiven in accordance with the loan forgiveness provisions of the Paycheck Protection Program by the date that is 150 days after the date on which the SBA Loan is incurred or such later date as permitted by the Paycheck Protection Program and (z) provide evidence reasonably satisfactory to Agent substantiating such forgiveness by the date that is 150 days after the date on which the SBA Loan is incurred or such later date as permitted by the Paycheck Protection Program;

(l) Debt under corporate credit cards issued by a financial institution and other ancillary bank services, incurred in the Ordinary Course of Business, in an amount not to exceed $500,000 in the aggregate at any given time;

(m) extensions, refinancings, modifications, amendments and restatements of any items of Permitted Debt set forth in clause (c) or clause (d) of this definition above that (i) has an aggregate outstanding principal amount not greater than the aggregate principal amount of the Debt being refinanced or extended, (ii) has a weighted average maturity (measured as of the date of such refinancing or extension) and maturity no shorter than that of the Debt being refinanced or extended, (iii) is not entered into as part of a sale leaseback transaction, (iv) is not secured by a Lien on any assets other than the collateral securing the Debt being refinanced or extended, (v) the obligors of which are the same as the obligors of the Debt being refinanced or extended and (vi) is otherwise on terms no less favorable to Credit Parties and their Subsidiaries, taken as a whole, than those of the Debt being refinanced or extended;

(n) Debt consisting of Guarantees by a Credit Party of Permitted Debt of any Credit Parties or any Subsidiaries (other than any Excluded Subsidiary) in the Ordinary Course of Business; *provided*, any such Guarantee shall be subordinated to the Obligations to the same extent and on the same terms and conditions as the Debt guaranteed has been subordinated to the Obligations; and

(o) Other unsecured Debt not to exceed $1,000,000 in the aggregate at any time outstanding.

"**Permitted Discretion**" means a determination made in good faith and in the exercise of reasonable (from the perspective of a secured asset-based lender) business judgment.

"**Permitted Distributions**" means the following Distributions: (a) dividends by any Subsidiary of any Borrower to such parent Borrower; (b) dividends payable solely in common stock; and (c) repurchases of stock of former employees, directors or consultants pursuant to stock purchase agreements so long as an Event of Default does not exist at the time of such repurchase and would not exist after giving effect to such repurchase, *provided, however,* that such repurchase does not exceed $500,000 in the aggregate per fiscal year.

"**Permitted Investments**" means:

(a) Investments shown on Schedule 5.7 and existing on the Closing Date;

(b) the holding of cash and cash equivalents;

(c) Investments consisting of the endorsement of negotiable instruments for deposit or collection or similar transactions in the Ordinary Course of Business;

(d) Investments consisting of (i) travel advances and employee relocation loans and other employee loans and advances in the Ordinary Course of Business, and (ii) loans to employees, officers or directors relating to the purchase of equity securities of Borrowers or their Subsidiaries pursuant to employee stock purchase plans or agreements approved by Borrowers' Board of Directors (or other governing body), but the aggregate of all such loans outstanding may not exceed $1,000,000 at any time;

(e) Investments (including debt obligations) received in connection with the bankruptcy or reorganization of customers or suppliers and in settlement of delinquent obligations of, and other disputes with, customers or suppliers arising in the Ordinary Course of Business;

(f) Investments consisting of notes receivable of, or prepaid royalties and other credit extensions, to customers and suppliers who are not Affiliates, in the Ordinary Course of Business, *provided, however*, that this subpart (f) shall not apply to Investments of Borrowers in any Subsidiary;

(g) Investments consisting of Deposit Accounts in which Agent has received a Deposit Account Control Agreement;

(h) Investments by any Credit Party or any Subsidiary thereof in (1) any Borrower, or (2) any Subsidiary now owned or hereafter created by such Borrower, which Subsidiary is a Borrower or has provided a Guarantee of the Obligations of the Borrowers which Guarantee is secured by a Lien granted by such Subsidiary to Agent in all or substantially all of its property of the type described in Schedule 9.1 hereto and otherwise made in compliance with Section 4.11(d);

(i) so long as no Event of Default exists at the time of such Investment or after giving effect to such Investment, Investments by any Borrower or any Subsidiary thereof of cash and cash equivalents in an Excluded Subsidiary but solely to the extent that the aggregate amount of such Investments made with respect to all Excluded Subsidiaries (i) prior to a Qualified IPO, does not exceed $2,000,000 in any twelve (12) month period and (ii) after a Qualified IPO, does not exceed $15,000,000 in any twelve (12) month period; *provided* that in no event shall any Investment be made pursuant to this clause (i) unless the Borrowers are in compliance with Section 5.18(a) before and after giving effect to such Investment;

(j) so long as no Event of Default exists or results therefrom, the granting of Permitted Licenses;

(k) Investments consisting of extensions of credit in the nature of Accounts or notes receivable arising from the grant of trade credit in the Ordinary Course of Business in an amount not exceeding $500,000 in the aggregate outstanding at any time;

(l) Investments consisting of intercompany Debt in accordance with and to the extent permitted by clause (h) of the definition of "Permitted Debt";

(m) Investments of cash and cash equivalents in joint ventures or strategic alliances in the Ordinary Course of Business of Borrowers' business; *provided* that the cash investment in all such joint ventures and strategic alliances shall not exceed $500,000 in the aggregate in any twelve (12) month period;

(n) Permitted Acquisitions; and

(o) so long as no Event of Default exists at the time of such Investment or after giving effect to such Investment, other Investments of cash and cash equivalents in an amount not exceeding $1,000,000 in the aggregate.

"**Permitted License**" means (a) any non-exclusive license of Intellectual Property of Borrower or its Subsidiaries so long as such Permitted Licenses are granted to third parties in the Ordinary Course of Business, does not result in a legal transfer of title to the licensed property, and has been granted in exchange for reasonable consideration, (b) any exclusive license of Intellectual Property of Borrower or its Subsidiaries so long as such Permitted License (i) has been granted to third parties in the Ordinary Course of Business, (ii) does not result in a legal transfer of title to the licensed property, (iii) has been granted in exchange for reasonable consideration, (iv) is exclusive solely as to discrete geographical areas outside of the United States, and (v) no Event of Default is existing at the time such license is granted or would result from the granting thereof, and (c) any exclusive license solely of Non-Core Intellectual Property of Borrower or its Subsidiaries so long as such Permitted License (i) has been granted to third parties in the Ordinary Course of Business, (ii) does not result in a legal transfer of title to the licensed property, (iii) has been granted in exchange for reasonable consideration, and (iv) no Event of Default is existing at the time such license is granted or would result from the granting thereof.

"**Permitted Liens**" means:

(a) deposits or pledges of cash arising in the Ordinary Course of Business to secure obligations under workmen's compensation claims, unemployment insurance and other social security legislation or similar laws (but excluding Liens arising under ERISA or, with respect to any Pension Plan or Multiemployer Plan, the Code) pertaining to a Borrower's or its Subsidiary's employees, if any;

(b) deposits or pledges of cash to secure bids, tenders, contracts (other than contracts for the payment of money or the deferred purchase price of property or services), leases, statutory obligations, surety and appeal bonds and other obligations of like nature arising in the Ordinary Course of Business;

(c) carrier's, warehousemen's, contractors, subcontractors, mechanic's, workmen's, materialmen's or other like Liens on Collateral arising in the Ordinary Course of Business with respect to obligations which are not due, or which are being contested pursuant to a Permitted Contest;

(d) Liens for taxes, assessments or other governmental charges not at the time delinquent or thereafter payable without penalty or the subject of a Permitted Contest;

(e) attachments, appeal bonds, judgments and other similar Liens on Collateral for sums not exceeding $250,000 in the aggregate arising in connection with court proceedings; *provided, however*, that the execution or other enforcement of such Liens is effectively stayed and the claims secured thereby are the subject of a Permitted Contest;

(f) with respect to real estate, easements, rights of way, restrictions, minor defects or irregularities of title, none of which, individually or in the aggregate, materially interfere with the benefits of the security intended to be provided by the Security Documents, materially affect the value or marketability of the Collateral, impair the use or operation of the Collateral for the use currently being made thereof or impair Borrowers' ability to pay the Obligations in a timely manner or impair the use of the Collateral or the ordinary conduct of the business of any Borrower or any Subsidiary and which, in the case of any real estate that is part of the Collateral, are set forth as exceptions to or subordinate matters in the title insurance policy accepted by Agent insuring the lien of the Security Documents;

(g) Liens and encumbrances in favor of Agent under the Financing Documents;

(h) Liens, other than on Collateral that is part of the Borrowing Base, existing on the date hereof and set forth on Schedule 5.2;

(i) any Lien on any equipment securing Debt permitted under subpart (c) of the definition of Permitted Debt, *provided*, *however*, that such Lien attaches concurrently with or within twenty (20) days after the acquisition thereof;

(j) the interests of lessors or sublessors under operating leases to the extent such lease or sublease is otherwise permitted under this Agreement;

(k) Liens and encumbrances in favor of the holders of the Affiliated Financing Documents;

(l) Without limiting clause (b) of the definition of Eligible Inventory, Liens arising out of consignment for the sale of goods entered into by any Borrower or any of its Subsidiaries in the Ordinary Course of Business;

(m) Liens granted in the Ordinary Course of Business on the unearned portion of insurance premiums securing the financing of insurance premiums to the extent the financing is permitted under clause (f) of the definition of Permitted Debt;

(n) Liens of the applicable depository bank on cash and cash equivalents held in an Excluded Account in an aggregate amount not to exceed 105% of the aggregate outstanding L/C Obligations at any time; and

(o) banker's liens, rights of set-off and other non-consensual Liens in favor of financial institutions incurred in the Ordinary Course of Business arising in connection with a Credit Party's Deposit Accounts and Securities Accounts; *provided* that such Deposit Accounts and Securities Accounts are subject to a Deposit Account Control Agreement or Securities Account Control Agreement, as applicable, to the extent required under this Agreement; and

(p) Liens (other than Liens arising under ERISA, Liens on any Intellectual Property or Liens that secure obligations in respect of Debt for borrowed money) not otherwise permitted pursuant to this definition that secure obligations permitted under this Agreement not exceeding $250,000 in the aggregate at any one time outstanding.

"**Permitted Modifications**" means (a) such amendments or other modifications to a Borrower's or Subsidiary's Organizational Documents as are required under this Agreement or by applicable Law and fully disclosed to Agent within thirty (30) days after such amendments or modifications have become effective, and (b) such amendments or modifications to a Borrower's or Subsidiary's Organizational Documents (other than those involving a change in the name of a Borrower or Subsidiary or involving a reorganization of a Borrower or Subsidiary under the laws of a different jurisdiction) that would not materially and adversely affect the rights and interests of Agent or Lenders and fully disclosed to Agent within thirty (30) days after such amendments or modifications have become effective.

"**Person**" means any natural person, corporation, limited liability company, professional association, limited partnership, general partnership, joint stock company, joint venture, association, company, trust, bank, trust company, land trust, business trust or other organization, whether or not a legal entity, and any Governmental Authority.

"**Products**" means, from time to time, any products currently manufactured, sold, developed, tested or marketed by any Borrower or any of its Subsidiaries.

"**Pro Rata Share**" means (a) [reserved], (b) with respect to a Lender's obligation to make Revolving Loans, the Revolving Loan Commitment Percentage of such Lender, (c) with respect to a Lender's right to receive payments of principal and interest with respect to Revolving Loans, such Lender's Revolving Loan Exposure with respect thereto; and (d) for all other purposes (including, without limitation, the indemnification obligations arising under Section 11.6) with respect to any Lender, the percentage obtained by *dividing* (i) the Revolving Loan Commitment Amount of such Lender (or, in the event the Revolving Loan Commitment shall have been terminated, such Lender's then existing Revolving Loan Outstandings), *by* (ii) the sum of the Revolving Loan Commitment (or, in the event the Revolving Loan Commitment shall have been terminated, the then existing Revolving Loan Outstandings) of all Lenders.

"**Qualified IPO**" means the issuance and sale by Sight Sciences of its common stock in an underwritten public offering (other than a public offering pursuant to a registration statement on Form S-8) pursuant to an effective registration statement (whether alone or in connection with a secondary public offering) filed with the SEC in accordance with the Securities Act of 1933, as amended, following which Sight Sciences's common stock is listed on the New York Stock Exchange or the Nasdaq Stock Market and in respect of which Sight Sciences has delivered evidence satisfactory to Agent that Sight Sciences has received unrestricted net cash proceeds of not less than $60,000,000 (subject to no clawback, escrow or other terms limiting the Sight Sciences's ability to freely use such proceeds).

"**Reaffirmation Agreement**" means that certain Reaffirmation Agreement and Omnibus Joinder and Amendment, dated as of the Closing Date, by and among the Borrowers and the Agent, as amended, restated, supplemented or modified from time to time.

"**Recall**" means a Person's Removal or Correction of a marketed product that the FDA considers to be in violation of the laws it administers and against which the FDA would initiate legal action, e.g., seizure.

"**Registered Intellectual Property**" means any patent, registered trademark or servicemark, registered copyright, or any pending application for any of the foregoing.

"**Regulatory Reporting Event**" has the meaning set forth in Section 4.1(l).

"**Regulatory Required Permit**" means any and all Permits issued by the FDA or any other applicable Governmental Authority necessary for the testing, manufacture, marketing or sale of any Product by any applicable Borrower(s) or its Subsidiaries as such activities are being conducted by such Borrower and its Subsidiaries with respect to such Product at such time, and those issued by state governments for the conduct of Borrower's or any Subsidiary's business.

"**Removal**" means the physical removal of a Product from its point of use to some other location for repair, modification, adjustment, relabeling, destruction, or inspection.

"**Required Lenders**" means at any time Lenders holding (a) sixty percent (60%) or more of the sum of the Revolving Loan Commitment (taken as a whole), or (b) if the Revolving Loan Commitment has been terminated, sixty percent (60%) or more of the then aggregate outstanding principal balance of the Loans.

"**Responsible Officer**" means any of the Chief Executive Officer, Chief Financial Officer or any other officer of the applicable Borrower reasonably acceptable to Agent.

"**Revolving Lender**" means each Lender having a Revolving Loan Commitment Amount in excess of Zero Dollars ($0) (or, in the event the Revolving Loan Commitment shall have been terminated at any time, each Lender at such time having Revolving Loan Outstandings in excess of Zero Dollars ($0)).

"**Revolving Loan Availability**" means, at any time, the Revolving Loan Limit *minus* the Revolving Loan Outstandings.

"**Revolving Loan Commitment**" means, as of any date of determination, the aggregate Revolving Loan Commitment Amounts of all Lenders as of such date.

"**Revolving Loan Commitment Amount**" means, as to any Lender, the dollar amount set forth opposite such Lender's name on the Commitment Annex under the column "Revolving Loan Commitment Amount" (if such Lender's name is not so set forth thereon, then the dollar amount on the Commitment Annex for the Revolving Loan Commitment Amount for such Lender shall be deemed to be Zero Dollars ($0)), as such amount may be adjusted from time to time by (a) any amounts assigned (with respect to such Lender's portion of Revolving Loans outstanding and its commitment to make Revolving Loans) pursuant to the terms of any and all effective assignment agreements to which such Lender is a party, and (b) any Additional Tranche(s) activated by Borrowers. For the avoidance of doubt, the aggregate Revolving Loan Commitment Amount of all Lenders on the Closing Date shall be $5,000,000 and if all Additional Tranches are fully activated by Borrowers pursuant to the terms of the Agreement such amount shall increase to $15,000,000.

"**Revolving Loan Commitment Percentage**" means, as to any Lender, (a) on the Closing Date, the percentage set forth opposite such Lender's name on the Commitment Annex under the column "Revolving Loan Commitment Percentage" (if such Lender's name is not so set forth thereon, then, on the Closing Date, such percentage for such Lender shall be deemed to be zero), and (b) on any date following the Closing Date, the percentage equal to the Revolving Loan Commitment Amount of such Lender on such date *divided by* the Revolving Loan Commitment on such date.

"**Revolving Loan Exposure**" means, with respect to any Lender on any date of determination, the percentage equal to the amount of such Lender's Revolving Loan Outstandings on such date *divided by* the aggregate Revolving Loan Outstandings of all Lenders on such date.

"**Revolving Loan Limit**" means, at any time, the lesser of (a) the Revolving Loan Commitment and (b) the Borrowing Base.

"**Revolving Loan Outstandings**" means, at any time of calculation, (a) the then existing aggregate outstanding principal amount of Revolving Loans, and (b) when used with reference to any single Lender, the then existing outstanding principal amount of Revolving Loans advanced by such Lender.

"**Revolving Loans**" has the meaning set forth in Section 2.1(b).

"**SEC**" means the United States Securities and Exchange Commission.

"**Securities Account**" means a "securities account" (as defined in Article 9 of the UCC), an investment account, or other account in which investment property or securities are held or invested for credit to or for the benefit of any Borrower.

"**Securities Account Control Agreement**" means an agreement, in form and substance reasonably satisfactory to Agent, among Agent, any applicable Borrower and each securities intermediary in which such Borrower maintains a Securities Account pursuant to which Agent shall obtain "control" (as defined in Article 9 of the UCC) over such Securities Account.

"**Security Document**" means this Agreement, the Reaffirmation Agreement, and any other agreement, document or instrument executed concurrently with the Original Credit Agreement or at any time thereafter, including on the Closing Date, pursuant to which one or more Credit Parties or any other Person either (a) Guarantees payment or performance of all or any portion of the Obligations, and/or (b) provides, as security for all or any portion of the Obligations, a Lien on any of its assets in favor of Agent for its own benefit and the benefit of the Lenders, as any or all of the same may be amended, supplemented, restated or otherwise modified from time to time.

"**Solvent**" means, with respect to any Person, that such Person (a) owns and will own assets the fair saleable value of which are (i) greater than the total amount of its debts and liabilities (including subordinated and Contingent Obligations), and (ii) greater than the amount that will be required to pay the probable liabilities of its then existing debts as they become absolute and matured considering all financing alternatives and potential asset sales reasonably available to it; (b) has capital that is not unreasonably small in relation to its business as presently conducted or after giving effect to any contemplated transaction, in each case of clauses (a) and (b) to the extent applicable, as calculated in accordance with applicable bankruptcy laws; and (c) does not intend to incur and does not believe that it will incur debts beyond its ability to pay such debts as they become due.

"**Stated Rate**" has the meaning set forth in Section 2.7.

"**Subordinated Debt**" means any Debt of Borrowers incurred pursuant to the terms of the Subordinated Debt Documents. As of the Closing Date, there is no Subordinated Debt.

"**Subordinated Debt Documents**" means any documents evidencing and/or securing Debt governed by a Subordination Agreement, all of which documents must be in form and substance acceptable to Agent in its reasonable discretion. As of the Closing Date, there are no Subordinated Debt Documents.

"**Subordination Agreement**" means each agreement between Agent and another creditor of Borrowers, as the same may be amended, supplemented, restated or otherwise modified from time to time in accordance with the terms thereof, pursuant to which the Debt owing from any Borrower(s) and/or the Liens securing such Debt granted by any Borrower(s) to such creditor are subordinated in any way to the Obligations and the Liens created under the Security Documents, the terms and provisions of such Subordination Agreements to have been agreed to by and be acceptable to Agent in the exercise of its reasonable discretion.

"**Subsidiary**" means, with respect to any Person, (a) any corporation (or any foreign equivalent thereof) of which an aggregate of more than fifty percent (50%) of the outstanding capital stock having ordinary voting power to elect a majority of the board of directors of such corporation (irrespective of whether, at the time, capital stock of any other 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, directly or indirectly, owned legally or beneficially by such Person or one or more Subsidiaries of such Person, or with respect to which any such Person has the right to vote or designate the vote of more than fifty percent (50%) of such capital stock whether by proxy, agreement, operation of law or otherwise, and (b) any partnership or limited liability company (or any foreign equivalent thereof) in which such Person and/or one or more Subsidiaries of such Person shall have an interest (whether in the form of voting or participation in profits or capital contribution) of more than fifty percent (50%) or of which any such Person is a general partner or may exercise the powers of a general partner. Unless the context otherwise requires, each reference to a Subsidiary shall be a reference to a Subsidiary of a Borrower.

"**Swap Contract**" means any "swap agreement", as defined in Section 101 of the Bankruptcy Code, that is obtained by Borrower to provide protection against fluctuations in interest or currency exchange rates, but only if Agent provides its prior written consent to the entry into such "swap agreement".

"**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.

"**TearCare System**" means products consisting of wearable eyelid technology providing thermal energy to meibomian glands, as commercialized by the Borrower.

"**Termination Date**" means the earliest to occur of (a) the Maturity Date, (b) any date on which the maturity of the Loans is accelerated pursuant to Section 10.2, or (c) the termination date stated in any notice of termination of this Agreement provided by Borrowers in accordance with Section 2.12.

"**Term Loan**" has the meaning set forth in the Affiliated Credit Agreement.

"**TRICARE**" means the program administered pursuant to 10 U.S.C. Section 1071 et. seq), Sections 1320a-7 and 1320a-7a of Title 42 of the United States Code and the regulations promulgated pursuant to such statutes.

"**UCC**" means the Uniform Commercial Code of the State of New York or of any other state the laws of which are required to be applied in connection with the perfection of security interests in any Collateral.

"**United States**" means the United States of America.

"**U.S. Tax Compliance Certificate**" has the meaning set forth in Section 2.8(c)(i).

"**Withholding Agent**" means any Borrower or Agent.

"**Work-In-Process**" means Inventory that is not a product that is finished and approved by a Borrower in accordance with applicable Laws and such Borrower's normal business practices for release and delivery to customers.

"**Write-Down and Conversion Powers"** means, 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.

Section 1.2 Accounting Terms and Determinations. Unless otherwise specified herein, all accounting terms used herein shall be interpreted, all accounting determinations hereunder (including, without limitation, determinations made pursuant to the exhibits hereto) shall be made, and all financial statements required to be delivered hereunder shall be prepared on a consolidated basis in accordance with GAAP applied on a basis consistent with the most recent audited consolidated financial statements of each Borrower and its Consolidated Subsidiaries delivered to Agent and each of the Lenders on or prior to the Closing Date. If at any time any change in GAAP would affect the computation of any financial ratio or financial requirement set forth in any Financing Document, and either Borrowers or the Required Lenders shall so request, Agent, the Lenders and Borrowers shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP (subject to the approval of the Required Lenders); *provided*, *however*, that until so amended, (a) such ratio or requirement shall continue to be computed in accordance with GAAP prior to such change therein and (b) Borrowers shall provide to Agent and the Lenders financial statements and other documents required under this Agreement which include a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP. 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 herein shall be made, without giving effect to any election under Statement of Financial Accounting Standards 159 (or any other Financial Accounting Standard having a similar result or effect) to value any Debt or other liabilities of any Credit Party or any Subsidiary of any Credit Party at "fair value", as defined therein. Any obligations of a Person under a lease (whether existing now or entered into the future) that is not (or would not be) a capital lease obligation under GAAP shall not be treated as a capital lease obligation solely as a result of the adoption of changes in GAAP.

Section 1.3 Other Definitional and Interpretive Provisions. References in this Agreement to "Articles", "Sections", "Annexes", "Exhibits", or "Schedules" shall be to Articles, Sections, Annexes, Exhibits or Schedules of or to this Agreement unless otherwise specifically provided. Any term defined herein may be used in the singular or plural. "Include", "includes" and "including" shall be deemed to be followed by "without limitation". Except as otherwise specified or limited herein, references to any Person include the successors and assigns of such Person. References "from" or "through" any date mean, unless otherwise specified, "from and including" or "through and including", respectively. References to any statute or act shall include all related current regulations and all amendments and any successor statutes, acts and regulations. All amounts used for purposes of financial calculations required to be made herein shall be without duplication. References to any statute or act, without additional reference, shall be deemed to refer to federal statutes and acts of the United States. References to any agreement, instrument or document shall include all schedules, exhibits, annexes and other attachments thereto. References to capitalized terms that are not defined herein, but are defined in the UCC, shall have the meanings given them in the UCC. All references herein to times of day shall be references to daylight or standard time, as applicable. All references herein to a merger, transfer, consolidation, amalgamation, assignment, sale or transfer, or analogous term, will be construed to mean also a division of or by a limited liability company, as if it were a merger, transfer, consolidation, amalgamation, assignment, sale or transfer, or similar term, as applicable. Any series of limited liability company shall be considered a separate Person.

Section 1.4 Settlement and Funding Mechanics. Unless otherwise specified herein, the settlement of all payments and fundings hereunder between or among the parties hereto shall be made in lawful money of the United States and in immediately available funds.

Section 1.5 Time is of the Essence. Time is of the essence in Borrower's and each other Credit Party's performance under this Agreement and all other Financing Documents.

Section 1.6 Time of Day. Unless otherwise specified, all references herein to times of day shall be references to Eastern time (daylight savings or standard, as applicable).

ARTICLE 2 - LOANS

Section 2.1 Loans.

(a) Reserved.

(b) Revolving Loans.

(i) Revolving Loans and Borrowings. On the terms and subject to the conditions set forth herein, each Lender severally agrees to make loans to Borrowers from time to time as set forth herein (each a "**Revolving Loan**", and collectively, "**Revolving Loans**") equal to such Lender's Revolving Loan Commitment Percentage of Revolving Loans requested by Borrowers hereunder, *provided*, *however*, that after giving effect thereto, the Revolving Loan Outstandings shall not exceed the Revolving Loan Limit. Borrowers shall deliver to Agent a Notice of Borrowing with respect to each proposed borrowing of a Revolving Loan, such Notice of Borrowing to be delivered before 1:00 p.m. (Eastern time) two (2) Business Days prior to the date of such proposed borrowing (other than for a borrowing made on the Closing Date). Each Borrower and each Revolving Lender hereby authorizes Agent to make Revolving Loans on behalf of Revolving Lenders, at any time in its Permitted Discretion, to pay principal owing in respect of the Loans and interest, fees, expenses and other charges payable by any Credit Party from time to time arising under this Agreement or any other Financing Document. The Borrowing Base shall be determined by Agent based on the most recent Borrowing Base Certificate delivered to Agent in accordance with this Agreement and such other information as may be available to Agent, in each case in its reasonable discretion. Without limiting any other rights and remedies of Agent hereunder or under the other Financing Documents, the Revolving Loans shall be subject to Agent's continuing right to withhold from the Borrowing Base reserves, and to increase and decrease such reserves from time to time, if and to the extent that in Agent's Permitted Discretion, such reserves are necessary. Immediately prior to the effectiveness of this Agreement, the outstanding principal balance of the Revolving Loans under the Original Credit Agreement is $0.00, which amount shall be deemed to have been, and hereby is, converted into a portion of the outstanding principal amount of the Revolving Loans hereunder in like amount without constituting a novation. Each Borrower hereby reaffirms its obligation to repay such Revolving Loans in accordance with the terms and provisions of this Agreement and the other Financing Documents.

(ii) Mandatory Revolving Loan Repayments and Prepayments.

(A) The Revolving Loan Commitment shall terminate on the Termination Date. On such Termination Date, there shall become due, and Borrowers shall pay, the entire outstanding principal amount of each Revolving Loan, together with accrued and unpaid Obligations pertaining thereto incurred to, but excluding the Termination Date; *provided*, *however,* that such payment is made not later than 12:00 Noon (Eastern time) on the Termination Date.

(B) If at any time the Revolving Loan Outstandings exceed the Revolving Loan Limit (an "**Overadvance**"), then, on the next succeeding Business Day, Borrowers shall repay the Revolving Loans, in an aggregate amount equal to the amount of such Overadvance; *provided* that if such Overadvance is the sole and direct result of the establishment of a new reserve by Agent, then the Overadvance shall instead be payable by Borrowers within two (2) Business Days from the date on which Agent first notifies Borrower of such new reserve.

(C) Principal payable on account of Revolving Loans shall be payable by Borrowers to Agent (I) immediately upon the receipt by any Borrower or Agent of any payments on or proceeds from any of the Accounts, to the extent of such payments or proceeds, as further described in Section 2.11 below, and (II) in full on the Termination Date.

(iii) Optional Prepayments. Borrowers may from time to time prepay the Revolving Loans in whole or in part; *provided*, *however*, that any such partial prepayment shall be in an amount equal to $100,000 or a higher integral multiple of $25,000. For the avoidance of doubt, nothing in this clause shall permit termination of the Revolving Loan Commitment by Borrower other than in accordance with Section 2.12(b).

(iv) LIBOR Rate.

(A) Except as provided in subsection (C) below, Revolving Loans shall accrue interest at the LIBOR Rate *plus* the Applicable Margin.

(B) The LIBOR Rate may be adjusted by Agent with respect to any Lender on a prospective basis to take into account any additional or increased costs to such Lender of maintaining or obtaining any eurodollar deposits or increased costs, in each case, due to changes in applicable Law occurring subsequent to the commencement of the then applicable Interest Period, including changes which subject any Lender to any Taxes (other than (A) Indemnified Taxes, (B) Taxes described in clauses (b) through (d) of the definition of Excluded Taxes and (C) Connection Income Taxes) imposed on its loans, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto, and changes in the reserve requirements imposed by the Board of Governors of the Federal Reserve System (or any successor), which additional or increased costs would increase the cost of funding loans bearing interest based upon the LIBOR Rate; *provided*, *however,* that notwithstanding anything in this Agreement to the contrary, (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, shall in each case be deemed to be a "change in applicable Law", regardless of the date enacted, adopted or issued. In any such event, the affected Lender shall give Borrowers and Agent notice of such a determination and adjustment and Agent promptly shall transmit the notice to each other Lender and, upon its receipt of the notice from the affected Lender, Borrowers may, by notice to such affected Lender (I) require such Lender to furnish to Borrowers a statement setting forth the basis for adjusting such LIBOR Rate and the method for determining the amount of such adjustment, or (II) repay the Loans bearing interest based upon the LIBOR Rate with respect to which such adjustment is made.

(C) In the event that any change in market conditions or any law, regulation, treaty, or directive, or any change therein or in the interpretation of application thereof, shall at any time after the date hereof, in the reasonable opinion of any Lender, make it unlawful or impractical for such Lender to fund or maintain Loans bearing interest based upon the LIBOR Rate or to continue such funding or maintaining, or to determine or charge interest rates at the LIBOR Rate, such Lender shall give notice of such changed circumstances to Agent and Borrowers and Agent promptly shall transmit the notice to each other Lender and (I) in the case of any outstanding Loans of such Lender bearing interest based upon the LIBOR Rate, the date specified in such Lender's notice shall be deemed to be the last day of the Interest Period of such Loans, and interest upon such Lender's Loans thereafter shall accrue interest at Base Rate *plus* the Applicable Margin, and (II) such Loans shall continue to accrue interest at Base Rate *plus* the Applicable Margin until such Lender determines that it would no longer be unlawful or impractical to maintain such Loans at the LIBOR Rate.

(D) Anything to the contrary contained herein notwithstanding, neither Agent nor any Lender is required actually to acquire eurodollar deposits to fund or otherwise match fund any Obligation as to which interest accrues based on the LIBOR Rate.

(v) Restriction on Termination. Notwithstanding any prepayment of the Revolving Loan Outstandings or any other termination of Lenders' Credit Exposure under this Agreement, Agent and Lenders shall have no obligation to release any of the Collateral securing the Obligations under this Agreement while any portion of the Affiliated Obligations shall remain outstanding.

(c) Additional Tranches. After the Closing Date, so long as no Event of Default exists and subject to the terms of this Agreement, with the prior written consent of Agent and all Lenders in their sole discretion, the Revolving Loan Commitment may be increased upon the written request of Borrower Representative (which such request shall state the aggregate amount of the Additional Tranche requested and shall be made at least ten (10) Business Days prior to the proposed effective date of such Additional Tranche) to Agent to activate an Additional Tranche (it being understood that each Additional Tranche shall be in an aggregate amount equal to $5,000,000 and Borrower shall be entitled to request no more than two (2) Additional Tranches during the term of this Agreement); *provided*, *however*, that Agent and Lenders shall have no obligation whatsoever to consent to any requested activation of an Additional Tranche and the written consent of Agent and all Lenders shall be required in order to activate an Additional Tranche. Upon activating an Additional Tranche, each Lender's Revolving Loan Commitment Amount shall increase by a proportionate amount so as to maintain the same Pro Rata Share of the Revolving Loan Commitment as such Lender held immediately prior to such activation.

Section 2.2 Interest, Interest Calculations and Certain Fees.

(a) Interest. From and following the Closing Date, except as expressly set forth in this Agreement, Loans and the other Obligations shall bear interest at the sum of the LIBOR Rate *plus* the Applicable Margin. Interest on the Loans shall be paid monthly in arrears on the first (1st) day of each month and on the maturity of such Loans, whether by acceleration or otherwise. Interest on all other Obligations shall be payable within two (2) Business Days upon written and invoiced demand. For purposes of calculating interest, all funds transferred to the Payment Account for application to any Revolving Loans shall be subject to a five (5) Business Day clearance period and all interest accruing on such funds during such clearance period shall accrue for the benefit of Agent, and not for the benefit of the Lenders. The Borrowers hereby agree that all accrued and unpaid interest, unused line fees, minimum balance fees and collateral management fees due and owing to the "Lenders" or "Agent" (each, as defined in the Original Credit Agreement) due and payable pursuant to the Original Credit Agreement as of the Closing Date shall be paid in cash by the Borrowers to the Agent, for the benefit of such Lenders or Agent, on the first (1st) day of the first calendar month following the Closing Date. For the avoidance of doubt, all Loans, including the Revolving Loans outstanding under the Original Credit Agreement, shall bear interest at the sum of the LIBOR Rate plus the Applicable Margin starting on and at all times after the Closing Date.

(b) Unused Line Fee. From and following the Closing Date, Borrowers shall pay Agent, for the benefit of all Lenders committed to make Revolving Loans, in accordance with their respective Pro Rata Shares, a fee in an amount equal to (i) (A) the Revolving Loan Commitment *minus* (B) the average daily balance of the sum of the Revolving Loan Outstandings during the preceding month, *multiplied by* (ii) one half of one percent (0.50%) per annum. Such fee is to be paid monthly in arrears on the first day of each month. The unused line fee shall be paid monthly in arrears on the first day of each month and shall be deemed fully earned when due and payable and, once paid, shall be non-refundable.

(c) Fee Letter. In addition to the other fees set forth herein, the Borrowers agree to pay Agent the fees set forth in the Fee Letter.

(d) Minimum Balance Fee. On the first day of each month, commencing on December 1, 2020, the Borrowers agree to pay to Agent, for the ratable benefit of all Lenders, the Minimum Balance Fee due for the prior month. The Minimum Balance Fee shall be deemed fully earned when due and payable and, once paid, shall be non-refundable.

(e) Collateral Management Fee. From and following the Closing Date, Borrowers shall pay Agent, for its own account and not for the benefit of any other Lenders, a fee in an amount equal to the product obtained by *multiplying* (i) the greater of (A) the average end-of-day principal balance of Revolving Loans outstanding during the immediately preceding month and (B) the Minimum Balance, *by* (ii) one half of one percent (0.50%) per annum. For purposes of calculating the average end-of-day principal balance of Revolving Loans, all funds paid into the Payment Account (or which were required to be paid into the Payment Account hereunder) or otherwise received by Agent for the account of Borrowers shall be subject to a five (5) Business Day clearance period. The collateral management fee shall be payable monthly in arrears on the first day of each calendar month and shall be deemed fully earned when due and payable and, once paid, shall be non-refundable other than if subject to manifest error in calculation.

(f) Origination Fee. Contemporaneous with Borrowers' execution of this Agreement, Borrowers shall pay Agent, for the benefit of all Lenders committed to make Revolving Loans on the Closing Date, in accordance with their respective Pro Rata Shares, a fee in an amount equal to Twenty-Five Thousand Dollars ($25,000). For the avoidance of doubt, the origination fee provided for in the preceding sentence is in addition to any origination fee paid under or in respect of the Original Credit Agreement. Upon activation of any Additional Tranche in accordance with Section 2.1(c) hereof, Borrowers shall pay Agent, for the benefit of all Lenders committed to make Revolving Loans on the Closing Date, in accordance with their respective Pro Rata Share, a fee in an amount equal to (i) such Additional Tranche, multiplied by (ii) one half of one percent (0.50%). Each origination fee shall be deemed fully earned when due and payable and, once paid, shall be non-refundable.

(g) Deferred Revolving Loan Origination Fee. If Lenders' funding obligations in respect of the Revolving Loan Commitment under this Agreement terminate or are permanently reduced for any reason (whether by voluntary termination by Borrowers, by reason of the occurrence of an Event of Default or the automatic termination of the Revolving Loan Commitments (including any automatic termination due to the occurrence of an Event of Default described in Section 10.1(f)) or otherwise) prior to the Maturity Date, Borrowers shall pay to Agent on the date of such reduction, for the benefit of all Lenders committed to make Revolving Loans on the Closing Date, a fee as compensation for the costs of such Lenders being prepared to make funds available to Borrowers under this Agreement, equal to an amount determined by *multiplying* the amount of the Revolving Loan Commitment so terminated or permanently reduced *by* the following applicable percentage amount: three percent (3.0%) for the first year following the Closing Date, two percent (2.0%) for the second year following the Closing Date, and one percent (1.0%) thereafter; *provided however*, that if any Additional Tranche has been activated, the amount of such Additional Tranche so terminated or permanently reduced shall be multiplied by: three percent (3.0%) for the first year following the date such Additional Tranche is activated, two percent (2.0%) for the second year following the date such Additional Tranche is activated, and one percent (1.0%) thereafter. All fees payable pursuant to this paragraph shall be deemed fully-earned and non-refundable as of the Closing Date.

(h) Reserved.

(i) Reserved.

(j) Audit Fees. Subject to the provisions of Sections 4.6 and 4.14, as applicable, Borrowers shall pay to Agent, for its own account and not for the benefit of any other Lenders, all reasonable fees and expenses in connection with audits and inspections of Borrowers' books and records, audits, valuations or appraisals of the Collateral, audits of Borrowers' compliance with applicable Laws and such other matters as Agent shall deem appropriate, which shall be due and payable on the first Business Day of the month following the date of issuance by Agent of a written request for payment thereof to Borrowers.

(k) Wire Fees. Borrowers shall pay to Agent, for its own account and not for the account of any other Lenders, on written demand, fees for incoming and outgoing wires made for the account of Borrowers, such fees to be based on Agent's then current wire fee schedule (available upon written request of the Borrowers).

(l) Late Charges. If payments of principal (other than a final installment of principal upon the Termination Date), interest due on the Obligations, or any other amounts due hereunder or under the other Financing Documents are not timely made and remain overdue for a period of five (5) days, Borrowers, without notice or demand by Agent, promptly shall pay to Agent, for its own account and not for the benefit of any other Lenders, as additional compensation to Agent in administering the Obligations, an amount equal to two percent (2.0%) of each delinquent payment.

(m) Computation of Interest and Related Fees. All interest and fees under each Financing Document shall be calculated on the basis of a 360-day year for the actual number of days elapsed. The date of funding of a Loan shall be included in the calculation of interest. The date of payment of a Loan shall be excluded from the calculation of interest. If a Loan is repaid on the same day that it is made, one (1) day's interest shall be charged.

(n) Automated Clearing House Payments. If Agent (or its designated servicer or trustee on behalf of a securitization vehicle) so elects, monthly payments of principal, interest, fees, expenses or any other amounts due and owing from Borrower to Agent hereunder shall be paid to Agent by Automated Clearing House debit of immediately available funds from the financial institution account designated by Borrower Representative in the Automated Clearing House debit authorization executed by Borrowers or Borrower Representative in connection with this Agreement, and shall be effective upon receipt. Borrowers shall execute any and all forms and documentation necessary from time to time to effectuate such automatic debiting. In no event shall any such payments be refunded to Borrowers.

Section 2.3 Notes. The portion of the Loans made by each Lender shall be evidenced, if so requested by such Lender, by one or more promissory notes executed by Borrowers on a joint and several basis (each, a "**Note**") in an original principal amount equal to such Lender's Revolving Loan Commitment Amount. Upon activation of an Additional Tranche in accordance with Section 2.1(c) hereof, Borrowers shall deliver to each Lender to whom Borrowers previously delivered a Note, a restated Note evidencing such Lender's Revolving Loan Commitment Amount.

Section 2.4 Reserved.

Section 2.5 Reserved.

Section 2.6 General Provisions Regarding Payment; Loan Account.

(a) All payments to be made by each Borrower under any Financing Document, including payments of principal and interest made hereunder and pursuant to any other Financing Document, and all fees, expenses, indemnities and reimbursements, shall be made without set-off, recoupment or counterclaim. If any payment hereunder becomes due and payable on a day other than a Business Day, such payment shall be extended to the next succeeding Business Day and, with respect to payments of principal, interest thereon shall be payable at the then applicable rate during such extension (it being understood and agreed that, solely for purposes of calculating financial covenants and computations contained herein and determining compliance therewith, if payment is made, in full, on any such extended due date, such payment shall be deemed to have been paid on the original due date without giving effect to any extension thereto). Any payments received in the Payment Account before 12:00 Noon (Eastern time) on any date shall be deemed received by Agent on such date, and any payments received in the Payment Account at or after 12:00 Noon (Eastern time) on any date shall be deemed received by Agent on the next succeeding Business Day.

(b) Agent shall maintain a loan account (the "**Loan Account**") on its books to record Loans and other extensions of credit made by the Lenders hereunder or under any other Financing Document, and all payments thereon made by each Borrower. All entries in the Loan Account shall be made in accordance with Agent's customary accounting practices as in effect from time to time. The balance in the Loan Account, as recorded in Agent's books and records at any time shall be conclusive and binding evidence of the amounts due and owing to Agent by each Borrower absent manifest error; *provided*, *however*, that any failure to so record or any error in so recording shall not limit or otherwise affect any Borrower's duty to pay all amounts owing hereunder or under any other Financing Document.

Agent shall endeavor to provide Borrowers with a monthly statement regarding the Loan Account (but neither Agent nor any Lender shall have any liability if Agent shall fail to provide any such statement). Unless any Borrower notifies Agent of any objection to any such statement (specifically describing the basis for such objection) within ninety (90) days after the date of receipt thereof, it shall be deemed final, binding and conclusive upon Borrowers in all respects as to all matters reflected therein.

Section 2.7 Maximum Interest. In no event shall the interest charged with respect to the Loans or any other Obligations of any Borrower under any Financing Document exceed the maximum amount permitted under the laws of the State of New York or of any other applicable jurisdiction. Notwithstanding anything to the contrary herein or elsewhere, if at any time the rate of interest payable hereunder or under any Note or other Financing Document (the "**Stated Rate**") would exceed the highest rate of interest permitted under any applicable law to be charged (the "**Maximum Lawful Rate**"), then for so long as the Maximum Lawful Rate would be so exceeded, the rate of interest payable shall be equal to the Maximum Lawful Rate; *provided*, *however*, that if at any time thereafter the Stated Rate is less than the Maximum Lawful Rate, each Borrower shall, to the extent permitted by law, continue to pay interest at the Maximum Lawful Rate until such time as the total interest received is equal to the total interest which would have been received had the Stated Rate been (but for the operation of this provision) the interest rate payable. Thereafter, the interest rate payable shall be the Stated Rate unless and until the Stated Rate again would exceed the Maximum Lawful Rate, in which event this provision shall again apply. In no event shall the total interest received by any Lender exceed the amount which it could lawfully have received had the interest been calculated for the full term hereof at the Maximum Lawful Rate. If, notwithstanding the prior sentence, any Lender has received interest hereunder in excess of the Maximum Lawful Rate, such excess amount shall be applied to the reduction of the principal balance of the Loans or to other amounts (other than interest) payable hereunder, and if no such principal or other amounts are then outstanding, such excess or part thereof remaining shall be paid to Borrowers. In computing interest payable with reference to the Maximum Lawful Rate applicable to any Lender, such interest shall be calculated at a daily rate equal to the Maximum Lawful Rate *divided by* the number of days in the year in which such calculation is made.

Section 2.8 Taxes; Capital Adequacy.

(a) All payments of principal and interest on the Loans and all other amounts payable hereunder 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 any such withholding or deduction is in respect of any Indemnified Taxes, then the Borrowers shall pay such additional amount or amounts as is necessary to ensure that the net amount actually received by Agent and each Lender will equal the full amount Agent and such Lender would have received had no such withholding or deduction been required (including, without limitation, such withholdings and deductions applicable to additional sums payable under this Section 2.8). After payment of any Tax by a Borrower to a Governmental Authority pursuant to this Section 2.8, such Borrower shall promptly forward to Agent the original or a certified copy of an official receipt or other documentation evidencing such payment to such authority. Borrowers shall timely pay to the relevant Governmental Authority in accordance with applicable Law, or at the option of Agent timely reimburse it for the payment of, any Other Taxes.

(b) The Borrowers shall indemnify Agent and Lenders, within ten (10) Business Days after demand thereof, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section 2.8) payable or paid by Agent or any Lender or required to be withheld or deducted from a payment to Agent or any Lender and any reasonable and documented 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 in reasonable detail as to the amount of such payment or liability delivered to Borrowers by a Lender (with a copy to Agent), or by Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.

(c) Any Lender that is entitled to an exemption from or reduction of withholding tax with respect to payments made under any Financing Document shall deliver to Borrower Representative and Agent, at the time or times prescribed by applicable Law or reasonably requested by Borrower Representative or Agent, such properly completed and executed documentation reasonably requested by Borrower Representative or 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 Borrower Representative or Agent, shall deliver such other documentation prescribed by applicable Law or reasonably requested by Borrowers or Agent as will enable Borrowers or 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 2.8(c)(i), 2.8(c)(ii) and 2.8(e) below) shall not be required if in such 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.

(i) Each Lender that is not a "United States person" (as such term is defined in Section 7701(a)(30) of the Code) for U.S. federal income tax purposes and is a party hereto on the Closing Date or purports to become an assignee of an interest pursuant to Section 11.17(a) after the Closing Date (unless such Lender was already a Lender hereunder immediately prior to such assignment) (each such Lender a "**Foreign Lender**") shall, to the extent permitted by Law, execute and deliver to Borrower Representative and 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 Agreement (and from time to time thereafter upon the reasonable request of the Borrower Representative or Agent) whichever of the following is applicable: (A) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party, (x) with respect to payments of interest under any Financing Document, two (2) properly completed and executed originals of IRS Forms W-8BEN or W-8BEN-E (or successor form) establishing an exemption from, or reduction of, U.S. federal withholding tax pursuant to the "interest" article of such tax treaty and (y) with respect to any other applicable payments under any Financing Documents, two (2) properly completed and executed originals of IRS Forms W-8BEN or W-8BEN-E (or successor form) 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; (B) two (2) executed originals of IRS Form W-8ECI (or successor form); (C) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate substantially in the form of Exhibit E-1 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 any 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 (y) two (2) executed originals of IRS Forms W-8BEN or W-8BEN-E (or successor form); (D) to the extent a Foreign Lender is not the beneficial owner, two (2) executed originals of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN or W-8BEN-E (or successor form), a U.S. Tax Compliance Certificate substantially in the form of Exhibit E-2 or Exhibit E-3, IRS Form W-9 (or successor form), 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 substantially in the form of Exhibit E-4 on behalf of each such direct and indirect partner; or (E) other applicable forms, certificates or documents prescribed by the IRS. 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 Borrower Representative and Agent in writing of its legal inability to do so. In addition, to the extent permitted by applicable Law, such forms shall be delivered by each Foreign Lender upon the obsolescence or invalidity of any form previously delivered by such Foreign Lender. Each Foreign Lender shall promptly notify Borrower Representative at any time it determines that it is no longer in a position to provide any previously delivered certificate to Borrower Representative (or any other form of certification adopted by the U.S. taxing authorities for such purpose).

(ii) Each Lender that is a "United States person" (as such term is defined in Section 7701(a)(30) of the Code) for U.S. federal income tax purposes and is a party hereto on the Closing Date or purports to become an assignee of an interest pursuant to Section 11.17(a) after the Closing Date (unless such Lender was already a Lender hereunder immediately prior to such assignment) shall, to the extent permitted by Law, provide to Borrower Representative and Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower Representative or Agent), a properly completed and executed IRS Form W-9 or any successor form certifying as to such Lender's entitlement to an exemption from U.S. backup withholding and other applicable forms, certificates or documents prescribed by the IRS or reasonably requested by Borrower Representative or Agent. Each such Lender shall promptly notify Borrower Representative and Agent at any time it determines that any certificate previously delivered to Borrower Representative and Agent (or any other form of certification adopted by the U.S. Governmental Authorities for such purposes) is no longer valid.

(iii) Any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to Borrower Representative and 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 Agreement (and from time to time thereafter upon the reasonable request of the Borrower Representative or 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 Borrowers or Agent to determine the withholding or deduction required to be made.

(d) If any Lender or Agent determines, in its sole discretion exercised in good faith, that it has received a refund in respect of any Taxes as to which it has been indemnified by any Credit Party pursuant to this Section 2.8 (including by the payment of additional amounts pursuant to this Section 2.8), then it shall promptly pay an amount equal to such refund to such Credit Party, net of all reasonable out-of-pocket expenses of such Lender or of Agent with respect thereto, including any Taxes; *provided*, *however*, that the applicable Credit Party, upon the written request of such Lender or Agent, agrees to repay any amount paid over to such Credit Party to such Lender or to Agent (plus any related penalties, interest or other charges imposed by the relevant Governmental Authority) in the event such Lender or Agent is required, for any reason, to disgorge or otherwise repay such refund. Notwithstanding anything to the contrary in this Section 2.8, in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this Section 2.8(d) 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 Section 2.8 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.

(e) If a payment made to a Lender under any Financing 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 Borrower Representative and Agent at the time or times prescribed by Law and at such time or times reasonably requested by Borrower Representative or 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 Borrower Representative or Agent as may be necessary for Borrowers and 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 (e), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

(f) Each Lender shall severally indemnify Agent, within ten (10) days after demand therefor, for (i) any Indemnified Taxes attributable to such Lender (but only to the extent that any Credit Party has not already indemnified Agent for such Indemnified Taxes and without limiting the obligation of the Credit Parties to do so), (ii) any Taxes attributable to such Lender's failure to comply with the provisions of Section 11.17 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 Agent in connection with any Financing 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 Agent shall be conclusive absent manifest error. Each Lender hereby authorizes Agent to set off and apply any and all amounts at any time owing to such Lender under any Financing Document or otherwise payable by Agent to such Lender from any other source against any amount due to Agent under this paragraph (f).

(g) Each party's obligations under Section 2.8(a) through (f) shall survive the resignation or replacement of Agent or any assignment of rights by, or the replacement of, a Lender, and the repayment, satisfaction or discharge of all Obligations hereunder.

(h) If any Lender shall reasonably determine that the adoption or taking effect of, or any change in, any applicable Law regarding capital adequacy, in each instance, after the Closing Date, or any change after the Closing Date in the interpretation, administration or application thereof by any Governmental Authority, central bank or comparable agency charged with the interpretation, administration or application thereof, or the compliance by any Lender or any Person controlling such Lender with any request, guideline or directive regarding capital adequacy (whether or not having the force of Law) of any such Governmental Authority, central bank or comparable agency adopted or otherwise taking effect after the Closing Date, has or would have the effect of reducing the rate of return on such Lender's or such controlling Person's capital as a consequence of such Lender's obligations hereunder to a level below that which such Lender or such controlling Person could have achieved but for such adoption, taking effect, change, interpretation, administration, application or compliance (taking into consideration such Lender's or such controlling Person's policies with respect to capital adequacy) then from time to time, upon demand by such Lender (which demand shall be accompanied by a certificate setting forth the basis for such demand and a calculation of the amount thereof in reasonable detail, a copy of which shall be furnished to Agent), Borrowers shall promptly pay to such Lender such additional amount as will compensate such Lender or such controlling Person for such reduction, so long as such amounts have accrued on or after the day which is two hundred seventy (270) days prior to the

date on which such Lender first made demand therefor; *provided* that notwithstanding anything in this Agreement to the contrary, for all purposes of this Section (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, shall in each case be deemed to be a "change in applicable Law", regardless of the date enacted, adopted or issued.

(i) If any Lender requests compensation under either Section 2.1(b)(iv) or Section 2.8(h), or requires Borrowers to pay any Indemnified Taxes or additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.8, then, upon the written request of Borrower Representative, such Lender shall use reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder (subject to the provisions of Section 11.17) to another of its offices, branches or affiliates, if, in the reasonable judgment of such Lender, such designation or assignment (i) would eliminate or materially reduce amounts payable pursuant to any such Section, as the case may be, in the future, (ii) would not subject such Lender to any unreimbursed cost or expense and (iii) would not otherwise be disadvantageous to such Lender (as determined in its good faith discretion). Without limitation of the provisions of Section 12.14, each Borrower hereby agrees to pay all reasonable and documented, out-of-pocket costs and expenses incurred by any Lender in connection with any such designation or assignment.

Section 2.9 Appointment of Borrower Representative.

(a) Each Borrower hereby irrevocably appoints and constitutes Borrower Representative as its agent and attorney-in-fact to request and receive Loans in the name or on behalf of such Borrower and any other Borrowers, deliver Notices of Borrowing, and Borrowing Base Certificates, give instructions with respect to the disbursement of the proceeds of the Loans , giving and receiving all other notices and consents hereunder or under any of the other Financing Documents and taking all other actions (including in respect of compliance with covenants) in the name or on behalf of any Borrower or Borrowers pursuant to this Agreement and the other Financing Documents. Agent and Lenders may disburse the Loans to such bank account of Borrower Representative or a Borrower or otherwise make such Loans to a Borrower, in each case as Borrower Representative may designate or direct, without notice to any other Borrower. Notwithstanding anything to the contrary contained herein, Agent may at any time and from time to time require that Loans to or for the account of any Borrower be disbursed directly to an operating account of such Borrower.

(b) Borrower Representative hereby accepts the appointment by Borrowers to act as the agent and attorney-in-fact of Borrowers pursuant to this Section 2.9. Borrower Representative shall ensure that the disbursement of any Loans that are at any time requested by or to be remitted to or for the account of a Borrower, shall be remitted or issued to or for the account of such Borrower.

(c) Each Borrower hereby irrevocably appoints and constitutes Borrower Representative as its agent to receive statements on account and all other notices from Agent, Lenders with respect to the Obligations or otherwise under or in connection with this Agreement and the other Financing Documents.

(d) Any notice, election, representation, warranty, agreement or undertaking made or delivered by or on behalf of any Borrower by Borrower Representative shall be deemed for all purposes to have been made or delivered by such Borrower, as the case may be, and shall be binding upon and enforceable against such Borrower to the same extent as if made or delivered directly by such Borrower.

(e) No resignation by or termination of the appointment of Borrower Representative as agent and attorney-in-fact as aforesaid shall be effective, except after ten (10) Business Days' prior written notice to Agent. If the Borrower Representative resigns under this Agreement, Borrowers shall be entitled to appoint a successor Borrower Representative (which shall be a Borrower and shall be reasonably acceptable to Agent as such successor). Upon the acceptance of its appointment as successor Borrower Representative hereunder, such successor Borrower Representative shall succeed to all the rights, powers and duties of the retiring Borrower Representative and the term "Borrower Representative" means such successor Borrower Representative for all purposes of this Agreement and the other Financing Documents, and the retiring or terminated Borrower Representative's appointment, powers and duties as Borrower Representative shall be thereupon terminated.

Section 2.10 Joint and Several Liability; Rights of Contribution; Subordination and Subrogation.

(a) Borrowers are defined collectively to include all Persons named as one of the Borrowers herein; *provided, however*, that any references herein to "any Borrower", "each Borrower" or similar references, shall be construed as a reference to each individual Person named as one of the Borrowers herein. Each Person so named shall be jointly and severally liable for all of the obligations of Borrowers under this Agreement. Each Borrower, individually, expressly understands, agrees and acknowledges, that the credit facilities would not be made available on the terms herein in the absence of the collective credit of all of the Persons named as the Borrowers herein, the joint and several liability of all such Persons, and the cross-collateralization of the collateral of all such Persons. Accordingly, each Borrower individually acknowledges that the benefit to each of the Persons named as one of the Borrowers as a whole constitutes reasonably equivalent value, regardless of the amount of the credit facilities actually borrowed by, advanced to, or the amount of collateral provided by, any individual Borrower. In addition, each entity named as one of the Borrowers herein hereby acknowledges and agrees that all of the representations, warranties, covenants, obligations, conditions, agreements and other terms contained in this Agreement shall be applicable to and shall be binding upon and measured and enforceable individually against each Person named as one of the Borrowers herein as well as all such Persons when taken together. By way of illustration, but without limiting the generality of the foregoing, the terms of Section 10.1 of this Agreement are to be applied to each individual Person named as one of the Borrowers herein (as well as to all such Persons taken as a whole), such that the occurrence of any of the events described in Section 10.1 of this Agreement as to any Person named as one of the Borrowers herein shall constitute an Event of Default even if such event has not occurred as to any other Persons named as the Borrowers or as to all such Persons taken as a whole.

(b) Notwithstanding any provisions of this Agreement to the contrary, it is intended that the joint and several nature of the liability of each Borrower for the Obligations and the Liens granted by Borrowers to secure the Obligations, not constitute a Fraudulent Conveyance (as defined below). Consequently, Agent, Lenders and each Borrower agree that if the liability of a Borrower for the Obligations, or any Liens granted by such Borrower securing the Obligations would, but for the application of this sentence, constitute a Fraudulent Conveyance, the liability of such Borrower and the Liens securing such liability shall be valid and enforceable only to the maximum extent that would not cause such liability or such Lien to constitute a Fraudulent Conveyance, and the liability of such Borrower and this Agreement shall automatically be deemed to have been amended accordingly. For purposes hereof, the term "**Fraudulent Conveyance**" means a fraudulent conveyance under Section 548 of Chapter 11 of Title II of the Bankruptcy Code or a fraudulent conveyance or fraudulent transfer under the applicable provisions of any fraudulent conveyance or fraudulent transfer law or similar law of any state, nation or other governmental unit, as in effect from time to time.

(c) Agent is hereby authorized, without notice or demand (except as otherwise specifically required under this Agreement) and without affecting the liability of any Borrower hereunder, at any time and from time to time, to (i) renew, extend or otherwise increase the time for payment of the Obligations; (ii) with the written agreement of all Borrowers, change the terms relating to the Obligations or otherwise modify, amend or change the terms of any Note or other agreement, document or instrument now or hereafter executed by any Borrower and delivered to Agent for any Lender; (iii) accept partial payments of the Obligations; (iv) take and hold any Collateral for the payment of the Obligations or for the payment of any guaranties of the Obligations and exchange, enforce, waive and release any such Collateral; (v) apply any such Collateral and direct the order or manner of sale thereof as Agent, in its sole discretion, may determine; and (vi) settle, release, compromise, collect or otherwise liquidate the Obligations and any Collateral therefor in any manner, all guarantor and surety defenses being hereby waived by each Borrower. Except as specifically provided in this Agreement or any of the other Financing Documents, Agent shall have the exclusive right to determine the time and manner of application of any payments or credits, whether received from any Borrower or any other source, and such determination shall be binding on all Borrowers. All such payments and credits may be applied, reversed and reapplied, in whole or in part, to any of the Obligations that Agent shall determine, in its sole discretion, without affecting the validity or enforceability of the Obligations of any other Borrower.

(d) Each Borrower hereby agrees that, except as hereinafter provided, its obligations hereunder shall be unconditional, irrespective of (i) the absence of any attempt to collect the Obligations from any obligor or other action to enforce the same; (ii) the waiver or consent by Agent with respect to any provision of any instrument evidencing the Obligations, or any part thereof, or any other agreement heretofore, now or hereafter executed by a Borrower and delivered to Agent; (iii) failure by Agent to take any steps to perfect and maintain its security interest in, or to preserve its rights to, any security or collateral for the Obligations; (iv) the institution of any proceeding under the Bankruptcy Code, or any similar proceeding, by or against a Borrower or Agent's election in any such proceeding of the application of Section 1111(b)(2) of the Bankruptcy Code; (v) any borrowing or grant of a security interest by a Borrower as debtor-in-possession, under Section 364 of the Bankruptcy Code; (vi) the disallowance, under Section 502 of the Bankruptcy Code, of all or any portion of Agent's claim(s) for repayment of any of the Obligations; or (vii) any other circumstance other than payment in full of the Obligations which might otherwise constitute a legal or equitable discharge or defense of a guarantor or surety.

(e) Borrowers hereby agree, as between themselves, that to the extent that Agent, on behalf of Lenders, shall have received from any Borrower any Recovery Amount (as defined below), then the paying Borrower shall have a right of contribution against each other Borrower in an amount equal to such other Borrower's contributive share of such Recovery Amount; *provided*, *however*, that in the event any Borrower suffers a Deficiency Amount (as defined below), then the Borrower suffering the Deficiency Amount shall be entitled to seek and receive contribution from and against the other Borrowers in an amount equal to the Deficiency Amount; and *provided*, *further*, that in no event shall the aggregate amounts so reimbursed by reason of the contribution of any Borrower equal or exceed an amount that would, if paid, constitute or result in Fraudulent Conveyance. Until all Obligations have been paid and satisfied in full, no payment made by or for the account of a Borrower including, without limitation, (i) a payment made by such Borrower on behalf of the liabilities of any other Borrower, or (ii) a payment made by any other Guarantor under any Guarantee, shall entitle such Borrower, by subrogation or otherwise, to any payment from such other Borrower or from or out of such other Borrower's property. The right of each Borrower to receive any contribution under this Section 2.10(e)

or by subrogation or otherwise from any other Borrower shall be subordinate in right of payment to the Obligations and such Borrower shall not exercise any right or remedy against such other Borrower or any property of such other Borrower by reason of any performance of such Borrower of its joint and several obligations hereunder, until the Obligations have been paid and satisfied in full, and no Borrower shall exercise any right or remedy with respect to this Section 2.10(e) until the Obligations have been paid and satisfied in full. As used in this Section 2.10(e), the term "**Recovery Amount**" means the amount of proceeds received by or credited to Agent from the exercise of any remedy of the Lenders under this Agreement or the other Financing Documents, including, without limitation, the sale of any Collateral. As used in this Section 2.10(e), the term "**Deficiency Amount**" means any amount that is less than the entire amount a Borrower is entitled to receive by way of contribution or subrogation from, but that has not been paid by, the other Borrowers in respect of any Recovery Amount attributable to the Borrower entitled to contribution, until the Deficiency Amount has been reduced to Zero Dollars ($0) through contributions and reimbursements made under the terms of this Section 2.10(e) or otherwise.

Section 2.11 Collections and Lockbox Account.

(a) Borrowers shall maintain a lockbox (the "**Lockbox**") with a United States depository institution reasonably acceptable to Agent (the "**Lockbox Bank**"), subject to the provisions of this Agreement, and shall execute with the Lockbox Bank a Deposit Account Control Agreement and such other agreements related to such Lockbox as Agent may require to implement the provisions of this Section 2.11. At all times following the initial borrowing of the Revolving Loans, Borrowers shall ensure that all collections of Accounts are paid directly from Account Debtors (i) into the Lockbox for deposit into the Lockbox Account and/or (ii) directly into the Lockbox Account; *provided, however*, that unless Agent shall otherwise direct by written notice to Borrowers, Borrowers shall be permitted to cause Account Debtors who are individuals to pay Accounts directly to Borrowers, which Borrowers shall then administer and apply in the manner required below. All funds deposited into a Lockbox Account shall be transferred into the Payment Account (or, prior to the time of the initial borrowing of the Revolving Loans, such Deposit Account of Borrower as Agent may direct in its Permitted Discretion) by the close of each Business Day.

(b) Reserved.

(c) Notwithstanding anything in any lockbox agreement or Deposit Account Control Agreement to the contrary, Borrowers agree that they shall be liable for any fees and charges in effect from time to time and charged by the Lockbox Bank in connection with the Lockbox, the Lockbox Account, and that Agent shall have no liability therefor. Borrowers hereby indemnify and agree to hold Agent harmless from any and all liabilities, claims, losses and demands whatsoever, including reasonable attorneys' fees and expenses, arising from or relating to actions of Agent or the Lockbox Bank pursuant to this Section or any lockbox agreement or Deposit Account Control Agreement or similar agreement, except to the extent of such losses arising from Agent's gross negligence or willful misconduct, as determined in a final, non-appealable judgment of a court of competent jurisdiction.

(d) Agent shall apply, on a daily basis, all funds transferred into the Payment Account pursuant to this Section 2.11 to reduce the outstanding Revolving Loans in such order of application as Agent shall elect. If as the result of collections of Accounts pursuant to the terms and conditions of this Section, a credit balance exists with respect to the Loan Account, such credit balance shall not accrue interest in favor of Borrowers, but Agent shall transfer such funds into an account designated by Borrower Representative promptly for so long as no Event of Default exists.

(e) At all times following the initial borrowing of the Revolving Loans, to the extent that any collections of Accounts or proceeds of other Collateral comprising part of the Borrowing Base (including Inventory) are not sent directly to the Lockbox or Lockbox Account but are received by any Borrower, such collections shall be held in trust for the benefit of Agent pursuant to an express trust created hereby and immediately remitted, in the form received, to applicable Lockbox or Lockbox Account. No such funds received by any Borrower shall be commingled with other funds of the Borrowers. .

(f) Borrowers acknowledge and agree that compliance with the terms of this Section is essential, and that Agent and Lenders will suffer immediate and irreparable injury and have no adequate remedy at law, if, at any time following the initial borrowing of the Revolving Loans, any Borrower, through acts or omissions, causes or permits Account Debtors to send payments other than to the Lockbox or Lockbox Accounts or if any Borrower fails to promptly deposit collections of Accounts or proceeds of other Collateral comprising part of the Borrowing Base (including Inventory) in the Lockbox Account as herein required. Accordingly, in addition to all other rights and remedies of Agent and Lenders hereunder, Agent shall have the right to seek specific performance of the Borrowers' obligations under this Section, and any other equitable relief as Agent may deem necessary or appropriate, and Borrowers waive any requirement for the posting of a bond in connection with such equitable relief.

(g) Borrowers shall not, and Borrowers shall not suffer or permit any Credit Party to, (i) withdraw any amounts from any Lockbox Account, (ii) change the procedures or sweep instructions under the agreements governing any Lockbox Accounts, or (iii) send to or deposit in any Lockbox Account any funds other than payments made with respect to and proceeds of Accounts or proceeds of other Collateral comprising part of the Borrowing Base (including Inventory). Borrowers shall, and shall cause each Credit Party to, cooperate with Agent in the identification and reconciliation on a daily basis of all amounts received in or required to be deposited into the Lockbox Accounts. If more than twenty percent (20%) of the collections of Accounts received by Borrowers during any given fifteen (15) day period is not identified or reconciled to the reasonable satisfaction of Agent within ten (10) Business Days of receipt, Agent shall not be obligated to make further advances under this Agreement until such amount is identified or is reconciled to the reasonable satisfaction of Agent, as the case may be. In addition, if any such amount cannot be identified or reconciled to the reasonable satisfaction of Agent, Agent may utilize its own staff or, if it deems necessary, engage an outside auditor, in either case at Borrowers' expense (which in the case of Agent's own staff shall be in accordance with Agent's then prevailing customary charges (*plus* reasonable and documented expenses)), to make such examination and report as may be necessary to identify and reconcile such amount.

(h) If any Borrower breaches its obligation to direct payments of the proceeds of the Borrowing Base Collateral to the Lockbox Account, Agent, as the irrevocably made, constituted and appointed true and lawful attorney for Borrowers, may, by the signature or other act of any of Agent's authorized representatives (without requiring any of them to do so), direct any Account Debtor to pay proceeds of the Borrowing Base Collateral to Borrowers by directing payment to the Lockbox Account.

Section 2.12 Termination; Restriction on Termination.

(a) Termination by Lenders. In addition to the rights set forth in Section 10.2, Agent may, and at the direction of Required Lenders shall, terminate this Agreement upon or after the occurrence and during the continuance of an Event of Default by giving notice to the Borrower Representative.

(b) Termination by Borrowers. Upon at least ten (10) days prior written notice (provided that such notice may provide that it is conditioned upon the consummation of a Change in Control, the consummation of another financing or the consummation of a sale of equity interests, in which case, such noticed may be revoked or extended by the Borrowers if any such condition is not satisfied prior to the date of termination of this Agreement given in such notice) and pursuant to payoff documentation in form and substance satisfactory to Agent and Lenders, Borrowers may, at its option, terminate this Agreement; *provided, however,* that no such termination shall be effective until Borrowers have complied with Section 2.12(c) and paid in full all of the Affiliated Obligations in immediately available funds and terminated the Affiliated Financing Documents. Except as otherwise provided above in this clause (b), any notice of termination given by Borrowers shall be irrevocable unless all Lenders otherwise agree in writing and no Lender shall have any obligation to make any Loans on or after the termination date stated in such notice. Borrowers may elect to terminate this Agreement in its entirety only. No section of this Agreement or type of Loan available hereunder may be terminated singly.

(c) Effectiveness of Termination. All of the Obligations shall be immediately due and payable upon the Termination Date. All undertakings, agreements, covenants, warranties and representations of Borrowers contained in the Financing Documents shall survive any such termination and Agent shall retain its Liens in the Collateral and Agent and each Lender shall retain all of its rights and remedies under the Financing Documents notwithstanding such termination until all Obligations and Affiliated Obligations have been discharged or paid, in full (other than contingent indemnification for obligations for which no claim has been asserted or the known existence of a claim is reasonably likely to be asserted), in immediately available funds, including, without limitation, all Obligations under Section 2.2(g) and the terms of any Fee Letter resulting from such termination. Notwithstanding the foregoing or the payment in full of the Obligations, Agent shall not be required to terminate its Liens in the Collateral unless, with respect to any loss or damage Agent may incur as a result of dishonored checks or other items of payment received by Agent from Borrower or any Account Debtor and applied to the Obligations, Agent shall, at its option, (a) have received a written agreement satisfactory to Agent, executed by Borrowers and by any Person whose loans or other advances to Borrowers are used in whole or in part to satisfy the Obligations, indemnifying Agent and each Lender from any such loss or damage or (b) have retained cash Collateral or other Collateral for such period of time as Agent, in its Permitted Discretion, may deem necessary to protect Agent and each Lender from any such loss or damage.

ARTICLE 3 - REPRESENTATIONS AND WARRANTIES

To induce Agent and Lenders to enter into this Agreement and to make the Loans and other credit accommodations contemplated hereby, each Borrower hereby represents and warrants to Agent and each Lender that:

Section 3.1 Existence and Power. Each Credit Party (a) is an entity as specified on Schedule 3.1, (b) is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, as specified on Schedule 3.1, (c) has the same legal name as it appears in such Credit Party's Organizational Documents and an organizational identification number (if any), in each case as specified on Schedule 3.1, (d) has all powers to own its assets and has powers and all Permits necessary in the operation of its business as presently conducted or as proposed to be conducted, except where the failure to have such Permits could not reasonably be expected to have a Material Adverse Effect, and (e) is qualified to do business as a foreign entity in each jurisdiction in which it is required to be so qualified, which jurisdictions as of the Closing Date are specified on Schedule 3.1, except in the case of this clause (e) where the failure to be so qualified could not reasonably be expected to have a Material Adverse Effect. Except as set forth on Schedule 3.1, no Credit Party (x) has had, over the five (5) year period preceding the Closing Date, any name other than its current name, or (y) was incorporated or organized under the laws of any jurisdiction other than its current jurisdiction of incorporation or organization.

Section 3.2 Organization and Governmental Authorization; No Contravention. The execution, delivery and performance by each Credit Party of the Operative Documents to which it is a party (a) are within its powers, (b) have been duly authorized by all necessary action pursuant to its Organizational Documents, (c) require no further action by or in respect of, or filing with, any Governmental Authority and (d) do not violate, conflict with or cause a breach or a default under (i) any material requirement of any Law applicable to any Credit Party, (ii) any of the Organizational Documents of any Credit Party, or (iii) any agreement or instrument binding upon it, except for such violations, conflicts, breaches or defaults as could not, with respect to this clause (iii), reasonably be expected to have a Material Adverse Effect.

Section 3.3 Binding Effect. Each of the Operative Documents to which any Credit Party is a party constitutes a valid and binding agreement or instrument of such Credit Party, enforceable against such Credit Party in accordance with its respective terms, except as the enforceability thereof may be limited by bankruptcy, insolvency or other similar laws relating to the enforcement of creditors' rights generally and by general equitable principles. Each Financing Document has been duly executed and delivered by each Credit Party party thereto.

Section 3.4 Capitalization. The authorized equity securities of each of the Credit Parties as of the Closing Date are as set forth on Schedule 3.4. All issued and outstanding equity securities of each of the Credit Parties are duly authorized and validly issued, fully paid, nonassessable, free and clear of all Liens other than Permitted Liens, and such equity securities were issued in compliance with all applicable Laws. The identity of the holders of the equity securities of each of the Credit Parties and the percentage of their fully-diluted ownership of the equity securities of each of the Credit Parties as of the Closing Date is set forth on Schedule 3.4. No shares of the capital stock or other equity securities of any Credit Party, other than those described above, are issued and outstanding as of the Closing Date. Except as set forth on Schedule 3.4, as of the Closing Date there are no preemptive or other outstanding rights, options, warrants, conversion rights or similar agreements or understandings for the purchase or acquisition from any Credit Party of any equity securities of any such entity.

Section 3.5 Financial Information. All information delivered to Agent and pertaining to the financial condition of any Credit Party fairly presents the financial position of such Credit Party as of such date in conformity with GAAP (and as to unaudited financial statements, subject to normal year-end adjustments and the absence of footnote disclosures). Since December 31, 2019, there has been no Material Adverse Effect.

Section 3.6 Litigation. Except as set forth on Schedule 3.6 as of the Closing Date, and except as hereafter disclosed to Agent in writing, there is no Litigation pending against, or to such Borrower's knowledge threatened in writing against, any Credit Party that would be reasonably expected to result in liability to any Credit Party in an amount in excess of $2,500,000 (regardless of whether covered by insurance). There is no Litigation pending in which an adverse decision could reasonably be expected to have a Material Adverse Effect or which in any manner draws into question the validity of any of the Operative Documents.

Section 3.7 Ownership of Property. Each Borrower and each of its Subsidiaries is the lawful owner of, has good and marketable title to and is in lawful possession of, or has valid leasehold interests in, all properties, accounts and other assets (real or personal, tangible, intangible or mixed) purported or reported to be owned or leased (as the case may be) by such Person.

Section 3.8 No Default. No Event of Default, or to such Borrower's knowledge, Default, has occurred and is continuing. No Credit Party is in breach or default under or with respect to any contract, agreement, lease or other instrument to which it is a party or by which its property is bound or affected, which breach or default could reasonably be expected to have a Material Adverse Effect.

Section 3.9 Labor Matters. As of the Closing Date, there are no strikes or other labor disputes pending or, to any Borrower's knowledge, threatened in writing against any Credit Party. Hours worked and payments made to the employees of the Credit Parties have not been in violation of the Fair Labor Standards Act or any other applicable Law dealing with such matters, except for any such violation that could not reasonably be expected to have a Material Adverse Effect. All payments due from the Credit Parties, or for which any claim may be made against any of them, on account of wages and employee and retiree health and welfare insurance and other benefits have been paid or accrued as a liability on their books, as the case may be except for any such violation that could not reasonably be expected to have a Material Adverse Effect. The consummation of the transactions contemplated by the Financing Documents will not give rise to a right of termination or right of renegotiation on the part of any union under any collective bargaining agreement to which it is a party or by which it is bound.

Section 3.10 Investment Company Act. No Credit Party is an "investment company" or a company "controlled" by an "investment company" or a "subsidiary" of an "investment company," all within the meaning of the Investment Company Act of 1940.

Section 3.11 Margin Regulations.

(a) The Credit Parties and their Subsidiaries do not own any stock, partnership interest or other equity securities, except for Permitted Investments. Without limiting the foregoing, the Credit Parties and their Subsidiaries do not own or hold any Margin Stock.

(b) None of the proceeds from the Loans have been or will be used, directly or indirectly, for the purpose of purchasing or carrying any "margin stock" (as defined in Regulation U of the Federal Reserve Board), for the purpose of reducing or retiring any indebtedness which was originally incurred to purchase or carry any "margin stock" or for any other purpose which might cause any of the Loans to be considered a "purpose credit" within the meaning of Regulation T, U or X of the Federal Reserve Board.

Section 3.12 Compliance With Laws; Anti-Terrorism Laws.

(a) Each Credit Party is in compliance with the requirements of all applicable Laws, except for such instances of noncompliance with such applicable Laws which, whether individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect.

(b) None of the Credit Parties and, to the knowledge of the Credit Parties, none of their controlled Affiliates (i) is in violation of any Anti-Terrorism Law, (ii) 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 any Anti-Terrorism Law, (iii) is a Blocked Person, or is controlled by a Blocked Person, (iv) is acting or will act for or on behalf of a Blocked Person, (v) is associated with, or will become associated with, a Blocked Person or (vi) is providing, or will provide, material, financial or technical support or other services to or in support of acts of terrorism of a Blocked Person. No Credit Party nor, to the knowledge of any Credit Party, any of its controlled Affiliates or agents acting or benefiting in any capacity in connection with the transactions contemplated by this Agreement, (A) conducts any business or engages in making or receiving any contribution of funds, goods or services to or for the benefit of any Blocked Person, or (B) deals in, or otherwise engages in any transaction relating to, any property or interest in property blocked pursuant to Executive Order No. 13224, any similar executive order or other Anti-Terrorism Law.

Section 3.13 Taxes. All federal and material state and material foreign and local income tax returns, reports and all other material tax returns, and statements required to be filed by or on behalf of each Credit Party have been filed with the appropriate Governmental Authorities in all jurisdictions in which such returns, reports and statements are required to be filed and, except to the extent subject to a Permitted Contest, all material Taxes (including real property Taxes) and other charges shown to be due and payable in respect thereof have been timely paid prior to the date on which any fine, penalty, interest, late charge or loss may be added thereto for nonpayment thereof. Except to the extent subject to a Permitted Contest, all material state, and local sales and use Taxes required to be paid by each Credit Party have been paid. All federal income and other material federal and state returns have been filed by each Credit Party for all periods for which returns were due with respect to employee income tax withholding, social security and unemployment taxes, and, except to the extent subject to a Permitted Contest, the amounts shown thereon to be due and payable have been paid in full or adequate provisions therefor have been made. For purposes of this Section 3.13, any federal (other than federal income), foreign, state or local tax, assessment, deposit or contribution, and any return with respect thereto, shall not be considered "material" if it is equal to or less than $100,000 in the aggregate for all taxes and the nonpayment thereof or failure to file could not reasonably be expected to have a Material Adverse Effect.

Section 3.14 Compliance with ERISA.

(a) Each ERISA Plan (and the related trusts and funding agreements) complies in form and in operation with, has been administered in compliance with, and the terms of each ERISA Plan satisfy, the applicable requirements of ERISA and the Code in all material respects. Except as would not reasonably be expected to have a Material Adverse Effect, each ERISA Plan which is intended to be qualified under Section 401(a) of the Code is so qualified, and the United States Internal Revenue Service has issued a favorable determination letter or opinion letter with respect to each such ERISA Plan which may be relied on currently. Except as would not reasonably be expected to have a Material Adverse Effect, no Credit Party has incurred liability for any material excise tax under any of Sections 4971 through 5000 of the Code.

(b) Except as could not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect, each Borrower and each Subsidiary is in compliance with the applicable provisions of ERISA and the provision of the Code relating to ERISA Plans and the regulations and published interpretations therein. During the thirty-six (36) month period prior to the Closing Date or the making of any Loan (i) no steps have been taken to terminate any Pension Plan, and (ii) no contribution failure has occurred with respect to any Pension Plan sufficient to give rise to a Lien under Section 303(k) of ERISA or Section 430(k) of the Code and no event has occurred that would give rise to a Lien under Section 4068 of ERISA. No condition exists or event or transaction has occurred with respect to any Pension Plan which would reasonably be expected to result in the incurrence by any Credit Party of any material liability, fine or penalty. No Credit Party has incurred liability to the PBGC (other than for current premiums) with respect to any employee Pension Plan. All contributions (if any) have been made on a timely basis to any Multiemployer Plan that are required to be made by any Credit Party or any other member of the Controlled Group under the terms of the plan or of any collective bargaining agreement or by applicable Law; no Credit Party nor any member of the Controlled Group has withdrawn or partially withdrawn from any Multiemployer Plan, incurred any withdrawal liability with respect to any such plan or received notice of any claim or demand for withdrawal liability or partial withdrawal liability from any such plan, and no condition has occurred which, if continued, could result in a withdrawal or partial withdrawal from any such plan, and no Credit Party nor any member of the Controlled Group has received any notice that any Multiemployer Plan is in reorganization, that increased contributions may be required to avoid a reduction in plan benefits or the imposition of any excise tax, that any such plan is or has been funded at a rate less than that required under Section 412 of the Code, that any such plan is or may be terminated, or that any such plan is or may become insolvent.

Section 3.15 Consummation of Operative Documents; Brokers. Except for fees payable to Agent and/or Lenders, no broker, finder or other intermediary has brought about the obtaining, making or closing of the transactions contemplated by the Operative Documents, and no Credit Party has or will have any obligation to any Person in respect of any finder's or brokerage fees, commissions or other expenses in connection herewith or therewith.

Section 3.16 Reserved.

Section 3.17 Material Contracts. Except for the Operative Documents and the agreements set forth on Schedule 3.17, as of the Closing Date there are no Material Contracts. The consummation of the transactions contemplated by the Financing Documents will not give rise to a right of termination in favor of any party to any Material Contract (other than any Credit Party), except for such Material Contracts the noncompliance with which would not reasonably be expected to have a Material Adverse Effect.

Section 3.18 Compliance with Environmental Requirements; No Hazardous Materials. Except in each case as set forth on Schedule 3.18:

(a) no notice, notification, demand, request for information, citation, summons, complaint or order has been issued, no complaint has been filed, no penalty has been assessed and no investigation or review is pending, or to such Borrower's knowledge, threatened in writing by any Governmental Authority or other Person with respect to any (i) alleged material violation by any Credit Party of any Environmental Law, (ii) alleged failure by any Credit Party to have any Permits required in connection with the conduct of its business or to comply with the material terms and conditions thereof, (iii) any generation, treatment, storage, recycling, transportation or disposal of any Hazardous Materials, or (iv) release of Hazardous Materials; and

(b) no property now owned or leased by any Credit Party and, to the knowledge of each Borrower, no such property previously owned or leased by any Credit Party, to which any Credit Party has, directly or indirectly, transported or arranged for the transportation of any Hazardous Materials, is listed or, to such Borrower's knowledge, proposed for listing, on the National Priorities List promulgated pursuant to CERCLA, or CERCLIS (as defined in CERCLA) or any similar state list or is the subject of federal, state or local enforcement actions or, to the knowledge of such Borrower, other investigations which may lead to claims against any Credit Party for clean-up costs, remedial work, damage to natural resources or personal injury claims, including, without limitation, claims under CERCLA, except in the case of the foregoing as would not reasonably be expected to result in a Material Adverse Effect.

For purposes of this Section 3.18, each Credit Party shall be deemed to include any business or business entity (including a corporation) that is, in whole or in part, a predecessor of such Credit Party.

Section 3.19 Intellectual Property and License Agreements. A list of (a) all Registered Intellectual Property owned by each Credit Party, (b) all in-bound license or sublicense agreements that are material to a Credit Party's business, and (c) all exclusive out-bound license or sublicense agreements, in each case, to which a Credit Party is party (but excluding agreements for in-bound licenses for (i) off-the-shelf software or services that are commercially available to the public, and (ii) open source software), as of the Closing Date and, as updated pursuant to Section 4.15, is set forth on Schedule 3.19. Except for Permitted Liens, each Borrower is the sole owner of the material Intellectual Property purported to be owned by such Borrower, free and clear of any Liens other than Permitted Liens. Each material patent owned by a Borrower is valid and, to the best of Borrower's knowledge, enforceable and no part of the Material Intangible Assets owned by each Borrower has been judged by a court or Governmental Authority of competent jurisdiction invalid or unenforceable, in whole or in part, and to the best of Borrower's knowledge, no written claim has been made to a Borrower that any part of the Intellectual Property owned by such Borrower infringes or misappropriates the Intellectual Property rights of any third party.

Section 3.20 Solvency. After giving effect to the Loan advance and the liabilities and obligations of each Borrower and each additional Credit Party under the Operative Documents, (x) each Borrower is Solvent and (y) the Credit Parties (taken as a whole) are Solvent.

Section 3.21 Full Disclosure. None of the written information (financial or otherwise) relating to the Credit Parties (other than projections, other forward- looking information and industry information) furnished by or on behalf of any Credit Party to Agent or any Lender in connection with the consummation of the transactions contemplated by the Operative Documents, when taken as a whole, is accurate and complete in all material respects and does not and will not, when taken as a whole, contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements contained herein or therein not materially misleading in light of the circumstances under which such statements were made. All financial projections delivered to Agent and Lenders by Borrowers (or their agents) have been prepared on the basis of the assumptions stated therein. Such projections represent each Borrower's good faith estimate of such Borrower's future financial performance and such assumptions are believed by such Borrower to be fair and reasonable in light of current business conditions; it being understood that projections are as to future events and are not to be viewed as facts, projections are subject to significant uncertainties and contingencies, many of which are beyond Borrowers' control; *provided*, *however*, that Borrowers can give no assurance that such projections will be attained and that actual results during the period.

Section 3.22 Reserved.

Section 3.23 Subsidiaries. Borrowers do not own any stock, partnership interests, limited liability company interests or other equity securities or Subsidiaries except for Permitted Investments. As of the Closing Date, Borrower has no Subsidiaries.

Section 3.24 Regulatory Matters.

(a) With respect to each Product and except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, (i) Borrower and its Subsidiaries have received, and such Product is the subject of, all Regulatory Required Permits needed in connection with the testing, manufacture, marketing or sale of such Product as currently being conducted by or on behalf of Borrower, and (ii) such Product has been and is being tested, manufactured, marketed, promoted, sold, imported, possessed, owned, warehoused, promoted, labeled, furnished or distributed as the case may be, by Borrowers (or to Borrower's actual knowledge, by any applicable third parties) in compliance with all applicable Healthcare Laws and Regulatory Required Permits.

(b) Except as would not reasonably be expected to have a Material Adverse Effect, none of the Borrowers or any Subsidiary thereof are in violation of any applicable Healthcare Law.

(c) No Borrower or any Subsidiary thereof receives any payments directly (including through any third party payment processor) from Medicare, Medicaid, or TRICARE.

(d) To Borrower's knowledge, none of the Borrower's or its Subsidiaries' officers, directors or employees has made an untrue statement of material fact or fraudulent statement to the FDA or failed to disclose a material fact required to be disclosed to the FDA, committed an act, made a statement, or failed to make a statement that could reasonably be expected to provide a basis for the FDA to invoke its policy respecting "Fraud, Untrue Statements of Material Facts, Bribery, and Illegal Gratuities," set forth in 56 Fed. Regulation 46191 (September 10, 1991).

(e) No Borrower, nor any Subsidiary thereof, is subject to any proceeding, suit or, to any Borrower's knowledge, investigation by any Governmental Authority, which would reasonably be expected to result in the revocation, transfer, surrender, suspension of any material Permits of Borrower or any Subsidiary thereof, in each case, that would reasonably be expected to result in a Material Adverse Effect.

(f) As of the Closing Date, there have been no Regulatory Reporting Events.

ARTICLE 4 - AFFIRMATIVE COVENANTS

Each Borrower agrees that, so long as any Credit Exposure exists:

Section 4.1 Financial Statements and Other Reports. Each Borrower will deliver to Agent:

(a) as soon as available, but no later than thirty (30) days after the last day of each month, a company prepared consolidated and consolidating (if applicable and requested in advance by Agent) balance sheet, cash flow and income statement (including year-to-date results) covering Borrowers' and its Consolidated Subsidiaries' consolidated operations during the period, prepared under GAAP, consistently applied (setting forth in comparative form the corresponding figures as at the end of the corresponding month of the previous fiscal year and the projected figures for such period based upon the projections required hereunder), all in reasonable detail, certified by a Responsible Officer and in a form reasonably acceptable to Agent;

(b) together with the financial reporting package described in (a) above, evidence of payment and satisfaction of all payroll, withholding and similar taxes due and owing by all Borrowers with respect to the payroll period(s) occurring during such month;

(c) as soon as available, but no later than one hundred and eighty (180) days after the last day of each of Borrower's fiscal year, audited consolidated and consolidating (if applicable and requested in advance by Agent) financial statements prepared under GAAP, consistently applied, together with an unqualified opinion (other than a going concern qualification based solely on the upcoming maturity date of the Debt under this Agreement occurring within 12 months of the date of such audit, any Credit Party having negative profits or a determination that any Credit Party has less than 12 months liquidity) on the financial statements from an independent certified public accounting firm acceptable to Agent in its reasonable discretion;

(d) within five (5) days of delivery or filing thereof, copies of all material statements, reports and notices made available to Borrower's security holders or to any holders of Subordinated Debt and copies of all reports and other filings made by Borrower with any stock exchange on which any securities of any Borrower are traded and/or the SEC;

(e) a prompt written report of any legal actions pending or threatened in writing against any Borrower or any of its Subsidiaries that could reasonably be expected to result in damages or costs to any Borrower or any of its Subsidiaries of One Million Dollars ($1,000,000) or more;

(f) prompt written notice of an event that has a Material Adverse Effect on the value of any Material Intangible Asset;

(g) within sixty (60) days after the start of each fiscal year, projections for the forthcoming two fiscal years, on a quarterly basis for the current year and on an annual basis for the subsequent year;

(h) promptly (but in any event within ten (10) days of any request therefor) such readily available other budgets, sales projections, operating plans and other financial information and information, reports or statements regarding the Borrowers, their business and the Collateral as Agent may from time to time reasonably request;

(i) together with the monthly financial statements described in (a) above, a duly completed Compliance Certificate signed by a Responsible Officer setting forth calculations showing monthly cash and cash equivalents of Borrowers, Borrowers and their Consolidated Subsidiaries, and the Excluded Subsidiaries and compliance with the financial covenants set forth in this Agreement.

(j) within ten (10) Business Days after the last day of each month, deliver to Agent a duly completed Borrowing Base Certificate signed by a Responsible Officer, with aged listings of accounts receivable and accounts payable (by invoice date).

(k) within fifteen (15) Business Days of Agent's reasonable request, deliver to Agent a schedule of Eligible Accounts denoting, for the thirty (30) largest Account Debtors during such quarter.

(l) written notice to Agent promptly, but in any event within ten (10) Business Days of a Responsible Officer of a Borrower receiving written notice or otherwise becoming aware of:

(i) any development and/or manufacturing of any Product that is material to Borrowers' business should cease;

(ii) the marketing or sales of a Product, which is material to Borrowers' business, should cease or such Product should be withdrawn in a material quantity from the marketplace;

(iii) any Governmental Authority provides any Borrower or any Subsidiary with written notice of the threatened or actual revocation, termination or suspension of any Regulatory Required Permit the loss of which would be reasonably expected to result in a Material Adverse Effect;

(iv) any Regulatory Required Permit, the loss of which could be reasonably expected to result in a Material Adverse Effect, has been revoked or withdrawn;

(v) any Governmental Authority, including without limitation the FDA, the Office of the Inspector General of HHS or the United States Department of Justice, has commenced (A) any action against a Credit Party or a Subsidiary thereof that could be reasonably expected to have a Material Adverse Effect, or (B) any action to enjoin a Credit Party or a Subsidiary thereof from conducting their businesses at any facility owned or used by them or for any material civil penalty, injunction, seizure or criminal action;

(vi) receipt by Borrower or any Subsidiary thereof from the FDA of a warning letter, "untitled letter," other written correspondence or written notice setting forth alleged material violations of laws and regulations enforced by the FDA, or any comparable written correspondence from any state or local authority responsible for regulating medical device

products, or any comparable written correspondence from any foreign Governmental Authority exercising authority comparable to the FDA alleging material noncompliance with any applicable Healthcare Laws the result of which would be reasonably expected to result in a Material Adverse Effect;

(vii) any material failures in the manufacturing of any material Product have occurred such that the amount of such Product successfully manufactured in accordance with all specifications thereof shall materially decrease; or

(viii) any Borrower or any Subsidiary thereof engaging in any material Recalls, Market Withdrawals, or other forms of product retrieval from the marketplace of any Products (other than discrete batches or lots that are not material in quantity or amount and are not made in conjunction with a larger recall) (each of the events set forth in clauses (i)-(viii) a "**Regulatory Reporting Event**");

(m) promptly after the request by any Lender, all documentation and other information that such Lender reasonably requests in order to comply with its ongoing obligations under applicable "know your customer" and anti-money laundering rules and regulations, including, without limitation, the USA PATRIOT Act; and

(n) promptly, but in any event within ten (10) Business Days, after any Responsible Officer of any Borrower obtains knowledge of the occurrence of any event or change (including, without limitation, any written notice of any violation of applicable Healthcare Laws) that has resulted or would reasonably be expected to result in, either in any case or in the aggregate, a Material Adverse Effect, a certificate of a Responsible Officer specifying the nature and period of existence of any such event or change, or specifying the notice given or action taken by such holder or Person and the nature of such event or change, and what action the applicable Credit Party or Subsidiary has taken, is taking or proposes to take with respect thereto.

Borrower may deliver any of the documents set forth in clauses (a), (c) and (d) of this Section 4.1 by posting such documents on Borrower's website or to the SEC's EDGAR system, and such documents shall be deemed to have been delivered on the date on which Borrower posts such documents.

Section 4.2 Payment and Performance of Obligations. Each Borrower (a) will pay and discharge, and cause each Subsidiary to pay and discharge, on a timely basis as and when due, all of their respective obligations and liabilities, except for such obligations and/or liabilities (i) that may be the subject of a Permitted Contest, and (ii) the nonpayment or nondischarge of which could not reasonably be expected to have a Material Adverse Effect or result in a Lien against any Collateral, except for Permitted Liens, (b) without limiting anything contained in the foregoing clause (a), pay all amounts due and owing in respect of Taxes (including without limitation, payroll and withholdings tax liabilities) on a timely basis as and when due, and in any case prior to the date on which any fine, penalty, interest, late charge or loss may be added thereto for nonpayment thereof, except for such Taxes that may be the subject of a Permitted Contest and except as the nonpayment of such amounts is less than $100,000 in the aggregate at any one time outstanding, (c) will maintain, and cause each Subsidiary to maintain, in accordance with GAAP, appropriate reserves for the accrual of all of their respective obligations and liabilities, and (d) will not breach or permit any Subsidiary to breach, or permit to exist any default under, the terms of any lease, commitment, contract, instrument or obligation to which it is a party, or by which its properties or assets are bound, except for such breaches or defaults which could not reasonably be expected to have a Material Adverse Effect.

Section 4.3 Maintenance of Existence. Except as otherwise provided in Section 9.2(e), each Borrower will preserve, renew and keep in full force and effect and in good standing, and will cause each Subsidiary to preserve, renew and keep in full force and effect and in good standing, (a) their respective existence; *provided*, *however*, that the foregoing shall not prohibit any merger or consolidation, otherwise expressly permitted pursuant to this Agreement and (b) their respective rights, privileges and franchises necessary in the normal conduct of business, except, in the case of this clause (b), where a failure to do so would not reasonably be expected to result in a Material Adverse Effect.

Section 4.4 Maintenance of Property; Insurance.

(a) Each Borrower will keep, and will cause each Subsidiary to keep, all property useful and necessary in its business in good working order and condition, ordinary wear and tear excepted. If all or any part of the tangible Collateral useful or necessary in its business becomes damaged or destroyed, each Borrower will, and will cause each Subsidiary to, promptly repair and/or restore the affected Collateral in a good and workmanlike manner.

(b) Upon completion of any Permitted Contest, Borrowers shall, and will cause each Subsidiary to, promptly pay the amount due, if any, and deliver to Agent proof of the completion of the contest and payment of the amount due, if any.

(c) Each Borrower will maintain (i) casualty insurance on all real and personal property (including all of Borrower's inventory comprising the Borrowing Base wherever located) on an all risks basis (including the perils of windstorm), covering the repair and replacement cost of all such property and coverage, business interruption and rent loss coverages with extended period of indemnity (for the period required by Agent from time to time) and indemnity for extra expense, in each case without application of coinsurance and with agreed amount endorsements, (ii) general and professional liability insurance (including products/completed operations liability coverage), and (iii) such other insurance coverage, in each case against loss or damage of the kinds customarily insured against by Persons engaged in the same or similar business, of such types and in such amounts as are customarily carried under similar circumstances by such other Persons; *provided*, *however*, that, unless otherwise agreed by Agent in writing, in no event shall such insurance be in amounts or with coverage less than, or with carriers with qualifications inferior to, any of the insurance or carriers in existence as of the Closing Date (or required to be in existence after the Closing Date under a Financing Document). All such insurance shall be provided by insurers having an A.M. Best policyholders rating reasonably acceptable to Agent.

(d) On or prior to the Closing Date, and at all times thereafter, each Borrower will cause Agent to be named as an additional insured, assignee and lender loss payee (which shall include, as applicable, identification as mortgagee), as applicable, on each insurance policy required to be maintained pursuant to this Section 4.4 pursuant to endorsements in form and substance acceptable to Agent. Borrowers shall deliver to Agent and the Lenders (i) on the Closing Date, a certificate from Borrowers' insurance broker dated such date showing the amount of coverage as of such date, and that such policies will include effective waivers (whether under the terms of any such policy or otherwise) by the insurer of all claims for insurance premiums against all loss payees and additional insureds and all rights of subrogation against all loss payees and additional insureds, and that if all or any part of such policy is canceled, terminated or expires, will endeavor to give notice thereof to each additional insured, assignee and loss payee and that no cancellation, reduction in amount or material change in coverage thereof shall be effective until at least thirty (30) days (ten (10) days for nonpayment of premium) after receipt by each additional insured, assignee and loss payee of written notice thereof, (ii) on an annual basis, and upon the request of any Lender through Agent from time to time full information as to the insurance carried, (iii) within five (5) days of receipt of notice from any insurer, a copy of any notice of

cancellation, nonrenewal or material change in coverage from that existing on the date of this Agreement, (iv) forthwith, notice of any cancellation or nonrenewal of coverage by any Borrower, and (v) at least ten (10) Business Days prior to expiration of any policy of insurance, evidence of renewal of such insurance upon the terms and conditions herein required.

(e) In the event any Borrower fails to provide Agent with evidence of the insurance coverage required by this Agreement, Agent may purchase insurance at Borrowers' expense to protect Agent's interests in the Collateral. This insurance may, but need not, protect such Borrower's interests. The coverage purchased by Agent may not pay any claim made by such Borrower or any claim that is made against such Borrower in connection with the Collateral. Such Borrower may later cancel any insurance purchased by Agent, but only after providing Agent with evidence that such Borrower has obtained insurance as required by this Agreement. If Agent purchases insurance for the Collateral, Borrowers will be responsible for the documented costs of that insurance to the fullest extent provided by law, including interest and other charges imposed by Agent in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. Such documented costs of the insurance may be added to the Obligations. The costs of the insurance may be more than the cost of insurance such Borrower is able to obtain on its own.

Section 4.5 Compliance with Laws and Material Contracts. Each Borrower will comply, and cause each Subsidiary to comply, with the requirements of all applicable Laws and Material Contracts, except to the extent that failure to so comply could not reasonably be expected to (a) have a Material Adverse Effect, or (b) result in any Lien (other than a Permitted Lien) upon either (i) a material portion of the assets of any such Person in favor of any Governmental Authority, or (ii) any Collateral which is part of the Borrowing Base.

Section 4.6 Inspection of Property, Books and Records. Each Borrower will keep, and will cause each Subsidiary to keep, proper books of record substantially in accordance with GAAP in which full, true and correct entries shall be made of all dealings and transactions in relation to its business and activities; and will permit, and will cause each Subsidiary to permit, at the sole cost of the applicable Borrower or any applicable Subsidiary, representatives of Agent and of any Lender to visit and inspect any of their respective properties, to examine and make abstracts or copies from any of their respective books and records, to conduct a collateral audit and analysis of their respective operations and the Collateral, to evaluate and make physical verifications and appraisals of the Inventory and other Collateral in any commercially reasonable manner and through any commercially reasonable medium that Agent considers advisable, to verify the amount and age of the Accounts, the identity and credit of the respective Account Debtors, to review the billing practices of Borrowers and to discuss their respective affairs, finances and accounts with their respective officers, employees and independent public accountants as often as may reasonably be desired. In the absence of an Event of Default, Agent or any Lender exercising any rights pursuant to this Section 4.6 shall give the applicable Borrower or any applicable Subsidiary commercially reasonable prior notice (a) during normal business hours, and (b) not more than twice per calendar year at the Borrower's expense and the aggregate amount Borrowers shall be required to pay in respect of such audits and inspections in any calendar year shall not exceed $75,000 in the aggregate under this Agreement and the Affiliated Credit Agreement; *provided, however,* that the restrictions set forth in clauses (a)-(b) shall not apply during the existence and continuance of any Event of Default. No notice shall be required during the existence and continuance of any Default or any time during which Agent reasonably believes a Default exists.

Section 4.7 Use of Proceeds. Borrowers shall use the proceeds of the Loans solely for (a) transaction fees incurred in connection with the Financing Documents and (b) for working capital needs of Borrowers and their Subsidiaries. No portion of the proceeds of the Loans will be used for family, personal, agricultural or household use.

Section 4.8 [Reserved].

Section 4.9 Notices of Material Contracts, Litigation and Defaults.

(a) (i) Borrowers shall promptly (but in any event within five (5) Business Days) provide written notice to Agent after any Borrower or Subsidiary receives or delivers any notice of termination or default or similar notice in connection with any Material Contract, and (ii) Borrower shall provide, together with the next quarterly Compliance Certificate required to be delivered under this Agreement, written notice to Agent after any Borrower or Subsidiary (1) executes and delivers any material amendment, consent, waiver or other modification to any Material Contract or (2) enters into new Material Contract and shall, upon request of Agent, promptly provide Agent a copy thereof.

(b) Borrowers shall promptly (but in any event within ten (10) days) provide written notice to Agent (i) of any litigation or governmental proceedings pending or threatened (in each case, in writing) against Borrowers or other Credit Party which if determined adversely to such Borrower or other Credit Party, would reasonably be expected to have a Material Adverse Effect with respect to such Borrower or any other Credit Party or which in any manner calls into question the validity or enforceability of any Financing Document, (ii) of any strikes or other labor disputes pending or, to any Borrower's knowledge, threatened in writing against any Credit Party, if such strike or labor dispute would reasonably be expected to have a Material Adverse Effect, (iii) if there is any infringement or written claim of infringement by any other Person with respect to any Intellectual Property rights of any Credit Party that could reasonably be expected to have a Material Adverse Effect, or if there is any claim by any other Person that any Credit Party in the conduct of its business is infringing on the Intellectual Property rights of others that could reasonably be expected to have a Material Adverse Effect, (iv) of all returns, recoveries, disputes and claims that involve more than $1,000,000, and (v) any change of Borrower's chief executive officer or chief financial officer. Borrowers shall promptly (but in any event within five (5) Business Days) provide written notice to Agent upon any Borrower becoming aware of the existence of any Default or Event of Default. Borrowers represent and warrant that Schedule 4.9 sets forth a complete list of all matters existing as of the Closing Date for which notice could be required under this Section and all litigation or governmental proceedings pending or threatened (in writing) against Borrowers or other Credit Party as of the Closing Date.

(c) Borrower shall, and shall cause each Credit Party, to provide such further information (including copies of such documentation) as Agent or any Lender shall reasonably request with respect to any of the events or notices described in clauses (a) and (b) above and any notice given in respect of a Regulatory Reporting Event. From the date hereof and continuing through the termination of this Agreement, Borrower shall, and shall cause each Credit Party to, use commercially reasonable efforts to make available to Agent and each Lender, without expense to Agent or any Lender, each Credit Party's officers, employees and agents and books, to the extent that Agent or any Lender may deem them reasonably necessary to prosecute or defend any third-party suit or proceeding instituted by or against Agent or any Lender with respect to any Collateral or relating to a Credit Party.

Section 4.10 Hazardous Materials; Remediation.

(a) If any release or disposal of Hazardous Materials shall occur or shall have occurred on any real property or any other assets of any Borrower or any other Credit Party, such Borrower will cause, or direct the applicable Credit Party to cause, the prompt containment and removal of such Hazardous Materials and the remediation of such real property or other assets as is necessary to comply with all Environmental Laws and to preserve the value of such real property or other assets. Without limiting the generality of the foregoing, each Borrower shall, and shall cause each other Credit Party to, comply with each Environmental Law requiring the performance at any real property by any Borrower or any other Credit Party of activities in response to the release or threatened release of a Hazardous Material.

(b) Upon reasonable request, Borrowers will provide Agent within thirty (30) days after written demand therefor with a bond, letter of credit or similar financial assurance evidencing to the reasonable satisfaction of Agent that sufficient funds are available to pay the cost of removing, treating and disposing of any Hazardous Materials or Hazardous Materials Contamination and discharging any assessment which may be established on any property as a result thereof, such demand to be made, if at all, upon Agent's reasonable business determination that the failure to remove, treat or dispose of any Hazardous Materials or Hazardous Materials Contamination, or the failure to discharge any such assessment could reasonably be expected to have a Material Adverse Effect.

Section 4.11 Further Assurances.

(a) Each Borrower will, and will cause each Subsidiary to, at its own cost and expense, promptly and duly take, execute, acknowledge and deliver all such further acts, documents and assurances as may from time to time be reasonably necessary or as Agent or the Required Lenders may from time to time reasonably request in order to carry out the intent and purposes of the Financing Documents and the transactions contemplated thereby, including all such actions to (i) establish, create, preserve, protect and perfect a first priority Lien (subject only to the Affiliated Intercreditor Agreement and to Permitted Liens) in favor of Agent for itself and for the benefit of the Lenders on the Collateral (including Collateral acquired after the Original Closing Date), and (ii) unless Agent shall agree otherwise in writing, cause all Subsidiaries of Borrowers to be jointly and severally obligated with the other Borrowers under all covenants and obligations under this Agreement, including the obligation to repay the Obligations.

(b) Upon receipt of an affidavit of an authorized representative of Agent or a Lender as to the loss, theft, destruction or mutilation of any Note or any other Financing Document which is not of public record, and, in the case of any such mutilation, upon surrender and cancellation of such Note or other applicable Financing Document, Borrowers will issue, in lieu thereof, a replacement Note or other applicable Financing Document, dated the date of such lost, stolen, destroyed or mutilated Note or other Financing Document in the same principal amount thereof and otherwise of like tenor.

(c) Upon the request of Agent, Borrowers shall use commercially reasonable efforts to obtain a landlord's agreement or mortgagee agreement, as applicable, from the lessor of each leased property or mortgagee of owned property with respect to its headquarters location and any other business location where any portion of the Collateral included in or proposed to be included in the Borrowing Base, or the records relating to such Collateral and/or software and equipment relating to such records or Collateral with an aggregate value in excess of $500,000 is stored or located, which agreement or letter shall be reasonably satisfactory in form and substance to Agent. Borrowers shall timely and fully pay and perform its material obligations under all leases and other agreements with respect to each leased location where any Collateral, or any records related thereto, is or may be located.

(d) Borrower shall provide Agent with at least ten (10) Business Days (or such shorter period as Agent may accept in its reasonable discretion) prior written notice of its intention to create (or to the extent permitted under this Agreement, acquire) a new Subsidiary. Upon the formation (or to the extent permitted under this Agreement, acquisition) of a new Subsidiary, Borrowers shall within ten (10) Business Days (i) pledge, have pledged or cause or have caused to be pledged to Agent pursuant to a pledge agreement in form and substance satisfactory to Agent, all of the outstanding shares of equity interests or other equity interests of such Subsidiary (to the extent not constituting Excluded Property) owned directly or indirectly by any Borrower, along with undated stock or equivalent powers

for such certificates, executed in blank; (ii) unless Agent shall agree otherwise in writing, cause the new Subsidiary (other than any Excluded Subsidiary) to take such other actions (including entering into or joining any Security Documents) as are necessary or advisable in the reasonable opinion of Agent in order to grant Agent, acting on behalf of the Lenders, a first priority Lien (subject to the Affiliated Intercreditor Agreement) on all real and personal property (other than Excluded Property) of such Subsidiary in existence as of such date and in all after acquired property, which first priority Liens are required to be granted pursuant to this Agreement; (iii) unless Agent shall agree otherwise in writing, cause such new Subsidiary (other than any Excluded Subsidiary) to either (at the election of Agent) become a Borrower hereunder with joint and several liability for all obligations of Borrowers hereunder and under the other Financing Documents pursuant to a joinder agreement or other similar agreement in form and substance satisfactory to Agent or to become a Guarantor of the obligations of Borrowers hereunder and under the other Financing Documents pursuant to a guaranty and suretyship agreement in form and substance reasonably satisfactory to Agent; and (iv) cause the new Subsidiary to deliver certified copies of such Subsidiary's certificate or articles of incorporation, together with good standing certificates, by-laws (or other operating agreement or governing documents), resolutions of the Board of Directors or other governing body, approving and authorizing the execution and delivery of the Security Documents, incumbency certificates and to execute and/or deliver such other documents and legal opinions or to take such other actions as may be reasonably requested by Agent, in each case, in form and substance reasonably satisfactory to Agent.

Section 4.12 Reserved.

Section 4.13 Power of Attorney. Each of the authorized representatives of Agent is hereby irrevocably made, constituted and appointed the true and lawful attorney for Borrowers (without requiring any of them to act as such) with full power of substitution to do the following, following the occurrence and continuation of an Event of Default: (a) endorse the name of Borrowers upon any and all checks, drafts, money orders, and other instruments for the payment of money that are payable to Borrowers and constitute collections on Borrowers' Accounts; (b) so long as Agent has provided not less than three (3) Business Days' prior written notice to Borrower to perform the same and Borrower has failed to take such action, execute in the name of Borrowers any schedules, assignments, instruments, documents, and statements that Borrowers are obligated to give Agent under this Agreement; (c) take any action Borrowers are required to take under this Agreement; (d) so long as Agent has provided not less than three (3) Business Days' prior written notice to Borrower to perform the same and Borrower has failed to take such action, do such other and further acts and deeds in the name of Borrowers that Agent may deem necessary or desirable to enforce any Account or other Collateral or perfect Agent's security interest or Lien in any Collateral; and (e) do such other and further acts and deeds in the name of Borrowers that Agent may deem necessary or desirable to enforce its rights with regard to any Account or other Collateral. This power of attorney shall be irrevocable and coupled with an interest.

Section 4.14 Borrowing Base Collateral Administration.

(a) All data and other information relating to Accounts and other intangible Collateral shall at all times be kept by Borrowers, at their respective principal offices and shall not be moved from such locations without providing prior written notice to Agent and complying with the provisions of Section 4.11(c).

(b) At all times following the date on which the initial borrowing of the Revolving Loans occurs, Borrowers shall provide prompt written notice to each Person who either is currently an Account Debtor or becomes an Account Debtor at any time following the date on which the initial borrowing of the Revolving Loans occurs, in each case, with respect to Accounts comprising the Borrowing Base that directs each Account Debtor to make payments into the Lockbox or Lockbox

Account, and hereby authorizes Agent, upon Borrowers' failure to send such notices within ten (10) Business Days after the date on which the initial borrowing of the Revolving Loans occurs (or ten (10) Business Days after such Person becomes an Account Debtor), to send any and all similar notices to such Person. Following the occurrence and during the continuance of an Event of Default, Agent reserves the right to notify Account Debtors that Agent has been granted a Lien upon all Accounts.

(c) Following the initial borrowing of the Revolving Loans, Borrowers will conduct a physical count of the Inventory at least twice per year and (if an Event of Default has occurred and is continuing) at such other times as Agent requests, and Borrowers shall provide to Agent a written accounting of such physical count in form and substance reasonably satisfactory to Agent. At all times following the initial borrowing of the Revolving Loans, each Borrower will use commercially reasonable efforts to at all times keep its Inventory in good and marketable condition. In addition to the foregoing, from time to time after the initial borrowing of the Revolving Loans, Agent may require Borrowers to obtain and deliver to Agent appraisal reports in form and substance and from appraisers reasonably satisfactory to Agent stating the then current fair market values of all or any portion of Inventory owned by each Borrower or any Credit Party.

(d) In addition to the foregoing, from time to time following the initial borrowing of the Revolving Loans, Agent may require Borrowers to obtain and deliver to Agent appraisal reports in form and substance and from appraisers reasonably satisfactory to Agent stating the then current fair market values of all or any portion of the Collateral; provided, that unless an Event of Default shall have occurred and be continuing, Borrowers shall only have to pay the costs of one (1) such appraisal per calendar year.

Section 4.15 Schedule Updates. Borrower shall, in the event of any information in the Schedules (other than Schedules required to be delivered solely on the Closing Date) becoming inaccurate, incomplete or misleading, deliver to Agent, together with the next quarterly Compliance Certificate required to be delivered under this Agreement after such event a proposed update to the Schedules correcting all outdated, inaccurate, incomplete or misleading information; *provided* that updates to Schedule 3.19 shall be required only on such dates as are provided in Section 4.16 and updates to Schedule 4.17 shall be required only on such dates as are required pursuant to Section 4.17(e).

Section 4.16 Intellectual Property and Licensing.

(a) Together with each Compliance Certificate required to be delivered pursuant to Section 4.1 with respect to the months ending on June 30th and December 31st of each year, to the extent (A) Borrower acquires and/or registers any new Registered Intellectual Property, (B) Borrower enters into or becomes bound by any additional in-bound license or sublicense agreement that is material to Borrower's business or any additional exclusive out-bound license or sublicense agreement (excluding agreements for in-bound licenses for (a) off-the-shelf software or services that are commercially available to the public, and (b) open source software), or (C) there occurs (i) any other material change in the registration status of Borrower's Registered Intellectual Property or (ii) any termination of any in-bound license or sublicense agreement that is material to Borrower's business or any exclusive out-bound license or sublicense agreement (excluding agreements for in-bound licenses for (a) off-the-shelf software or services that are commercially available to the public, and (b) open source software) listed on Schedule 3.19, deliver to Agent an updated Schedule 3.19 reflecting such updated information; provided, that in the case of clause (i) above, for the first three quarters of each fiscal year, Borrower shall be required to provide information regarding such new Registered Intellectual Property solely to the extent it is registered in North America.

(b) If Borrower obtains any Registered Intellectual Property, Borrower shall execute such documents and provide such other information (including, without limitation, copies of applications) and take such other actions as Agent shall reasonably request to perfect and maintain a first priority perfected security interest in favor of Agent, for the ratable benefit of Lenders, in such Registered Intellectual Property.

(c) [Reserved].

(d) Borrower shall own, or be licensed to use or otherwise have the right to use, all Material Intangible Assets. Borrower shall cause all Registered Intellectual Property to be duly and properly registered, filed or issued in the appropriate office and jurisdictions for such registrations, filings or issuances, except where the failure to do so would not reasonably be expected to result in a Material Adverse Effect. Borrower shall at all times conduct its business without knowingly infringing any Intellectual Property rights of others. Borrower shall (i) protect, defend and maintain the validity and enforceability of Material Intangible Assets owned by Borrower, (ii) promptly advise Agent in writing if Borrower discovers of material infringements of Material Intangible Assets owned by Borrower by a third party, or if Borrower receives a material written claim of infringement by Borrower on the Intellectual Property rights of others, in each case where such infringement would be reasonably expected to have a Material Adverse Effect; and (iii) not allow any of Material Intangible Assets owned by Borrower to be abandoned, invalidated, forfeited or dedicated to the public or to become unenforceable. Borrower shall not become a party to, nor become bound by, any material license or other agreement with respect to which Borrower is the licensee that prohibits or otherwise restricts Borrower from granting a security interest in Borrower's interest in such license or agreement or other property (other than pursuant to reasonable and customary anti-assignment provisions).

Section 4.17 Regulatory Reporting and Covenants.

(a) Borrowers shall have, and shall ensure that it and each of its Subsidiaries has, each material Permit and other material rights from, and have made all material declarations and filings with, all applicable Governmental Authorities, all self-regulatory authorities and all courts and other tribunals necessary to engage in all material respects in the ownership, management and operation of the business or the assets of any Borrower except where failure to do so would not reasonably be expected to have a Material Adverse Effect. Borrower shall ensure that all Permits are valid and in full force and effect and Borrowers are in material compliance with the terms and conditions of all such Permits, except where failure to be in such compliance or for a Permit to be valid and in full force and effect would not reasonably be expected to have a Material Adverse Effect.

(b) Borrowers will maintain in full force and effect, and free from restrictions, probations, conditions or known conflicts which would materially impair the use or operation of Borrowers' business and assets, all Permits necessary under Healthcare Laws to carry on the business of Borrowers as it is conducted on the Closing Date, except where failure to do so would not reasonably be expected to have a Material Adverse Effect.

(c) If, after the Closing Date, Borrowers determine to sell or market any new Product commercially (excluding for the avoidance of doubt any revisions to the Borrower's existing Products) that could be reasonably expected to generate at least $1,000,000 per year in Net Revenue, Borrowers shall deliver, together with delivery of the next Compliance Certificate, an updated Schedule 4.17 reflecting updates related to such determination (which shall also include a brief description of such Product).

Section 4.18 Board Observation Rights.

Agent and/or its designees (including any Lender) shall have the right, on behalf of itself and/or the other Lenders, to: (a) receive notice of all meetings (both regular and special) of the board of directors (or other comparable body) and/or the equity holders of each Credit Party, and each committee of any such board of directors (or other comparable body) (such notice to be delivered or mailed to Agent as specified in this Agreement at the same time as notice is given to the members of any such board of directors (or other comparable body) and/or committee and/or equity holders); (b) be entitled to attend all such meetings (telephonically or in person, at Agent's or its designee's discretion) in a nonvoting capacity; and (c) receive all notices, information, reports and minutes of meetings, which are furnished (or made available) to the members of any such board of directors (or other comparable body) and/or committee and/or equity holders at the same time and in the same manner as the same is furnished (or made available) to such members. Each Credit Party shall provide Agent or its applicable designees with a copy of any action that is taken by such board of directors (or other comparable body) and/or committee by written consent in lieu of a meeting not later than ten (10) Business Days after it has been signed by a sufficient number of signatories to make it effective. Agent or, as applicable, Agent's designees shall not constitute a member of any such board of directors (or other comparable body) and/or committee and shall not be entitled to vote on any matters presented at meetings of any such board of directors (or other comparable body) and/or committee or to consent to any matter as to which the consent of any such board of directors (or other comparable body) and/or committee shall have been requested. Notwithstanding the foregoing, Agent, and or its designee may be excluded from receiving any such information and materials (or the relevant portions thereof) or from attending such meetings (or the relevant portions thereof) pursuant to this Section 4.18 to avoid a conflict of interest, to protect attorney-client privilege or with respect to highly confidential information.

ARTICLE 5 - NEGATIVE COVENANTS

Each Borrower agrees that, so long as any Credit Exposure exists:

Section 5.1 Debt; Contingent Obligations. No Borrower will, or will permit any Subsidiary to, directly or indirectly, create, incur, assume, guarantee or otherwise become or remain directly or indirectly liable with respect to, any Debt, except for Permitted Debt. No Borrower will, or will permit any Subsidiary to, directly or indirectly, create, assume, incur or suffer to exist any Contingent Obligations, except for Permitted Contingent Obligations.

Section 5.2 Liens. No Borrower will, or will permit any Subsidiary to, directly or indirectly, create, assume or suffer to exist any Lien on any asset now owned or hereafter acquired by it, except for Permitted Liens.

Section 5.3 Distributions. No Borrower will, or will permit any Subsidiary to, directly or indirectly, declare, order, pay, make or set apart any sum for any Distribution, except for Permitted Distributions.

Section 5.4 Restrictive Agreements. No Borrower will, or will permit any Subsidiary to, directly or indirectly (a) enter into or assume any agreement (other than the Financing Documents, the Affiliated Financing Documents, and any agreements for purchase money debt permitted under clause (c) of the definition of Permitted Debt) prohibiting the creation or assumption of any Lien upon its properties or assets, whether now owned or hereafter acquired, or (b) create or otherwise cause or suffer to exist or become effective any consensual encumbrance or restriction of any kind (except as provided by the Financing Documents and the Affiliated Financing Documents) on the ability of any Subsidiary to: (i) pay or make Distributions to any Borrower or any Subsidiary; (ii) pay any Debt owed to any Borrower or any Subsidiary; (iii) make loans or advances to any Borrower or any Subsidiary; or (iv) transfer any of its property or assets to any Borrower or any Subsidiary.

Section 5.5 Payments and Modifications of Subordinated Debt. No Borrower will, or will permit any Subsidiary to, directly or indirectly (a) declare, pay, make or set aside any amount for payment in respect of Subordinated Debt, except for payments made in full compliance with and expressly permitted under the Subordination Agreement, (b) amend or otherwise modify the terms of any Subordinated Debt, except for amendments or modifications made in full compliance with the Subordination Agreement, (c) declare, pay, make or set aside any amount for payment in respect of any Debt hereinafter incurred that, by its terms, or by separate agreement, is subordinated to the Obligations, except for payments made in full compliance with and expressly permitted under the subordination provisions applicable thereto, or (d) amend or otherwise modify the terms of any such Subordinated Debt in a manner prohibited by the applicable Subordination Agreement.

Section 5.6 Consolidations, Mergers and Sales of Assets. No Borrower will, or will permit any Subsidiary to, directly or indirectly (a) consolidate or merge or amalgamate with or into any other Person other than (i) consolidations or mergers among Borrowers so long as a Borrower is the surviving entity and, in any consolidation or merger involving Sight Sciences, Sight Sciences is the surviving entity, (ii) consolidations or mergers among a Guarantor and a Borrower so long as the Borrower is the surviving entity, (iii) consolidations or mergers among Guarantors where a Guarantor is the surviving entity, and (iv) consolidations or mergers among Subsidiaries that are not Credit Parties, or (b) consummate any Asset Dispositions other than Permitted Asset Dispositions.

Section 5.7 Purchase of Assets, Investments. No Borrower will, or will permit any Subsidiary to, directly or indirectly (a) acquire, make or own any Investment other than Permitted Investments, (b) without limiting clause (a), acquire any assets other than in the Ordinary Course of Business or as permitted under the definition of Permitted Investments; or (c) engage in any joint venture or partnership with any other Person other than as permitted by clause (m) of Permitted Investment. Without limiting the foregoing, no Credit Party shall, nor will any Credit Party permit any Subsidiary to, purchase or carry Margin Stock.

Section 5.8 Transactions with Affiliates. No Borrower will, or will permit any Subsidiary to, directly or indirectly, enter into or permit to exist any transaction (including the purchase, sale, lease or exchange of any property or the rendering of any service) with any Affiliate of any Borrower except for (a) transactions otherwise disclosed on Schedule 5.8 on the Closing Date, (b) Permitted Distributions, (c) transactions among the Credit Parties and their Subsidiaries that are expressly permitted by the Financing Documents, (d) customary indemnification arrangements and normal and reasonable compensation (including equity-based compensation), benefits and reimbursement of expenses of, and other employment arrangements with, employees, officers and directors in the Ordinary Course of Business, (e) debt and equity financing transactions otherwise permitted pursuant to the terms of this Agreement and entered into with Affiliates on commercially reasonable terms approved by the applicable Borrower's or Subsidiary's board of directors, and (f) transactions entered into and which contain terms that are no less favorable to the applicable Borrower or any Subsidiary, as the case may be, than those which might be obtained from a third party not an Affiliate of any Credit Party.

Section 5.9 Modification of Organizational Documents. No Borrower will, or will permit any Subsidiary to, directly or indirectly, amend or otherwise modify any Organizational Documents of such Person, except for Permitted Modifications.

Section 5.10 Modification of Certain Agreements. No Borrower will, or will permit any Subsidiary to, directly or indirectly, amend or otherwise modify any Material Contract, which amendment or modification in any case: (i) is contrary to the terms of this Agreement or any other Financing Document; (ii) could reasonably be expected to materially adversely effect the rights, interests or privileges of Agent or the Lenders or their ability to enforce the same; or (iii) without the prior written consent of Agent, amend or otherwise modify any Affiliated Financing Document as required pursuant to the pursuant to the Affiliated Intercreditor Agreement.

Section 5.11 Conduct of Business. No Borrower will, or will permit any Subsidiary to, directly or indirectly, (a) engage in any line of business other than those businesses engaged in on the Closing Date and described on Schedule 5.11 and businesses reasonably related or complimentary thereto, or (b) other than in the Ordinary Course of Business, change its normal billing payment and reimbursement policies and procedures with respect to its Accounts (including, without limitation, the amount and timing of finance charges, fees and write-offs).

Section 5.12 Reserved.

Section 5.13 Limitation on Sale and Leaseback Transactions. No Borrower will, or will permit any Subsidiary to, directly or indirectly, enter into any arrangement with any Person whereby, in a substantially contemporaneous transaction, any Borrower or any Subsidiaries sells or transfers all or substantially all of its right, title and interest in an asset and, in connection therewith, acquires or leases back the right to use such asset.

Section 5.14 Deposit Accounts and Securities Accounts; Payroll and Benefits Accounts.

(a) No Borrower will, or will permit any Subsidiary to, directly or indirectly, establish any new Deposit Account or Securities Account without prior written notice to Agent, and unless Agent, such Borrower or such Subsidiary and the bank, financial institution or securities intermediary at which the account is to be opened enter into a Deposit Account Control Agreement or Securities Account Control Agreement prior to or concurrently with the establishment of such Deposit Account or Securities Account. Without limiting the foregoing, except for Excluded Accounts, no Borrower will permit any Deposit Account or Securities Account of any Credit Party to exist unless such Deposit Account or Securities Account is subject to a Deposit Account Control Agreement or Securities Account Control Agreement, as applicable.

(b) Borrowers represent and warrant that Schedule 5.14 lists all of the Deposit Accounts and Securities Accounts of each Borrower as of the Closing Date and on each other date such schedule is required to be updated pursuant to Section 4.15. The provisions of this Section 5.14 requiring Deposit Account Control Agreements shall not apply to (i) Deposit Accounts exclusively used for payroll, payroll taxes and other employee wage and benefit payments to or for the benefit of Borrowers' employees and identified to Agent by Borrowers as such, (ii) other petty cash deposit accounts holding deposits in an amount not in excess of $100,000 in the aggregate with respect to all such deposit accounts, (iii) segregated Deposit Accounts holding only cash and cash equivalents in an amount that is necessary to secure the L/C Obligations outstanding at such time and, in any event, not containing cash or cash equivalents greater than an amount equal to 105% of the outstanding LC Obligations at any time and (iv) Deposit Accounts of any Excluded Subsidiary in each case, subject to the restrictions of Section 5.18 (clauses (i)-(iv), collectively, "**Excluded Accounts**").

(c) At all times that any Obligations or Affiliated Obligations remain outstanding, Borrower shall maintain one or more separate Deposit Accounts to hold any and all amounts to be used for payroll, payroll taxes and other employee wage and benefit payments, and shall not commingle any monies allocated for such purposes with funds in any other Deposit Account; *provided*, *however*, that the aggregate balance in such accounts does not exceed the amount necessary to make the next two (2) immediately succeeding payroll, payroll tax or benefit payments (or such minimum amounts as may be required by any requirement of Law with respect to such accounts).

Section 5.15 Compliance with Anti-Terrorism Laws. Agent hereby notifies Borrowers that pursuant to the requirements of Anti-Terrorism Laws, and Agent's policies and practices, Agent is required to obtain, verify and record certain information and documentation that identifies Borrowers and their principals, which information includes the name and address of each Borrower and its principals and such other information that will allow Agent to identify such party in accordance with Anti-Terrorism Laws. No Borrower will, or will permit any Subsidiary to, directly or indirectly, knowingly enter into any contracts or other agreements with any Blocked Person or any Person listed on the OFAC Lists. Each Borrower shall immediately notify Agent if such Borrower has knowledge that any Borrower, any additional Credit Party or any of their respective Affiliates or agents acting or benefiting in any capacity in connection with the transactions contemplated by this Agreement is or becomes a Blocked Person or (a) is convicted on, (b) pleads nolo contendere to, (c) is indicted on, or (d) is arraigned and held over on charges involving money laundering or predicate crimes to money laundering. No Borrower will, or will permit any Subsidiary to, directly or indirectly, (i) conduct any business or engage in any transaction or dealing with any Blocked Person, including, without limitation, the making or receiving of any contribution of funds, goods or services to or for the benefit of any Blocked Person, (ii) deal in, or otherwise engage in any transaction relating to, any property or interests in property blocked pursuant to Executive Order No. 13224, any similar executive order or other Anti-Terrorism Law, or (iii) engage in or conspire 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 Executive Order No. 13224 or other Anti-Terrorism Law.

Section 5.16 Change in Accounting. No Borrower shall, and no Borrower shall suffer or permit any of its Subsidiaries to, without the prior written consent of Agent, (i) make any significant change in accounting treatment or reporting practices, except as required by GAAP or (ii) change the fiscal year or method for determining fiscal quarters of any Credit Party or of any consolidated Subsidiary of any Credit Party.

Section 5.17 Agreements Regarding Receivables. No Borrower may backdate, postdate or redate any of its invoices except in the Ordinary Course of Business and, following the initial borrowing of the Revolving Loans, to the extent not relating to an Eligible Account. At all times following the initial borrowing of the Revolving Loans, no Borrower may make any sales on extended dating or credit terms beyond that customary in such Borrower's industry and consented to in advance by Agent. In addition to the Borrowing Base Certificate to be delivered in accordance with this Agreement, Borrower Representative shall notify Agent promptly upon any Borrower's learning thereof, in the event any Eligible Account comprising the Borrowing Base for Revolving Loan Outstandings becomes ineligible for any reason, other than the aging of such Account, and of the reasons for such ineligibility. Borrower Representative shall also notify Agent promptly of all material disputes and claims with respect to the Accounts comprising the Borrowing Base for Revolving Loan Outstandings of any Borrower, and such Borrower will settle or adjust such material disputes and claims at no expense to Agent; *provided*, *however*, at all times following the initial borrowing of the Revolving Loans, no Borrower may, without Agent's consent, grant (a) any discount, credit or allowance in respect of its Eligible Accounts (i) which is outside the Ordinary Course Of Business or (ii) which discount, credit or allowance exceeds an amount equal to $250,000 in the aggregate with respect to any individual Account of (b) any materially adverse extension, compromise or settlement to any customer or account debtor with respect to any then Eligible Account. Nothing permitted by this Section 5.17, however, may be construed to alter in any the criteria for Eligible Accounts or Eligible Inventory provided in Section 1.1.

Section 5.18 Excluded Subsidiaries; Joint Ventures.

(a) Borrowers shall not, at any time, permit the aggregate amount of cash and cash equivalents held by Excluded Subsidiaries (collectively) to exceed ten percent (10%) of the Borrower Consolidated Unrestricted Cash at such time.

(b) No Credit Party shall make any Asset Disposition to or Investment in any Excluded Subsidiary or any joint venture entity other than Investments of cash and Cash Equivalents permitted to be made pursuant to the definition of "Permitted Investment".

(c) No Borrowers will permit any Excluded Subsidiary or any other entity which is not a Credit Party to commingle any of its assets (including any bank accounts, cash or cash equivalents) with the assets of a Credit Party.

ARTICLE 6 - FINANCIAL COVENANTS

Section 6.1 Minimum Net Revenue. Borrower shall not permit its consolidated Net Revenue for any Defined Period, as tested monthly on the last day of the applicable Defined Period (each such date, a "**Testing Date**"), to be less than the minimum amount set forth on Schedule 6.1 for such Testing Date. A breach of a financial covenant contained in this Section 6.1 shall be deemed to have occurred as of any date of determination by Agent or as of the last day of any specified Defined Period, regardless of when the financial statements reflecting such breach are delivered to Agent.

Section 6.2 Evidence of Compliance. Borrowers shall furnish to Agent, as required by Section 4.1, a Compliance Certificate as evidence of (x) the monthly cash and cash equivalents of Borrowers and Borrowers and their Consolidated Subsidiaries, (y) as applicable, of Borrowers' compliance with the covenants in this Article, and (z) that no Event of Default specified in this Article has occurred and is continuing. The Compliance Certificate shall include, without limitation, (a) a statement and report, in form and substance reasonably satisfactory to Agent, detailing Borrowers' calculations, and (b) if requested by Agent, back-up documentation (including, without limitation, bank statements, invoices, receipts and other evidence of costs incurred during such month as Agent shall reasonably require) evidencing the propriety of the calculations.

ARTICLE 7 - CONDITIONS

Section 7.1 Conditions to Closing. The obligation of each Lender to take, fulfill, or perform any action hereunder shall be subject to the receipt by Agent of each agreement, document and instrument set forth on the closing checklist prepared by Agent or its counsel, each in form and substance satisfactory to Agent, and such other closing deliverables reasonably requested by Agent and Lenders, and to the satisfaction of the following conditions precedent, each to the reasonable satisfaction of Agent and Lenders:

(a) the receipt by Agent of executed counterparts of this Agreement, the other Financing Documents and the Affiliated Financing Documents;

(b) the payment of all fees, expenses and other amounts due and payable under each Financing Document;

(c) since December 31, 2019, the absence of any Material Adverse Effect; and

(d) the receipt of the initial Borrowing Base Certificate, prepared as of the date referenced therein on the Closing Date.

Each Lender, by delivering its signature page to this Agreement, shall be deemed to have acknowledged receipt of, and consented to and approved, each Financing Document, each additional Operative Document and each other document, agreement and/or instrument required to be approved by Agent, Required Lenders or Lenders, as applicable, on the Closing Date.

Section 7.2 Conditions to Each Loan. The obligation of the Lenders to make a Loan or an advance in respect of any Loan (including the initial Loans), is subject to the satisfaction of the following additional conditions:

(a) in the case of each borrowing of Revolving Loans, receipt by Agent of a Notice of Borrowing (or telephonic notice if permitted by this Agreement) and an updated Borrowing Base Certificate;

(b) the fact that, immediately after such borrowing and after application of the proceeds thereof or after such issuance, the Revolving Loan Outstandings will not exceed the Revolving Loan Limit;

(c) the fact that, immediately before and after such advance or issuance, no Default or Event of Default shall have occurred and be continuing;

(d) the fact that the representations and warranties of each Credit Party contained in the Financing Documents shall be true, correct and complete in all material respects on and as of the date of such borrowing, except to the extent that any such representation or warranty relates to 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*, *however*, in each case, such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof; and

(e) the absence of any fact, event, or circumstance that would reasonably be expected to result in a Material Adverse Effect.

Each giving of a Notice of Borrowing hereunder and each acceptance by any Borrower of the proceeds of any Loan made hereunder shall be deemed to be (y) a representation and warranty by each Borrower on the date of such notice or acceptance as to the facts specified in this Section, and (z) a restatement by each Borrower that each and every one of the representations made by it in any of the Financing Documents is true and correct as of such date in all material respects (except to the extent that such representations and warranties expressly relate solely to an earlier date), *provided* that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof.

Section 7.3 Searches. Before the Closing Date, and thereafter (as and when determined by Agent in its reasonable discretion), Agent shall have the right to perform, all at Borrowers' expense, the searches described in clauses (a), (b), and (c) below against Borrowers and any other Credit Party, the results of which are to be reasonably satisfactory to Agent, which shall be a condition precedent to all advances of Loan proceeds: (a) UCC searches with the Secretary of State of the jurisdiction in which the applicable Person is organized; (b) judgment, pending litigation, federal tax lien, personal property tax lien, and corporate and partnership tax lien searches, in each jurisdiction searched under clause (a) above; and (c) searches of applicable corporate, limited liability company, partnership and related records to confirm the continued existence, organization and good standing of the applicable Person and the exact legal name under which such Person is organized.

Section 7.4 Post-Closing Requirements. Borrowers shall complete each of the post-closing obligations and/or provide to Agent each of the documents, instruments, agreements and information listed on Schedule 7.4 attached hereto on or before the date set forth for each such item thereon (or such later date as Agent may agree in its sole discretion), each of which shall be completed or provided in form and substance reasonably satisfactory to Agent.

ARTICLE 8 – RESERVED

ARTICLE 9 - SECURITY AGREEMENT

Section 9.1 Generally. As security for the payment and performance of the Obligations, and for the payment and performance of all obligations under the Affiliated Financing Documents (if any) and without limiting any other grant of a Lien and security interest in any Security Document, each Borrower hereby assigns, grants and pledges to Agent, for the benefit of itself and Lenders, subject only to the Affiliated Intercreditor Agreement, a continuing first priority Lien on and security interest in, upon, and to the property set forth on Schedule 9.1 attached hereto and made a part hereof.

Section 9.2 Representations and Warranties and Covenants Relating to Collateral.

(a) The security interest granted pursuant to this Agreement constitutes a valid and, to the extent such security interest is required to be perfected by this Agreement and any other Financing Document, continuing perfected security interest in favor of Agent in all Collateral subject, for the following Collateral, to the occurrence of the following: (i) in the case of all Collateral in which a security interest may be perfected by filing a financing statement under the UCC, the completion of the filings and other actions specified on Schedule 9.2(b) (which, in the case of all filings and other documents referred to on such schedule, have been delivered to Agent in completed and duly authorized form), (ii) with respect to any Deposit Account, the execution of Deposit Account Control Agreements, (iii) in the case of letter-of-credit rights that are not supporting obligations of Collateral, the execution of a contractual obligation granting control to Agent over such letter-of-credit rights, (iv) in the case of electronic chattel paper, the completion of all steps necessary to grant control to Agent over such electronic chattel paper, (v) in the case of all certificated stock, debt instruments and investment property, the delivery thereof to Agent of such certificated stock, debt instruments and investment property consisting of instruments and certificates, in each case properly endorsed for transfer to Agent or in blank, (vi) in the case of all investment property not in certificated form, the execution of control agreements with respect to such investment property and (vii) in the case of all other instruments and tangible chattel paper that are not certificated stock, debt instructions or investment property, the delivery thereof to Agent of such instruments and tangible chattel paper. Such security interest shall be prior to all other Liens on the Collateral except for Permitted Liens. Except to the extent not required pursuant to the terms of this Agreement, all actions by each Credit Party necessary or desirable to protect and perfect the Lien granted hereunder on the Collateral have been duly taken.

(b) Schedule 9.2(b) sets forth (i) each chief executive office and principal place of business of each Borrower and each of their respective Subsidiaries, and (ii) all of the addresses (including all warehouses) at which any of the Collateral is located and/or books and records of Borrowers regarding any Collateral are kept, which such Schedule 9.2(b) indicates in each case which Borrower(s) have Collateral and/or books located at such address, and, in the case of any such address not owned by one or more of the Borrowers(s), indicates the nature of such location (e.g., leased business location operated by Borrower(s), third party warehouse, consignment location, processor location, etc.) and the name and address of the third party owning and/or operating such location.

(c) Without limiting the generality of Section 3.2, except as indicated on Schedule 3.19 with respect to any rights of any Borrower as a licensee under any license of Intellectual Property owned by another Person, and except for the filing of financing statements under the UCC, no authorization, approval or other action by, and no notice to or filing with, any Governmental Authority or consent of any other Person is required for (i) the grant by each Borrower to Agent of the security interests and Liens in the Collateral provided for under this Agreement and the other Security Documents (if any), or (ii) the exercise by Agent of its rights and remedies with respect to the Collateral provided for under this Agreement and the other Security Documents or under any applicable Law, including the UCC and neither any such grant of Liens in favor of Agent or exercise of rights by Agent shall violate or cause a default under any agreement between any Borrower and any other Person relating to any such collateral, including any license to which a Borrower is a party, whether as licensor or licensee, with respect to any Intellectual Property, whether owned by such Borrower or any other Person.

(d) As of the Closing Date, except as set forth on Schedule 9.2(d), no Borrower has any ownership interest in any Chattel Paper (as defined in Article 9 of the UCC), letter of credit rights, commercial tort claims, Instruments, documents or investment property (other than equity interests in any Subsidiaries of such Borrower disclosed on Schedule 3.4), and Borrowers shall give notice to Agent promptly (but in any event not later than the delivery by Borrowers of the next Compliance Certificate required pursuant to Section 4.1 above for the last month of a fiscal quarter) upon the acquisition by any Borrower of any such Chattel Paper, letter of credit rights, commercial tort claims, Instruments, documents, investment property. Subject to the terms of the Affiliated Intercreditor Agreement, no Person other than Agent or (if applicable) any Lender has "control" (as defined in Article 9 of the UCC) over any Deposit Account (other than any Excluded Account), investment property (including Securities Accounts and commodities account), letter of credit rights or electronic chattel paper in which any Borrower has any interest (except for such control arising by operation of law in favor of any bank or securities intermediary or commodities intermediary with whom any Deposit Account, Securities Account or commodities account of Borrowers is maintained).

(e) Borrowers shall not, and shall not permit any Credit Party to, take any of the following actions or make any of the following changes unless Borrowers have given at least ten (10) Business Days prior written notice to Agent of Borrowers' intention to take any such action (which such written notice shall include an updated version of any Schedule impacted by such change) and have executed any and all documents, instruments and agreements and taken any other actions which Agent may reasonably request after receiving such written notice in order to protect and preserve the Liens, rights and remedies of Agent with respect to the Collateral: (i) change the legal name or organizational identification number of any Borrower as it appears in official filings in the jurisdiction of its organization, (ii) change the jurisdiction of incorporation or formation of any Borrower or Credit Party or allow any Borrower or Credit Party to designate any jurisdiction as an additional jurisdiction of incorporation for such Borrower or Credit Party, or change the type of entity that it is; *provided* that in no event shall a Borrower organized under the laws of the United States or any state thereof be reorganized under the laws of a jurisdictions other than the United States or any state thereof, or (iii) change its chief executive office, principal place of business, or the location of its books and records or move any Collateral to or place any Collateral with an aggregate value in excess of $500,000 on any location that is not then listed on the Schedules and/or establish any business location at any location that is not then listed on the Schedules.

(f) Borrowers shall not adjust, settle or compromise the amount or payment of any Account, or release wholly or partly any Account Debtor, or allow any credit or discount thereon (other than adjustments, settlements, compromises, credits and discounts in the Ordinary Course of Business, made while no Event of Default exists and in amounts which are not material with respect to the Account and which, after giving effect thereto, do not cause the Borrowing Base to be less than the

Revolving Loan Outstandings) without the prior written consent of Agent. Without limiting the generality of this Agreement or any other provisions of any of the Financing Documents relating to the rights of Agent after the occurrence and during the continuance of an Event of Default, Agent shall have the right at any time after the occurrence and during the continuance of an Event of Default to: (i) exercise the rights of Borrowers with respect to the obligation of any Account Debtor to make payment or otherwise render performance to Borrowers and with respect to any property that secures the obligations of any Account Debtor or any other Person obligated on the Collateral, and (ii) adjust, settle or compromise the amount or payment of such Accounts.

(g) Without limiting the generality of Sections 9.2(c) and 9.2(e):

(i) Subject to the terms and conditions of the Affiliated Intercreditor Agreement, Borrowers shall deliver to Agent all tangible Chattel Paper and all Instruments and documents owned by any Borrower and constituting part of the Collateral with an aggregate value in excess of $1,000,000 duly endorsed and accompanied by duly executed instruments of transfer or assignment, all in form and substance reasonably satisfactory to Agent. Borrowers shall provide Agent with "control" (as defined in Article 9 of the UCC) of all electronic Chattel Paper with a value in excess of $1,000,000 in the aggregate for all such electronic Chattel Paper owned by any Borrower and constituting part of the Collateral by having Agent identified as the assignee on the records pertaining to the single authoritative copy thereof and otherwise complying with the applicable elements of control set forth in the UCC. Borrowers also shall deliver to Agent all security agreements securing any such Chattel Paper and securing any such Instruments. Borrowers shall comply with all the provisions of Section 5.14 with respect to the Deposit Accounts and Securities Accounts of Borrowers.

(ii) Borrowers shall deliver to Agent all letters of credit with a face value in excess of $1,000,000 on which any Borrower is the beneficiary and which give rise to letter of credit rights owned by such Borrower which constitute part of the Collateral in each case duly endorsed and accompanied by duly executed instruments of transfer or assignment, all in form and substance satisfactory to Agent. Borrowers shall take any and all actions as may be necessary or desirable, or that Agent may request, from time to time, to cause Agent to obtain exclusive "control" (as defined in Article 9 of the UCC) of any such letter of credit rights in a manner acceptable to Agent.

(iii) Borrowers shall promptly notify Agent upon any Borrower becoming aware that it has any interests in any commercial tort claim in excess of $1,000,000 that constitutes part of the Collateral, which such notice shall include descriptions of the events and circumstances giving rise to such commercial tort claim and the dates such events and circumstances occurred, the potential defendants with respect such commercial tort claim and any court proceedings that have been instituted with respect to such commercial tort claims, and Borrowers shall, with respect to any such commercial tort claim, execute and deliver to Agent such documents as Agent shall request to perfect, preserve or protect the Liens, rights and remedies of Agent with respect to any such commercial tort claim.

(iv) Without limiting Section 4.11(c), except for Accounts and Inventory in an aggregate amount of $1,000,000, no Accounts or Inventory or other Collateral and no books and records and/or software and equipment of the Borrowers regarding any of the Collateral shall at any time be located at any leased location or in the possession or control of any warehouse, consignee, bailee or any of Borrowers' agents or processors, without prior written notice to Agent and Borrowers' use of commercially reasonable efforts to obtain receipt by Agent of warehouse receipts, consignment agreements, landlord waivers, or bailee waivers (as applicable) satisfactory

to Agent prior to the commencement of such lease or of such possession or control (as applicable). Borrower has notified Agent that Collateral and books and records are currently located at the locations set forth on Schedule 9.2(b). Borrowers shall, upon the reasonable request of Agent, notify any such landlord, warehouse, consignee, bailee, agent or processor of the security interests and Liens in favor of Agent created pursuant to this Agreement and the Security Documents, instruct such Person to hold all such Collateral for Agent's account subject to Agent's instructions and, without limiting the first sentence of this clause (iv), shall use commercially reasonable efforts to obtain an acknowledgement from such Person that such Person holds the Collateral for Agent's benefit.

(v) Borrowers shall cause all equipment and other tangible Personal Property other than Inventory to be maintained and preserved in the same condition, repair and in working order as when new, ordinary wear and tear excepted, and shall promptly make or cause to be made all repairs, replacements and other improvements in connection therewith that are necessary to such end. Upon request of Agent, Borrowers shall promptly deliver to Agent any and all certificates of title, applications for title or similar evidence of ownership of all such tangible Personal Property with a value greater than $1,000,000 in the aggregate and shall cause Agent to be named as lienholder on any such certificate of title or other evidence of ownership. Borrowers shall not permit any such tangible Personal Property to become fixtures to real estate unless such real estate is subject to a Lien in favor of Agent.

(vi) Each Borrower hereby authorizes Agent to file without the signature of such Borrower one or more UCC financing statements relating to liens on personal property relating to all or any part of the Collateral, which financing statements may list Agent as the "secured party" and such Borrower as the "debtor" and which describe and indicate the collateral covered thereby as all or any part of the Collateral under the Financing Documents (including an indication of the collateral covered by any such financing statement as "all assets" of such Borrower now owned or hereafter acquired), in such jurisdictions as Agent from time to time determines are appropriate, and to file without the signature of such Borrower any continuations of or corrective amendments to any such financing statements, in any such case in order for Agent to perfect, preserve or protect the Liens, rights and remedies of Agent with respect to the Collateral. Each Borrower also ratifies its authorization for Agent to have filed in any jurisdiction any initial financing statements or amendments thereto if filed prior to the date hereof.

(vii) As of the Closing Date, no Borrower holds, and after the Closing Date Borrowers shall promptly notify Agent in writing upon creation or acquisition by any Borrower of, any Collateral which constitutes a claim against any Governmental Authority, including, without limitation, the federal government of the United States or any instrumentality or agency thereof, the assignment of which claim is restricted by any applicable Law, including, without limitation, the federal Assignment of Claims Act and any other comparable Law. Upon the reasonable request of Agent, Borrowers shall take such steps as may be necessary, or that Agent may reasonably request, to comply with any such applicable Law.

(viii) Borrowers shall furnish to Agent from time to time any statements and schedules further identifying or describing the Collateral and any other information, reports or evidence concerning the Collateral as Agent may reasonably request from time to time.

(h) Any obligation of any Credit Party in this Agreement that requires (or any representation or warranty hereunder to the extent that it would have the effect of requiring) delivery of Collateral (including any endorsements related thereto) to, or the possession of Collateral with, Agent shall be deemed to have complied with and satisfied (or, in the case of any representation or warranty hereunder, shall be deemed to be true) if such delivery of Collateral is made to, or such possession of Collateral is with, the Affiliated Financing Agent.

ARTICLE 10 - EVENTS OF DEFAULT

Section 10.1 Events of Default. For purposes of the Financing Documents, the occurrence of any of the following conditions and/or events, whether voluntary or involuntary, by operation of law or otherwise, shall constitute an "**Event of Default**":

(a) (i) any Credit Party shall fail to pay when due (x) any scheduled principal, interest, premium or fee under any Financing Document or (y) any other amount payable under any Financing Document within three (3) Business Days after such amount is due or declared due in accordance with the terms of this Agreement or under any Financing Document or (ii) there shall occur any default in the performance of or compliance with any of the following sections or articles of this Agreement: Section 2.11, Section 4.1, Section 4.2(b), Section 4.4(c), Section 4.6, Section 4.9, Section 4.16, Section 4.17, Section 4.18, Article 5, Article 6, or Section 7.4;

(b) any Credit Party defaults in the performance of or compliance with any term contained in this Agreement or in any other Financing Document (other than occurrences described in other provisions of this Section 10.1 for which a different grace or cure period is specified or for which no grace or cure period is specified and thereby constitute immediate Events of Default) and such default is not remedied by the Credit Party or waived by Agent within thirty (30) days after the earlier of (i) receipt by Borrower Representative of notice from Agent or Required Lenders of such default, or (ii) actual knowledge of any Borrower or any other Credit Party of such default;

(c) any representation, warranty, certification or statement made by any Credit Party or any other Person in any Financing Document or in any certificate, financial statement or other document delivered pursuant to any Financing Document is incorrect in any respect (or in any material respect if such representation, warranty, certification or statement is not by its terms already qualified as to materiality) when made (or deemed made);

(d) (i) failure of any Credit Party to pay when due or within any applicable grace period any principal, interest or other amount on Debt (other than the Loans), or the occurrence of any breach, default, condition or event with respect to any Debt (other than the Loans), if the effect of such failure or occurrence is to cause or to permit the holder or holders of any such Debt, or to cause, Debt or other liabilities having an individual principal amount in excess of $1,000,000 or having an aggregate principal amount in excess of $1,000,000 to become or be declared due prior to its stated maturity, or (ii) the occurrence of any breach or default under any terms or provisions of any Subordinated Debt Document or under any agreement subordinating the Subordinated Debt to all or any portion of the Obligations or the occurrence of any event requiring the prepayment of any Subordinated Debt;

(e) any Credit Party or any Subsidiary of a Borrower shall commence a voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to itself or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its property, or shall consent to any such relief or to the appointment of or taking possession by any such official in an involuntary case or other proceeding commenced against it, or shall make a general assignment for the benefit of creditors, or shall fail generally to pay its debts as they become due, or shall take any corporate action to authorize any of the foregoing;

(f) an involuntary case or other proceeding shall be commenced against any Credit Party or any Subsidiary of a Borrower seeking liquidation, reorganization or other relief with respect to it or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its property, and such involuntary case or other proceeding shall remain undismissed and unstayed for a period of sixty (60) days; or an order for relief shall be entered against any Credit Party or any Subsidiary of a Borrower under applicable federal bankruptcy, insolvency or other similar law in respect of (i) bankruptcy, liquidation, winding-up, dissolution or suspension of general operations, (ii) composition, rescheduling, reorganization, arrangement or readjustment of, or other relief from, or stay of proceedings to enforce, some or all of the debts or obligations, or (iii) possession, foreclosure, seizure or retention, sale or other disposition of, or other proceedings to enforce security over, all or any substantial part of the assets of such Credit Party or Subsidiary;

(g) (i) institution of any steps by any Person to terminate a Pension Plan if as a result of such termination any Credit Party or any member of the Controlled Group could be required to make a contribution to such Pension Plan, or could incur a liability or obligation to such Pension Plan, in excess of $500,000, (ii) a contribution failure occurs with respect to any Pension Plan sufficient to give rise to a Lien under Section 303(k) of ERISA or Section 430(k) of the Code or an event occurs that could reasonably be expected to give rise to a Lien under Section 4068 of ERISA, or (iii) there shall occur any withdrawal or partial withdrawal from a Multiemployer Plan and the withdrawal liability (without unaccrued interest) to Multiemployer Plans as a result of such withdrawal (including any outstanding withdrawal liability that any Credit Party or any member of the Controlled Group have incurred on the date of such withdrawal) exceeds $500,000;

(h) one or more judgments or orders for the payment of money (not paid or fully covered by insurance maintained in accordance with the requirements of this Agreement and as to which the relevant insurance company has not rejected coverage) aggregating in excess of $500,000 shall be rendered against any or all Credit Parties and either (i) enforcement proceedings shall have been commenced by any creditor upon any such judgments or orders, or (ii) there shall be any period of forty-five (45) consecutive days during which a stay of enforcement of any such judgments or orders, by reason of a pending appeal, bond or otherwise, shall not be in effect;

(i) any Lien created by any of the Security Documents shall at any time fail to constitute a valid and perfected Lien on all of the Collateral purported to be encumbered thereby (other than any immaterial portion thereof), subject to no prior or equal Lien except Permitted Liens (other than as a result of any action or inaction of Agent or Required Lenders provided that such action or inaction is not caused by any Credit Parties failure to comply with the terms of the Financing Documents), or any Credit Party shall so assert;

(j) the institution by any Governmental Authority of non-frivolous criminal proceedings against any Credit Party;

(k) an event of default occurs under any Guarantee of any portion of the Obligations;

(l) any Borrower makes any payment on account of any Debt that has been subordinated to any of the Obligations, other than payments specifically permitted by the terms of such subordination;

(m) if any Borrower is or becomes an entity whose equity is registered with the SEC, and/or is publicly traded on and/or registered with a public securities exchange, such Borrower’s equity fails to remain registered with the SEC in good standing, and/or such equity fails to remain publicly traded on and registered with a public securities exchange;

(n) the occurrence of a Material Adverse Effect;

(o) (i) the voluntary withdrawal or institution of any action or proceeding by the FDA or similar Governmental Authority to order the withdrawal of any Product or Product category from the market or to enjoin Borrower, its Subsidiaries or any representative of Borrower or its Subsidiaries from manufacturing, marketing, selling or distributing any Product or Product category, which, in each case, has had or could reasonably be expected to result in a Material Adverse Effect, (ii) the institution of any action or proceeding by any FDA or any other Governmental Authority to revoke, suspend, reject, withdraw, limit, or restrict any Regulatory Required Permit held by Borrower, its Subsidiaries or any representative of Borrower or its Subsidiaries, which, in each case, has or could reasonably be expected to result in Material Adverse Effect, or (iii) the commencement of any enforcement action against Borrower, its Subsidiaries or any representative of Borrower or its Subsidiaries (with respect to the business of Borrower or its Subsidiaries) by FDA any other Governmental Authority which has or could reasonably be expected to result in a Material Adverse Effect;

(p) the occurrence of any material defaults under or breaches of any Material Contracts (after any applicable grace period contained therein) by any Credit Party, or a Material Contract shall be terminated by a third party or parties party thereto prior to the expiration thereof, or there is a loss of a material right of a Credit Party under any Material Contract to which it is a party, in each case, if the loss of such Material Contract could reasonably be expected to result in a Material Adverse Effect; or

(q) there shall occur any "Event of Default" (as defined in the Affiliated Credit Agreement) under the Affiliated Financing Documents;

(r) the occurrence of a Change in Control; or

(s) any of the Financing Documents shall for any reason fail to constitute the valid and binding agreement of any party thereto, or any Credit Party shall so assert, in each case, unless such Financing Document terminates pursuant to the terms and conditions thereof without any breach or default thereunder by any Credit Party thereto.

All cure periods provided for in this Section 10.1 shall run concurrently with any cure period provided for in any applicable Financing Documents under which the default occurred.

Section 10.2 Acceleration and Suspension or Termination of Revolving Loan Commitment. Upon the occurrence and during the continuance of an Event of Default, Agent may, and shall if requested by Required Lenders, (a) by notice to Borrower Representative suspend or terminate the Revolving Loan Commitment and the obligations of Agent and the Lenders with respect thereto, in whole or in part (and, if in part, each Lender's Revolving Loan Commitment shall be reduced in accordance with its Pro Rata Share), and/or (b) by notice to Borrower Representative declare all or any portion of the Obligations to be, and the Obligations shall thereupon become, immediately due and payable, with accrued interest thereon, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by each Borrower and Borrowers will pay the same; *provided*, *however*, that in the case of any of the Events of Default specified in Section 10.1(e) or 10.1(f) above, without any notice to any Borrower or any other act by Agent or the Lenders, the Revolving Loan Commitment and the obligations of Agent and the Lenders with respect thereto shall thereupon immediately and automatically terminate and all of the Obligations shall become immediately and automatically due and payable without presentment, demand, protest or other notice of any kind, all of which are hereby waived by each Borrower and Borrowers will pay the same.

Section 10.3 UCC Remedies.

(a) Upon the occurrence of and during the continuance of an Event of Default under this Agreement or the other Financing Documents, Agent, in addition to all other rights, options, and remedies granted to Agent under this Agreement or at law or in equity, may exercise, either directly or through one or more assignees or designees, all rights and remedies granted to it under all Financing Documents and under the UCC in effect in the applicable jurisdiction(s) and under any other applicable law; including, without limitation:

(i) the right to take possession of, send notices regarding, and collect directly the Collateral, with or without judicial process;

(ii) the right to (by its own means or with judicial assistance) enter any of Borrowers' premises and take possession of the Collateral, or render it unusable, or to render it usable or saleable, or dispose of the Collateral on such premises in compliance with subsection (iii) below and to take possession of Borrowers' original books and records, to obtain access to Borrowers' data processing equipment, computer hardware and software relating to the Collateral and to use all of the foregoing and the information contained therein in any manner Agent deems appropriate, without any liability for rent, storage, utilities, or other sums, and Borrowers shall not resist or interfere with such action (if Borrowers' books and records are prepared or maintained by an accounting service, contractor or other third party agent, Borrowers hereby irrevocably authorize such service, contractor or other agent, upon notice by Agent to such Person that an Event of Default has occurred and is continuing, to deliver to Agent or its designees such books and records, and to follow Agent's instructions with respect to further services to be rendered);

(iii) the right to require Borrowers at Borrowers' expense to assemble all or any part of the Collateral and make it available to Agent at any place designated by Lender;

(iv) the right to notify postal authorities to change the address for delivery of Borrowers' mail to an address designated by Agent and to receive, open and dispose of all mail addressed to any Borrower; and/or

(v) the right to enforce Borrowers' rights against Account Debtors and other obligors, including, without limitation, (i) the right to collect Accounts directly in Agent's own name (as agent for Lenders) and to charge the collection costs and expenses, including attorneys' fees, to Borrowers, and (ii) the right, in the name of Agent or any designee of Agent or Borrowers, to verify the validity, amount or any other matter relating to any Accounts by mail, telephone, telegraph or otherwise, including, without limitation, verification of Borrowers' compliance with applicable Laws. Borrowers shall cooperate fully with Agent in an effort to facilitate and promptly conclude such verification process. Such verification may include contacts between Agent and applicable federal, state and local regulatory authorities having jurisdiction over the Borrowers' affairs, all of which contacts Borrowers hereby irrevocably authorize.

(b) Each Borrower agrees that a notice received by it at least ten (10) days before the time of any intended public sale, or the time after which any private sale or other disposition of the Collateral is to be made, shall be deemed to be reasonable notice of such sale or other disposition. If permitted by applicable law, any perishable Collateral which threatens to speedily decline in value or which is sold on a recognized market may be sold immediately by Agent without prior notice to Borrowers. At any sale or disposition of Collateral, Agent may (to the extent permitted by applicable law) purchase all or any part of the Collateral, free from any right of redemption by Borrowers, which right is hereby waived and released. Each Borrower covenants and agrees not to interfere with or impose any obstacle to Agent's exercise of its rights and remedies with respect to the Collateral. Agent shall have no obligation to clean-up or otherwise prepare the Collateral for sale. Agent may comply with any applicable state or federal law requirements in connection with a disposition of the Collateral and compliance will not be considered to adversely affect the commercial reasonableness of any sale of the Collateral. Agent may sell the Collateral without giving any warranties as to the Collateral. Agent may specifically disclaim any warranties of title or the like. This procedure will not be considered to adversely affect the commercial reasonableness of any sale of the Collateral. If Agent sells any of the Collateral upon credit, Borrowers will be credited only with payments actually made by the purchaser, received by Agent and applied to the indebtedness of the purchaser. In the event the purchaser fails to pay for the Collateral, Agent may resell the Collateral and Borrowers shall be credited with the proceeds of the sale. Borrowers shall remain liable for any deficiency if the proceeds of any sale or disposition of the Collateral are insufficient to pay all Obligations.

(c) Without restricting the generality of the foregoing and for the purposes aforesaid, upon the occurrence and during the continuance of an Event of Default, each Borrower hereby appoints and constitutes Agent its lawful attorney-in-fact with full power of substitution in the Collateral to (i) use unadvanced funds remaining under this Agreement or which may be reserved, escrowed or set aside for any purposes hereunder at any time, or to advance funds in excess of the face amount of the Notes, (ii) pay, settle or compromise all existing bills and claims, which may be Liens or security interests, or to avoid such bills and claims becoming Liens against the Collateral, (iii) execute all applications and certificates in the name of such Borrower and to prosecute and defend all actions or proceedings in connection with the Collateral, and (iv) do any and every act which such Borrower might do in its own behalf; it being understood and agreed that this power of attorney in this subsection (c) shall be a power coupled with an interest and cannot be revoked.

(d) Upon the occurrence and during the continuance of an Event of Default, subject to any right of any third parties and/or any agreement between any Borrower and any third party to the extent not granted or entered into in contravention of the terms of this Agreement, Agent and each Lender is hereby granted a non-exclusive, royalty-free license or other right to use, without charge, Borrowers' labels, rights of use of any name, any other Intellectual Property and advertising matter, and any similar property as it pertains to the Collateral, in each case as owned by a Borrower, in completing production of, advertising for sale, and selling any Collateral and, in connection with Agent's exercise of its rights under this Article, Borrowers' rights under all licenses (whether as licensor or licensee) and all franchise agreements inure to Agent's and each Lender's benefit.

Section 10.4 Reserved.

Section 10.5 Default Rate of Interest. At the election of Agent or Required Lenders, after the occurrence of an Event of Default and for so long as it continues, the Loans and other Obligations shall bear interest at rates that are two percent (2.0%) per annum in excess of the rates otherwise payable under this Agreement; *provided*, *however*, that in the case of any Event of Default specified in Section 10.1(e) or 10.1(f) above, such default rates shall apply immediately and automatically without the need for any election or action of any kind on the part of Agent or any Lender.

Section 10.6 Setoff Rights. During the continuance of any Event of Default, each Lender is hereby authorized by each Borrower at any time or from time to time, with reasonably prompt subsequent notice to such Borrower (any prior or contemporaneous notice being hereby expressly waived) to set off and to appropriate and to apply any and all (a) balances held by such Lender or any of such Lender's Affiliates at any of its offices for the account of such Borrower or any of its Subsidiaries (regardless of whether such balances are then due to such Borrower or its Subsidiaries), and (b) other property at any time held or owing by such Lender to or for the credit or for the account of such Borrower or any of its Subsidiaries, against and on account of any of the Obligations; except that no Lender shall exercise any such right without the prior written consent of Agent. Any Lender exercising a right to set off shall purchase for cash (and the other Lenders shall sell) interests in each of such other Lender's Pro Rata Share of the Obligations as would be necessary to cause all Lenders to share the amount so set off with each other Lender in accordance with their respective Pro Rata Share of the Obligations. Each Borrower agrees, to the fullest extent permitted by law, that any Lender and any of such Lender's Affiliates may exercise its right to set off with respect to the Obligations as provided in this Section 10.6.

Section 10.7 Application of Proceeds.

(a) Notwithstanding anything to the contrary contained in this Agreement, upon the occurrence and during the continuance of an Event of Default, each Borrower irrevocably waives the right to direct the application of any and all payments at any time or times thereafter received by Agent from or on behalf of such Borrower or any Guarantor of all or any part of the Obligations, and, as between Borrowers on the one hand and Agent and Lenders on the other, Agent shall have the continuing and exclusive right to apply and to reapply any and all payments received against the Obligations in such manner as Agent may deem advisable notwithstanding any previous application by Agent.

(b) Following the occurrence and continuance of an Event of Default, but absent the occurrence and continuance of an Acceleration Event, Agent shall apply any and all payments received by Agent in respect of the Obligations, and any and all proceeds of Collateral received by Agent, in such order as Agent may from time to time elect.

(c) Notwithstanding anything to the contrary contained in this Agreement, if an Acceleration Event shall have occurred, and so long as it continues, Agent shall apply any and all payments received by Agent in respect of the Obligations, and any and all proceeds of Collateral received by Agent, in the following order: *first*, to all fees, costs, indemnities, liabilities, obligations and expenses incurred by or owing to Agent with respect to this Agreement, the other Financing Documents or the Collateral; *second*, to all fees, costs, indemnities, liabilities, obligations and expenses incurred by or owing to any Lender with respect to this Agreement, the other Financing Documents or the Collateral; *third*, to accrued and unpaid interest on the Obligations (including any interest which, but for the provisions of the Bankruptcy Code, would have accrued on such amounts); *fourth*, to the principal amount of the Obligations outstanding; and *fifth* to any other indebtedness or obligations of Borrowers owing to Agent or any Lender under the Financing Documents. Any balance remaining shall be delivered to Borrowers or to whomever may be lawfully entitled to receive such balance or as a court of competent jurisdiction may direct. In carrying out the foregoing, (y) amounts received shall be applied in the numerical order provided until exhausted prior to the application to the next succeeding category, and (z) each of the Persons entitled to receive a payment in any particular category shall receive an amount equal to its Pro Rata Share of amounts available to be applied pursuant thereto for such category.

Section 10.8 Waivers.

(a) Except as otherwise provided for in this Agreement and to the fullest extent permitted by applicable law, each Borrower waives: (i) presentment, demand and protest, and notice of presentment, dishonor, intent to accelerate, acceleration, protest, default, nonpayment, maturity, release, compromise, settlement, extension or renewal of any or all Financing Documents, the Notes or any other notes, commercial paper, accounts, contracts, documents, Instruments, Chattel Paper and Guarantees at any time held by Lenders on which any Borrower may in any way be liable, and hereby ratifies and confirms whatever Lenders may do in this regard; (ii) all rights to notice and a hearing prior to Agent's or any Lender's taking possession or control of, or to Agent's or any Lender's replevy, attachment or levy upon, any Collateral or any bond or security which might be required by any court prior to allowing Agent or any Lender to exercise any of its remedies; and (iii) the benefit of all valuation, appraisal and exemption Laws. Each Borrower acknowledges that it has been advised by counsel of its choices and decisions with respect to this Agreement, the other Financing Documents and the transactions evidenced hereby and thereby.

(b) Each Borrower for itself and all its successors and assigns, (i) agrees that its liability shall not be in any manner affected by any indulgence, extension of time, renewal, waiver, or modification granted or consented to by Lender; (ii) consents to any indulgences and all extensions of time, renewals, waivers, or modifications that may be granted by Agent or any Lender with respect to the payment or other provisions of the Financing Documents, and to any substitution, exchange or release of the Collateral, or any part thereof, with or without substitution, and agrees to the addition or release of any Borrower, endorsers, guarantors, or sureties, or whether primarily or secondarily liable, without notice to any other Borrower and without affecting its liability hereunder; (iii) agrees that its liability shall be unconditional and without regard to the liability of any other Borrower, Agent or any Lender for any tax on the indebtedness; and (iv) to the fullest extent permitted by law, expressly waives the benefit of any statute or rule of law or equity now provided, or which may hereafter be provided, which would produce a result contrary to or in conflict with the foregoing.

(c) To the extent that Agent or any Lender may have acquiesced in any noncompliance with any requirements or conditions precedent to the closing of the Loans or to any subsequent disbursement of Loan proceeds, such acquiescence shall not be deemed to constitute a waiver by Agent or any Lender of such requirements with respect to any future disbursements of Loan proceeds and Agent may at any time after such acquiescence require Borrowers to comply with all such requirements. Any forbearance by Agent or Lender in exercising any right or remedy under any of the Financing Documents, or otherwise afforded by applicable law, including any failure to accelerate the maturity date of the Loans, shall not be a waiver of or preclude the exercise of any right or remedy nor shall it serve as a novation of the Notes or as a reinstatement of the Loans or a waiver of such right of acceleration or the right to insist upon strict compliance of the terms of the Financing Documents. Agent's or any Lender's acceptance of payment of any sum secured by any of the Financing Documents after the due date of such payment shall not be a waiver of Agent's and such Lender's right to either require prompt payment when due of all other sums so secured or to declare a default for failure to make prompt payment. The procurement of insurance or the payment of taxes or other Liens or charges by Agent as the result of an Event of Default shall not be a waiver of Agent's right to accelerate the maturity of the Loans, nor shall Agent's receipt of any condemnation awards, insurance proceeds, or damages under this Agreement operate to cure or waive any Credit Party's default in payment of sums secured by any of the Financing Documents.

(d) Without limiting the generality of anything contained in this Agreement or the other Financing Documents, each Borrower agrees that if an Event of Default is continuing (i) Agent and Lenders shall not be subject to any "one action" or "election of remedies" law or rule, and (ii) all Liens and other rights, remedies or privileges provided to Agent or Lenders shall remain in full force and effect until Agent or Lenders have exhausted all remedies against the Collateral and any other properties owned by Borrowers and the Financing Documents and other security instruments or agreements securing the Loans have been foreclosed, sold and/or otherwise realized upon in satisfaction of Borrowers' obligations under the Financing Documents.

(e) Nothing contained herein or in any other Financing Document shall be construed as requiring Agent or any Lender to resort to any part of the Collateral for the satisfaction of any of Borrowers' obligations under the Financing Documents in preference or priority to any other Collateral, and Agent may seek satisfaction out of all of the Collateral or any part thereof, in its absolute discretion in respect of Borrowers' obligations under the Financing Documents. In addition, Agent shall have the right from time to time to partially foreclose upon any Collateral in any manner and for any amounts secured by the Financing Documents then due and payable as determined by Agent in its sole discretion, including, without limitation, the following circumstances: (i) in the event any Borrower defaults beyond any applicable grace period in the payment of one or more scheduled payments of principal and/or interest, Agent may foreclose upon all or any part of the Collateral to recover such delinquent payments, or (ii) in the event Agent elects to accelerate less than the entire outstanding principal balance of the Loans, Agent may foreclose all or any part of the Collateral to recover so much of the principal balance of the Loans as Lender may accelerate and such other sums secured by one or more of the Financing Documents as Agent may elect. Notwithstanding one or more partial foreclosures, any unforeclosed Collateral shall remain subject to the Financing Documents to secure payment of sums secured by the Financing Documents and not previously recovered.

(f) To the fullest extent permitted by law, each Borrower, for itself and its successors and assigns, waives in the event of foreclosure of any or all of the Collateral any equitable right otherwise available to any Credit Party which would require the separate sale of any of the Collateral or require Agent or Lenders to exhaust their remedies against any part of the Collateral before proceeding against any other part of the Collateral; and further in the event of such foreclosure each Borrower does hereby expressly consent to and authorize, at the option of Agent, the foreclosure and sale either separately or together of each part of the Collateral.

Section 10.9 Injunctive Relief. The parties acknowledge and agree that, in the event of a breach or threatened breach of any Credit Party's obligations under any Financing Documents, Agent and Lenders may have no adequate remedy in money damages and, accordingly, shall be entitled to an injunction (including, without limitation, a temporary restraining order, preliminary injunction, writ of attachment, or order compelling an audit) against such breach or threatened breach, including, without limitation, maintaining any cash management and collection procedure described herein. However, no specification in this Agreement of a specific legal or equitable remedy shall be construed as a waiver or prohibition against any other legal or equitable remedies in the event of a breach or threatened breach of any provision of this Agreement. Each Credit Party waives, to the fullest extent permitted by law, the requirement of the posting of any bond in connection with such injunctive relief. By joining in the Financing Documents as a Credit Party, each Credit Party specifically joins in this Section as if this Section were a part of each Financing Document executed by such Credit Party.

Section 10.10 Marshalling; Payments Set Aside. Neither Agent nor any Lender shall be under any obligation to marshal any assets in payment of any or all of the Obligations. To the extent that Borrower makes any payment or Agent enforces its Liens or Agent or any Lender exercises its right of set-off, and such payment or the proceeds of such enforcement or set-off is subsequently invalidated, declared to be fraudulent or preferential, set aside, or required to be repaid by anyone, then to the extent of such recovery, the Obligations or part thereof originally intended to be satisfied, and all Liens, rights and remedies therefor, shall be revived and continued in full force and effect as if such payment had not been made or such enforcement or set-off had not occurred.

ARTICLE 11 - AGENT

Section 11.1 Appointment and Authorization. Each Lender hereby irrevocably appoints and authorizes Agent to enter into each of the Financing Documents to which it is a party (other than this Agreement) on its behalf and to take such actions as Agent on its behalf and to exercise such powers under the Financing Documents as are delegated to Agent by the terms thereof, together with all such powers as are reasonably incidental thereto. Subject to the terms of Section 11.16 and to the terms of the other Financing Documents, Agent is authorized and empowered to amend, modify, or waive any provisions of this Agreement or the other Financing Documents on behalf of Lenders. The provisions of this Article 11 are solely for the benefit of Agent and Lenders and neither any Borrower nor any other Credit Party shall have any rights as a third party beneficiary of any of the provisions hereof other than Section 11.17. In performing its functions and duties under this Agreement, Agent shall act solely as agent of Lenders and does not assume and shall not be deemed to have assumed any obligation toward or relationship of agency or trust with or for any Borrower or any other Credit Party. Agent may perform any of its duties hereunder, or under the Financing Documents, by or through its agents, servicers, trustees, investment managers or employees.

Section 11.2 Agent and Affiliates. Agent shall have the same rights and powers under the Financing Documents as any other Lender and may exercise or refrain from exercising the same as though it were not Agent, and Agent and its Affiliates may lend money to, invest in and generally engage in any kind of business with each Credit Party or Affiliate of any Credit Party as if it were not Agent hereunder.

Section 11.3 Action by Agent. The duties of Agent shall be mechanical and administrative in nature. Agent shall not have by reason of this Agreement a fiduciary relationship in respect of any Lender. Nothing in this Agreement or any of the Financing Documents is intended to or shall be construed to impose upon Agent any obligations in respect of this Agreement or any of the Financing Documents except as expressly set forth herein or therein.

Section 11.4 Consultation with Experts. Agent may consult with legal counsel, independent public accountants and other experts selected by it and shall not be liable for any action taken or omitted to be taken by it in good faith in accordance with the advice of such counsel, accountants or experts.

Section 11.5 Liability of Agent. Neither Agent nor any of its directors, officers, agents, trustees, investment managers, servicers or employees shall be liable to any Lender for any action taken or not taken by it in connection with the Financing Documents, except that Agent shall be liable with respect to its specific duties set forth hereunder but only to the extent of its own gross negligence or willful misconduct in the discharge thereof as determined by a final non-appealable judgment of a court of competent jurisdiction. Neither Agent nor any of its directors, officers, agents, trustees, investment managers, servicers or employees shall be responsible for or have any duty to ascertain, inquire into or verify (a) any statement, warranty or representation made in connection with any Financing Document or any borrowing hereunder; (b) the performance or observance of any of the covenants or agreements specified in any Financing Document; (c) the satisfaction of any condition specified in any Financing Document; (d) the validity, effectiveness, sufficiency or genuineness of any Financing Document, any Lien purported to be created or perfected thereby or any other instrument or writing furnished in connection therewith; (e) the existence or non-existence of any Default or Event of Default; or (f) the financial condition of any Credit Party. Agent shall not incur any liability by acting in reliance upon any notice, consent, certificate, statement, or other writing (which may be a bank wire, facsimile or electronic

transmission or similar writing) believed by it to be genuine or to be signed by the proper party or parties. Agent shall not be liable for any apportionment or distribution of payments made by it in good faith and if any such apportionment or distribution is subsequently determined to have been made in error the sole recourse of any Lender to whom payment was due but not made, shall be to recover from other Lenders any payment in excess of the amount to which they are determined to be entitled (and such other Lenders hereby agree to return to such Lender any such erroneous payments received by them).

Section 11.6 Indemnification. Each Lender shall, in accordance with its Pro Rata Share, indemnify Agent (to the extent not reimbursed by Borrowers) upon demand against any cost, expense (including counsel fees and disbursements), claim, demand, action, loss or liability (except such as result from Agent's gross negligence or willful misconduct as determined by a final non-appealable judgment of a court of competent jurisdiction) that Agent may suffer or incur in connection with the Financing Documents or any action taken or omitted by Agent hereunder or thereunder. If any indemnity furnished to Agent for any purpose shall, in the opinion of Agent, be insufficient or become impaired, Agent may call for additional indemnity and cease, or not commence, to do the acts indemnified against even if so directed by Required Lenders until such additional indemnity is furnished.

Section 11.7 Right to Request and Act on Instructions. Agent may at any time request instructions from Lenders with respect to any actions or approvals which by the terms of this Agreement or of any of the Financing Documents Agent is permitted or desires to take or to grant, and if such instructions are promptly requested, Agent shall be absolutely entitled to refrain from taking any action or to withhold any approval and shall not be under any liability whatsoever to any Person for refraining from any action or withholding any approval under any of the Financing Documents until it shall have received such instructions from Required Lenders or all or such other portion of the Lenders as shall be prescribed by this Agreement. Without limiting the foregoing, no Lender shall have any right of action whatsoever against Agent as a result of Agent acting or refraining from acting under this Agreement or any of the other Financing Documents in accordance with the instructions of Required Lenders (or all or such other portion of the Lenders as shall be prescribed by this Agreement) and, notwithstanding the instructions of Required Lenders (or such other applicable portion of the Lenders), Agent shall have no obligation to take any action if it believes, in good faith, that such action would violate applicable Law or exposes Agent to any liability for which it has not received satisfactory indemnification in accordance with the provisions of Section 11.6.

Section 11.8 Credit Decision. Each Lender acknowledges that it has, independently and without reliance upon Agent or any other Lender, and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender also acknowledges that it will, independently and without reliance upon Agent or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking any action under the Financing Documents.

Section 11.9 Collateral Matters. Lenders irrevocably authorize Agent, at its option and in its reasonable discretion, to (a) release any Lien granted to or held by Agent under any Security Document (i) upon termination of the Revolving Loan Commitment and payment in full of all Obligations (other than contingent indemnification obligations for which no claim has been asserted or the known existence of a claim is reasonably likely to be asserted); or (ii) constituting property sold or disposed of as part of or in connection with any disposition permitted under any Financing Document (it being understood and agreed that Agent may conclusively rely without further inquiry on a certificate of a Responsible Officer as to the sale or other disposition of property being made in full compliance with the provisions of the Financing Documents); and (b) subordinate any Lien granted to or held by Agent under any Security Document to a Permitted Lien that is allowed to have priority over the Liens granted to or held by Agent pursuant to the definition of "Permitted Liens". Upon request by Agent at any time, Lenders will confirm Agent's authority to release and/or subordinate particular types or items of Collateral pursuant to this Section 11.9.

Section 11.10 Agency for Perfection. Agent and each Lender hereby appoint each other Lender as agent for the purpose of perfecting Agent's security interest in assets which, in accordance with the Uniform Commercial Code in any applicable jurisdiction, can be perfected by possession or control. Should any Lender (other than Agent) obtain possession or control of any such assets, such Lender shall notify Agent thereof, and, promptly upon Agent's request therefor, shall deliver such assets to Agent or in accordance with Agent's instructions or transfer control to Agent in accordance with Agent's instructions. Each Lender agrees that it will not have any right individually to enforce or seek to enforce any Security Document or to realize upon any Collateral for the Loan unless instructed to do so by Agent (or consented to by Agent), it being understood and agreed that such rights and remedies may be exercised only by Agent.

Section 11.11 Notice of Default. Agent shall not be deemed to have knowledge or notice of the occurrence of any Default or Event of Default except with respect to defaults in the payment of principal, interest and fees required to be paid to Agent for the account of Lenders, unless Agent shall have received written notice from a Lender or a Borrower referring to this Agreement, describing such Default or Event of Default and stating that such notice is a "notice of default". Agent will notify each Lender of its receipt of any such notice. Agent shall take such action with respect to such Default or Event of Default as may be requested by Required Lenders (or all or such other portion of the Lenders as shall be prescribed by this Agreement) in accordance with the terms hereof. Unless and until Agent has received any such request, 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 it shall deem advisable or in the best interests of Lenders.

Section 11.12 Assignment by Agent; Resignation of Agent; Successor Agent.

(a) Agent may at any time assign its rights, powers, privileges and duties hereunder to (i) another Lender or an Affiliate of Agent or any Approved Fund, or (ii) any Person to whom Agent, in its capacity as a Lender, has assigned (or will assign, in conjunction with such assignment of agency rights hereunder) 50% or more of its Loan, in each case without the consent of the Lenders or Borrowers. Following any such assignment, Agent shall endeavor to give notice to the Lenders and Borrowers. Failure to give such notice shall not affect such assignment in any way or cause the assignment to be ineffective. An assignment by Agent pursuant to this subsection (a) shall not be deemed a resignation by Agent for purposes of subsection (b) below.

(b) Without limiting the rights of Agent to designate an assignee pursuant to subsection (a) above, Agent may at any time give notice of its resignation to the Lenders and Borrowers. Upon receipt of any such notice of resignation, Required Lenders shall have the right to appoint a successor Agent. If no such successor shall have been so appointed by Required Lenders and shall have accepted such appointment within ten (10) Business Days after the retiring Agent gives notice of its resignation, then the retiring Agent may on behalf of the Lenders, appoint a successor Agent; *provided, however,* that if Agent shall notify Borrowers and the Lenders that no Person has accepted such appointment, then such resignation shall nonetheless become effective in accordance with such notice from Agent that no Person has accepted such appointment and, from and following delivery of such notice, (i) the retiring Agent shall be discharged from its duties and obligations hereunder and under the other Financing Documents, and (ii) all payments, communications and determinations provided to be made by, to or through Agent shall instead be made by or to each Lender directly, until such time as Required Lenders appoint a successor Agent as provided for above in this paragraph.

(c) Upon (i) an assignment permitted by subsection (a) above, or (ii) the acceptance of a successor's appointment as Agent pursuant to subsection (b) above, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or retired) Agent, and the retiring Agent shall be discharged from all of its duties and obligations hereunder and under the other Financing Documents (if not already discharged therefrom as provided above in this paragraph). The fees payable by Borrowers to a successor Agent shall be the same as those payable to its predecessor unless otherwise agreed between Borrowers and such successor. After the retiring Agent's resignation hereunder and under the other Financing Documents, the provisions of this Article and Section 11.12 shall continue in effect for the benefit of such retiring Agent and its sub-agents in respect of any actions taken or omitted to be taken by any of them while the retiring Agent was acting or was continuing to act as Agent.

Section 11.13 Payment and Sharing of Payment.

(a) Revolving Loan Advances, Payments and Settlements; Interest and Fee Payments.

(i) Agent shall have the right, on behalf of Revolving Lenders to disburse funds to Borrowers for all Revolving Loans requested or deemed requested by Borrowers pursuant to the terms of this Agreement. Agent shall be conclusively entitled to assume, for purposes of the preceding sentence, that each Revolving Lender, other than any Non-Funding Lenders, will fund its Pro Rata Share of all Revolving Loans requested by Borrowers. Each Revolving Lender shall reimburse Agent on demand, in accordance with the provisions of the immediately following paragraph, for all funds disbursed on its behalf by Agent pursuant to the first sentence of this clause (i), or if Agent so requests, each Revolving Lender will remit to Agent its Pro Rata Share of any Revolving Loan before Agent disburses the same to a Borrower. If Agent elects to require that each Revolving Lender make funds available to Agent, prior to a disbursement by Agent to a Borrower, Agent shall advise each Revolving Lender by telephone, facsimile or e-mail of the amount of such Revolving Lender's Pro Rata Share of the Revolving Loan requested by such Borrower no later than noon (Eastern time) on the date of funding of such Revolving Loan, and each such Revolving Lender shall pay Agent on such date such Revolving Lender's Pro Rata Share of such requested Revolving Loan, in same day funds, by wire transfer to the Payment Account, or such other account as may be identified by Agent to Revolving Lenders from time to time. If any Lender fails to pay the amount of its Pro Rata Share of any funds advanced by Agent pursuant to the first sentence of this clause (i) within one (1) Business Day after Agent's demand, Agent shall promptly notify Borrower Representative, and Borrowers shall immediately repay such amount to Agent. Any repayment required by Borrowers pursuant to this Section 11.13 shall be accompanied by accrued interest thereon from and including the date such amount is made available to a Borrower to but excluding the date of payment at the rate of interest then applicable to Revolving Loans. Nothing in this Section 11.13 or elsewhere in this Agreement or the other Financing Documents shall be deemed to require Agent to advance funds on behalf of any Lender or to relieve any Lender from its obligation to fulfill its commitments hereunder or to prejudice any rights that Agent or any Borrower may have against any Lender as a result of any default by such Lender hereunder.

(ii) On a Business Day of each week as selected from time to time by Agent, or more frequently (including daily), if Agent so elects (each such day being a "**Settlement Date**"), Agent will advise each Revolving Lender by telephone, facsimile or e-mail of the amount of each such Revolving Lender's percentage interest of the Revolving Loan balance as of the close of business of the Business Day immediately preceding the Settlement Date. In the event that payments are necessary to adjust the amount of such Revolving Lender's actual percentage

interest of the Revolving Loans to such Lender's required percentage interest of the Revolving Loan balance as of any Settlement Date, the Revolving Lender from which such payment is due shall pay Agent, without setoff or discount, to the Payment Account before 1:00 p.m. (Eastern time) on the Business Day following the Settlement Date the full amount necessary to make such adjustment. Any obligation arising pursuant to the immediately preceding sentence shall be absolute and unconditional and shall not be affected by any circumstance whatsoever. In the event settlement shall not have occurred by the date and time specified in the second preceding sentence, interest shall accrue on the unsettled amount at the rate of interest then applicable to Revolving Loans.

(iii) On each Settlement Date, Agent shall advise each Revolving Lender by telephone, facsimile or e-mail of the amount of such Revolving Lender's percentage interest of principal, interest and fees paid for the benefit of Revolving Lenders with respect to each applicable Revolving Loan, to the extent of such Revolving Lender's Revolving Loan Exposure with respect thereto, and shall make payment to such Revolving Lender before 1:00 p.m. (Eastern time) on the Business Day following the Settlement Date of such amounts in accordance with wire instructions delivered by such Revolving Lender to Agent, as the same may be modified from time to time by written notice to Agent; *provided, however,* that, in the case such Revolving Lender is a Defaulted Lender, Agent shall be entitled to set off the funding short-fall against that Defaulted Lender's respective share of all payments received from any Borrower.

(iv) On the Closing Date, Agent, on behalf of Lenders, may elect to advance to Borrowers the full amount of the initial Loans to be made on the Closing Date prior to receiving funds from Lenders, in reliance upon each Lender's commitment to make its Pro Rata Share of such Loans to Borrowers in a timely manner on such date. If Agent elects to advance the initial Loans to Borrower in such manner, Agent shall be entitled to receive all interest that accrues on the Closing Date on each Lender's Pro Rata Share of such Loans unless Agent receives such Lender's Pro Rata Share of such Loans before 3:00 p.m. (Eastern time) on the Closing Date.

(v) It is understood that for purposes of advances to Borrowers made pursuant to this Section 11.13, Agent will be using the funds of Agent, and pending settlement, (A) all funds transferred from the Payment Account to the outstanding Revolving Loans shall be applied first to advances made by Agent to Borrowers pursuant to this Section 11.13, and (B) all interest accruing on such advances shall be payable to Agent.

(vi) The provisions of this Section 11.13(a) shall be deemed to be binding upon Agent and Lenders notwithstanding the occurrence of any Default or Event of Default, or any insolvency or bankruptcy proceeding pertaining to any Borrower or any other Credit Party.

(b) Reserved.

(c) Return of Payments.

(i) If Agent pays an amount to a Lender under this Agreement in the belief or expectation that a related payment has been or will be received by Agent from a Borrower and such related payment is not received by Agent, then Agent will be entitled to recover such amount from such Lender on demand without setoff, counterclaim or deduction of any kind, together with interest accruing on a daily basis at the Federal Funds Rate.

(ii) If Agent determines at any time that any amount received by Agent under this Agreement must be returned to any Borrower or paid to any other Person pursuant to any insolvency law or otherwise, then, notwithstanding any other term or condition of this Agreement or any other Financing Document, Agent will not be required to distribute any portion thereof to any Lender. In addition, each Lender will repay to Agent on demand any portion of such amount that Agent has distributed to such Lender, together with interest at such rate, if any, as Agent is required to pay to any Borrower or such other Person, without setoff, counterclaim or deduction of any kind.

(d) Defaulted Lenders. The failure of any Defaulted Lender to make any payment required by it hereunder shall not relieve any other Lender of its obligations to make payment, but neither any other Lender nor Agent shall be responsible for the failure of any Defaulted Lender to make any payment required hereunder. Notwithstanding anything set forth herein to the contrary, a Defaulted Lender shall not have any voting or consent rights under or with respect to any Financing Document or constitute a "Lender" (or be included in the calculation of "Required Lenders" hereunder) for any voting or consent rights under or with respect to any Financing Document.

(e) Sharing of Payments. If any Lender shall obtain any payment or other recovery (whether voluntary, involuntary, by application of setoff or otherwise) on account of any Loan (other than pursuant to the terms of Section 2.8(d)) in excess of its Pro Rata Share of payments entitled pursuant to the other provisions of this Section 11.13, such Lender shall purchase from the other Lenders such participations in extensions of credit made by such other Lenders (without recourse, representation or warranty) as shall be necessary to cause such purchasing Lender to share the excess payment or other recovery ratably with each of them; *provided*, *however*, that if all or any portion of the excess payment or other recovery is thereafter required to be returned or otherwise recovered from such purchasing Lender, such portion of such purchase shall be rescinded and each Lender which has sold a participation to the purchasing Lender shall repay to the purchasing Lender the purchase price to the ratable extent of such return or recovery, without interest. Each Borrower agrees that any Lender so purchasing a participation from another Lender pursuant to this clause (e) may, to the fullest extent permitted by law, exercise all its rights of payment (including pursuant to Section 10.6) with respect to such participation as fully as if such Lender were the direct creditor of Borrowers in the amount of such participation). If under any applicable bankruptcy, insolvency or other similar law, any Lender receives a secured claim in lieu of a setoff to which this clause (e) applies, such Lender shall, to the extent practicable, exercise its rights in respect of such secured claim in a manner consistent with the rights of the Lenders entitled under this clause (e) to share in the benefits of any recovery on such secured claim.

Section 11.14 Right to Perform, Preserve and Protect. If any Credit Party fails to perform any obligation hereunder or under any other Financing Document, Agent itself may, but shall not be obligated to, cause such obligation to be performed at Borrowers' expense. Agent is further authorized by Borrowers and the Lenders to make expenditures from time to time which Agent, in its reasonable business judgment, deems necessary or desirable to (a) preserve or protect the business conducted by Borrowers, the Collateral, or any portion thereof, and/or (b) enhance the likelihood of, or maximize the amount of, repayment of the Loan and other Obligations. Each Borrower hereby agrees to reimburse Agent on demand for any and all costs, liabilities and obligations incurred by Agent pursuant to this Section 11.14. Each Lender hereby agrees to indemnify Agent upon demand for any and all costs, liabilities and obligations incurred by Agent pursuant to this Section 11.14, in accordance with the provisions of Section 11.6.

Section 11.15 Additional Titled Agents. Except for rights and powers, if any, expressly reserved under this Agreement to any bookrunner, arranger or to any titled agent named on the cover page of this Agreement, other than Agent (collectively, the "**Additional Titled Agents**"), and except for obligations, liabilities, duties and responsibilities, if any, expressly assumed under this Agreement by any Additional Titled Agent, no Additional Titled Agent, in such capacity, has any rights, powers, liabilities, duties or responsibilities hereunder or under any of the other Financing Documents. Without limiting the foregoing, no Additional Titled Agent shall have nor be deemed to have a fiduciary relationship with any Lender. At any time that any Lender serving as an Additional Titled Agent shall have transferred to any other Person (other than any Affiliates) all of its interests in the Loan, such Lender shall be deemed to have concurrently resigned as such Additional Titled Agent.

Section 11.16 Amendments and Waivers.

(a) No provision of this Agreement or any other Financing Document may be amended, waived or otherwise modified unless such amendment, waiver or other modification is in writing and is signed or otherwise approved by Borrowers, the Required Lenders and any other Lender to the extent required under Section 11.16(b); *provided, however*, the Fee Letter may be amended, or rights or privileges thereunder waived, in a writing executed only by the parties thereto.

(b) In addition to the required signatures under Section 11.16(a), no provision of this Agreement or any other Financing Document may be amended, waived or otherwise modified unless such amendment, waiver or other modification is in writing and is signed or otherwise approved by the following Persons:

(i) if any amendment, waiver or other modification would increase a Lender's funding obligations in respect of any Loan, by such Lender; and/or

(ii) if the rights or duties of Agent are affected thereby, by Agent;

provided, however, that, in each of (i) and (ii) above, no such amendment, waiver or other modification shall, unless signed or otherwise approved in writing by all the Lenders directly affected thereby, (A) reduce the principal of, rate of interest on or any fees with respect to any Loan or forgive any principal, interest (other than default interest) or fees (other than late charges) with respect to any Loan; (B) postpone the date fixed for, or waive, any payment (other than any mandatory prepayment pursuant to Section 2.1(b)(ii)) of principal of any Loan, or of interest on any Loan (other than default interest) or any fees provided for hereunder (other than late charges) or postpone the date of termination of any commitment of any Lender hereunder; (C) change the definition of the term Required Lenders or the percentage of Lenders which shall be required for Lenders to take any action hereunder; (D) release all or substantially all of the Collateral, authorize any Borrower to sell or otherwise dispose of all or substantially all of the Collateral, release any Guarantor of all or any portion of the Obligations or its Guarantee obligations with respect thereto, or consent to a transfer of any of the Intellectual Property, except, in each case with respect to this clause (D), as otherwise may be provided in this Agreement or the other Financing Documents (including in connection with any disposition permitted hereunder); (E) amend, waive or otherwise modify this Section 11.16(b) or the definitions of the terms used in this Section 11.16(b) insofar as the definitions affect the substance of this Section 11.16(b); (F) consent to the assignment, delegation or other transfer by any Credit Party of any of its rights and obligations under any Financing Document or release any Borrower of its payment obligations under any Financing Document, except, in each case with respect to this clause (F), pursuant to a merger or consolidation permitted pursuant to this Agreement; or (G) amend any of the provisions of Section 10.7 or amend any of the definitions Pro Rata Share, Revolving Loan Commitment, Revolving Loan Commitment Amount, Revolving Loan Commitment Percentage or that provide for the Lenders to receive their Pro Rata Shares of any fees, payments, setoffs or proceeds of Collateral hereunder. It is hereby understood and agreed that all Lenders shall be deemed directly affected by an amendment, waiver or other modification of the type described in the preceding clauses (C), (D), (E), (F) and (G) of the preceding sentence.

Section 11.17 Assignments and Participations.

(a) Assignments.

(i) Any Lender may at any time assign to one or more Eligible Assignees all or any portion of such Lender's Loan together with all related obligations of such Lender hereunder. Except as Agent may otherwise agree, the amount of any such assignment (determined as of the date of the applicable Assignment Agreement or, if a "Trade Date" is specified in such Assignment Agreement, as of such Trade Date) shall be in a minimum aggregate amount equal to $1,000,000 or, if less, the assignor's entire interests in the outstanding Loan; *provided*, *however*, that, in connection with simultaneous assignments to two or more related Approved Funds, such Approved Funds shall be treated as one assignee for purposes of determining compliance with the minimum assignment size referred to above. Borrowers and Agent shall be entitled to continue to deal solely and directly with such Lender in connection with the interests so assigned to an Eligible Assignee until Agent shall have received and accepted an effective Assignment Agreement executed, delivered and fully completed by the applicable parties thereto and a processing fee of $3,500 to be paid by the assigning Lender; *provided*, *however*, that only one processing fee shall be payable in connection with simultaneous assignments to two or more related Approved Funds.

(ii) From and after the date on which the conditions described above have been met, (A) such Eligible Assignee shall be deemed automatically to have become a party hereto and, to the extent of the interests assigned to such Eligible Assignee pursuant to such Assignment Agreement, shall have the rights and obligations of a Lender hereunder (including, for the avoidance of doubt, the obligation to deliver applicable documentation pursuant to Section 2.8(c) which such Eligible Assignee shall deliver to Borrower Representative and Agent on or prior to the date of such Assignment Agreement), and (B) the assigning Lender, to the extent that rights and obligations hereunder have been assigned by it pursuant to such Assignment Agreement, shall be released from its rights and obligations hereunder (other than those that survive termination pursuant to Section 2.8(g) or Section 12.1). Upon the request of the Eligible Assignee (and, as applicable, the assigning Lender) pursuant to an effective Assignment Agreement, each Borrower shall execute and deliver to Agent for delivery to the Eligible Assignee (and, as applicable, the assigning Lender) Notes in the aggregate principal amount of the Eligible Assignee's Loan (and, as applicable, Notes in the principal amount of that portion of the principal amount of the Loan retained by the assigning Lender). Upon receipt by the assigning Lender of such Note, the assigning Lender shall return to Borrower Representative any prior Note held by it.

(iii) Agent, acting solely for this purpose as an agent of Borrower, shall maintain at the office of its servicer located in Bethesda, Maryland a copy of each Assignment Agreement delivered to it and a register for the recordation of the names and addresses of each Lender, and the commitments of, and principal amount of the Loan owing to, such Lender pursuant to the terms hereof (the "**Register**"). The entries in such Register shall be conclusive, absent manifest error, and Borrower, Agent and Lenders may treat each Person whose name is recorded therein pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. Such Register shall be available for inspection by Borrower and any Lender, at any reasonable time upon reasonable prior notice to Agent. Each Lender that sells a participation shall, acting solely for this purpose as an agent of Borrower maintain 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 the Obligations (each, a "Participant Register"). The entries in the Participant Registers shall be conclusive, absent manifest error.

Each Participant Register shall be available for inspection by Borrower and Agent at any reasonable time upon reasonable prior notice to the applicable Lender; provided, that 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 Financing Document) to any Person (including Borrower) 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. For the avoidance of doubt, Agent (in its capacity as Agent) shall have no responsibility for maintaining a Participant Register.

(iv) Notwithstanding the foregoing provisions of this Section 11.17(a) or any other provision of this Agreement, any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; *provided*, *however,* that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(v) Notwithstanding the foregoing provisions of this Section 11.17(a) or any other provision of this Agreement, Agent has the right, but not the obligation, to effectuate assignments of Loan via an electronic settlement system acceptable to Agent as designated in writing from time to time to the Lenders by Agent (the "**Settlement Service**"). At any time when Agent elects, in its sole discretion, to implement such Settlement Service, each such assignment shall be effected by the assigning Lender and proposed assignee pursuant to the procedures then in effect under the Settlement Service, which procedures shall be consistent with the other provisions of this Section 11.17(a). Each assigning Lender and proposed Eligible Assignee shall comply with the requirements of the Settlement Service in connection with effecting any assignment of Loan pursuant to the Settlement Service. With the prior written approval of Agent, Agent's approval of such Eligible Assignee shall be deemed to have been automatically granted with respect to any transfer effected through the Settlement Service. Assignments and assumptions of the Loan shall be effected by the provisions otherwise set forth herein until Agent notifies Lenders of the Settlement Service as set forth herein.

(b) Participations. Any Lender may at any time, without the consent of, or notice to, any Borrower or Agent, sell to one or more Persons (other than any Borrower or any Borrower's Affiliates) participating interests in its Loan, commitments or other interests hereunder (any such Person, a "**Participant**"). In the event of a sale by a Lender of a participating interest to a Participant, (i) such Lender's obligations hereunder shall remain unchanged for all purposes, (ii) Borrowers and Agent shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations hereunder, and (iii) all amounts payable by each Borrower shall be determined as if such Lender had not sold such participation and shall be paid directly to such Lender. Each Borrower agrees that if amounts outstanding under this Agreement are due and payable (as a result of acceleration or otherwise), each Participant shall be deemed to have the right of set-off in respect of its participating interest in amounts owing under this Agreement to the same extent as if the amount of its participating interest were owing directly to it as a Lender under this Agreement; *provided*, *however*, that such right of set-off shall be subject to the obligation of each Participant to share with Lenders, and Lenders agree to share with each Participant, as provided in Section 11.5. Notwithstanding the foregoing, (i) no Participant shall be entitled to receive any greater payment under Section 2.8 with respect to any participation than its participating Lender would have been entitled to receive and (ii) any Participant shall deliver applicable documentation pursuant to Section 2.8(c) to its participating Lender.

(c) Replacement of Lenders. Within thirty (30) days after: (i) receipt by Agent of notice and demand from any Lender for payment of additional costs as provided in Section 2.8(h), which demand shall not have been revoked, (ii) any Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.8(a) through (h), (iii) any Lender is a Defaulted Lender, and the circumstances causing such status shall not have been cured or waived; or (iv) any failure by any Lender to consent to a requested amendment, waiver or modification to any Financing Document in which Required Lenders have already consented to such amendment, waiver or modification but the consent of each Lender, or each Lender affected thereby, is required with respect thereto (each relevant Lender in the foregoing clauses (i) through (iv) being an "**Affected Lender**") each of Borrower Representative and Agent may, at its option, notify such Affected Lender and, in the case of Borrowers' election, Agent, of such Person's intention to obtain, at Borrowers' expense, a replacement Lender ("**Replacement Lender**") for such Lender, which Replacement Lender shall be an Eligible Assignee and, in the event the Replacement Lender is to replace an Affected Lender described in the preceding clause (iv), such Replacement Lender consents to the requested amendment, waiver or modification making the replaced Lender an Affected Lender. In the event Borrowers or Agent, as applicable, obtains a Replacement Lender within ninety (90) days following notice of its intention to do so, the Affected Lender shall sell, at par, and assign all of its Loan and funding commitments hereunder to such Replacement Lender in accordance with the procedures set forth in Section 11.17(a); *provided, however,* that (A) Borrowers shall have reimbursed such Lender for its increased costs and additional payments for which it is entitled to reimbursement under Section 2.8(a) through (h), as applicable, of this Agreement through the date of such sale and assignment, and (B) Borrowers shall pay to Agent the $3,500 processing fee in respect of such assignment. In the event that a replaced Lender does not execute an Assignment Agreement pursuant to Section 11.17(a) within five (5) Business Days after receipt by such replaced Lender of notice of replacement pursuant to this Section 11.17(c) and presentation to such replaced Lender of an Assignment Agreement evidencing an assignment pursuant to this Section 11.17(c), such replaced Lender shall be deemed to have consented to the terms of such Assignment Agreement, and any such Assignment Agreement executed by Agent, the Replacement Lender and, to the extent required pursuant to Section 11.17(a), Borrowers, shall be effective for purposes of this Section 11.17(c) and Section 11.17(a). Upon any such assignment and payment, such replaced Lender shall no longer constitute a "**Lender**" for purposes hereof, other than with respect to such rights and obligations that survive termination as set forth in Section 2.8(g) or Section 12.1.

(d) Credit Party Assignments. No Credit Party may assign, delegate or otherwise transfer any of its rights or other obligations hereunder or under any other Financing Document without the prior written consent of Agent and each Lender.

Section 11.18 Funding and Settlement Provisions Applicable When Non-Funding Lenders Exist. So long as Agent has not waived the conditions to the funding of Loans set forth in Section 7.2 or Section 2.1, any Lender may deliver a notice to Agent stating that such Lender shall cease making Revolving Loans due to the non-satisfaction of one or more conditions to funding Loans set forth in Section 7.2 or Section 2.1, and specifying any such non-satisfied conditions. Any Lender delivering any such notice shall become a non-funding Lender (a "**Non-Funding Lender**") for purposes of this Agreement commencing on the Business Day following receipt by Agent of such notice, and shall cease to be a Non-Funding Lender on the date on which such Lender has either revoked the effectiveness of such notice or acknowledged in writing to each of Agent the satisfaction of the condition(s) specified in such notice, or Required Lenders waive the conditions to the funding of such Loans giving rise to such notice by Non-Funding Lender. Each Non-Funding Lender shall remain a Lender for purposes of this Agreement to the extent that such Non-Funding Lender has Revolving Loan Outstanding in excess of Zero Dollars ($0); *provided, however,* that during any period of time that any Non-Funding Lender exists, and notwithstanding any provision to the contrary set forth herein, the following provisions shall apply:

(a) For purposes of determining the Pro Rata Share of each Lender under clause (b) of the definition of such term, each Non-Funding Lender shall be deemed to have a Revolving Loan Commitment Amount as in effect immediately before such Lender became a Non-Funding Lender.

(b) Except as provided in clause (a) above, the Revolving Loan Commitment Amount of each Non-Funding Lender shall be deemed to be Zero Dollars ($0).

(c) The Revolving Loan Commitment at any date of determination during such period shall be deemed to be equal to the sum of (i) the aggregate Revolving Loan Commitment Amounts of all Lenders, other than the Non-Funding Lenders as of such date *plus* (ii) the aggregate Revolving Loan Outstandings of all Non-Funding Lenders as of such date.

(d) Agent shall have no right to make or disburse Revolving Loans for the account of any Non-Funding Lender pursuant to Section 2.1(b)(i) to pay interest, fees, expenses and other charges of any Credit Party.

(e) To the extent that Agent applies proceeds of Collateral or other payments received by Agent to repayment of Revolving Loans pursuant to Section 10.7, such payments and proceeds shall be applied first in respect of Revolving Loans made at the time any Non-Funding Lenders exist, and second in respect of all other outstanding Revolving Loans.

ARTICLE 12 - MISCELLANEOUS

Section 12.1 Survival. All agreements, representations and warranties made herein and in every other Financing Document shall survive the execution and delivery of this Agreement and the other Financing Documents and the other Operative Documents. The provisions of Section 2.10 and Articles 11 and 12 shall survive the payment of the Obligations (both with respect to any Lender and all Lenders collectively) and any termination of this Agreement and any judgment with respect to any Obligations, including any final foreclosure judgment with respect to any Security Document, and no unpaid or unperformed, current or future, Obligations will merge into any such judgment.

Section 12.2 No Waivers. No failure or delay by Agent or any Lender in exercising any right, power or privilege under any Financing Document 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, power or privilege. The rights and remedies herein and therein provided shall be cumulative and not exclusive of any rights or remedies provided by law. Any reference in any Financing Document to the “continuing” nature of any Event of Default shall not be construed as establishing or otherwise indicating that any Borrower or any other Credit Party has the independent right to cure any such Event of Default, but is rather presented merely for convenience should such Event of Default be waived in accordance with the terms of the applicable Financing Documents.

Section 12.3 Notices.

(a) All notices, requests and other communications to any party hereunder shall be in writing (including prepaid overnight courier, facsimile transmission, email or similar writing) and shall be given to such party at its address, facsimile number or e-mail address set forth on the signature pages hereof (or, in the case of any such Lender who becomes a Lender after the date hereof, in an assignment agreement or in a notice delivered to Borrower Representative and Agent by the assignee Lender forthwith upon such assignment) or at such other address, facsimile number or e-mail address as such party may hereafter specify for the purpose by notice to Agent and Borrower Representative; *provided*, *however*, that notices, requests or other communications shall be permitted by electronic means only in

accordance with the provisions of Section 12.3(b) and (c). Each such notice, request or other communication shall be effective (i) if given by facsimile, when such notice is transmitted to the facsimile number specified by this Section and the sender receives a confirmation of transmission from the sending facsimile machine, or (ii) if given by mail, prepaid overnight courier or any other means, when received or when receipt is refused at the applicable address specified by this Section 12.3(a).

(b) Notices and other communications to the parties hereto may be delivered or furnished by electronic communication (including e-mail and internet or intranet websites) pursuant to procedures approved from time to time by Agent, *provided*, *however*, that the foregoing shall not apply to notices sent directly to any Lender if such Lender has notified Agent that it is incapable of receiving notices by electronic communication. Agent or Borrower Representative may, in their reasonable discretion, agree to accept notices and other communications to them hereunder by electronic communications pursuant to procedures approved by it, *provided*, *however*, that approval of such procedures may be limited to particular notices or communications.

(c) Unless Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgment from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgment), and (ii) notices or communications posted to an internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor, *provided*, *however*, that if any such notice or other communication is not sent or posted during normal business hours, such notice or communication shall be deemed to have been sent at the opening of business on the next Business Day.

Section 12.4 Severability. In case any provision of or obligation under this Agreement or any other Financing Document shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

Section 12.5 Headings. Headings and captions used in the Financing Documents (including the Exhibits, Schedules and Annexes hereto and thereto) are included for convenience of reference only and shall not be given any substantive effect.

Section 12.6 Confidentiality.

(a) Each Credit Party agrees (i) not to transmit or disclose provisions of any Financing Document to any Person (other than to Borrowers' agents, employees, Subsidiaries, Affiliates, attorneys, auditors, professional consultants, rating agencies, insurance industry associations and portfolio management services or as otherwise may be required by Law, subpoena, judicial order or similar order and in connection with any litigation) without Agent's prior written consent, (ii) to inform all Persons of the confidential nature of the Financing Documents and to direct them not to disclose the same to any other Person and to require each of them to be bound by these provisions.

(b) Agent and each Lender shall hold all non-public information regarding the Credit Parties and their respective businesses in accordance with such Person's customary procedures for handling information of such nature, except that disclosure of such information may be made (i) to their respective agents, employees, Subsidiaries, Affiliates, attorneys, auditors, professional consultants, rating agencies, insurance industry associations and portfolio management services, (ii) to prospective transferees or purchasers of any interest in the Loans, Agent or a Lender, *provided*, *however*, that any such Persons are bound by obligations of confidentiality, (iii) as required by Law, subpoena, judicial

order or similar order and in connection with any litigation, (iv) as may be required in connection with the examination, audit or similar investigation of such Person; *provided, however*, that any such persons are bound by obligations of confidentiality, and (v) to a Person that is a trustee, investment advisor or investment manager, collateral manager, servicer, noteholder or secured party in a Securitization (as hereinafter defined) in connection with the administration, servicing and reporting on the assets serving as collateral for such Securitization; *provided, however*, that any such persons are bound by obligations of confidentiality. For the purposes of this Section, "**Securitization**" means (A) the pledge of the Loans as collateral security for loans to a Lender, or (B) a public or private offering by a Lender or any of its Affiliates or their respective successors and assigns, of securities which represent an interest in, or which are collateralized, in whole or in part, by the Loans. Confidential information shall not include information that either: (y) is in the public domain, or becomes part of the public domain after disclosure to such Person through no fault of such Person, or (z) is disclosed to such Person by a Person other than a Credit Party, *provided, however*, Agent does not have actual knowledge that such Person is prohibited from disclosing such information. The obligations of Agent and Lenders under this Section 12.6 shall supersede and replace the obligations of Agent and Lenders under any confidentiality agreement in respect of this financing executed and delivered by Agent or any Lender prior to the date hereof.

Section 12.7 Waiver of Consequential and Other Damages. To the fullest extent permitted by applicable law, no Borrower shall assert, and each Borrower hereby waives, any claim against any Indemnitee (as defined below), on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of this Agreement, any other Financing Document or any agreement or instrument contemplated hereby or thereby, the transactions contemplated hereby or thereby, any Loan or the use of the proceeds thereof. No Indemnitee 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 Agreement or the other Financing Documents or the transactions contemplated hereby or thereby.

Section 12.8 GOVERNING LAW; SUBMISSION TO JURISDICTION.

(a) THIS AGREEMENT, EACH NOTE AND EACH OTHER FINANCING DOCUMENT, AND ALL DISPUTES AND OTHER MATTERS RELATING HERETO OR THERETO OR ARISING THEREFROM (WHETHER SOUNDING IN CONTRACT LAW, TORT LAW OR OTHERWISE), SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO CONFLICTS OF LAWS PRINCIPLES (OTHER THAN SECTION 5-1401 OF THE GENERAL OBLIGATIONS LAW).

(b) EACH PARTY HERETO HEREBY CONSENTS TO THE JURISDICTION OF ANY STATE OR FEDERAL COURT LOCATED IN THE STATE OF NEW YORK IN THE CITY OF NEW YORK, BOROUGH OF MANHATTAN, AND IRREVOCABLY AGREES THAT ALL ACTIONS OR PROCEEDINGS ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE OTHER FINANCING DOCUMENTS SHALL BE LITIGATED IN SUCH COURTS. EACH PARTY HERETO EXPRESSLY SUBMITS AND CONSENTS TO THE JURISDICTION OF THE AFORESAID COURTS AND WAIVES ANY DEFENSE OF FORUM NON CONVENIENS. EACH PARTY HERETO HEREBY WAIVES PERSONAL SERVICE OF ANY AND ALL PROCESS AND AGREES THAT ALL SUCH SERVICE OF PROCESS MAY BE MADE UPON SUCH PARTY BY CERTIFIED OR REGISTERED MAIL, RETURN RECEIPT REQUESTED, ADDRESSED TO SUCH PARTY AT THE ADDRESS SET FORTH IN THIS AGREEMENT AND SERVICE SO MADE SHALL BE COMPLETE TEN (10) DAYS AFTER THE SAME HAS BEEN POSTED.

Section 12.9 **WAIVER OF JURY TRIAL**.

(a) EACH BORROWER, AGENT AND THE LENDERS HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THE FINANCING DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED THEREBY AND AGREES THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY. EACH BORROWER, AGENT AND EACH LENDER ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO A BUSINESS RELATIONSHIP, THAT EACH HAS RELIED ON THE WAIVER IN ENTERING INTO THIS AGREEMENT AND THE OTHER FINANCING DOCUMENTS, AND THAT EACH WILL CONTINUE TO RELY ON THIS WAIVER IN THEIR RELATED FUTURE DEALINGS. EACH BORROWER, AGENT AND EACH LENDER WARRANTS AND REPRESENTS THAT IT HAS HAD THE OPPORTUNITY OF REVIEWING THIS JURY WAIVER WITH LEGAL COUNSEL, AND THAT IT KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS.

(b) In the event any such action or proceeding is brought or filed in any United States federal court sitting in the State of California or in any state court of the State of California, and the waiver of jury trial set forth in Section 12.9(a) hereof is determined or held to be ineffective or unenforceable, the parties agree that all actions or proceedings shall be resolved by reference to a private judge sitting without a jury, pursuant to California Code of Civil Procedure Section 638, before a mutually acceptable referee or, if the parties cannot agree, a referee selected by the Presiding Judge of the Los Angeles County, California. Such proceeding shall be conducted in Los Angeles County, California, with California rules of evidence and discovery applicable to such proceeding. In the event any actions or proceedings are to be resolved by judicial reference, any party may seek from any court having jurisdiction thereover any prejudgment order, writ or other relief and have such prejudgment order, writ or other relief enforced to the fullest extent permitted by Law notwithstanding that all actions or proceedings are otherwise subject to resolution by judicial reference.

Section 12.10 Publication; Advertisement.

(a) Publication. No Credit Party will directly or indirectly publish, disclose or otherwise use in any public disclosure, advertising material, promotional material, press release or interview, any reference to the name, logo or any trademark of MCF or any of its Affiliates or any reference to this Agreement or the financing evidenced hereby, in any case except (i) as required by Law, subpoena or judicial or similar order, in which case the applicable Credit Party shall give Agent prior written notice of such publication or other disclosure, or (ii) with MCF's prior written consent.

(b) Advertisement. Each Lender and each Credit Party hereby authorizes MCF to publish the name of such Lender and Credit Party, the existence of the financing arrangements referenced under this Agreement, the primary purpose and/or structure of those arrangements, the amount of credit extended under each facility, the title and role of each party to this Agreement, and the total amount of the financing evidenced hereby in any "tombstone", comparable advertisement or press release which MCF elects to submit for publication. In addition, each Lender and each Credit Party agrees that MCF may provide lending industry trade organizations with information necessary and customary for inclusion in league table measurements after the Closing Date. With respect to any of the foregoing, MCF shall provide Borrowers with an opportunity to review and confer with MCF regarding the contents of any such tombstone, advertisement or information, as applicable, prior to its submission for publication and, following such review period, MCF may, from time to time, publish such information in any media form desired by MCF, until such time that Borrowers shall have requested MCF cease any such further publication.

Section 12.11 Counterparts; Integration. This Agreement and the other Financing Documents may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument. Signatures by facsimile or by electronic mail delivery of an electronic version of any executed signature page shall bind the parties hereto. This Agreement and the other Financing Documents constitute the entire agreement and understanding among the parties hereto and supersede any and all prior agreements and understandings, oral or written, relating to the subject matter hereof.

Section 12.12 No Strict Construction. The parties hereto have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties hereto and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provisions of this Agreement.

Section 12.13 Lender Approvals. Unless expressly provided herein to the contrary, any approval, consent, waiver or satisfaction of Agent or Lenders with respect to any matter that is the subject of this Agreement, the other Financing Documents may be granted or withheld by Agent and Lenders in their sole and absolute discretion and credit judgment.

Section 12.14 Expenses; Indemnity

(a) Except with respect to Indemnified Taxes, Other Taxes, and Excluded Taxes which shall be governed exclusively by Section 2.8, Borrowers hereby agree to promptly pay (i) all reasonable and documented costs and expenses of Agent (including, without limitation, the reasonable and documented fees, costs and expenses of one primary counsel and one counsel in each applicable specialty or jurisdiction to, and independent appraisers and consultants retained by, Agent; *provided* that no such restriction on the use of a single counsel shall apply if an Event of Default has occurred and is continuing) in connection with the examination, review, due diligence investigation, documentation, negotiation, closing and syndication of the transactions contemplated by the Financing Documents, in connection with the performance by Agent of its rights and remedies under the Financing Documents and in connection with the continued administration of the Financing Documents including (A) any amendments, modifications, consents and waivers to and/or under any and all Financing Documents, and (B) any periodic public record searches conducted by or at the request of Agent (including, without limitation, title investigations, UCC searches, fixture filing searches, judgment, pending litigation and tax lien searches and searches of applicable corporate, limited liability, partnership and related records concerning the continued existence, organization and good standing of certain Persons); (ii) without limitation of the preceding clause (i), all reasonable and documented costs and expenses of Agent in connection with the creation, perfection and maintenance of Liens pursuant to the Financing Documents; (iii) without limitation of the preceding clause (i), (A) all reasonable and documented costs and expenses of Agent in connection with protecting, storing, insuring, handling, maintaining or selling any Collateral, and (B) all documented costs and expenses of Agent in connection with (I) any litigation, dispute, suit or proceeding relating to any Financing Document, and (II) any workout, collection, bankruptcy, insolvency and other enforcement proceedings under any and all of the Financing Documents; (iv) without limitation of the preceding clause (i), all reasonable and documented costs and expenses of Agent in connection with Agent's reservation of funds in anticipation of the funding of the initial Loans to be made hereunder; and (v) all documented costs and expenses incurred by Lenders in connection with any litigation, dispute, suit or proceeding relating to any Financing Document and in connection with any workout, collection, bankruptcy, insolvency and other enforcement proceedings under any and all Financing Documents, whether or not Agent or Lenders are a party thereto; *provided* that so long as no Event of Default has occurred and is continuing, the Lenders shall be limited to one primary counsel (except in the case of any conflict of interest) and one counsel in each applicable specialty or jurisdiction and Agent shall be limited to one primary counsel and one counsel in each applicable specialty or jurisdiction.

(b) Each Borrower hereby agrees to indemnify, pay and hold harmless Agent and Lenders and the officers, directors, employees, trustees, agents, investment advisors and investment managers, collateral managers, servicers, and counsel of Agent and Lenders (collectively called the "**Indemnitees**") from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, claims, costs, expenses and disbursements of any kind or nature whatsoever (including the fees and disbursements of counsel for such Indemnitee) in connection with any investigative, response, remedial, administrative or judicial matter or proceeding, whether or not such Indemnitee shall be designated a party thereto and including any such proceeding initiated by or on behalf of a Credit Party, and the reasonable expenses of investigation by engineers, environmental consultants and similar technical personnel and any commission, fee or compensation claimed by any broker (other than any broker retained by Agent or Lenders) asserting any right to payment for the transactions contemplated hereby, which may be imposed on, incurred by or asserted against such Indemnitee as a result of or in connection with the transactions contemplated hereby or by the other Operative Documents (including (i)(A) as a direct or indirect result of the presence on or under, or escape, seepage, leakage, spillage, discharge, emission or release from, any property now or previously owned, leased or operated by Borrower, any Subsidiary or any other Person of any Hazardous Materials, (B) arising out of or relating to the offsite disposal of any materials generated or present on any such property, or (C) arising out of or resulting from the environmental condition of any such property or the applicability of any governmental requirements relating to Hazardous Materials, whether or not occasioned wholly or in part by any condition, accident or event caused by any act or omission of Borrower or any Subsidiary, and (ii) proposed and actual extensions of credit under this Agreement) and the use or intended use of the proceeds of the Loans, except that Borrower shall have no obligation hereunder to an Indemnitee with respect to any liability resulting from (x) the gross negligence or willful misconduct of such Indemnitee, as determined by a final non-appealable judgment of a court of competent jurisdiction, (y) a material breach by any such Indemnitee or any of such Indemnitee's Affiliates of the obligations under this Agreement or any other Financing Document, as determined in a final, non-appealable judgment of a court of competent jurisdiction or (z) disputes solely among any Indemnitees (other than any claims against an Indemnitee in its capacity or in fulfilling its role as Agent, arranger or any similar role hereunder) to the extent such disputes do not arise from any act or omission of any Credit Party or of any of any Credit Party's Affiliates, unless such claims arise from the bad faith, gross negligence or willful misconduct of any such person. To the extent that the undertaking set forth in the immediately preceding sentence may be unenforceable, Borrower shall contribute the maximum portion which it is permitted to pay and satisfy under applicable Law to the payment and satisfaction of all such indemnified liabilities incurred by the Indemnitees or any of them.

(c) Notwithstanding any contrary provision in this Agreement, the obligations of Borrowers under this Section 12.14 shall survive the payment in full of the Obligations and the termination of this Agreement. NO INDEMNITEE SHALL BE RESPONSIBLE OR LIABLE TO THE BORROWERS OR TO ANY OTHER PARTY TO ANY FINANCING DOCUMENT, ANY SUCCESSOR, ASSIGNEE OR THIRD PARTY BENEFICIARY OR ANY OTHER PERSON ASSERTING CLAIMS DERIVATIVELY THROUGH SUCH PARTY, FOR INDIRECT, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES WHICH MAY BE ALLEGED AS A RESULT OF CREDIT HAVING BEEN EXTENDED, SUSPENDED OR TERMINATED UNDER THIS AGREEMENT OR ANY OTHER FINANCING DOCUMENT OR AS A RESULT OF ANY OTHER TRANSACTION CONTEMPLATED HEREUNDER OR THEREUNDER.

(d) This Section 12.14 shall not apply with respect to Taxes other than any Taxes that represent losses, claims, damages, etc. arising from any non-Tax claim.

(e) Each Borrower for itself and all endorsers, guarantors and sureties and their heirs, legal representatives, successors and assigns, hereby further specifically waives any rights that it may have under Section 1542 of the California Civil Code (to the extent applicable), which provides as follows: "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR," and further waives any similar rights under applicable Laws.

Section 12.15 RESERVED.

Section 12.16 Reinstatement. This Agreement shall remain in full force and effect and continue to be effective should any petition or other proceeding be filed by or against any Credit Party for liquidation or reorganization, should any Credit Party become insolvent or make an assignment for the benefit of any creditor or creditors or should an interim receiver, receiver, receiver and manager or trustee be appointed for all or any significant part of any Credit Party's assets, and shall continue to be effective or to be reinstated, as the case may be, if at any time payment and performance of the Obligations, or any part thereof, is, pursuant to applicable law, rescinded or reduced in amount, or must otherwise be restored or returned by any obligee of the Obligations, whether as a fraudulent preference reviewable transaction or otherwise, all as though such payment or performance had not been made. In the event that any payment, or any part thereof, is rescinded, reduced, restored or returned, the Obligations shall be reinstated and deemed reduced only by such amount paid and not so rescinded, reduced, restored or returned.

Section 12.17 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of Borrowers and Agent and each Lender and their respective successors and permitted assigns.

Section 12.18 USA PATRIOT Act Notification. Agent (for itself and not on behalf of any Lender) and each Lender hereby notifies Borrowers that pursuant to the requirements of the USA PATRIOT Act, it is required to obtain, verify and record certain information and documentation that identifies Borrowers, which information includes the name and address of Borrower and such other information that will allow Agent or such Lender, as applicable, to identify Borrowers in accordance with the USA PATRIOT Act.

Section 12.19 Warrants. Notwithstanding anything to the contrary herein, any warrants issued to the Lenders (or any designated Affiliate thereof) by any Credit Party, the stock issuable thereunder, any equity securities purchased by Lenders, any amounts paid thereunder, any dividends, and any other rights in connection therewith shall not be subject to the terms and conditions of this Agreement. Nothing herein shall affect any Lender's rights under any such warrants, stock, or other equity securities to administer, manage, transfer, assign, or exercise such warrants, stock, or other equity securities for its own account.

Section 12.20 Acknowledgement and Consent to Bail-In of EEA Financial Institutions. Notwithstanding anything to the contrary in any Financing Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any EEA Financial Institution arising under any Financing Document, to the extent such liability is unsecured, may be subject to the write-down and conversion powers of an EEA 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 an EEA Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an EEA 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 EEA 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 Agreement or any other Financing 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 EEA Resolution Authority.

Section 12.21 Cross Default and Cross Collateralization.

(a) Cross-Default. As stated under Section 10.1 hereof, an Event of Default under any of the Affiliated Financing Documents shall be an Event of Default under this Agreement.

(b) Cross Collateralization. Borrowers acknowledge and agree that the Collateral securing this Loan, also secures the Affiliated Obligations.

(c) Consent. Each Borrower authorizes Agent, without giving notice to any Borrower or obtaining the consent of any Borrower and without affecting the liability of any Borrower for the Affiliated Obligations directly incurred by the Borrowers, from time to time to:

(i) compromise, settle, renew, extend the time for payment, change the manner or terms of payment, discharge the performance of, decline to enforce, or release all or any of the Affiliated Obligations; grant other indulgences to any Borrowers in respect thereof; or modify in any manner any documents relating to the Affiliated Obligations;

(ii) declare all Affiliated Obligations due and payable upon the occurrence and during the continuance of an Event of Default;

(iii) take and hold security for the performance of the Affiliated Obligations of any Borrowers and exchange, enforce, waive and release any such security;

(iv) apply and reapply such security and direct the order or manner of sale thereof as Agent, in its sole discretion, may determine;

(v) release, surrender or exchange any deposits or other property securing the Affiliated Obligations or on which Agent at any time may have a Lien; release, substitute or add any one or more endorsers or guarantors of the Affiliated Obligations of any Borrowers; or compromise, settle, renew, extend the time for payment, discharge the performance of, decline to enforce, or release all or any obligations of any such endorser or guarantor or other Person who is now or may hereafter be liable on any Affiliated Obligations or release, surrender or exchange any deposits or other property of any such Person;

(vi) apply payments received by Lender from Borrower to any Obligations or Affiliated Obligations, in such order as Lender shall determine, in its sole discretion (in accordance with the terms of this Agreement and the Affiliated Credit Agreement, as applicable); and

(vii) assign the Affiliated Financing Documents in whole or in part in accordance with the terms thereof.

Section 12.22 Existing Agreements Superseded; Exhibits and Schedules.

(a) The Original Credit Agreement, including the schedules thereto, is superseded by this Agreement, including the schedules hereto, which has been executed in amendment, restatement and modification of, but not in novation or extinguishment of, the obligations under the Original Credit Agreement. It is the express intention of the parties hereto to reaffirm the indebtedness and other obligations created under the Original Credit Agreement. Any and all outstanding amounts under the Original Credit Agreement including, but not limited to principal, accrued interest, fees (except as otherwise provided herein) and other charges, as of the Closing Date shall be carried over and deemed outstanding under this Agreement, including as specifically set forth in Section 2.1.

(b) Each Credit Party reaffirms its obligations under each Financing Document to which it is a party, including but not limited to the Security Documents and the schedules thereto.

(c) Each Credit Party acknowledges and confirms that (i) the Liens and security interests granted pursuant to the Financing Documents secure the indebtedness, liabilities and obligations of the Borrowers and the other Credit Parties to Agent and the Lenders under the Original Credit Agreement, as amended and restated hereby, and that the term “Obligations” as used in the Financing Documents (or any other term used therein to describe or refer to the indebtedness, liabilities and obligations of the Borrowers to Agent and the Lenders) includes, without limitation, the indebtedness, liabilities and obligations of the Borrowers under this Agreement and the Notes to be delivered hereunder, if any, and under the Original Credit Agreement, as amended and restated hereby, as the same may be further amended, restated, supplemented and/or modified from time to time, and (ii) the grants of Liens under and pursuant to the Financing Documents shall continue unaltered, and each other Financing Document shall continue in full force and effect in accordance with its terms unless otherwise amended by the parties thereto, and the parties hereto hereby ratify and confirm the terms thereof as being in full force and effect and unaltered by this Agreement and all references in the any of the Financing Documents to the “Credit Agreement” shall be deemed to refer to this Amended and Restated Credit Agreement.

(d) Nothing herein contained shall be construed as a substitution or novation of the obligations outstanding under the Original Credit Agreement or the other Financing Documents. Nothing in this Agreement shall be construed as a release or other discharge of any Borrower or any other Credit Party from its obligations and liabilities under the Original Credit Agreement or the other Financing Documents. On the Closing Date, any and all references in any Financing Documents to the Original Credit Agreement shall be deemed to be amended to refer to this Agreement.

[SIGNATURES APPEAR ON FOLLOWING PAGE(S)]

IN WITNESS WHEREOF, intending to be legally bound, each of the parties have caused this Agreement to be executed under seal the day and year first above mentioned.

BORROWERS:

SIGHT SCIENCES, INC.

By: /s/ Jesse Selnick
Name: Jesse Selnick
Title: CFO

Address:

4040 Campbell, Suite 100
Menlo Park, CA 94025
Attn: Jesse Selnick
E-Mail: xxx@sightsciences.com
Robert Geronimo
E-Mail: xxx@sightsciences.com
Facsimile: 650-352-2509

AGENT:

MIDCAP FUNDING IV TRUST

By: Apollo Capital Management, L.P.,
its investment manager

By: Apollo Capital Management GP, LLC,
its general partner

By: /s/ Maurice Amsellem
Name: Maurice Amsellem
Title: Authorized Signatory

Address:

c/o MidCap Financial Services, LLC, as servicer
7255 Woodmont Avenue, Suite 300
Bethesda, Maryland 20814
Attn: Account Manager for Sight Sciences transaction
Facsimile: 301-941-1450
E-mail: notices@midcapfinancial.com

with a copy to:

c/o MidCap Financial Services, LLC, as servicer
7255 Woodmont Avenue, Suite 300
Bethesda, Maryland 20814
Attn: General Counsel
Facsimile: 301-941-1450
E-mail: legalnotices@midcapfinancial.com

Payment Account Designation:

Wells Fargo Bank, N.A. (McLean, VA)
ABA #: XXX
Account Name: MidCap Funding IV Trust – Collections
Account #: XXX
Attention: Sight Sciences Facility

LENDER:

MIDCAP FUNDING IV TRUST

By: Apollo Capital Management, L.P.,
its investment manager

By: Apollo Capital Management GP, LLC,
its general partner

By: /s/ Maurice Amsellem
Name: Maurice Amsellem
Title: Authorized Signatory

Address:

c/o MidCap Financial Services, LLC, as servicer
7255 Woodmont Avenue, Suite 300
Bethesda, Maryland 20814
Attn: Account Manager for Sight Sciences transaction
Facsimile: 301-941-1450
E-mail: notices@midcapfinancial.com

with a copy to:

c/o MidCap Financial Services, LLC, as servicer
7255 Woodmont Avenue, Suite 300
Bethesda, Maryland 20814
Attn: General Counsel
Facsimile: 301-941-1450
E-mail: legalnotices@midcapfinancial.com

ANNEXES, EXHIBITS AND SCHEDULES

ANNEXES

Annex A	Commitment Annex

EXHIBITS

Exhibit A	[Reserved]
Exhibit B	Form of Compliance Certificate
Exhibit C	Borrowing Base Certificate
Exhibit D	Form of Notice of Borrowing
Exhibit E-1	Form of U.S. Tax Compliance Certificate
Exhibit E-2	Form of U.S. Tax Compliance Certificate
Exhibit E-3	Form of U.S. Tax Compliance Certificate
Exhibit E-4	Form of U.S. Tax Compliance Certificate

SCHEDULES

Schedule 3.1	Existence, Organizational ID Numbers, Foreign Qualification, Prior Names
Schedule 3.4	Capitalization
Schedule 3.6	Litigation
Schedule 3.17	Material Contracts
Schedule 3.18	Environmental Compliance
Schedule 3.19	Intellectual Property
Schedule 4.9	Litigation, Governmental Proceedings and Other Notice Events
Schedule 4.17	Products
Schedule 5.1	Debt; Contingent Obligations
Schedule 5.2	Liens
Schedule 5.7	Permitted Investments
Schedule 5.8	Affiliate Transactions
Schedule 5.11	Business Description
Schedule 5.14	Deposit Accounts and Securities Accounts
Schedule 6.1	Net Revenue
Schedule 7.4	Post-Closing Obligations
Schedule 9.1	Collateral
Schedule 9.2(b)	Location of Collateral
Schedule 9.2(d)	Chattel Paper, Letter of Credit Rights, Commercial Tort Claims, Instruments, Documents, Investment Property

SUPPLY AGREEMENT

This Supply Agreement (**"Agreement"**) is made effective as of January 14, 2021 (**"Effective Date"**) between Sight Sciences, Inc., a Delaware corporation with its principal office and place of business at 4040 Campbell Avenue, Suite 100, Menlo Park, California 94025 (**"Buyer"**), and Peter's Technology (Suzhou) CO., LTD., a Suzhou, Jiangsu Province corporation, with its principal place of business at No. 99 Jishi East Road, Wu Jiang District, Suzhou City, Jiangsu Province, P.R. China 215200 (**"Supplier"**).

BACKGROUND

A. Supplier manufactures and/or supplies the Products listed in Exhibit A, and

B. Buyer designs, manufactures and sells medical devices and wishes to purchase the Products for use in its business.

TERMS OF AGREEMENT

For good, valuable and sufficient consideration, Buyer and Supplier agree as follows:

1. DEFINITIONS

1.1 In addition to capitalized terms defined elsewhere in this Agreement, when used in this Agreement the following capitalized terms have the meanings indicated below:

"**Agreement**" means this Agreement, all Exhibits and any purchase orders placed under this Agreement.

"**Applicable Law**" means any law, statute, code, rule, regulation, published interpretation, ordinance, directive, regulatory bulletin or guidance, regulatory examination or order, treaty, judgment, order, decree or injunction of any Governmental Authority that is applicable to or binding in the jurisdiction and/or situation in which the term is used.

"**Buyer Intellectual Property**" means Intellectual Property that is owned or controlled by Buyer as of the Effective Date or comes into Buyer's ownership, possession or control after the Effective Date, including, without limitation, the Buyer Confidential Information, Developed Intellectual Property and the Specifications (as well as the Intellectual Property embodied in the Equipment and Tools).

"cGMP" shall mean Good Manufacturing Practices as promulgated under the FD&C Act (including Quality System Regulation for medical devices, as defined in 21 C.F.R. Part 820), as well as any other applicable regulations, policies or guidelines, as then in effect, of the FDA and other United States or foreign governmental or regulatory agencies with jurisdiction over the manufacture, use, distribution or sale of the Products.

"**Developed Intellectual Property**" means Intellectual Property that comes into existence (as measured from October 1, 2020) in the course of or relating to Supplier's performance of its obligations under this Agreement that is derived from Buyer's Intellectual Property or its Confidential Information. Developed Intellectual Property shall constitute Buyer Intellectual Property.

"**FDA**" means the United States Food and Drug Administration, and any successor agency having substantially the same functions.

"FD&C Act" shall mean the U.S. Federal Food, Drug & Cosmetic Act, as in effect from time to time.

"**Force Majeure**" means riots, war, terrorism, invasion, acts of God, pandemic, fire, explosion, floods, orders of a Governmental Authority or any other cause beyond the reasonable control and without the fault or negligence of a party that prevent such party's performance under this Agreement.

"**Governmental Authority**" means any government, state or political subdivision thereof and any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, including federal, state or local entities in the jurisdiction and/or situation in which the term is used.

"**Import/Export Laws**" means all laws, treaties, governmental orders and regulations of the countries from which a Product is exported and to which a Product is imported, including rules regarding classification, marking, packaging, and payments of tariffs and duties.

"**Intellectual Property**" means ideas, design specifications, inventions, proprietary information, trade secrets, research and development data, manufacturing processes/procedures, software, works of authorship, improvements, or suggestions, whether or not patentable or copyrightable, conceived, created, adapted, or reduced to practice by or for a party, whether made alone or in conjunction with others.

"Latent Defect" shall mean a defect that causes a Product to not conform to Buyer's purchase order or Specifications, or to the Product Warranties, which defect is not discoverable upon reasonable physical inspection.

"**Manufacture**" and "**Manufacturing**" means all steps, processes and activities necessary to produce Product(s), including without limitation, the design, manufacturing, processing, quality control testing, release and storage of Product(s) in accordance with the terms and conditions of this Agreement.

"**Personnel**" means Supplier's employees, agents, contractors, consultants and subcontractors whose services are used in accordance with the terms of this Agreement to perform its obligations under this Agreement.

"**Product(s)**" means the goods purchased by Buyer from or through Supplier listed on Exhibit A, as the same may be supplemented or revised by the parties.

"**Product Warranties**" shall mean the representations and warranties made by Supplier in Sections 8.1 and 8.2 of this Agreement

"**Publicly Available Software**" means (a) any software that contains, or is derived in any manner (in whole or in part) from, any software that is distributed as free software, open source software or similar licensing or distribution models; and (b) any software that requires as a condition of use, modification, and/or distribution of such software that such software or other software incorporated into, derived from, or distributed with such software (i) be disclosed or distributed in source code from, (ii) be licensed for the purpose of making derivative works, or (iii) be redistributable at no charge.

"**Quality Requirements**" means, with respect to a Product, the requirements set forth in this Agreement and in any written quality agreement or other written standards provided by Buyer covering such Product and agreed between Buyer and Supplier.

"**Restricted Party Lists**" means (i) any of the restricted party lists maintained by the U.S. Government, including the Specially Designated Nationals List and Foreign Sanctions Evaders List administered by the U.S. Department of Treasury's Office of Foreign Assets Controls (OFAC), the Denied Parties List, Unverified List or Entity List maintained by the U.S. Department of Commerce Bureau of Industry and Security, and the List of Statutorily Debarred Parties maintained by the U.S. State Department's Directorate of Defense Trade Controls, (ii) the consolidated list of asset freeze targets designated by the United Nations, European Union, and United Kingdom, and any other applicable jurisdictions, and (iii) any other restricted party lists maintained by any Governmental Authority.

"**Specifications**" means all applicable specifications and protocols relative to the design, physical characteristics, function, performance, Manufacture, packaging and quality of the Products listed on Exhibit A or as otherwise communicated in writing by Buyer, including, without limitation, the specifications set forth on attached Exhibit B.

"**Supplier Facility**" means the manufacturing facility where Supplier will Manufacture a Product, which facility is located as specified in the purchase order placed thereunder, quality agreement, or such other facility designated by Supplier and accepted by Buyer in a separate writing by the parties.

"**Supplier Intellectual Property**" means Intellectual Property that is owned by or licensed to (with the right to grant sublicenses) Supplier and exists on the Effective Date or is thereafter developed by or licensed to Supplier independent of Buyer Intellectual Property (and excluding in all instances the Buyer Intellectual Property).

"**Trade Control Laws**" means all applicable export control and economic sanctions laws and regulations of the United States, the European Union and all other applicable jurisdictions, including but not limited to the U.S. Department of Commerce Bureau of Industry and Security's Export Administration Regulations, 15 C.F.R. 730-774, the economic sanctions programs administered by the U.S. Department of Treasury's Office of Foreign Assets Controls ("OFAC"), as set forth in 31 C.F.R. 500-598 and certain executive orders, EU Regulation 428/2009 imposing controls on exports of dual-use items, OJ L 134, 29.5.2009, p. 1, and economic sanctions regulations implemented by the European Council, and any export controls or economic sanctions measures implemented by EU Member States.

2. PRODUCT ORDERING AND SALE

2.1 **Sale of Products**. Supplier shall sell and supply the Products to Buyer at the prices established pursuant to Section 3. To the extent a Product includes embedded software, the term "sell" means, with respect to such software, the grant of a non-exclusive, fully-paid, perpetual, worldwide, sublicensable (through multiple tiers of sublicensees), assignable license for Buyer to market, sell, distribute and otherwise use and exploit, and to allow Buyer's customers and end-users to use, such software in connection with the Product.

2.2 **Other Sales**. Supplier will not, during the term of this Agreement, provide any Product to any third party without the prior written approval of Buyer. This obligation shall survive the expiration or termination of the Agreement for a period of one (1) year and indefinitely with respect to Products and products that utilize, are derived from or embody any Buyer Intellectual Property, including, without limitation, any Specifications. The obligations in this Section 2.2 shall not apply with respect to products that were developed by Supplier or a third party without the use of Buyer Intellectual Property.

2.3 **Firm Order and Forecasting**. Buyer will submit to Supplier the orders and forecasts below to assist Supplier in anticipating Buyer's Product needs for twelve-months into the future.

2.3.1 *Firm Orders*. An order to which Buyer is bound will be referred to in this Section 2.3 as a "Firm Order." Firm Orders may be rescheduled only by mutual agreement or cancelled in accordance with Section 2.4.3 (Termination of Orders). Buyer shall provide Supplier with an initial Firm Order for Products for three (3) months.

2.3.2 *Product Order Process*. Products will be ordered via standard Buyer purchase orders, which shall, at a minimum, identify the Products and set forth the corresponding quantities, confirmation of price, delivery dates, shipping instructions and shipping addresses. Buyer may submit purchase orders via mail, fax, email or, if mutually agreed by the parties, electronic data interchange (EDI). Orders will be deemed accepted upon receipt.

2.3.3 *Initial Forecast.* Buyer shall also provide Supplier with a written, non-binding, Product purchase forecast in monthly increments consisting of a forecast for the nine (9) months after the end of the Firm Order ("**Planning Period**"). The above forecasts for the Planning Period are non-binding, and Buyer may change them at any time by providing a new written forecast to Supplier.

2.3.4 *Subsequent Forecasts and Orders*. At the start of each calendar month, the Products forecast for the first month of the Planning Period forecast automatically become part of an additional month Firm Order at the end of the then-current Firm Order, so that a rolling Firm Order of three (3) months is always maintained. Within the first seven (7) Business Days after the start of each calendar month, Buyer shall deliver a new Planning Period forecast, revised so that forecasts for nine (9) month periods are always maintained.

2.4 **Order Terms**.

2.4.1 *Surge Capacity*. Supplier shall satisfy all Buyer orders that are submitted in a manner consistent with the terms of this Agreement. Supplier shall have the capacity to satisfy at least a thirty percent (30%) increase over the forecasted amount; provided, however, a reasonable ninety (90) days advance written notice relating to such increase is provided to Supplier by Buyer.

2.4.2 *Allocation*. Supplier will provide Buyer one hundred percent (100%) of the quantities of Products forecasted and will use reasonable best efforts to provide all other quantities ordered. If Supplier cannot deliver all Products when due, Supplier shall give Buyer's purchase orders first priority to capacity for production and delivery of Products other than only as to capacity necessary to fulfill mandatory government contract commitments. In addition, and not in lieu of the foregoing, if Supplier fails to deliver Product on a timely basis and to cure such breach within thirty (30) days after Buyer's written notice and Buyer is required to procure such Product from another supplier, Supplier shall pay for any reasonable increase over the relevant price on Exhibit A or the purchase order submitted thereunder. In any event, if Supplier cannot supply the full amount of the order within the time requested and cannot cure the breach within the time limit specified in this Agreement, Buyer may terminate any or all of such order.

2.4.3 *Termination of Orders*. Buyer may terminate in whole or in part an order or orders by written notice to Supplier (i) for safety or regulatory reasons caused by Supplier, (ii) if, as a result of a Force Majeure event, Supplier remains unable to deliver such Product for more than ninety (90) days, or (iii) if Supplier fails to cure a material breach with respect to the order within thirty (30) days after written notice.

2.5 **Delivery**.

2.5.1 *Shipping Terms*. Unless otherwise specified in an applicable order, delivery of Products will be Ex Works (Incoterms, as then in effect) Supplier's Facility, and title and risk of loss will pass at that point.

2.5.2 *Shipment*. Shipment of the Products will be freight collect via Buyer-designated mode and carrier. Supplier will ship Products using the method of shipment and carrier specified on Buyer's purchase order, or if none is specified, via Buyer's preferred carrier such that the Products will be delivered by the requested delivery dates and to the locations specified in

Buyer's purchase orders. Supplier shall use the Buyer account number, if available, with such carriers when shipping Products. Unless the carrier is specified on the purchase order, Supplier shall verify with Buyer that the carrier is a preferred Buyer carrier before shipping Products. Supplier shall provide Buyer electronic notice of each Product shipment on the shipment/delivery date. Supplier shall include a packing list, certificate of conformance and lot history record (in addition to such other equivalent documentation as may be agreed to by the parties) in each shipment. Pursuant to this documentation, Seller shall certify that the Products contained in each such shipment comply in all respects with the Specifications and applicable Quality Requirements.

2.5.3 *Delays*. Supplier shall promptly notify Buyer of any actual or prospective delay in delivery, and Supplier shall obtain Buyer's approval prior to making any partial deliveries. If the delivery of Product is delayed through the fault of Supplier and Supplier has failed to cure such delay within any applicable cure periods as specified in this Agreement, Buyer may, at its option, in addition to its other rights and remedies under this Agreement, terminate or reschedule the order in whole or in part without liability or require Supplier to deliver Product by means of commercially reasonable premium transport agreed by the parties, at Supplier's cost (of which Supplier will pay for the difference between the premium transport costs and the Buyer's original shipping costs) or take a two percent (2%) discount on all orders delayed more than thirty (30) days. Product shall not be delivered early without Buyer's prior written consent. In the event of a rescheduled or cancelled order per this section, Buyer still shall be considered to have met all firm or other commitments set forth in Section 2.3 as to the period in which such orders were originally scheduled and any rescheduled amount shall further count toward any firm commitment for the period in which it is actually delivered.

2.5.4 *Acceptance and Rejection*. Buyer may reject any Product that does not conform to the Specifications or to the Product Warranties. To reject a Product, Buyer must give written notice of rejection to Supplier within sixty (60) days after receipt of such Product or, in the case of a Latent Defect, within sixty (60) days after Buyer becomes aware of such Latent Defect, which notice shall specify Buyer's reason for rejection. If no such notice of rejection is received within sixty (60) days after receipt of the Product or, in the case of a Latent Defect, within sixty (60) days after Buyer becomes aware of such Latent Defect, Buyer shall be deemed to have accepted such shipment of Products, provided that, notwithstanding any acceptance or deemed acceptance of Products, the Product Warranties shall continue to cover the Supplier Product. Any Product rejected by Buyer will be returned to Supplier at Supplier's request and expense within sixty (60) days after receipt of such Product or, in the case of a Latent Defect, within sixty (60) days after Buyer becomes aware of such Latent Defect. Whether or not Supplier accepts Buyer's basis for rejection, Supplier will supply replacement Product within thirty (30) days of notice of rejection at no additional cost. Within thirty (30) days after receiving any notice of rejection from Buyer, Supplier will respond stating whether (a) it accepts the rejection or (b) it disputes the rejection, in which case the parties will refer such dispute to a mutually acceptable independent third party with the appropriate expertise to assess the conformity or non-conformity of the rejected Product to the Product Warranties. Such independent third party shall examine or test the applicable Products and shall determine whether such Products conformed or did not conform to the Product Warranties. The parties agree that such third party's determination shall be final and binding upon the parties. The party against whom the independent third party rules shall bear the costs of testing by such independent third party, and if such third party determines that Buyer's rejection of the Products was incorrect, Buyer will purchase and pay for both the initially rejected Products and the replacement Products.

3. PRICING AND PAYMENT

3.1 **Prices.**

3.1.1 *Product Pricing*. Product prices shall be calculated as provided in Exhibit A and will not increase for an initial period of one (1) year. Thereafter such prices will be subject to review and good faith negotiation at the request of either party, not more than once per year. Mutually agreed prices will remain in effect until changed on the basis specified in this Section 3.1.

3.1.2 *Cost Reductions*. Supplier shall use commercially reasonable best efforts to reduce the aggregate cost of Products. Cost reduction efforts shall not compromise quality or reliability, and Supplier shall comply with the Quality Requirements with respect to design and process changes. Supplier shall give Buyer notice of the cost reductions as soon as practicable, but in any event within thirty (30) days of the accomplished reduction. Thereafter, all invoices shall reflect such reduced pricing.

3.2 **Payment Terms.** Payment terms shall be 1% discount, fifteen (15) days, net thirty (30) after the date of invoice. Invoicing requirements, if any, will be as specified in a mutually agreed electronic format, or if there is no such format, in the applicable Purchase Order. Following request by Buyer, Supplier shall submit invoices electronically via a means specified by Buyer.

4. PRODUCTION AND QUALITY

4.1 **Production.**

4.1.1 *Product Manufacturing*. Supplier shall Manufacture, package and label the Products in strict accordance with the applicable Specifications and the Quality Requirements, including, without limitation, cGMP and the FD&C Act. Products shall be Manufactured only at the Supplier Facility unless Buyer, in its sole discretion, provides advance written approval of an alternative facility. In the event Buyer notifies Supplier of any new manufacturing requirements or specifications required by Buyer, the FDA or any other regulatory agency, or of any other new legal requirements, the parties shall promptly confer with each other with respect to the best means to comply with such requirements and allocate any costs of implementing such changes on an equitable basis. Without the prior written approval of Buyer, or as otherwise set forth in a separate quality agreement between Supplier and Buyer, (i) Supplier shall not implement any change in the manufacturing process or the equipment, facility or materials used in the manufacture of the Product; and (ii) Supplier shall not source any Product components or raw materials from any supplier unless such supplier has been validated and approved in advance by Buyer in its sole discretion. Supplier shall comply with the applicable Quality Requirements when making any changes to the Specifications, design, materials, production processes or production testing. Upon request, Supplier will permit representatives of Buyer to observe such manufacture and to have access to any relevant records in connection with such Manufacture. Upon Buyer's written request, Supplier shall supply Buyer with copies of Supplier's Manufacturing records for the purposes of assuring product quality and compliance with cGMP and other applicable requirements. Supplier represents and warrants to Buyer that it has, and will maintain during the term of the Agreement, all government permits, including, without limitation, health, safety and environmental permits, necessary for the conduct of the actions and procedures that it undertakes pursuant to this Agreement.

4.1.2 *Specifications; Testing***.** Supplier shall perform Manufacturing process verification and validation of the Products, as well quality control testing and quality oversight on Products to be delivered to Buyer or its designee hereunder, in accordance with the Specifications and cGMP. Products supplied hereunder will conform to the Specifications. The parties

agree that, should Buyer wish to implement any amendment to the Specifications, Buyer shall provide written notice thereof to Supplier for Supplier's review and approval, which approval shall not be unreasonably withheld, delayed or conditioned. The parties acknowledge that the Specifications may need to be refined and modified as the parties gain experience with the manufacture, testing and use of the Products. Accordingly, Buyer and Supplier agree to negotiate in good faith to modify the Specifications from time to time as the parties' experience with the manufacture, testing and use of the Products warrants. Supplier further agrees that it will facilitate changes to the Specifications that are necessary or appropriate in light of FDA or other regulatory requirements as updated by Buyer from time to time. The parties agree to allocate on an equitable basis any special costs of developing and implementing revised procedures.

4.1.3 *Regulatory Support***.** Except as otherwise expressly set forth herein, Buyer shall be responsible for all filings necessary for approval to market the Products. Supplier agrees to promptly provide to Buyer such information relating to the Products or the manufacture thereof as may be necessary or useful in connection therewith

4.1.4 *Production Indemnity*. Buyer will not be liable for, and Supplier assumes responsibility for and will defend, indemnify and save harmless Buyer from, all personal injury and property damages that occur during Manufacturing of a Product or for claims based on violations of Applicable Laws or (including those applicable to employee or environmental protection) in connection with such production (e.g., a claim based on Supplier's violations of environmental standards or standards dealing with providing a safe place to work or the maintenance of hazardous materials) and in connection with the breach of any warranty herein.

4.2 **Risk Management**.

4.2.1 *Disaster Recovery.* Supplier shall practice ongoing business continuity planning to minimize disruptions to its ability to fulfill its obligations under this Agreement. Supplier shall maintain a written disaster recovery plan and shall cooperate with Buyer's efforts to periodically review Supplier's plan and planning. Supplier shall notify Buyer within twenty-four (24) hours if, in accordance with the disaster recovery plan, Supplier plans to move the Manufacture of any Product to a different Supplier Facility.

4.3 **Quality**. Supplier shall comply with the Quality Requirements in its Manufacture of Products. Supplier shall also comply with Applicable Laws, applicable standards of the International Standards Organization (ISO) and all other quality standards and quality assurance plans referenced in the Specifications and any separate quality agreement between the parties. Each set of applicable Quality Requirements for a particular Product survive until such Quality Requirements are replaced with other Quality Requirements, or such Products are no longer provided by Supplier under this Agreement or otherwise.

4.4 **Use and Return of Buyer Property.** Any molds, equipment, tooling and related materials that Buyer furnishes to Supplier or Supplier develops or purchases at Buyer's expense, if any (collectively, "**Equipment and Tools**"), shall be used only in the performance of work for Buyer and shall remain the property of Buyer. Upon Buyer's request, Supplier shall return all Equipment and Tools in good repair, normal wear and tear excepted, to Buyer at Buyer's direction and expense. Supplier assumes risk of loss and damage and shall calibrate, maintain, and repair the Equipment and Tools in its possession or under its control at its expense, normal wear and tear excepted. Supplier shall notify Buyer promptly whenever any Equipment and Tools are damaged or are in need of replacement, which will be done at Supplier's expense if such damage or replacement is caused by Supplier's fault. Equipment and Tools shall be marked or otherwise adequately identified by Supplier as property of Buyer for use only under this Agreement and shall be safely stored.

Supplier waives any right it may have in law or equity to withhold Buyer's property. Supplier shall remain responsible for any and all claims or injuries related to the usage and storage of the equipment in its facility. Supplier shall give Buyer access to relevant Supplier facilities, books and records during normal business hours to audit Supplier's compliance with this section so long as Buyer gives Supplier at least ten (10) days' advance written notice.

4.5 **Subcontracting**. Supplier may not subcontract any of its obligations under the Agreement without Buyer's prior written consent. If Buyer consents to such an arrangement, any subcontracting will be subject to the following terms:

4.5.1 The subcontracting must be under a written agreement which (i) obligates the subcontractor to comply with all relevant terms and conditions of this Agreement as though it were Supplier, (ii) names Buyer as a third party beneficiary with the right to enforce the rights of Supplier under such subcontract agreement, and (iii) authorizes Supplier to disclose the terms of the subcontract agreement to Buyer. Supplier shall provide Buyer with a copy of a subcontract agreement promptly after Buyer's request.

4.5.2 Supplier shall be responsible for all acts and omissions of its subcontractor and guarantees the subcontractor's performance.

4.6 **Discontinuation.** Supplier shall not discontinue a Product during the Initial Term (defined in 10.1). Following the Initial Term, if Supplier desires to stop making a Product, Supplier shall give Buyer written notice ("**Discontinuation Notice**") at least twelve (12) months before the date on which Supplier will stop making a Product ("**Discontinuation Date**"). In such case, Supplier will provide a backup plan for Buyer to mitigate risk to Buyer. Buyer is not obligated to accept such plan. So long as Buyer places orders at least three (3) months before the planned Discontinuation Date, Supplier shall accept last time buy orders for the discontinued Product(s) at the prices in effect as of the date of the Discontinuation Notice; provided, however, that Supplier shall pass on to Buyer any savings that result due to the increased volumes ordered. Unless the parties agree otherwise in the order documentation, delivery of the Product in a last time buy order shall be in accordance with the terms of the applicable order(s) delivered by Buyer, and in any event within one (1) year of the Discontinuation Date. If Supplier fails to comply with the requirements set forth in this Section 4.6, Buyer may invoke the license and technology transfer specified under Section 7.3 (Failure to Supply License) for discontinued Products by written notice to Supplier given no more than three (3) months after receipt of the Discontinuation Notice.

5. LEGAL AND REGULATORY COMPLIANCE

5.1 **Compliance with Applicable Laws**. Each party shall comply with all Applicable Laws in the performance of its obligations under this Agreement, and each party represents and warrants that it shall have obtained all required licenses and permits to engage in the activities necessary to perform its obligations under this Agreement.

5.2 **Import/Export and Trade Control Compliance**.

5.2.1 Supplier shall comply with applicable Import/Export Laws and Trade Control Laws regarding the shipping, purchase, procurement, import, export, and any other transfer of all Products and any parts, components or materials incorporated into all Products. For purposes of Sections 5.2.1 and 5.2.2, Products includes product-associated technology and technical data, whether provided by Buyer or Supplier, and the documents related to that technology and data. Supplier represents and warrants that all provision of Products by Supplier under this Agreement and all payments for such activities comply with the Import/Export Laws and Trade Control Laws, including the terms of any relevant authorizations issued by any U.S. or non-U.S. Governmental Authority. Supplier shall immediately notify Buyer if Supplier's export privileges are denied, suspended or revoked in whole or in part by any U.S. or non-U.S. Governmental Authority.

5.2.2 Supplier hereby acknowledges and confirms that, unless specifically authorized in this Agreement and under applicable Import/Export Laws or Trade Control Laws, it will not sell, ship, export, re-export, re-transfer or divert Products that are sold or otherwise provided hereunder (including samples), directly or indirectly through third parties or otherwise, to any company or individual on the Restricted Party Lists or to or through persons that are, or who are located, organized, or resident in a country or territory that is (or whose government currently is), the target of sanctions imposed by any U.S. Governmental Authority.

5.2.3 Supplier understands that Buyer's participation, directly or indirectly, in any business under terms that would support or facilitate a boycott against Israel or any other boycott not recognized by the U.S. is prohibited. Notwithstanding any other provision of this Agreement, neither Buyer nor Supplier shall be required to take, or to refrain from taking, any action where to do so would be inconsistent with or penalized under Applicable Law, including without limitation the anti-boycott laws administered by the U.S. Commerce and Treasury Departments.

5.3 **Conflict Minerals.** For Products delivered to Buyer under this Agreement, Supplier shall provide Buyer, at no additional cost, with assistance and sufficient documentation, as reasonably determined by Buyer, to enable Buyer to comply with its obligations, as applicable, under Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Reform Act") and the rules and regulations promulgated thereunder relating to Conflict Minerals as defined in the Reform Act, and other similar laws or regulations. Such assistance and documentation may include but shall not be limited to (i) completing and submitting questionnaires or templates relating to the origin of products, materials, parts, components, metals or any Conflict Minerals contained in the Products (collectively, "Surveys") within the deadline requested by Buyer; (ii) promptly responding to Buyer's questions or request for additional information with respect to Supplier's Survey; and (iii) to the extent the Products contain Conflict Minerals, using diligent efforts to ensure traceability of those metals to the smelter level, including working with Supplier's sub-suppliers to identify the origin of the Conflict Minerals. Supplier agrees to maintain any documentation and data related to Supplier's obligations under this Section, including any traceability data, for a period of five (5) years and agrees to provide Buyer with a copy of such documentation or data promptly upon request. This obligation shall survive termination or expiration of this Agreement. From time to time, Buyer has the right to notify Supplier of changes to the requirements of this Section.

5.4 **Environmental Compliance.** Supplier shall comply with the following terms and conditions for all Products provided to Buyer:

5.4.1 Supplier shall comply with all Environmental Regulations applicable to the Products. For the purposes of this section, "Environmental Regulations" shall include any and all laws, regulations, directives, ordinances, orders and decrees of any kind, adopted or implemented in any country, state, region or jurisdiction, which govern, regulate or restrict: (i) the use of hazardous substances; (ii) waste electrical and electronic equipment; (iii) batteries, accumulators and waste batteries and accumulators; (iv) packaging and packaging waste; and (v) the registration, evaluation, authorization and restriction of chemicals. Supplier shall provide Buyer with assistance and sufficient documentation, as reasonably determined by Buyer, to enable Buyer to verify the materials used in the Products and that Products are in full compliance with Environmental Regulations.

5.4.2 During the term of this Agreement, in accordance with applicable Quality Requirements, Supplier shall promptly notify Buyer of any changes in the Products' design, technical specification, composition, components, substances or materials, or any permitted changes in a supplier of a component, substance or material, that may have an impact on the ongoing compliance of the Products with Environmental Regulations.

5.4.5 Supplier certifies that it gathered the information required by this Agreement and that all information submitted to Buyer in connection with this Agreement is accurate. Supplier acknowledges that Buyer will rely on this certification in determining the compliance of its products. Buyer acknowledges that Supplier may have relied on information provided by others, and that Supplier may not have independently verified such information. However, in situations where Supplier has not independently verified information provided by others, Supplier agrees that, at a minimum, its suppliers have provided certifications regarding their contributions to the Products, and those certifications are at least as comprehensive as the certification provided by Supplier.

5.5 **Compliance with Anti-Bribery Laws**. Supplier will, and will ensure that it and its affiliates, and any subcontractors and other third parties acting on its behalf in connection with this Agreement (collectively the "Supplier Parties") will, comply with the United States Foreign Corrupt Practices Act, the U.K. Bribery Act, the Criminal Law of the People's Republic of China, and any analogous laws or regulations existing in any other country or region, as applicable (collectively, "Anti-Bribery Laws"), in connection with the performance of Supplier's services and obligations under this Agreement. None of Supplier or its affiliates, or, to Supplier's knowledge, any other Supplier Party, has directly or indirectly made any bribes, rebates, payoffs, influence payments, kickbacks, illegal payments, illegal political contributions, or other payments, in the form of cash, gifts, or otherwise, or otherwise taken any other action, in violation of the Anti-Bribery Laws. To Supplier's knowledge, no Supplier Party is or has been the subject of any investigation or inquiry by any governmental authority with respect to potential violations of Anti-Bribery Laws. In connection with this Agreement, Supplier will not make, offer, or authorize any payment, money, gift, fee, commission, remuneration, or other thing of value to or for the benefit of any third party in order to influence an act or decision of the third party or for the purpose of assisting any party to this Agreement, or its affiliates, in obtaining or retaining business or for the purpose of securing an improper advantage, or otherwise in violation of any Anti-Bribery Laws. Suppler shall cooperate with Buyer as necessary to enable Buyer to monitor and audit the Supplier Parties' performance under this Agreement for purposes of ensuring compliance with applicable Anti-Bribery Laws.

5.6 **Non-Discrimination and Human Trafficking.** Buyer and Supplier shall, to the extent they apply, abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, prohibit discrimination against all individuals based on their race, color, religion, sex, or national origin and require affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability. Supplier shall comply with all applicable labor laws, rules, and regulations, including but not limited to, all laws forbidding the solicitation, facilitation, or any other use of slavery or human trafficking.

6. CONFIDENTIALITY AND PUBLICITY

6.1 **Confidential Information**: The following is "**Confidential Information**" (collectively, Buyer Confidential Information and Supplier Confidential Information, each as defined below) to be treated in accordance with the Agreement:

6.1.1 "**Buyer Confidential Information**" means non-public information relating to medical or diagnostic devices, components, accessories and attachments, including Specifications and drawings, Buyer Intellectual Property, business plans and other financial or marketing information disclosed to Supplier during the Term.

6.1.2 "**Supplier Confidential Information**" means non-public information of Supplier, including, but not limited to, Supplier Intellectual Property, that is disclosed to Buyer during the Term.

6.1.3 In order for information to be considered Confidential Information hereunder it must be:

(i) if given in electronic or paper form, marked "confidential," "proprietary" or the like at the time of disclosure to the receiving party or within thirty (30) days of such disclosure; or

(ii) if given orally, identified as confidential in a written summary describing the Confidential Information delivered to the receiving party within thirty (30) days of the disclosure; *provided; however;*

that in each case of clauses (i) and (ii) above, information shall be considered the Confidential Information of the disclosing party if it is reasonably apparent from the nature of the information and circumstances of disclosure, that the information is of a confidential or proprietary nature.

6.2 **Exclusions**. Confidential Information does not include information that:

(i) is known to the receiving party prior to receipt thereof, as demonstrated by reliable evidence;

(ii) is disclosed to the receiving party, without restriction or following expiration of a restriction, by a third party;

(iii) is or becomes public knowledge, by publication or otherwise, through no fault of the receiving party; or

(iv) is independently developed by the receiving party, as demonstrated by reliable evidence and without using Confidential Information of the disclosing party.

6.3 **Obligations**. Each party agrees it shall make no use of Confidential Information except for the purpose of this Agreement. The receiving party will safeguard the disclosing party's Confidential Information against unauthorized disclosure using the same degree of care as it uses for its own confidential information of like importance, but in any event using no less than reasonable care. Any disclosure of the disclosing party's Confidential Information to the receiving party's employees or consultants will be under an appropriate individual confidentiality obligation with each such employee and consultant. The receiving party is responsible for any disclosure of the disclosing party's Confidential Information by the receiving party's employees or consultants.

6.4 **Ownership**. Except as otherwise expressly provided in this Agreement, all Confidential Information shall remain the property of the disclosing party.

6.5 **Copies; Return or Destruction of Materials.** Neither party will copy or duplicate any materials containing Confidential Information except as necessary to comply with Applicable Law or to perform its obligations or exercise its rights under this Agreement. The parties will return or certify in writing the destruction of all materials containing Confidential Information that have been provided by the other party, including all copies, upon demand by the disclosing party. The receiving party will treat any materials containing Confidential Information of the disclosing party that are not destroyed or returned to the disclosing party in accordance with this Article 6. A party may elect to keep copies of Confidential Information for evidentiary purposes, to comply with Applicable Laws and to comply with such party's quality, regulatory and similar internal requirements, provided that such items shall continue to be treated as Confidential Information pursuant to this Agreement. Nothing in this Article 6 shall be construed to require the deletion of any items of Confidential Information that are contained or stored in back up media, disaster recovery systems, or other electronic data storage systems, latent data or metadata, provided that such items shall continue to be treated as Confidential Information pursuant to this Agreement.

6.6 **Required Disclosure**. In the event that, on the advice of legal counsel, the receiving party is compelled to disclose the disclosing party's Confidential Information, the receiving party will, to the extent reasonably possible, notify the disclosing party in advance of such disclosure about the need for any such disclosure so that the disclosing party may seek a protective order or other remedy, if such remedy is reasonable under the circumstances. The receiving party will take reasonable action to ensure protection of the disclosed Confidential Information to the extent allowed by Applicable Law.

6.7 **Publicity**. Neither party may make any public announcement about or advertise the existence of this Agreement or divulge its terms and conditions to third parties, other than attorneys, financial consultants or other advisors that are under a duty of confidentiality, without the prior written consent of the other party.

6.8 **Term of Obligations**. Each party's obligations under this Section 6 shall remain in effect during the term of this Agreement plus five (5) years thereafter.

7. INTELLECTUAL PROPERTY RIGHTS

7.1 **License to Supplier**. Buyer hereby grants to Supplier a non-exclusive, nontransferable, non-sublicensable, revocable, fully paid up license to use Buyer Intellectual Property that is used or employed to perform Supplier's obligations under the Agreement. Such use shall be solely to design, develop and Manufacture the Products for supply to Buyer for the benefit of Buyer at the applicable Supplier Facility during the term of and pursuant to this Agreement, and for no other purpose. No other license to any other Buyer Intellectual Property is granted, and none is to be implied.

7.2 **Intellectual Property Ownership**.

7.2.1 *Buyer Intellectual Property*. Buyer owns all Buyer Intellectual Property.

7.2.2 *Supplier Intellectual Property*. Supplier owns all Supplier Intellectual Property.

7.2.3 *Developed Intellectual Property.* As between the parties, Buyer owns all Developed Intellectual Property, whether developed solely by Supplier or jointly by Supplier and Buyer or any third party. Supplier shall assign and hereby assigns all of its rights in and to such Developed Intellectual Property to Buyer. Supplier shall promptly disclose Developed Intellectual Property to and shall execute and deliver documents appropriate to evidence ownership of the Developed Intellectual Property to Buyer. All Product documentation, drawings, prototypes and the like related to Developed Intellectual Property are also the property of Buyer.

7.2.4 Each party represents and warrants that neither it nor its personnel nor any other party retained by it to assist in the performance of its obligations under this Agreement will decompile, reverse engineer, or disassemble any sample, device, prototype, hardware, software or other material, or portion thereof, made available to it by the other party without the other party's prior written consent.

7.3 **Failure to Supply License**.

7.3.1 *Supplier License to Buyer.* Supplier hereby grants to the Buyer a non-exclusive, sub-licensable (through multiple tiers of sublicensees), assignable, worldwide, royalty-free, fully paid license to Supplier Intellectual Property and any other Intellectual Property that is used, employed or necessary to make, have made, import, export, and to use, sell and otherwise exploit Products and replacements for Products. The scope of use of the above license grant is to make, have made, import, export, and to use, sell and otherwise exploit Products and replacements for Products.

7.3.2 *Limitation on Supplier License.* Subject to the terms and conditions of this Agreement, Buyer shall not exercise the Supplier license granted in Section 7.3.1, unless and until the occurrence of any one of the following events ("**Trigger Condition**"):

(i) Supplier fails for any reason to timely deliver units of the Product ordered by Buyer, including but not limited to a failure to deliver Products which conform to the Specifications, which failure is not cured within thirty (30) days after written notice from Buyer;

(ii) Supplier wrongfully terminates this Agreement;

(iii) Supplier fails to comply with the requirements of Section 4.6;

(v) Supplier petitions for, consents to, or becomes subject to any relief under any bankruptcy, reorganization, or moratorium statutes or similar debtor relief laws; or

(vi) Supplier fails to continue to do business in the ordinary course, either in general or with regard to the Products.

7.3.3 Supplier shall promptly (and in any event within thirty days) submit to Buyer the Supplier Intellectual Property relating to the Products in the event Buyer undertakes to exercise its license rights following a Trigger Condition.

7.3.4 *Technical Support; Technology Transfer.* In the event Buyer undertakes to exercise its license rights following a Trigger Condition, Supplier shall provide technical support and training and otherwise assist Buyer or its designee in establishing manufacturing operations equivalent to the Manufacturing operations under this Agreement for the production of each Product that utilizes Supplier Intellectual Property. Supplier shall provide Buyer with a full and enabling technology transfer (including any tooling, mask works, foundry access, or other critical items necessary for production) relative to each Product. Except as expressly permitted under this Agreement, neither party may, directly or through others, distribute, copy, modify or create derivative works of the other party's Intellectual Property.

7.3.5 *Access to Supplier Intellectual Property*. Upon the occurrence of a Trigger Condition, Supplier shall promptly provide Buyer or its designee with access to all Supplier Intellectual Property, Supplier Confidential Information and other items used, employed or necessary for the Manufacturing of the Product (including any specialized items, such as tooling, molds, etc.) together with all information and training reasonably necessary for the Manufacture of the Products, as well as training for the use thereof.

7.3.6 *Bankruptcy*. In the event that a bankruptcy petition is filed by or on behalf of Supplier and Supplier, or a custodian or trustee acting on behalf of Supplier, rejects this Agreement, Buyer may elect to retain the license from Supplier pursuant to §365(n) of the federal bankruptcy code (11 U.S.C. § et seq.) or exercise any of its other rights or elections under the bankruptcy code and shall be entitled to retain all of its license and use rights granted under the Agreement.

7.4 **Third Party Licenses**. Supplier shall comply with and maintain in full force and effect all license agreements with third parties pursuant to which Supplier is licensed to use the Intellectual Property of third parties that is used or employed by Supplier to perform its obligations under this Agreement. Supplier shall promptly notify Buyer in writing of any allegation that Supplier is in breach of any such license agreement. Buyer may, but is not obligated to, cure any such alleged breach and recover the cost of such cure from Supplier, including without limitation, by set-off against amounts Buyer owes Supplier hereunder.

7.5 **Intellectual Property Warranty and Indemnification.**

7.5.1 *Non-Infringement*. Supplier shall not provide Buyer any designs, plans, models, samples, software, integrated circuits, reports, or other writings or products which it either knows or has reason to believe violate the valid patent, copyright, or other form of Intellectual Property right of a third party. Supplier represents and warrants that the manufacture, use, sale and provision of the Product(s) by Supplier, and Buyer's subsequent use and sale of the Product, will not infringe or violate the patent, copyright, or other property or proprietary rights of any third party, except that the warranty in this subsection does not apply to any infringement or violation resulting from: (i) Specifications or other Buyer Intellectual Property provided by Buyer; or (ii) a combination of other products with the Product at the request of Buyer or when Supplier did not supply, recommend, or procure such other products, or when Supplier objected to the combination of such other products with the Product.

7.5.2 *Rights in Intellectual Property.* Each party represents and warrants to the other party that it owns all right, title and interest in, or has all sufficient and valid right its use, its Intellectual Property (Buyer Intellectual Property or Supplier Intellectual Property as the case may be) as used or employed by it to design, develop, Manufacture and distribute the Products, without restriction or encumbrance.

7.5.3 *Indemnity.* Each party (in this context, the "indemnifying party") shall defend, indemnify and save harmless the other party and its officers, directors, employees, shareholders, agents or representatives (in this context, the "indemnified parties") from all damages, costs and expenses (including attorney fees) related to a claim that its Intellectual Property (Buyer Intellectual Property or Supplier Intellectual Property as the case may be) infringes a patent or other intellectual property right of any third party, provided, that the indemnified parties provide notice to the indemnifying party of such claim no more than thirty (30) days after receipt of such claim. If the indemnified parties fails to notify the indemnifying party within thirty (30) days, the indemnifying party's obligation to defend, indemnify and save harmless the indemnified parties shall be reduced only to the extent the indemnifying party is prejudiced by the delay beyond thirty (30) days. If the use of any Products is enjoined as the result of a claim against Supplier contemplated by this Section 7.5.3, at Buyer's option, Supplier shall at its expense and as a first priority, work to either substitute a fully functionally equivalent product or process (as applicable) not subject to such injunction, modify such Product or process (as applicable) so that it is no longer subject to such injunction, or obtain the right to continue using such Product or process (as applicable) so long as such Product or process meets all Buyer and regulatory requirements.

7.6 **Patent Marking**. Supplier shall place patent markings on, about or within Products or components in accordance with written instructions provided by or on behalf of Buyer.

8. WARRANTIES AND REPRESENTATIONS

8.1 **Product Compliance**. Supplier represents and warrants to Buyer that: (i) the Products delivered to Buyer are not adulterated or misbranded within the meaning of the FD&C Act, (ii) all Products delivered to Buyer have been Manufactured in accordance with a quality system that is consistent with the applicable Quality Requirements and the requirements set forth in any separate quality agreement between the parties; and (iii) the Manufacture, sale and delivery of Products does not violate any, and the Products conform to all, Applicable Laws. Supplier shall promptly notify Buyer in writing if Supplier becomes aware that a Product or any applicable Quality Requirements may not comply with Applicable Law.

8.2 **Product Warranty**. Supplier represents and warrants that each Product fully complies and will comply with all applicable Specifications and applicable Quality Requirements and is and will be free from defects in materials and workmanship. If Supplier includes software in a Product,

Supplier warrants that any computer software provided with or incorporated into a Product (i) is and will be free of viruses, worms, and other components designed to erase, disable, or otherwise cause harm to computer systems, and (ii) does not contain Publicly Available Software except as provided herein. If Publicly Available Software is included in a Product by Supplier, Supplier represents and warrants that it has complied with all licensing requirements associated with the use of such software in the Products and agrees to provide information about such compliance in response to a written request from Buyer. Supplier shall inform Buyer in writing no more than two (2) days after Supplier learns of any actual or potential problems relating to the performance of any Product or any similar product manufactured by Supplier for a third party.

8.3 **Government Watch List**. Supplier represents and warrants that neither Supplier, nor any parent, subsidiary, affiliate of Supplier, nor any Personnel, nor any sub-supplier of Supplier, is included in or listed on: (i) the List of Excluded Individuals/Entities maintained by the HHS Office of Inspector General pursuant to 42 U.S.C. Sections 1320a-7, 13955ccc, 1320c-5 and regulations promulgated thereunder, which, as of the Effective Date, can be searched at the internet website of http://exclusions.oig.hhs.gov/ ("OIG List"); (ii) the Excluded Parties List System maintained by the United States General Services Administration which, as of the Effective Date, can be searched at the internet website of http://epls.arnet.gov (the "GSA List"); or (iii) any Restricted Party List. Supplier shall immediately notify Buyer if Supplier, any parent, subsidiary or affiliate of Supplier or Personnel, or any sub-supplier of Supplier, should come to be included on the OIG List, the GSA List or any Restricted Party List.

8.4 **Compliance with Agreement**. Supplier represents and warrants that all of its employees, agents, contractors and consultants whose services may be used to fulfill the obligations under this Agreement are or will be informed of the terms of this Agreement to the extent necessary to comply with its terms and that all such persons are sufficiently obligated to Supplier, by contract or otherwise, to fully comply with all provisions of this Agreement.

8.5 **Conflicts**. Supplier represents and warrants to Buyer that the execution of this Agreement and Supplier's performance hereunder is within its duly authorized powers and does not conflict with any other contract or obligation of Supplier. Supplier shall not enter into any agreement or understanding whether written or oral, during the term of this Agreement which conflicts or is inconsistent with the terms of this Agreement.

9. INDEMNIFICATION

9.1 **Indemnifications**.

9.1.1 In addition to other indemnification obligations provided in this Agreement, Supplier shall indemnify, defend and hold harmless Buyer and its officers, directors, employees, shareholders, agents and representatives from and against and in respect of any and all alleged or actual demands, claims, actions or causes of action, alleged or actual claims of negligence, assessments, losses, damages, liabilities, interest and penalties, costs and expenses (including, without limitation, reasonable legal fees and disbursements incurred in connection therewith) (collectively, "**Claims**") resulting from, arising out of, or imposed upon or incurred by any person to be indemnified hereunder by reason of Supplier's alleged negligence or breach of the Agreement. Buyer will notify Supplier promptly after Buyer becomes aware of any claim by any third party with respect to which Buyer would be entitled to indemnification hereunder. Supplier shall, at no cost to Buyer, cooperate as requested by Buyer in the defense of any Claim for which indemnity may be sought.

9.1.2 In addition to other indemnification obligations provided in this Agreement, Buyer shall indemnify, defend and hold harmless Supplier and its officers, directors, employees, shareholders, agents and representatives from and against and in respect of any and all third-

party Claims resulting from, arising out of, or imposed upon or incurred by any person to be indemnified hereunder by reason of Buyer's alleged negligence or breach of the Agreement. Supplier will notify Buyer promptly after Supplier becomes aware of any claim by any third party with respect to which Supplier would be entitled to indemnification hereunder. Buyer shall, at no cost to Supplier, cooperate as requested by Supplier in the defense of any Claim for which indemnity may be sought.

9.2 **Limitation of Remedies**. Except for their obligations under Section 6 (Confidentiality and Publicity), and any other section that specifically refers to this Limitation of Remedies Section, IN NO EVENT WILL A PARTY BE LIABLE TO THE OTHER FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, EXEMPLARY OR SPECIAL DAMAGES OF ANY KIND; *provided, however,* that this Section 9.2 shall not be construed to limit either party's indemnification rights or obligations under this Section 9.

9.3. **Insurance**. Supplier shall, at its sole cost and expense, obtain and at all times during the term of this Agreement maintain insurance with the following minimum coverage and limits: (a) workers' compensation insurance in accordance with all applicable legal requirements; (b) commercial general liability insurance on an occurrence basis with minimum combined single limit coverage of $1,000,000 per occurrence and $3,000,000 general aggregate for bodily injury and property damage liability; and (c) product liability of $2,000,000 per occurrence covering all Products. Supplier will name "Sight Sciences, Inc., its subsidiaries and affiliates" as "Additional Insured", with primary, non-contributory coverage, under Supplier's insurance policies. Supplier shall furnish Buyer written evidence of such insurance and shall provide at least thirty (30) days' prior written notice of change in coverage levels or termination of such insurance.

10. TERM AND TERMINATION

10.1 **Term.** This Agreement will become effective on the Effective Date for an initial term of three (3) years (the "Initial Term"). Unless earlier terminated, this Agreement will thereafter automatically renew for additional one-year periods, unless either party provides the other with notice of non-renewal at least ninety (90) days before the end of the then-current term.

10.2 **Termination**. Buyer may terminate this Agreement for any reason upon written notice to Supplier of no less than one hundred eighty (180) days. Buyer may terminate this Agreement or any Purchase Order for cause upon a material default by Supplier, which default either remains uncured for thirty (30) days after written notice thereof is given to Supplier. If either party becomes or is declared insolvent or bankrupt, admits in writing of its inability to pay its debts generally as they become due, is the subject of any proceedings relating to its liquidation or insolvency or for the appointment of a receiver for it, makes an assignment for the benefit of all or substantially all of its creditors, or enters into an agreement for the composition, extension, or readjustment of all or substantially all of its obligations, then the other party may, by giving written notice thereof to such party, terminate this Agreement as of a date specified in such notice of termination

10.3 **Effect of Expiration or Termination:**

10.3.1 *Orders*. Unless otherwise provided in a purchase order, upon termination or expiration of this Agreement, all then-outstanding orders for Products shall survive.

10.3.2 *License*. In the event of a non-renewal or termination by Supplier of this Agreement with less notice than required by Section 4.6 (Discontinuation), Buyer will have the rights accorded to it under Section 7.3 (Failure to Supply License) as though Supplier had elected to exit the business.

10.3.3 *Last Time Buy*. In event of termination or expiration of this Agreement, Buyer shall have a right to place an order for a last time buy pursuant to Section 4.6 (Discontinuation) during the remainder of the term of this Agreement and for ninety (90) days thereafter as though Supplier had elected to exit the business. Supplier shall be required to supply Products sufficient to satisfy Buyer's then current demand planning forecast for a period of at least twelve (12) months.

10.3.4 *Return to Buyer*. At the earlier of Buyer's written request or Product delivery to fulfill the last order placed under this Agreement, Supplier shall promptly return all applicable Buyer Confidential Information and Buyer property, return or securely destroy the records in Supplier's possession as directed by Buyer and execute such documents and take other action as reasonably requested by Buyer in connection therewith.

10.4 **Survival**. All provisions which are continuing in nature, including but not limited to Sections 2.5.4 (Acceptance and Rejection); 4 (Production and Quality), 5 (Legal and Regulatory Compliance), 6 (Confidentiality and Publicity), 7 (Intellectual Property Rights), 8 (Warranties and Representations), 9 (Indemnification), 10 (Term and Termination) and 11 (Miscellaneous), will survive termination of this Agreement.

11. MISCELLANEOUS

11.1 **Force Majeure**. A party's obligations under this Agreement, including any delays in Product deliveries, will be excused by a Force Majeure event only to the degree affected, provided that the party affected by the Force Majeure event makes reasonable efforts to avoid being so affected and promptly delivers written notice to the other party upon learning of the Force Majeure event, which notice must include a detailed description of the event and its anticipated effect on the party's ability to perform its obligations. Upon giving notice to the other party, the affected party is excused from the performance of its obligations under this Agreement only to the extent and only for the period that its performance of such obligations is prevented by the Force Majeure event, except that this clause does not apply to Supplier's obligation to perform its disaster recovery plan. During the period that the performance by a party has been suspended by reason of a Force Majeure event, the other party may suspend the performance of all or part of its obligations to the extent that such suspension is commercially reasonable.

11.2 **Assignment**. This Agreement and/or any portion thereof is assignable by Buyer, provided that the assignee assumes the rights and obligations of Buyer corresponding to the entire Agreement or the assigned portions thereof. This Agreement or any portion of it may not be assigned by Supplier without the prior written consent of Buyer.

11.3 **Notices**. Notices given under the Agreement must be in writing and must be either delivered in person (including express courier, such as Federal Express) or sent by United States certified or registered mail, postage and certification prepaid, to the other party, at the address at the beginning of this Agreement. Notices are effective upon delivery. A party may change its address for notice by giving the other party notice in accordance with this section.

11.4 **Consents**. Any approval, authorization or consent required by this Agreement must be in writing, duly signed by an authorized representative of the granting party. The withholding of an approval, authorization or consent for regulatory, quality, or competitive reasons shall not be deemed unreasonable.

11.5 **Relationship of the Parties**. Nothing contained in the Agreement creates a joint venture, partnership, agency or similar endeavor between the parties. Each party is acting solely as an independent contractor, and neither party has any power or authority to direct or indirectly bind or act on behalf of the other. It is understood that, except as expressly provided in this Agreement, nothing prevents Buyer from developing products similar to the Products or from sourcing products similar to the Products from another vendor.

11.6 **Governing Law**. This Agreement will be construed in accordance with and governed by the laws of the State of California, USA, without giving effect to any choice of law rule that would cause the application of the laws of any other jurisdiction.

11.7 **Dispute Escalation; Arbitration**. The parties will in good faith endeavor to resolve any disputes or differences of interpretation of this Agreement amicably, through dialog and cooperation. In the event a dispute or difference is not promptly resolved at operational levels of the two organizations, the parties shall escalate it for a good faith effort to achieve an amicable resolution at a senior business management level. All disputes arising out of or in connection with this Agreement (including the existence, validity or termination of this Agreement) that are not amicably resolved within a reasonable time period in accordance with this Section 11.7 shall be submitted to the International Court of Arbitration of the International Chamber of Commerce and shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by three (3) arbitrators appointed in accordance with the said Rules. Arbitration will take place in San Francisco, California, and proceedings will be conducted in English. Such arbitrators shall apply California law. The decision or award of the arbitrators shall be in writing and is final and binding on both parties.

11.8 **Entire Agreement and Modifications**. This Agreement sets forth the entire agreement between the parties and supersedes all prior agreements, understandings and discussions regarding the subject matter hereof. No amendment, change, modification of any provision of this Agreement will be binding unless set forth in a written document signed by the parties.

11.9 **Waiver**. No waiver by either party of any default of the other party will be held to be a waiver of any other or subsequent default. No waiver shall be effective unless it is in writing and is signed by the party against which it is asserted.

11.10 **Severability**. If a provision contained or referred to in this Agreement is determined to be legally invalid or unenforceable, that provision will be ineffective to the extent of the invalidity or unenforceability without affecting the remaining provisions of this Agreement, which will continue to be valid and enforceable to the fullest extent permitted by law.

The parties have caused this Agreement to be executed as of the Effective Date.

SIGHT SCIENCES, INC.

By /s/ Sam Park

Sam Park, Chief Operating Officer

Date Jan 14th 2021

PETER'S TECHNOLOGY (SUZHOU) CO., LTD.

By /s/ Calvin Kuo

Calivn Kuo
(print name)

Title General Manager

Date Jan 15th, 2021

EXHIBIT A

PRODUCTS; PRODUCT PRICING

[Intentionally Omitted]

EXHIBIT B

SPECIFICATIONS

[Intentionally Omitted]

Subsidiaries of Sight Sciences, Inc.

Legal Name of Subsidiary	Jurisdiction of Organization
Sight Sciences UK, Ltd.	United Kingdom