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

## Form 10-K

(Mark one)

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

☐ **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**
For the transition period from to

**Commission file number: 1-33818**

## RESHAPE LIFESCIENCES INC.
(Exact name of registrant as specified in its charter)

| **Delaware** | **48-1293684** |
|---|---|
| (State or other jurisdiction of incorporation or organization) | (IRS Employer Identification No.) |

**1001 Calle Amanecer, San Clemente, California 92673**
(Address of principal executive offices, including zip code)

**(949) 429-6680**
(Registrant's telephone number, including area code)

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

| Title of Each Class | Trading Symbol | Name of Each Exchange on which Registered |
|---|---|---|
| Common stock, $0.001 par value per share | RSLS | OTCQB Market |

**Securities registered pursuant to Section 12(g) of the Act:** None

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes ☐ No ☒

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes ☐ No ☒

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ No ☐

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files). Yes ☒ No ☐

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

Large accelerated filer ☐ Accelerated filer ☐
Non-accelerated filer ☒ Smaller reporting company ☒
Emerging growth company ☐

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

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Act). Yes ☐ No ☒

At June 28, 2019, the last business day of the registrant's most recently completed second fiscal quarter, the aggregate market value of the registrant's common stock held by non-affiliates of the registrant, based upon the closing price of a share of the registrant's common stock as reported by the OTCQB Market on that date was $590,058.

As of April 28, 2020, 5,477,574 shares of the registrant's Common Stock were outstanding.

**Documents Incorporated by Reference**

Portions of the registrant's proxy statement for the 2020 Annual Meeting of Stockholders (to be filed within 120 days of December 31, 2019) are incorporated by reference into Part III, as indicated herein.

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**PART I**



**PART II**



**PART III**



**PART IV**



**Registered Trademarks and Trademark Applications:** In the United States we have registered trademarks for LAP-BAND®, LAP-BAND AP®, LAP BAND SYSTEM®, RAPIDPORT®, RESHAPE® and RESHAPE MEDICAL®, each registered with the United States Patent and Trademark Office, and trademark applications for RESHAPE VEST, and RESHAPE LIFESCIENCES. In addition, some or all of the marks LAP-BAND, LAP-BAND AP, LAP-BAND SYSTEM, RAPIDPORT, RESHAPE, RESHAPE MEDICAL, RESHAPE VEST, and RESHAPE LIFESCIENCES are the subject of either a trademark registration or an application for registration in Australia, Canada, the European Community, Mexico, Saudi Arabia, South Korea, and the United Arab Emirates. We believe that we have common law trademark rights to RESHAPE VEST. This Annual Report on Form 10-K contains other trade names and trademarks and service marks of ReShape Lifesciences and of other companies.

## ITEM 1. BUSINESS

### Our Company

The Company is a developer of minimally invasive medical devices that advance bariatric surgery to treat obesity and metabolic diseases. Our current portfolio includes the LAP-BAND® Adjustable Gastric Banding System and the ReShape Vest™, an investigational device, to help treat more patients with obesity. Our vision is to be recognized as a leading medical technology company focused on the design, development and commercialization of transformative technology to treat obesity and metabolic diseases.

### Our Product Portfolio

***LAP-BAND System***

The LAP-BAND System, which we acquired from Apollo Endosurgery, Inc. ("Apollo"), in December 2018, is designed to provide minimally invasive long-term treatment of severe obesity and is an alternative to more invasive surgical stapling procedures such as the gastric bypass or sleeve gastrectomy. The LAP-BAND System is an adjustable saline-filled silicone band that is laparoscopically placed around the upper part of the stomach through a small incision, creating a small pouch at the top of the stomach, which slows the passage of food and creates a sensation of fullness. The procedure can normally be performed as an outpatient procedure, where the patient is able to go home the day of the procedure without the need for an overnight hospital stay.

The LAP-BAND System has been in use in Europe since 1993 and received the CE mark in 1997. FDA approval for the LAP-BAND System in the U.S. was obtained in 2001 and the LAP-BAND System has been approved in many countries around the world. More than 1,000,000 LAP-BAND Systems have been sold worldwide.

The LAP-BAND System was approved for use in the U.S. for patients with a Body Mass Index ("BMI") greater than or equal to 40 or a BMI greater than or equal to 30 with one or more obesity-related comorbid conditions.

The LAP-BAND System has been subject to more than 400 peer-reviewed publications and extensive real-world experience. Adjustable gastric banding using the LAP-BAND System has been reported to be significantly safer than gastric bypass while statistically producing the same weight loss five years after surgery when accompanied by an appropriate post-operative follow-up and adjustment protocol. Studies have reported sustained resolution or improvement in type 2 diabetes, gastroesophageal reflux, obstructive sleep apnea, asthma, arthritis, hypertension and other pre-existing obesity related comorbidities following gastric banding. The gastric banding surgical procedure is generally reimbursed by most payors and insurance programs that cover bariatric surgery.

***Benefits.*** LAP-BAND System offers the following benefits:

- **Minimally Invasive.** The LAP-BAND System does not change anatomy and is removable or reversible.
- **Lifestyle Enhancing.** The LAP-BAND System helps patients lose weight and live a more comfortable life and potentially reduces co-morbidities from excess weight.
- **Durable Weight Loss.** The LAP-BAND System offers a sustainable solution that helps patients achieve long-term success.

***ReShape Vest***

The ReShape Vest is an investigational, minimally invasive, laparoscopically implanted medical device being studied for weight loss in morbidly obese adults with a BMI of at least 35. The device wraps around the stomach, emulating the effect of conventional weight loss surgery, and is intended to enable gastric volume reduction. This device is designed to restrict the intake of food and provide the feeling of fullness without cutting or permanently removing portions of the stomach, or bypassing any portion of the gastrointestinal tract. The implantation of the device mimics a traditional weight-loss surgery, it is anatomy sparing and may not require vitamin supplementation.

In a small pilot study conducted outside the United States, at 12 months, ReShape Vest patients demonstrated a mean percent excess weight loss ("%EWL") of 85% and a mean percent total body weight loss of 30.2%, an average waist circumference reduction of approximately 15 inches, an average drop in HbA1c (Hemoglobin A1c) of 2.1 points, an average decrease of systolic blood pressure of 13mmHg, and an average increase in HDL "good cholesterol" of 29 mg/dl.

***Benefits.*** The ReShape Vest, once approved for sale, would offer an additional weight loss solution that emulates the effect of conventional weight loss surgery through a procedure that is minimally invasive and anatomy sparing. The ReShape Vest potentially offers the following benefits:

- **Minimizes Changes to Normal Anatomy.** The ReShape Vest emulates the effects of conventional weight-loss surgery without stapling, cutting or removing any portion of the stomach.

- **Permanent Physical Restriction of the Stomach.** The stomach has the capacity to expand over time through overeating. The ReShape Vest provides physical restriction that maintains the reshaped stomach at a consistent size, as long as the device remains in the patient.

- **Removable/Reversible.** The ReShape Vest is designed to be removed laparoscopically, permitting the removal of the device at a later time, if that is desired.

- **Allows Normal Ingestion and Digestion of Foods Found in a Typical, Healthy Diet.** The ReShape Vest leaves the digestive anatomy largely unaltered, hence patients are able to maintain a more consistent nutritional balance compared with conventional bariatric surgical approaches. This feature allows patients to affect positive changes in their eating behavior in a non-forced and potentially more consistent way.

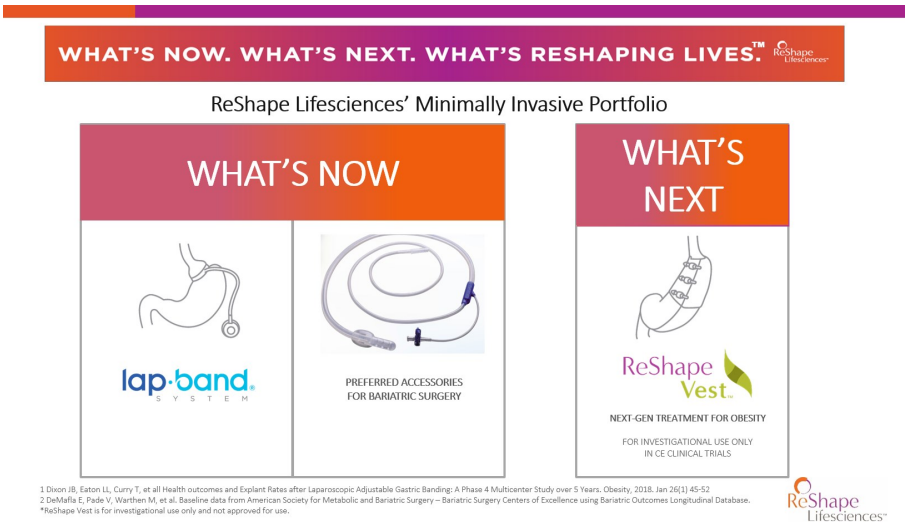
The ReShape Vest is being evaluated in a pivotal clinical investigation in Belgium, Czech Republic, Spain and The Netherlands. Enrollment of 95 subjects to this non-randomized clinical investigation and completion of 12-month follow-up is planned for the fourth quarter of 2021. We are expecting to receive CE Mark by the third quarter of 2022.

**Our Strategic Focus**

***Develop and Commercialize a Differentiated Portfolio of Products/Therapies***

An overarching strategy for our company is to develop and commercialize a product, program and services portfolio that is differentiated from our competition by offering transformative technologies that consists of a selection of patient-friendly, non-anatomy changing, lifestyle enhancing products, programs and services that provide alternatives to traditional bariatric surgery that help patients achieve durable weight loss. With the LAP-BAND® Program, accessories and the ReShape Vest™ (if approved for commercial use), we believe we have two compelling and

differentiated medical devices. We believe that we are well positioned for the existing market and can serve more of the overweight and obese population with our solutions and thereby help expand the addressable market for obesity.




***Drive the Adoption of Our Portfolio through Obesity Therapy Experts and Patient Ambassadors***

Our clinical development strategy is to collaborate closely with regulatory bodies, healthcare providers, obesity therapy lifestyle experts and others involved in the obesity management process, patients and their advocates and scientific experts. We have established relationships with obesity therapy experts and healthcare providers, including physicians and hospitals, and have identified LAP-BAND patient ambassadors and we believe these individuals will be important in promoting patient awareness and gaining widespread adoption of the LAP-BAND, it's accessories and the ReShape Vest.

***Expand and Protect Our Intellectual Property Position***

We believe that our issued patents and our patent applications encompass a broad platform of therapies focused on obesity, diabetes, hypertension and other gastrointestinal disorders. We intend to continue to pursue further intellectual property protection through U.S. and foreign patent applications.

***Alternative Weight Loss Solutions***

If we are able to commercialize the ReShape Vest, we believe that we will be able to offer two distinct weight loss treatment solutions that may be selected by the physician depending on the severity of the patient's BMI or condition. Together, the LAP-BAND and ReShape Vest provide a minimally-invasive continuum of care for bariatric patients and their care providers.

**Our Market**

*The Obesity and Metabolic Disease Epidemic*

Obesity is a disease that has been increasing at an alarming rate with significant medical repercussions and associated economic costs. The World Health Organization ("WHO") currently estimates that more than 2.1 billion adults, approximately 30% of the global population, are overweight. The global economic impact of obesity is

approximately $2.0 trillion, or approximately 2.8% of global GDP. Healthcare costs for severely or morbidly obese adults are 81% higher than for healthy weight adults and obesity is responsible for 5% of deaths worldwide. We believe our product and programs and product candidates could address a $1.64 billion per year global surgical device market.

We believe that this epidemic will continue to grow worldwide given dietary trends in developed nations that favor highly processed sugars, larger meals and fattier foods, as well as increasingly sedentary lifestyles. Despite the growing obesity rate, increasing public interest in the obesity epidemic and significant medical repercussions and economic costs associated with obesity, there continues to be a significant unmet need for effective treatments.

*The United States Market*

Obesity has been identified by the U.S. Surgeon General as the fastest growing cause of disease and death in the United States, and according to a 2014 McKinsey Report is the leading cause of preventable death in the U.S. Currently, it is estimated that approximately 160 million American adults are overweight or obese, 74 million American adults are overweight, 78 million American adults are obese or severely obese, and 24 million American adults are morbidly obese. It is estimated that if obesity rates stay consistent, 51% of the U.S. population will be obese by 2030. According to data from the U.S. Department of Health and Human Services, almost 80% of adults with a BMI above 30 have comorbidity, and almost 40% have two or more of these comorbidities. According to The Obesity Society and the CDC, obesity is associated with many significant weight-related comorbidities including Type 2 diabetes, high blood-pressure, sleep apnea, certain cancers, high cholesterol, coronary artery disease, osteoarthritis and stroke. According to the American Cancer Society, 572,000 Americans die of cancer each year, over one-third of which are linked to excess body weight, poor nutrition and/or physical inactivity. Over 75% of hypertension cases are directly linked to obesity, and more than 90% of the approximately 28 million U.S. adults with Type 2 diabetes are overweight or have obesity.

Currently, medical costs associated with obesity in the U.S. are estimated to be up to $210.0 billion per year and nearly 21% of medical costs in the U.S. can be attributed to obesity. Approximately $1.5 billion was spent in 2015 alone in the U.S. on approximately 200,000 bariatric surgical procedures to treat obesity. By 2025, it is estimated that up to $3.8 billion will be spent in the U.S. on approximately 800,000 bariatric surgical procedures to treat obesity. Researchers estimate that if obesity trends continue, obesity-related medical costs could rise by another $44-$66 billion each year in the U.S. by 2030. The medical costs paid by third-party payers for people who are obese were $2,741 per year, or 42% higher than those of people who are normal weight and the average cost to employers is $6,627 to $8,067 per year per obese employee (BMI of 35 to 40 and higher).

*Current Treatment Options and Their Limitations*

We believe existing bariatric surgery and endoscopic procedural options for the treatment of obesity have seen limited adoption to date, with approximately 1% of the obese population qualifying for treatment actually seeking treatment, due to patient concerns and potential side effects including permanently altered anatomy and morbidity.

The principal treatment alternatives available today for obesity include:

- **Behavioral modification.** Behavioral modification, which includes diet and exercise, is an important component in the treatment of obesity; however, most obese patients find it difficult to achieve and maintain significant weight loss with a regimen of diet and exercise alone.

- **Pharmaceutical therapy.** Pharmaceutical therapies often represent a first option in the treatment of obese patients but carry significant safety risks and may present troublesome side effects and compliance issues.

- **Bariatric Surgery and Endoscopic Procedures.** In more severe cases of obesity, patients may pursue more aggressive surgical treatment options such as sleeve gastrectomy and gastric bypass. These procedures promote weight loss by surgically restricting the stomach’s capacity and outlet size. While largely effective, these procedures generally result in major lifestyle changes, including dietary restrictions and food intolerances, and they may present substantial side effects and carry short- and long-term safety and side effect risks that have limited their adoption.

**Our Research and Development**

***Current R&D Focus***

We have an experienced research and development team, including clinical, regulatory affairs and quality assurance, comprised of scientists and mechanical engineers with significant clinical knowledge and expertise. Our research and development efforts are focused in the following major areas:

- supporting the current LAP-BAND System;
- expanding and improving current on LAP-BAND portfolio;
- testing and developing the ReShape Vest.

We have spent a significant portion of our capital resources on research and development. Our research and development expenses from continuing operations were $3.1 million in 2019 and $5.7 million in 2018.

**Our Competition**

The market for obesity treatments is competitive, subject to technological change and significantly affected by new product development. Our primary competition in the obesity treatment market is currently from bariatric surgical and endoscopic procedures.

Our LAP-BAND System competes, and we expect that our ReShape Vest System will compete, with surgical obesity procedures, including gastric bypass, gastric balloons, sleeve gastrectomy and the endoscopic sleeve. These current surgical procedures are performed in less than 1% of all eligible obese patients today. Current manufacturers of gastric balloon and suturing products that are approved in the United States include Apollo (ORBERA Intragastric Balloon System and OverStitch Endoscopic Suturing System) and Obalon Therapeutics, Inc. (Obalon Balloon System).

In June 2016, Aspire Bariatrics, Inc. received FDA approval for the Aspire Assist® System, an endoscopic alternative to weight loss surgery for people with moderate to severe obesity. We are also aware that GI Dynamics, Inc. has received approvals in various international countries to sell its EndoBarrier Gastrointestinal Liner.

We also compete against the manufacturers of pharmaceuticals that are directed at treating obesity and the 99% of obese patients eligible for surgery that are not willing to pursue a surgical option. We are aware of a number of drugs that are approved for long-term treatment of obesity in the United States: Orlistat, marketed by Roche as Xenical and GlaxoSmithKline as Alli, Belviq marketed by Arena Pharmaceuticals, Inc., Qsymia, marketed by VIVUS, Inc. and Contrave, marketed by Orexigen Therapeutics, Inc. In addition, we are aware of a pivotal trial for GELESIS100 that is being conducted by Gelesis, Inc.

In addition to competition from surgical obesity procedures, we compete with several private early-stage companies developing neurostimulation devices for application to the gastric region and related nerves for the treatment of obesity. Further, we know of two intragastric balloon companies either in clinical trials or working toward clinical trials in the U.S: Spatz3 Adjustable Balloon and Allurion Technology’s Elipse Balloon. These companies may prove to be significant competitors, particularly through collaborative arrangements with large and established companies. They also compete with us in recruiting and retaining qualified scientific and management personnel, establishing clinical trial sites and subject registration for clinical trials, as well as in acquiring technologies and technology licenses complementary to our programs or advantageous to our business.

We believe that the principal competitive factors in our market include:

- acceptance by healthcare professionals, patients and payers;
- published rates of safety and efficacy;
- reliability and high-quality performance;

- effectiveness at controlling comorbidities such as diabetes and hypertension;
- invasiveness and the inherent reversibility of the procedure or device;
- cost and average selling price of products and relative rates of reimbursement;
- effective marketing, training, education, sales and distribution;
- regulatory and reimbursement expertise;
- technological leadership and superiority; and
- speed of product innovation and time to market.

Many of our competitors are larger than we are and are either publicly-traded or are divisions of publicly-traded companies, and they enjoy several competitive advantages over us, including:

- stronger name recognition;
- existing relations with healthcare professionals, customers and third-party payers;
- established distribution networks;
- significant experience in research and development, manufacturing, preclinical testing, clinical trials, obtaining regulatory approvals, obtaining reimbursement and marketing approved products; and
- greater financial and human resources.

As a result, we cannot assure you that we will be able to compete effectively against these companies or their products.

***Market Opportunity***

Given the limitations of behavioral modification, pharmaceutical therapy and traditional bariatric surgical approaches, we believe there is a substantial need for patient-friendly, safer, effective and durable solutions that:

- provide proven, long-term weight loss;
- preserve normal anatomy;
- are “non-punitive” in that they support continued ingestion and digestion of foods and micronutrients such as vitamins and minerals found in a typical, healthy diet while allowing the user to modify his or her eating behavior appropriately without inducing punitive physical restrictions that physically force a limitation of food intake;
- diminish undesirable side-effects;
- minimize the risks of re-operations, malnutrition and mortality; and
- reduce the natural hunger drive of patients.

**Our Intellectual Property**

In order to remain competitive, we must develop and maintain protection of the proprietary aspects of our technologies. We rely on a combination of patents, trademarks, trade secret laws and confidentiality and invention

assignment agreements to protect our intellectual property rights. Our patent applications may not result in issued patents and our patents may not be sufficiently broad to protect our technology. Any patents issued to us may be challenged by third parties as being invalid or unenforceable, or third parties may independently develop similar or competing technology that does not infringe our patents. The laws of certain foreign countries do not protect our intellectual property rights to the same extent as do the laws of the United States.

***LAP-BAND***

As of December 31, 2019, we had 94 total U.S. and foreign patents and patent applications related to our LAP-BAND System. The international patents and patent applications are in regions including Germany, France, Spain, the United Kingdom, Mexico, Canada, Italy, the Netherlands, Portugal, Ireland, Belgium, Poland, Australia, and South Korea. The issued patents expire between the years 2020 and 2031.

We also have 141 total U.S. and international trademarks for the LAP-BAND brand name.

***ReShape Vest***

As of December 31, 2019, we had four granted U.S. patents and four granted foreign patents in China, Israel, Canada and Australia related to our ReShape Vest. The patents expire between the years 2028 and 2038.

We also have U.S. and international trademark applications for the RESHAPE VEST brand name.

**Sales and Distribution**

We market directly to patients but sell the LAP-BAND System to select surgical centers throughout the U.S. and internationally having patients that would like to treat obesity and its comorbidities. The surgical centers then sell our product to the patients and implant. Our sales representatives are supported by field clinical experts who are responsible for training, technical support, and other support services at various implant centers. Our sales representatives help implement consumer marketing programs and provide surgical centers and implanting surgeons with educational patient materials.

In connection with our acquisition of the LAP-BAND System in December 2018, we entered into a transition services agreement, supply agreement and distribution agreement with Apollo pursuant to which, among other things, Apollo will manufacture the LAP-BAND product for us for up two years. As of the end of 2019, we took over all of the worldwide distribution of the LAP-BAND Product and Accessories.

In order to support our LAP-BAND sales efforts, we have increased the size of our dedicated U.S. sales team from two to six. We have also launched marketing campaigns in several top strategic accounts that allow us to partner with clinics in marketing efforts and use digital and traditional marketing to drive qualified leads to physicians. During 2019, our international sales efforts were through a combination of direct and distributor sales channels, with a focus on top LAP-BAND customers in Australia and strategic countries in Europe.

**Our Manufacturers and Suppliers**

We are party to a supply agreement with Apollo pursuant to which, among other things, Apollo will manufacture the LAP-BAND product for us for up to two years after our acquisition of the LAP-BAND product, which was completed in December 2018.

To date, all of the materials and components for our products, as well as any related outside services, are procured from qualified suppliers and contract manufacturers in accordance with our proprietary specifications. All of our key manufacturers and suppliers have experience working with commercial implantable device systems, are ISO certified and are regularly audited by various regulatory agencies including the FDA. Our key manufacturers and suppliers have a demonstrated record of compliance with international regulatory requirements.

Given that we rely on third-party manufacturers and suppliers for the production of our products, our ability to increase production going forward will depend upon the experience, certification levels and large-scale production capabilities of our suppliers and manufacturers. Qualified suppliers and contract manufacturers have been and will

continue to be selected to supply products on a commercial scale according to our proprietary specifications. Our FDA approval process required us to name and obtain approval for the suppliers of key components of the LAP-BAND System.

Many of our parts are custom designed and require custom tooling and, as a result, we may not be able to quickly qualify and establish additional or replacement suppliers for the components of our products. Any new approvals of vendors required by the FDA or other regulatory agencies in other international markets for our products as a result of the need to qualify or obtain alternate vendors for any of our components would delay our ability to sell and market our products and could have a material adverse effect on our business.

We believe that our current manufacturing and supply arrangements will be adequate to continue our ongoing commercial sales and our ongoing and planned clinical trials. In order to produce our products in the quantities we anticipate to meet future market demand, we will need our manufacturers and suppliers to increase, or scale up, manufacturing production and supply arrangements by a significant factor over the current level of production. There are technical challenges to scaling up manufacturing capacity and developing commercial-scale manufacturing facilities that may require the investment of substantial additional funds by our manufacturers and suppliers and hiring and retaining additional management and technical personnel who have the necessary experience. If our manufacturers or suppliers are unable to do so, we may not be able to meet the requirements to expand the launch of the product in the United States or launch the product internationally or to meet future demand, if at all. We may also represent only a small portion of our suppliers' or manufacturers' business and if they become capacity constrained, they may choose to allocate their available resources to other customers that represent a larger portion of their business. If we are unable to obtain a sufficient supply of our product, our revenue, business and financial prospects would be adversely affected.

**Government Regulations**

***Device Classification and Regulations***

***United States***

Our products and products under development are regulated by the FDA as medical devices under the Federal Food, Drug, and Cosmetic Act ("FFDCA") and the regulations promulgated under the FFDCA. Pursuant to the FFDCA, the FDA regulates the research, design, testing, manufacture, safety, labeling, storage, record keeping, advertising, sales and distribution, post-market adverse event reporting, production and advertising and promotion of medical devices in the United States. Noncompliance with applicable requirements can result in warning letters, fines, injunctions, civil penalties, recall or seizure of products, total or partial suspension of production, failure of the government to grant premarket approval for devices and criminal prosecution.

Medical devices in the United States are classified into one of three classes, Class I, II or III, on the basis of the amount of risk and the controls deemed by the FDA to be necessary to reasonably ensure their safety and effectiveness. Class I, low risk, devices are subject to general controls (e.g., labeling and adherence to good manufacturing practices). Class II, intermediate risk, devices are subject to general controls and to special controls (e.g., performance standards, and premarket notification). Generally, Class III devices are those which must receive premarket approval by the FDA to ensure their safety and effectiveness (e.g., life-sustaining, life-supporting and implantable devices, or new devices which have not been found substantially equivalent to legally marketed devices), and require clinical testing to ensure safety and effectiveness and FDA approval prior to marketing and distribution. The FDA also has the authority to require clinical testing of Class II devices. In both the United States and certain international markets, there have been a number of legislative and regulatory initiatives and changes, such as the Modernization Act and the EU-Medical Device Regulations, which could and have altered the healthcare system in ways that could impact our ability to sell our medical devices profitably.

The FFDCA provides two basic review procedures for medical devices. Certain products may qualify for a submission authorized by Section 510(k) of the FFDCA, where the manufacturer submits to the FDA a premarket notification of the manufacturer's intention to commence marketing the product. The manufacturer must, among other things, establish that the product to be marketed is substantially equivalent to another legally marketed product. Marketing may commence when the FDA issues a letter finding substantial equivalence. If a medical device does not qualify for the 510(k) procedure, the manufacturer must file a PMA application with the FDA. This procedure requires more extensive pre-filing clinical and preclinical testing than the 510(k) procedure and involves a significantly longer

FDA review process. A PMA is required to establish the safety and effectiveness of the device and a key component of a PMA submission is the pivotal clinical trial data, as discussed in more detail below.

***Premarket Approval***

Our ReShape vBloc and our LAP-BAND System are medical devices that required PMAs from the FDA to market in the United States. The FDA approved ReShape vBloc in January of 2015 and the LAP-BAND System in 2001 with post-approval conditions intended to ensure the safety and effectiveness of the devices. Failure to comply with the conditions of approval can result in material adverse enforcement action, including the loss or withdrawal of the approvals. Even after approval of the PMAs, new PMAs or supplemental PMAs will be required for significant modifications to the manufacturing process, labeling, use and design of a device that is approved through the premarket approval process. Premarket approval 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 PMA. In addition, holders of an approved PMA are required to submit annual reports to the FDA that include relevant information on the continued use of the device.

The ReShape Vest will be considered a Class III Long Term Implantable ("LTI") product by the FDA requiring the PMA path. A pivotal trial for the ReShape Vest will likely include approximately 250 implanted patients monitored up to three years. Other implantable devices for the treatment of obesity relied on twelve-month endpoints for the PMA submission with annual follow-up visits up to five years and we expect the pivotal trial for the ReShape Vest to be similar. A U.S. pivotal trial requires FDA Investigational Device Exemption ("IDE") submission and approval.

***Clinical Trials***

A clinical trial is almost always required to support a PMA. Clinical trials for a "significant risk" device such as ours require submission to the FDA of an application for an IDE for clinical studies to be conducted within the United States. 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. Clinical trials for a significant risk device in the United States may begin once the IDE application is approved by the FDA and by the Institutional Review Boards ("IRBs") overseeing the clinical trial at the various investigational sites.

Clinical trials require extensive recordkeeping and detailed reporting requirements. Our clinical trials must be conducted under the oversight of an IRB for each participating clinical trial site and in accordance with applicable regulations and policies including, but not limited to, the FDA's good clinical practice IDE requirements. We, the trial Data Safety Monitoring Board, the FDA or the IRB for each site at which a clinical trial is being performed may suspend a clinical trial at any time for various reasons, including a belief that the risks to study subjects outweigh the anticipated benefits.

***Pervasive and Continuing U.S. Regulation***

Numerous regulatory requirements apply. These include:

- Quality System Regulation, which requires manufacturers to follow design, testing, control, documentation, complaint handling and other quality assurance procedures during the design and manufacturing processes;
- regulations which govern product labels and labeling, prohibit the promotion of products for unapproved or "off-label" uses and impose other restrictions on labeling and promotional activities;
- medical device reporting regulations, which require that manufacturers report to the FDA if their device may have caused or contributed to a death or serious injury or malfunctioned in a way that would likely cause or contribute to a death or serious injury if it were to recur;
- notices of correction or removal and recall regulations;
- periodic reporting of progress related to clinical trials, post approval studies required as conditions of PMA approval and relevant changes to information contained within the PMA approval; and

- reporting of transfers of value and payments to physicians and teaching hospitals.

Advertising and promotion of medical devices are also regulated by the Federal Trade Commission and by state regulatory and enforcement authorities. Recently, some promotional activities for FDA-regulated products have resulted in enforcement actions brought under healthcare reimbursement laws and consumer protection statutes. In addition, under the federal Lanham Act, competitors and others can initiate litigation relating to advertising claims.

Compliance with regulatory requirements is enforced through periodic facility inspections by the FDA, which may be unannounced. Because we rely on contract manufacturing sites and service providers, these additional sites are also subject to these FDA inspections. Failure to comply with applicable regulatory requirements can result in enforcement action, which may include any of the following sanctions:

- warning letters or untitled letters;
- fines, injunction and civil penalties;
- recall or seizure of our products;
- customer notification, or orders for repair, replacement or refund;
- operating restrictions, partial suspension or total shutdown of production or clinical trials;
- refusing our request for premarket approval of new products;
- withdrawing premarket approvals that are already granted; and
- criminal prosecution.

***International Regulations***

International sales of medical devices are subject to foreign government regulations, which vary substantially from country to country. The time required to obtain approval by a foreign country may be longer or shorter than that required for FDA approval, and the requirements may differ. The primary regulatory environment in Europe is that of the European Union (“EU”), which consists of 27 member states encompassing nearly all the major countries in Europe. Additional countries that are not part of the EU, but are part of the European Economic Area (“EEA”), and other countries, such as Switzerland, have voluntarily adopted laws and regulations that mirror those of the EU with respect to medical devices. The EU has adopted Directive 90/385/EEC as amended by 2007/47/EC for active implantable medical devices and numerous standards that govern and harmonize the national laws and standards regulating the design, manufacture, clinical trials, labeling and adverse event reporting for medical devices that are marketed in member states. Medical devices that comply with the requirements of the national law of the member state in which their Notified Body is located will be entitled to bear CE marking, indicating that the device conforms to applicable regulatory requirements, and, accordingly, can be commercially marketed within the EU and other countries that recognize this mark for regulatory purposes.

The LAP-BAND System was CE marked in 1997. The method of assessing conformity with applicable regulatory requirements varies depending on the class of the device, but for our LAP-BAND System, the method involved a combination of self-assessment and issuance of declaration of conformity by the manufacturer of the safety and performance of the device, and a third-party assessment by a Notified Body of the design of the device and of our quality system. A Notified Body is a private commercial entity that is designated by the national government of a member state as being competent to make independent judgments about whether a product complies with applicable regulatory requirements. The assessment included, among other things, a clinical evaluation of the conformity of the device with applicable regulatory requirements. We use BSI as the Notified Body for our CE marking approval process.

Continued compliance with CE marking requirements is enforced through periodic facility inspections by the Notified Body, which may be unannounced. Because we rely on contract manufacturing sites and service providers, these additional sites may also be subject to these Notified Body inspections.

***Patient Privacy Laws***

United States and various international laws have been evolving to protect the confidentiality of certain patient health information, including patient medical records. These laws restrict the use and disclosure of certain patient health information. Enforcement actions, including financial penalties, related to patient privacy issues are globally increasing. The management of patient data may have an impact on certain clinical research activities and product design considerations.

**Employees**

As of December 31, 2019, we had 38 employees, all of which were full-time. All of these employees are located in the U.S.

From time to time we also employ independent contractors, consultants and temporary employees to support our operations. None of our employees are subject to collective bargaining agreements. We have never experienced a work stoppage and believe that our relations with our employees are good.

**Information About our Executive Officers**

The following table sets forth information regarding our executive officers as of March 1, 2020:

| Name | Age | Position |
|---|---|---|
| Barton P. Bandy | 58 | President and Chief Executive Officer |
| Thomas Stankovich | 59 | Chief Financial Officer |

*Barton P. Bandy* has served as our President and Chief Executive Officer since April 1, 2019. Mr. Bandy has extensive leadership experience in health care and specifically in the obesity and bariatric space. Most recently, Mr. Bandy was President and Chief Executive Officer of BroadSpot Imaging Corporation, a developer of medical devices for eye care, since April 2017. From April 2013 to August 2016, Mr. Bandy was President of Wellness at Alphaeon Corporation, where he was responsible for business development, commercial activities, strategy and acquisition integration. He previously spent 10 years as the senior executive leading the Inamed and Allergan Health Divisions through the launch, growth and transition of the LAP-BAND.

*Thomas Stankovich* has served as our Chief Financial Officer since October 30, 2019. Mr. Stankovich has extensive leadership experiences as the CFO for multiple public and private healthcare companies. Mr. Stankovich has spent the past nine years as the Global Senior Vice President and Chief Financial Officer of MP Biomedicals, a life science and molecular biology-diagnostics company. Prior to MP Biomedicals, Mr. Stankovich served as Chief Financial Officer at Response Genetics where he successfully led the company through their initial public offering. Additionally, Mr. Stankovich served as Chief Financial Officer for Ribapham Inc., where he also led the company through their initial public offering, which at the time became the second largest ever initial public offering in the biotechnology sector. Mr. Stankovich also held the Chief Financial Officer position at ICN International which later changed its name to Valeant Pharmaceuticals.

**Our Corporate Information**

We were originally incorporated in the state of Minnesota in December 2002 and reincorporated in the state of Delaware in July 2004. In 2017, we changed our name from EnteroMedics Inc. to ReShape Lifesciences Inc. Our shares of common stock trade on the OTCQB Market under the symbol RSLS.

We file reports and other information with the Securities and Exchange Commission (“SEC”) including annual reports on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K and proxy or information statements. Those reports and statements as well as all amendments to those documents filed or furnished pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended (1) are available at the SEC’s Public Reference Room at 100 F Street, N.E., Washington, DC 20549, (2) may be obtained by sending an electronic message to the SEC at publicinfo@sec.gov or by sending a fax to the SEC at 1-202-777-1027, (3) are available at the SEC’s internet site (http://www.sec.gov), which contains reports, proxy and information statements and other information regarding issuers that file electronically with the SEC and (4) are available free of charge through our website as soon as

reasonably practicable after electronic filing with, or furnishing to, the SEC. You may obtain information on the operation of the Public Reference Room by calling the SEC at 1-800-SEC-0330.

Our principal executive offices are located at 1001 Calle Amanecer, San Clemente, California 92673, and our telephone number is (949) 429-6680. Our website address is *www.reshapelifesciences.com*. The information on, or that may be accessed through, our website is not incorporated by reference into this Annual Report on Form 10-K and should not be considered a part of this Annual Report on Form 10-K.

**ITEM 1A. RISK FACTORS**

**RISK FACTORS**

**Risks Related to Our Business and Industry**

***Our acquisition of the assets related to the LAP-BAND System from Apollo Endosurgery, Inc. in December 2018 could adversely affect our operations, financial results and financial condition.***

In December 2018, we acquired substantially all of the assets exclusively related to Apollo Endosurgery, Inc.'s LAP-BAND product line and Apollo acquired from us substantially all of the assets exclusively related to our ReShape Balloon product line. In addition, we agreed to pay Apollo $17.0 million in cash, of which $10.0 million was paid at the closing of the transaction, $2.0 million was paid in December 2019, $2.0 million is payable on the second anniversary of the closing date, and $3.0 million is payable on the third anniversary of the closing date.

A successful acquisition depends on our ability to identify, negotiate, complete and integrate such acquisition and to obtain any necessary financing. With respect to our acquisition of the LAP-BAND product line and any future acquisitions, we may experience:

- difficulties in integrating commercial organizations;
- difficulties or delays in realizing the anticipated benefits of the acquisition;
- diversion of our management's time and attention from other business concerns;
- challenges due to limited or no direct prior experience in new markets or countries we may enter;
- inability to successfully develop new products and services on a timely basis that address our new market opportunities post-acquisition;
- inability to compete effectively against companies already serving the broader market opportunities expected to be available to us post-acquisition;
- unanticipated costs and other contingent liabilities; and
- any unforeseen compliance risks and accompanying financial and reputational exposure or loss not uncovered in the due diligence process and which are imputed to our company, such as compliance with federal laws and regulations, the advertising and promotion regulations under the federal Food, Drug and Cosmetic Act, the Anti-kickback Statute, the False Claims Act, the Physician Sunshine Payments Act and other applicable laws.

We have invested, and expect to continue to invest, significant cash and other resources in connection with our acquisition of the LAP-BAND product line, including our obligation to pay the remaining $5.0 million of the purchase price. Our efforts to successfully integrate and continue the commercialization of the LAP-BAND product line will require significant cash expenditures. There can be no assurance that we will be successful in our efforts. Should we be unable to obtain adequate financing or generate sufficient revenue in the future, our business, results of operations, liquidity and financial condition could be materially and adversely harmed.

***If we do not achieve the contemplated benefits of our acquisition of the LAP-BAND product line, our business and financial condition may be materially impaired.***

We may not achieve the desired benefits from our acquisition of the LAP-BAND product line. For any of the reasons described above and elsewhere in this report and even if we are able to successfully integrate the LAP-BAND product line within our company, we may not be able to realize the revenue and other growth that we anticipate from the acquisition in the time frame that we currently expect, and the costs of achieving these benefits may be higher than what we currently expect, because of a number of risks, including, but not limited to:

- the possibility that the acquisition may not further our business strategy as we expected; and
- the possibility that the revenue from the LAP-BAND product line may be lower than we expected.

As a result of these risks, we may not achieve the anticipated strategic and financial benefits of the LAP-BAND acquisition.

***If we are unable to either substantially improve our operating results or obtain additional financing in the future, we will be unable to continue as a going concern.***

Our independent registered public accounting firm's report on our December 31, 2019 audited financial statements includes an explanatory paragraph referring to our ability to continue as a going concern. The proceeds from any future financings that we may be able to obtain, if any, together with our other available cash, may not be sufficient to fund our operating expenses, capital expenditures and other cash requirements. Should we be unable to obtain adequate financing or generate sufficient revenue in the future, our business, result of operations, liquidity and financial condition would be materially and adversely harmed, and we would be unable to continue as a going concern. These events and circumstances could have a material adverse effect on our ability to raise additional capital and on the market value of our common stock and the warrants offered thereby. Moreover, should we experience a cash shortage that requires us to curtail or cease our operations, or should we be unable to continue as a going concern, you could lose all or part of your investments in our securities.

We currently are not generating revenue from operations that is significant relative to our level of operating expenses, and we do not anticipate generating revenue sufficient to offset operating costs in the short-term to mid-term. We have financed our operations to date principally through the sale of equity securities. Our history of operating losses, limited cash resources and lack of certainty regarding obtaining significant third-party reimbursement for our products or timing thereof, raise substantial doubt about our ability to continue as a going concern. As of December 31, 2019, we had $3.0 million of cash and cash equivalents. We expect our current cash and cash equivalents to fund our operations through the short-term.

Our anticipated operations include plans to (i) integrate the sales and operations of the LAP-BAND product line as well as to obtain cost savings synergies (ii) continue development of the ReShape Vest, (iii) seek opportunities to leverage our intellectual property portfolio and custom development services to provide third-party sales and licensing opportunities, and (iv) explore and capitalize on synergistic opportunities to expand our portfolio and offer future minimally invasive treatments and therapies in the obesity continuum of care. We believe that we have the flexibility to manage the growth of our expenditures and operations depending on the amount of available cash flows, which could include reducing expenditures for marketing, clinical and product development activities. However, we will ultimately need to achieve sufficient revenues from product sales and obtain additional debt or equity financing in addition to the proceeds from this offering to support our operations.

***Our ReShape Vest product is in the early stages of clinical evaluation. If the clinical trial is not successfully completed or any required regulatory approvals are not obtained, the ReShape Vest may not be commercialized and our business prospects may suffer.***

Our ReShape Vest product is in the early stages of development and is currently in the early stages of clinical evaluation. Our ability to market the ReShape Vest in the United States and abroad depends upon our ability to demonstrate the safety and effectiveness of the product with clinical data to support our requests for regulatory approval. The ReShape Vest may not be found to be safe and, where required, effective in clinical trials and may not ultimately be approved for marketing by U.S. or foreign regulatory authorities, which would have a negative impact on our net sales.

There is no assurance that we will be successful in achieving the desired results in our anticipated clinical trials for the ReShape Vest or, if we do, that the FDA or other regulatory agencies will approve the product for sale without the need for additional clinical trial data to demonstrate safety and efficacy. We continually evaluate the potential financial benefits and costs of clinical trials and the products being evaluated in them. If we determine that the costs associated with obtaining regulatory approval of a product exceed the potential financial benefits of that product or if the projected development timeline is inconsistent with our investment horizon, we may choose to stop a clinical trial and/or the development of a product.

***The shares of series C convertible preferred stock issued in connection with our acquisition of ReShape Medical have certain rights and preferences senior to our common stock, including a liquidation preference that is senior to our common stock.***

There are currently 95,388 shares of our series C convertible preferred stock outstanding, which are convertible into 38 shares of our common stock. We issued the shares of our series C convertible preferred stock in connection with our acquisition of ReShape Medical. The series C convertible preferred stock has a liquidation preference of $274.88 per share, or $692,691.05 per underlying share of common stock, or approximately $26.2 million in the aggregate. Holders of the series C convertible preferred stock have the right to convert their shares into shares of common stock instead of receiving the liquidation preference. In general, the series C convertible preferred stock is entitled to receive dividends (on an as-if-converted-to-common stock basis) actually paid on shares of common stock when, as and if such dividends are paid on shares of common stock. No other dividends will be paid on shares of series C convertible preferred stock. While the series C convertible preferred stock generally does not have voting rights, as long as any shares of series C convertible preferred stock remain outstanding, we cannot, without the affirmative vote of holders of a majority of the then-outstanding shares of series C convertible preferred stock, (a) alter or change adversely the powers, preferences or rights given to the series C convertible preferred stock (including by the designation, authorization, or issuance of any shares of preferred stock that purports to have equal rights with, or be senior in rights or preferences to, the series C convertible preferred stock), (b) alter or amend the series C convertible preferred stock certificate of designation, (c) amend our certificate of incorporation or other charter documents in any manner that adversely affects any rights of the holders of series C convertible preferred stock, (d) increase the number of authorized shares of series C convertible preferred stock or (e) enter into any agreement with respect to any of the foregoing.

***We are a medical device company with a limited history of operations and sales, and we cannot assure you that we will ever generate substantial revenue or be profitable.***

We are a medical device company with a limited operating history upon which you can evaluate our business. The success of our business will depend on our ability to generate increased sales and control costs, as well as our ability to obtain additional regulatory approvals needed to market new versions of our LAP-BAND system or regulatory approvals needed to market our ReShape Vest and any other products we may develop in the future, all of which we may be unable to do. If we are unable to successfully market our LAP-BAND system for its indicated use or develop and commercialize the ReShape Vest, we may never become profitable and may have to cease operations as a result. Our lack of a significant operating history also limits your ability to make a comparative evaluation of us, our products and our prospects.

***During the second quarter of 2019 we recorded a non-cash indefinite-lived intangible assets impairment loss, which significantly impacted our results of operations, and we may be exposed to additional impairment losses that could be material.***

We conduct our annual indefinite-lived intangible assets impairment analysis during the fourth quarter of each year or when circumstances suggest that an indicator for impairment may be present. During the second quarter of 2019, we performed a qualitative impairment analysis of the in-process research and development (“IPR&D”). Due to delays in the clinical trials experienced during the first six months of 2019, we revised its expectations of when revenues would commence for the ReShape Vest, thus reducing the projected near-term future net cash flows related to the ReShape Vest. As a result, we recorded an impairment charge of approximately $6.6 million of the excess of the carrying value over the estimated fair value. In the future, we may have additional indicators of potential impairment requiring us to record an impairment loss related to our remaining indefinite-lived and finite-lived intangible assets, which could also have a material adverse effect on our results of operations.

***We will need substantial additional funding and may be unable to raise capital when needed, which would force us to delay, reduce or eliminate our product development programs or liquidate some or all of our assets.***

Our operations have consumed substantial amounts of cash since inception. We expect to continue to spend substantial amounts on the development and commercialization of our products and on research and development, including conducting current and future clinical trials for our LAP-BAND system, ReShape Vest (if approved for sale) and subsequent versions of our products. For the years ended December 31, 2019 and 2018, net cash used in operating activities from continuing operations was $14.2 million and $20.1 million, respectively, and net cash used in operating activities (including discontinued operations) was $17.6 million and $27.5 million, respectively. We expect that our cash used in operations will continue to be significant in the upcoming years, and that we will need to raise additional capital to commercialize our LAP-BAND system, to develop the ReShape Vest, to continue our research and development programs, and to fund our ongoing operations.

Our future funding requirements will depend on many factors, including:

- the cost and timing of establishing sales, marketing and distribution capabilities;
- the cost of establishing clinical and commercial supplies of our LAP-BAND system, ReShape Vest and any products that we may develop;
- the rate of market acceptance of our LAP-BAND system, ReShape Vest and any other product candidates;
- the cost of filing and prosecuting patent applications and defending and enforcing our patent and other intellectual property rights;
- the cost of defending, in litigation or otherwise, any claims that we infringe third-party patent or other intellectual property rights;
- the effect of competing products and market developments;
- the cost of explanting clinical devices;
- the terms and timing of any collaborative, licensing or other arrangements that we may establish;
- any revenue generated by sales of our LAP-BAND system, ReShape Vest or our future products;
- the scope, rate of progress, results and cost of any clinical trials and other research and development activities;
- the cost and timing of obtaining any further required regulatory approvals; and
- the extent to which we invest in products and technologies, although we currently have no commitments or agreements relating to these types of transactions.

Until the time, if ever, when we can generate a sufficient amount of product revenue, we expect to finance our future cash needs through public or private equity offerings, debt financings or corporate collaboration, licensing arrangements and grants, as well as through interest income earned on cash balances.

Additional capital may not be available on terms favorable to us, or at all. If we raise additional funds by issuing equity securities, our stockholders may experience dilution. Debt financing, if available, may involve restrictive covenants or additional security interests in our assets. Any additional debt or equity financing that we complete may contain terms that are not favorable to us or our stockholders. If we raise additional funds through collaboration and licensing arrangements with third parties, it may be necessary to relinquish some rights to our technologies or products, or grant licenses on terms that are not favorable to us. If we are unable to raise adequate funds, we may have to delay, reduce the scope of, or eliminate some or all of, our development programs or liquidate some or all of our assets.

***We incur significant costs as a result of operating as a public company, and our management is required to devote substantial time to compliance initiatives.***

As a public company, we incur significant legal, accounting and other expenses. In addition, the Sarbanes-Oxley Act of 2002 (the "Sarbanes-Oxley Act"), as well as rules subsequently implemented by the SEC have imposed various requirements on public companies, including establishment and maintenance of effective disclosure and financial controls and changes in corporate governance practices. Our management and other personnel devote a substantial amount of time to these compliance initiatives. Moreover, these rules and regulations result in increased legal and financial compliance costs and will make some activities more time-consuming and costly.

The Sarbanes-Oxley Act requires, among other things, that we maintain effective internal controls for financial reporting and disclosure. In particular, we are required to perform system and process evaluation and testing of our internal controls over financial reporting to allow management to report on the effectiveness of our internal controls over financial reporting, as required by Section 404 of the Sarbanes-Oxley Act. Our testing may reveal deficiencies in our internal controls over financial reporting that are deemed to be material weaknesses. We have incurred and continue to expect to incur significant expense and devote substantial management effort toward ensuring compliance with Section 404. Moreover, if we do not comply with the requirements of Section 404, or if we identify deficiencies in our internal controls that are deemed to be material weaknesses, the market price of our stock could decline and we could be subject to sanctions or investigations by the SEC or other regulatory authorities, which would entail expenditure of additional financial and management resources.

***General economic and political conditions could have a material adverse effect on our business***

External factors can affect our financial condition. Such external factors include general domestic and global economic conditions, such as interest rates, tax law including tax rate changes, and factors affecting global economic stability, and the political environment regarding healthcare in general. We cannot predict to what extent the global economic conditions may negatively impact our business. For example, negative conditions in the credit and capital markets could impair our ability to access the financial markets for working capital and could negatively impact our ability to borrow.

In addition, the coronavirus outbreak has begun to have indeterminable adverse effects on general commercial activity and the world economy. If the impact of the coronavirus outbreak continues for an extended period, it could materially adversely impact our operating and clinical activities as a result of the impacts on our supply chain, our clinical trial sites, access to patients and additional regulatory guidance could be delayed or impacted. Our business and results of operations could be adversely affected to the extent that this coronavirus or any epidemic harms the global economy.

***We face significant uncertainty in the industry due to government healthcare reform.***

In the United States, there have been and continue to be a number of legislative initiatives to contain healthcare costs. The Patient Protection and Affordable Care Act, as amended, (the "Affordable Care Act") as well as any future healthcare reform legislation, may have a significant impact on our business. The impact of the Affordable Care Act on the health care industry is extensive and includes, among other things, the federal government assuming a larger role in the health care system, expanding healthcare coverage of United States citizens and mandating basic healthcare benefits. The Affordable Care Act contains many provisions designed to generate the revenues necessary to fund the coverage expansions and to reduce costs of Medicare and Medicaid, including imposing a 2.3% excise tax on domestic sales of many medical devices by manufacturers that began in 2013. A moratorium was placed on the medical device excise tax through 2019. During December of 2019, the medical device excise tax was permanently repealed.

Congress is considering legislation to replace or repeal elements or all of the Affordable Care Act. In addition, there have been recent public announcements by members of Congress and the current presidential administration regarding their plans to repeal and replace the Affordable Care Act. Further, President Trump signed an Executive Order directing federal agencies with authorities and responsibilities under the Affordable Care Act to waive, defer, grant exemptions from, or delay the implementation of any provision of the Affordable Care Act that would impose a fiscal or regulatory burden on states, individuals, healthcare providers, health insurers, or manufacturers of pharmaceuticals or medical devices. At this time, it is not clear whether the Affordable Care Act will be repealed in whole or in part, and, if it is repealed, whether it will be replaced in whole or in part by another plan and what impact those changes will have on

coverage and reimbursement for healthcare items and services covered by plans that were authorized by the Affordable Care Act. We expect that additional state and federal healthcare reform measures will be adopted in the future, any of which could limit the amounts that federal and state governments will pay for healthcare products and services, and also indirectly affect the amounts that private payers are willing to pay. In addition, any healthcare reforms enacted in the future may, like the Affordable Care Act, be phased in over a number of years but, if enacted, could reduce our revenue, increase our costs, or require us to revise the ways in which we conduct business or put us at risk for loss of business. In addition, our results of operations, financial position and cash flows could be materially adversely affected by changes under the Affordable Care Act and changes under any federal or state legislation adopted in the future.

***We are subject, directly or indirectly, to United States federal and state healthcare fraud and abuse and false claims laws and regulations. Prosecutions under such laws have increased in recent years and we may become subject to such litigation. If we are unable to, or have not fully complied with such laws, we could face substantial penalties.***

Our operations are directly, or indirectly through customers, subject to various state and federal fraud and abuse laws, including, without limitation, the federal Anti-Kickback Statute and federal False Claims Act. These laws may impact, among other things, our sales, marketing and education programs.

The federal Anti-Kickback Statute prohibits persons from knowingly and willfully soliciting, offering, receiving or providing remuneration, directly or indirectly, in exchange for or to induce either the referral of an individual, or the furnishing or arranging for a good or service, for which payment may be made under a federal healthcare program such as the Medicare and Medicaid programs. Several courts have interpreted the statute's intent requirement to mean that if any one purpose of an arrangement involving remuneration is to induce referrals of federal healthcare covered business, the statute has been violated. The Anti-Kickback Statute is broad and, despite a series of narrow safe harbors, prohibits many arrangements and practices that are lawful in businesses outside of the healthcare industry. Penalties for violations of the federal Anti-Kickback Statute include criminal penalties and civil sanctions such as fines, imprisonment and possible exclusion from Medicare, Medicaid and other federal healthcare programs. Many states have also adopted laws similar to the federal Anti-Kickback Statute, some of which apply to the referral of patients for healthcare items or services reimbursed by any source, not only the Medicare and Medicaid programs.

The federal False Claims Act prohibits persons from knowingly filing, or causing to be filed, a false claim to, or the knowing use of false statements to obtain payment from the federal government. Suits filed under the False Claims Act, known as "qui tam" actions, can be brought by any individual on behalf of the government and such individuals, commonly known as "whistleblowers," may share in any amounts paid by the entity to the government in fines or settlement. The frequency of filing qui tam actions has increased significantly in recent years, causing greater numbers of medical device, pharmaceutical and healthcare companies to have to defend a False Claim Act action. When an entity is determined to have violated the federal False Claims Act, it may be required to pay up to three times the actual damages sustained by the government, plus civil penalties for each separate false claim. Various states have also enacted laws modeled after the federal False Claims Act.

We are unable to predict whether we could be subject to actions under any of these laws, or the impact of such actions. If we are found to be in violation of any of the laws described above or other applicable state and federal fraud and abuse laws, we may be subject to penalties, including civil and criminal penalties, damages, fines, exclusion from government healthcare reimbursement programs and the curtailment or restructuring of our operations.

***Failure to protect our information technology information technology infrastructure against cyber-based attacks, network security breaches, service interruptions or data corruption could materially disrupt our operations and adversely affect our business.***

The operation of our business depends on our information technology systems. We rely on our information technology systems to, among other things, effectively manage sales and marketing data, accounting and financial functions, inventory management, product development tasks, clinical data, customer service and technical support functions. Our information technology systems are vulnerable to damage or interruption from earthquakes, fires, floods and other natural disasters, terrorist attacks, power losses, computer system or data network failures, security breaches, data corruption, and cyber-based attacks. Cyber-based attacks can include computer viruses, computer denial-of-service attacks, phishing attacks, worms, and other malicious software programs or other attacks, covert introduction of malware to computers and networks, impersonation of authorized users, and efforts to discover and exploit any design flaws, bugs, security vulnerabilities, or security weaknesses, as well as intentional or unintentional acts by employees or other

insiders with access privileges, intentional acts of vandalism by third parties and sabotage. In addition, federal, state, and international laws and regulations, such as the General Data Protection Regulation adopted by the European Union and European Economic Area countries can expose us to enforcement actions and investigations by regulatory authorities, and potentially result in regulatory penalties and significant legal liability, if our information technology security efforts fail. In addition, a variety of our software systems are cloud-based data management applications, hosted by third-party service providers whose security and information technology systems are subject to similar risks.

***We operate in a highly competitive industry that is subject to rapid change. If our competitors are able to develop and market products that are safer or more effective than our products, our commercial opportunities will be reduced or eliminated***.

The health care industry is highly competitive, subject to rapid change and significantly affected by new product introductions and other market activities of industry participants. The obesity treatment market in which we operate has grown significantly in recent years and is expected to continue to expand as technology continues to evolve and awareness of the need to treat the obesity epidemic grows. Although we are not aware of any competitors in the neuroblocking market, we face potential competition from pharmaceutical and surgical obesity treatments. Many of our competitors in the obesity treatment field have significantly greater financial resources and expertise in research and development, manufacturing, preclinical testing, clinical trials, obtaining regulatory approvals and marketing approved products than we do. Smaller or early-stage companies may also prove to be significant competitors, particularly if they pursue competing solutions through collaborative arrangements with large and established companies, such as Allergan, Apollo Endosurgery, Boston Scientific, LivaNova PLC, Johnson & Johnson, Medtronic or St. Jude Medical. Our competitors may develop and patent processes or products earlier than us, obtain regulatory approvals for competing products more rapidly than we are able to and develop more effective, safer and less expensive products or technologies that would render our products non-competitive or obsolete.

**Risks Associated with Development and Commercialization of the LAP-BAND system and ReShape Vest**

***Our efforts to increase revenue from our LAP-BAND system and commercialize the ReShape Vest may not succeed or may encounter delays which could significantly harm our ability to generate revenue.***

Our ability to generate revenue will depend upon the sales of our LAP-BAND system and successful commercialization of our ReShape Vest (if approved for sale). Our efforts to commercialize these products may not succeed for a number of reasons, including:

- we may not be able to obtain the regulatory approvals required for our ReShape Vest;
- our products may not be accepted in the marketplace by physicians, patients and third-party payers;
- the price of our products, associated costs of the surgical procedure and treatment and the availability of sufficient third-party reimbursement for the system implantation and follow-up procedures;
- appropriate reimbursement and/or coding options may not exist to enable billing for the system implantation and follow-up procedures for our ReShape Vest;
- coverage policies for bariatric surgeries, including LAP-BAND may be restricted in the future;
- we may not be able to sell our products at a price that allows us to meet the revenue targets necessary to generate enough revenue for profitability;
- the frequency and severity of any side effects of our products;
- physicians and potential patients may not be aware of the perceived effectiveness and sustainability of the results of our products;
- we, or the investigators of our products, may not be able to have information on the outcome of the trials published in medical journals;

- the availability and perceived advantages and disadvantages of alternative treatments;
- any rapid technological change may make our products obsolete;
- we may not be able to have our products manufactured in commercial quantities or at an acceptable cost;
- we may not have adequate financial or other resources to complete the development and commercialization of our products or to develop sales and marketing capabilities for our products; and
- we may be sued for infringement of intellectual property rights and could be enjoined from manufacturing or selling our products.

Besides requiring physician adoption, market acceptance of our products will depend on successfully communicating the benefits of our products to three additional constituencies involved in deciding whether to treat a particular patient using our products: (1) the potential patients themselves; (2) institutions such as hospitals, where the procedure would be performed and opinion leaders in these institutions; and (3) third-party payers, such as private healthcare insurers and governmental payers, such as Medicare and Medicaid in the United States, which would ultimately bear most of the costs of the various providers and equipment involved in our LAP-BAND system and ReShape Vest (if approved for sale). Marketing to each of these constituencies requires a different marketing approach, and we must convince each of these groups of the efficacy and utility of our products to be successful.

If our products, or any other therapy or products for other gastrointestinal diseases and disorders that we may develop, do not achieve an adequate level of acceptance by the relevant constituencies, we may not generate significant product revenue and may not become profitable.

***We may not be able to obtain required regulatory approvals for our ReShape Vest in a cost-effective manner or at all, which could adversely affect our business and operating results.***

The production and marketing of our ReShape Vest and our ongoing research and development, preclinical testing and clinical trial activities are subject to extensive regulation and review by numerous governmental authorities both in the United States and abroad. U.S. and foreign regulations applicable to medical devices are wide-ranging and govern, among other things, the development, testing, marketing and premarket review of new medical devices, in addition to regulating manufacturing practices, reporting, advertising, exporting, labeling and record keeping procedures. We are required to obtain regulatory approval before we can market our ReShape Vest in the United States and certain foreign countries. The regulatory process will require significant time, effort and expenditures to bring products to market, and it is possible that our ReShape Vest will not be approved for sale. Even if regulatory approval of our ReShape Vest is granted, it may not be granted within the timeframe that we expect, which could have an adverse effect on our operating results and financial condition. Even after our ReShape Vest is approved by the FDA, we may have ongoing responsibilities under FDA regulations, non-compliance of which could result in the subsequent withdrawal of such approvals, or such approvals could be withdrawn due to the occurrence of unforeseen problems following initial approval. We also are subject to medical device reporting regulations that require us to report to the FDA if any of our products causes or contributes to a death or serious injury or if a malfunction were it to occur might cause or contribute to a death or serious injury. Any failure to obtain regulatory approvals on a timely basis or the subsequent withdrawal of such approvals could prevent us from successfully marketing our products, which could adversely affect our business and operating results.

***We depend on clinical investigators and clinical sites to enroll patients in our clinical trials, and on other third parties to manage the trials and to perform related data collection and analysis, and, as a result, we may face costs and delays that are outside of our control.***

We rely on clinical investigators and clinical sites to enroll patients in our clinical trials and other third parties to manage the trials and to perform related data collection and analysis. However, we may not be able to control the amount and timing of resources that clinical sites may devote to our clinical trials. If these clinical investigators and clinical sites fail to enroll a sufficient number of patients in our clinical trials, ensure compliance by patients with clinical protocols or comply with regulatory requirements, we will be unable to complete these trials, which could prevent us from obtaining or maintaining regulatory approvals for our product. Our agreements with clinical investigators and clinical trial sites for clinical testing place substantial responsibilities on these parties and, if these parties fail to perform

as expected, our trials could be delayed or terminated. If these clinical investigators, clinical sites or other third parties do not carry out their contractual duties or obligations or fail to meet expected deadlines, or if the quality or accuracy of the clinical data they obtain is compromised due to their failure to adhere to our clinical protocols, regulatory requirements or for other reasons, our clinical trials may be extended, delayed or terminated, or the clinical data may be rejected by the FDA, adversely affecting our ability to successfully commercialize our product.

***Modifications to the LAP-BAND system may require additional approval from regulatory authorities, which may not be obtained or may delay our commercialization efforts.***

The FDA and our European Notified Body require medical device companies to initially make and document a determination of whether or not a modification requires a new approval, supplement or clearance; however, some of these regulatory authorities can review a company's decision. Any modifications to an approved device that could significantly affect its safety or efficacy, or that would constitute a major change in its intended use could require additional clinical studies and separate regulatory applications. Product changes or revisions will require all the regulatory steps and associated risks discussed above possibly including testing, regulatory filings and clinical study. We may not be able to obtain approval of supplemental regulatory approvals for product modifications, new indications for our product or new products. Delays in obtaining future clearances would adversely affect our ability to introduce new or enhanced products in a timely manner, which in turn would harm our commercialization efforts and future growth.

***If we or our suppliers fail to comply with ongoing regulatory requirements, or if we experience unanticipated product problems, our LAP-BAND system could be subject to restrictions or withdrawal from the market.***

Any product for which we obtain marketing approval, along with the manufacturing processes, post-approval clinical data and promotional activities for such product, will be subject to continual review and periodic inspections by our European Notified Body and the FDA and other regulatory bodies. In particular we and our manufacturers and suppliers are required to comply with ISO requirements, Good Manufacturing Practices, which for medical devices is called the Quality System Regulation ("QSR"), and other regulations which cover the methods and documentation of the design, testing, production, control, quality assurance, labeling, packaging, storage and shipping of any product for which we obtain marketing approval. The FDA enforces the QSR through inspections, which may be unannounced, and the CE system enforces its certification through inspections and audits as well. Our quality system has received certification of compliance to the requirements of ISO 13485:2016 and will have to continue to successfully complete such inspections to maintain regulatory approvals for sales outside of the United States. Failure by us or one of our manufacturers or suppliers to comply with statutes and regulations administered by the FDA, CE authorities and other regulatory bodies, or failure to adequately respond to any observations, could result in enforcement actions against us or our manufacturers or suppliers, including, restrictions on our product or manufacturing processes, withdrawal of the product from the market, voluntary or mandatory recall, fines, suspension of regulatory approvals, product seizures, injunctions or the imposition of civil or criminal penalties.

If any of these actions were to occur it would harm our reputation and cause our product sales to suffer. Furthermore, our key component suppliers may not currently be or may not continue to be in compliance with applicable regulatory requirements. If the FDA or any other regulatory body finds their compliance status to be unsatisfactory, our commercialization efforts could be delayed, which would harm our business and our results of operations.

Additionally, if the FDA determines that our promotional materials, training or other activities constitute promotion of an unapproved use, we could be subject to significant liability, the FDA could request that we cease, correct or modify our training or promotional materials or subject us to regulatory enforcement actions. It is also possible that other federal, state or foreign enforcement authorities might take action if they consider our training or other promotional materials to constitute promotion of an unapproved use, which could result in significant fines or penalties under other statutory authorities, such as laws prohibiting false claims for reimbursement.

We are subject to medical device reporting regulations that require us to report to the FDA, Competent Authorities or other governmental authorities in other countries if our products cause or contribute to a death or serious injury or malfunction in a way that would be reasonably likely to contribute to death or serious injury if the malfunction were to recur. The FDA and similar governmental authorities in other countries have the authority to require the recall of our products in the event of material deficiencies or defects in design or manufacturing. A government mandated, or voluntary, recall by us could occur as a result of component failures, manufacturing errors or design defects, including defects in labeling. Any recall would divert managerial and financial resources and could harm our reputation with

customers. There can be no assurance that there will not be product recalls in the future or that such recalls would not have a material adverse effect on our business. Once the product is approved and implanted in a large number of patients, infrequently occurring adverse events may appear that were not observed in the clinical trials. This could cause health authorities in countries where the product is available to take regulatory action, including marketing suspension and recall.

***We may be unable to attract and retain management and other personnel we need to succeed.***

Our success depends on the services of our senior management and other key employees. The loss of the services of one or more of our officers or key employees could delay or prevent the successful completion of our clinical trials and the commercialization of our LAP-BAND system and the development of our ReShape Vest. Our continued growth will require hiring a number of qualified clinical, scientific, commercial and administrative personnel. Accordingly, recruiting and retaining such personnel in the future will be critical to our success. There is intense competition from other companies and research and academic institutions for qualified personnel in the areas of our activities. If we fail to identify, attract, retain and motivate these highly skilled personnel, we may be unable to continue our development and commercialization activities.

***We may be unable to manage our growth effectively.***

Our business strategy entails significant future growth. For example, we will have to expand existing operations in order to increase revenue from our LAP-BAND system and develop our ReShape Vest, conduct additional clinical trials, increase our contract manufacturing capabilities, hire and train new personnel to handle the marketing and sales of our product, assist patients and healthcare providers in obtaining reimbursement for the use of our product and create and develop new applications for our technology. This growth may place significant strain on our management and financial and operational resources. Successful growth is also dependent upon our ability to implement appropriate financial and management controls, systems and procedures. Our ability to effectively manage growth depends on our success in attracting and retaining highly qualified personnel, for which the competition may be intense. If we fail to manage these challenges effectively, our business could be harmed.

***We face the risk of product liability claims that could be expensive, divert management's attention and harm our reputation and business. We may not be able to obtain adequate product liability insurance.***

Our business exposes us to a risk of product liability claims that is inherent in the testing, manufacturing and marketing of medical devices. The medical device industry has historically been subject to extensive litigation over product liability claims. We may be subject to product liability claims if our products cause, or appear to have caused, an injury. Claims may be made by consumers, healthcare providers, third-party strategic collaborators or others selling our products.

We have product liability insurance, which covers the use of our products in our clinical trials and any commercial sales, in an amount we believe is appropriate. Our current product liability insurance may not continue to be available to us on acceptable terms, if at all, and, if available, the coverage may not be adequate to protect us against any future product liability claims. If we are unable to obtain insurance at an acceptable cost and on acceptable terms for an adequate coverage amount, or otherwise to protect against potential product liability claims, we could be exposed to significant liabilities, which may harm our business. 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. These liabilities could prevent or interfere with our product commercialization efforts. Defending a suit, regardless of merit, could be costly, could divert management attention and might result in adverse publicity, which could result in the withdrawal of, or inability to recruit, clinical trial volunteers or result in reduced acceptance of our products in the market.

We may be subject to product liability claims even if it appears that the claimed injury is due to the actions of others. For example, we rely on the expertise of surgeons and other associated medical personnel to perform the medical procedure to implant and remove our products and to perform the related therapy. If these medical personnel are not properly trained or are negligent, the therapeutic effect of our products may be diminished or the patient may suffer critical injury, which may subject us to liability. In addition, an injury that is caused by the negligence of one of our suppliers in supplying us with a defective component that injures a patient could be the basis for a claim against us. A product liability claim, regardless of its merit or eventual outcome, could result in decreased demand for our products;

injury to our reputation; diversion of management's attention; withdrawal of clinical trial participants; significant costs of related litigation; substantial monetary awards to patients; product recalls or market withdrawals; loss of revenue; and the inability to commercialize our products under development.

**Risks Related to Intellectual Property**

***If we are unable to obtain or maintain intellectual property rights relating to our technology and neuroblocking therapy, the commercial value of our technology and any future products will be adversely affected and our competitive position will be harmed.***

Our commercial success depends in part on our ability to obtain protection in the United States and other countries for our LAP-BAND system and ReShape Vest by establishing and maintaining intellectual property rights relating to or incorporated into our technology and products. We own numerous U.S. and foreign patents and have numerous patent applications pending, most of which pertain to treating gastrointestinal disorders and the treatment of obesity. We have also received or applied for additional patents outside the United States. Our pending and future patent applications may not issue as patents or, if issued, may not issue in a form that will provide us any competitive advantage. We expect to incur substantial costs in obtaining patents and, if necessary, defending our proprietary rights. The patent positions of medical device companies, including ours, can be highly uncertain and involve complex and evolving legal and factual questions. We do not know whether we will obtain the patent protection we seek, or that the protection we do obtain will be found valid and enforceable if challenged. If we fail to obtain adequate protection of our intellectual property, or if any protection we obtain is reduced or eliminated, others could use our intellectual property without compensating us, resulting in harm to our business. We may also determine that it is in our best interests to voluntarily challenge a third-party's products or patents in litigation or administrative proceedings, including patent interferences, re-examinations or under more recently promulgated Inter Partes Review proceedings, depending on when the patent application was filed. In the event that we seek to enforce any of our owned or exclusively licensed patents against an infringing party, it is likely that the party defending the claim will seek to invalidate the patents we assert, which, if successful could result in the loss of the entire patent or the relevant portion of our patent, which would not be limited to any particular party. Any litigation to enforce or defend our patent rights, even if we were to prevail, could be costly and time-consuming and could divert the attention of our management and key personnel from our business operations. Even if we were to prevail in any litigation, we cannot assure you that we can obtain an injunction that prevents our competitors from practicing our patented technology. Our competitors may independently develop similar or alternative technologies or products without infringing any of our patent or other intellectual property rights, or may design around our proprietary technologies.

We cannot assure you that we will obtain any patent protection that we seek, that any protection we do obtain will be found valid and enforceable if challenged or that it will confer any significant commercial advantage. U.S. patents and patent applications may also be subject to interference proceedings and U.S. patents may be subject to re-examination proceedings in the U.S. Patent and Trademark Office ("USPTO"), or under more recently promulgated Inter Partes Review proceedings, depending on when the patent application was filed, and foreign patents may be subject to opposition or comparable proceedings in the corresponding foreign patent offices, which proceedings 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. In addition, such interference, re-examination and opposition proceedings may be costly. Moreover, the U.S. patent laws have recently changed with the adoption of the America Invents Act ("AIA"), possibly making it easier to challenge patents. Some of our technology was, and continues to be, developed in conjunction with third parties, and thus there is a risk that such third parties may claim rights in our intellectual property. Thus, any patents that we own or license from others may provide limited or no protection against competitors. Our pending patent applications, those we may file in the future, or those we may license from third parties, may not result in patents being issued. If issued, they may not provide us with proprietary protection or competitive advantages against competitors with similar technology.

Non-payment or delay in payment of patent fees or annuities, whether intentional or unintentional, may result in loss of patents or patent rights important to our business. Many countries, including certain countries in Europe, have compulsory licensing laws under which a patent owner may be compelled to grant licenses to third parties. In addition, many countries limit the enforceability of patents against third parties, including government agencies or government contractors. In these countries, the patent owner may have limited remedies, which could materially diminish the value of the patent. In addition, the laws of some foreign countries do not protect intellectual property rights to the same extent as do the laws of the United States, particularly in the field of medical products and procedures.

***Many of our competitors have significant resources and incentives to apply for and obtain intellectual property rights that could limit or prevent our ability to commercialize our current or future products in the United States or abroad.***

Many of our competitors who have significant resources and have made substantial investments in competing technologies may seek to apply for and obtain patents that will prevent, limit or interfere with our ability to make, use or sell our products either in the U.S. or in international markets. Our current or future U.S. or foreign patents may be challenged, circumvented by competitors or others or may be found to be invalid, unenforceable or insufficient. In most cases in the United States patent applications are published 18 months after filing the application, or corresponding applications are published in other countries, and since publication of discoveries in the scientific or patent literature often lags behind actual discoveries, we cannot be certain that we were the first to make the inventions covered by each of our pending patent applications, or that we were the first to file patent applications for such inventions.

***If we are unable to protect the confidentiality of our proprietary information and know-how, the value of our technology and products could be adversely affected.***

In addition to patented technology, we rely on our unpatented proprietary technology, trade secrets, processes and know-how. We generally seek to protect this information by confidentiality agreements with our employees, consultants, scientific advisors and third parties. These agreements may be breached, and we may not have adequate remedies for any such breach. In addition, our trade secrets may otherwise become known or be independently developed by competitors. To the extent that our employees, consultants or contractors use intellectual property owned by others in their work for us, disputes may arise as to the rights in related or resulting know-how and inventions.

***Intellectual property litigation is a common tactic in the medical device industry to gain competitive advantage. If we become subject to a lawsuit, we may be required to expend significant financial and other resources and our management's attention may be diverted from our business.***

There has been a history of frequent and extensive litigation regarding patent and other intellectual property rights in the medical device industry, and companies in the medical device industry have employed intellectual property litigation to gain a competitive advantage. Accordingly, we may become subject to patent infringement claims or litigation in a court of law, or interference proceedings declared by the USPTO to determine the priority of inventions or an opposition to a patent grant in a foreign jurisdiction. We may also become subject to claims or litigation seeking payment of royalties based on sales of our product in connection with licensing or similar joint development arrangements with third parties or in connection with claims of patent infringement.

The defense and prosecution of intellectual property suits, USPTO interference proceedings, reexamination proceedings, or under more recently promulgated Inter Partes Review proceedings, depending on when the patent application was filed, or opposition proceedings and related legal and administrative proceedings, are both costly and time consuming and could result in substantial uncertainty to us. Litigation or regulatory proceedings may also be necessary to enforce patent or other intellectual property rights of ours or to determine the scope and validity of other parties' proprietary rights. Any litigation, opposition or interference proceedings, with or without merit, may result in substantial expense to us, cause significant strain on our financial resources, divert the attention of our technical and management personnel and harm our reputation. We may not have the financial resources to defend our patents from infringement or claims of invalidity. An adverse determination in any litigation could subject us to significant liabilities to third parties, require us to seek licenses from or pay royalties to third parties or prevent us from manufacturing, selling or using our proposed products, any of which could have a material adverse effect on our business and prospects.

Our LAP-BAND system or ReShape Vest may infringe or be claimed to infringe patents that we do not own or license, including patents that may issue in the future based on patent applications of which we are currently aware, as well as applications of which we are unaware. For example, we are aware of other companies that are investigating neurostimulation, including neuroblocking, and of patents and published patent applications held by companies in those fields. While we believe that none of such patents and patent applications are applicable to our products and technologies under development, third parties who own or control these patents and patent applications in the United States and abroad could bring claims against us that would cause us to incur substantial expenses and, if such claims are successfully asserted against us, they could cause us to pay substantial damages, could result in an injunction preventing us from selling, manufacturing or using our proposed products and would divert management's attention. Because patent applications in many countries such as the United States are maintained under conditions of confidentiality and can take many years to issue, there may be applications now pending of which we are unaware, and which may later result in

issued patents that our products infringe. If a patent infringement suit were brought against us, we could be forced to stop our ongoing or planned clinical trials, or delay or abandon commercialization of the product that is subject of the suit.

As a result of patent infringement claims, or to avoid potential claims, we may choose or be required to seek a license from a third-party and be required to pay license fees or royalties, or both. A license may not be available at all or on commercially reasonable terms, and we may not be able to redesign our products to avoid infringement. Modification of our products or development of new products could require us to conduct additional clinical trials and to revise our filings with the FDA and other regulatory bodies, which would be time-consuming and expensive. Even if we were able to obtain a license, the rights may be nonexclusive, which could result in our competitors gaining access to the same intellectual property. Ultimately, we could be forced to cease some aspect of our business operations if, as a result of actual or threatened patent infringement claims, we are unable to enter into licenses on acceptable terms. This could harm our business significantly.

**Risks Relating to Ownership of Our Common Stock**

***Our common stock trades on an over-the-counter market.***

Our common stock trades on the OTCQB market and therefore may have less liquidity and may experience potentially more price volatility than experienced when our shares traded on Nasdaq. Stockholders may not be able to sell their shares of common stock on the OTCQB market in the quantities, at the times, or at the prices that could potentially be available on a more liquid trading market. The delisting of our common stock from Nasdaq in 2018 could also adversely affect our ability to obtain financing for our operations and/or result in a loss of confidence by investors or employees.

***Our common stock may be deemed to be a "penny stock" and broker-dealers who make a market in our stock may be subject to additional compliance requirements.***

If our common stock is deemed to be a "penny stock" as defined in the Securities Exchange Act of 1934, broker-dealers who make a market in our stock will be subject to additional sales practice requirements for selling our common stock to persons other than established customers and accredited investors. For instance, the broker-dealer must make a special suitability determination for the purchaser and receive the purchaser's written agreement to the transaction prior to the sale. Consequently, the penny stock rules, if they were to become applicable, would affect the ability or willingness of broker-dealers to sell our securities, and accordingly would affect the ability of stockholders to sell their securities in the public market. These additional procedures could also limit our ability to raise additional capital in the future.

***The trading price of our common stock has been volatile and is likely to be volatile in the future.***

The trading price of our common stock has been highly volatile. The market price for our common stock will be affected by a number of factors, including:

- the denial or delay of regulatory clearances or approvals of our product or receipt of regulatory approval of competing products;
- our ability to accomplish clinical, regulatory and other product development milestones and to do so in accordance with the timing estimates we have publicly announced;
- changes in policies affecting third-party coverage and reimbursement in the United States and other countries;
- changes in government regulations and standards affecting the medical device industry and our product;
- ability of our products to achieve market success;
- the performance of third-party contract manufacturers and component suppliers;
- our ability to develop sales and marketing capabilities;

- actual or anticipated variations in our results of operations or those of our competitors;
- announcements of new products, technological innovations or product advancements by us or our competitors;
- developments with respect to patents and other intellectual property rights;
- sales of common stock or other securities by us or our stockholders in the future;
- additions or departures of key scientific or management personnel;
- disputes or other developments relating to proprietary rights, including patents, litigation matters and our ability to obtain patent protection for our technologies;
- the trading volume of our common stock;
- changes in earnings estimates or recommendations by securities analysts, failure to obtain or maintain analyst coverage of our common stock or our failure to achieve analyst earnings estimates;
- public statements by analysts or clinicians regarding their perceptions of our clinical results or the effectiveness of our products;
- decreases in market valuations of medical device companies; and
- general market conditions and other factors unrelated to our operating performance or the operating performance of our competitors.

The stock prices of many companies in the medical device industry have experienced wide fluctuations that have often been unrelated to the operating performance of these companies. Following periods of volatility in the market price of a company's securities, securities class action litigation often has been initiated against a company. If class action litigation is initiated against us, we may incur substantial costs and our management's attention may be diverted from our operations, which could significantly harm our business.

***Sales of a substantial number of shares of our common stock in the public market by existing stockholders, or the perception that they may occur, could cause our stock price to decline.***

Sales of substantial amounts of our common stock by us or by our stockholders, announcements of the proposed sales of substantial amounts of our common stock or the perception that substantial sales may be made, could cause the market price of our common stock to decline. We may issue additional shares of our common stock in follow-on offerings to raise additional capital, upon the exercise of options or warrants, or in connection with acquisitions or corporate alliances. We also plan to issue additional shares to our employees, directors or consultants in connection with their services to us. All of the currently outstanding shares of our common stock are freely tradable under federal and state securities laws, except for shares held by our directors, officers and certain greater than five percent stockholders, which may be subject to holding period, volume and other limitations under Rule 144. Due to these factors, sales of a substantial number of shares of our common stock in the public market could occur at any time and could reduce the market price of our common stock.

***We have a significant number of outstanding warrants, options and shares of convertible preferred stock, some of which contain full-ratchet anti-dilution protection, which may cause significant dilution to our stockholders, have a material adverse impact on the market price of our common stock and make it more difficult for us to raise funds through future equity offerings.***

As of December 31, 2019, we had outstanding 391,793 shares of common stock. In addition, as of that date we had outstanding warrants to acquire 13,609,929 shares of common stock, options to acquire 46 shares of common stock and shares of convertible preferred stock convertible into an aggregate of 1,288 shares of common stock. The issuance of shares of common stock upon the exercise of warrants or options or conversion of preferred stock would dilute the percentage ownership interest of all stockholders, might dilute the book value per share of our common stock and would increase the number of our publicly traded shares, which could depress the market price of our common stock.

In addition, a substantial number of our outstanding warrants and shares of convertible preferred stock contain so-called full-ratchet anti-dilution provisions which, subject to limited exceptions, would reduce the exercise price of the warrants (but not increase the number of shares issuable) and reduce the conversion price of the convertible preferred stock (and increase the number of shares issuable) in the event that we in the future issue common stock, or securities convertible into or exercisable to purchase common stock, at a lower price per share, to such lower price. Of our outstanding warrants as of December 31, 2019, warrants exercisable to purchase 350 shares of common stock with an exercise price of $150.00 per share contained a full-ratchet anti-dilution provision, and shares of convertible preferred stock convertible into 1,060 shares of common stock at a conversion price of $150.00 per share contained a full-ratchet anti-dilution provision. These full ratchet anti-dilution provisions would be triggered by the future issuances by us of shares of our common stock or common stock equivalents at a price per share below the then-exercise price of the warrants and the then-conversion price of the convertible preferred stock, subject to limited exceptions. In the event of a liquidation, the holders of shares of series C convertible preferred stock are entitled to be paid, before any payments are to be made to the holders of common stock or any other series of preferred stock, an amount per share equal to the greater of (i) $692,691.05 per share (on an as-converted-to-common stock basis), or an aggregate of approximately $26.2 million, plus any dividends declared but unpaid thereon, or (ii) such amount per share as would have been payable had all shares of series C convertible preferred stock been converted to common stock immediately prior to such liquidation.

In addition to the dilutive effects described above, the perceived risk of dilution as a result of the significant number of outstanding warrants, options and shares of convertible preferred stock may cause our common stockholders to be more inclined to sell their shares, which would contribute to a downward movement in the price of our common stock. Moreover, the perceived risk of dilution and the resulting downward pressure on our common stock price could encourage investors to engage in short sales of our common stock, which could further contribute to price declines in our common stock. The fact that our stockholders, warrant holders and option holders can sell substantial amounts of our common stock in the public market, whether or not sales have occurred or are occurring, as well as the existence of full-ratchet anti-dilution provisions in a substantial number of our outstanding warrants and shares of convertible preferred stock, could make it more difficult for us to raise additional funds through the sale of equity or equity-related securities in the future at a time and price that we deem reasonable or appropriate, or at all.

***You may experience future dilution as a result of future equity offerings.***

In order to raise additional capital for general corporate purposes, in the future we may offer additional shares of our common stock or other securities convertible into or exchangeable for our common stock at prices that may be lower than the current price per share of our common stock. In addition, investors purchasing shares or other securities in the future could have rights superior to existing stockholders. The price per share at which we sell additional shares of our common stock, or securities convertible or exchangeable into common stock, in future transactions may be higher or lower than the price per share paid by investors in prior offerings.

***Since our securities are quoted on the OTCQB market, our stockholders may face significant restrictions on the resale of our securities due to state "blue sky" laws.***

Each state has its own securities laws, often called "blue sky" laws, which (i) limit sales of securities to a state's residents unless the securities are registered in that state or qualify for an exemption from registration, and (ii) govern the reporting requirements for broker-dealers doing business directly or indirectly in the state. Before a security is sold in a state, there must be a registration in place to cover the transaction, or the transaction must be exempt from registration. The applicable broker must be registered in that state. We do not know whether our common stock will be registered or exempt from registration under the laws of any state. Since our common stock is currently quoted on the OTCQB, a determination regarding registration will be made by those broker-dealers, if any, who agree to serve as the market-makers for our common stock. There may be significant state blue sky law restrictions on the ability of investors to sell, and on purchasers to buy, our common stock. Investors should therefore consider the resale market for our common stock to be limited, as they may be unable to resell your common stock without the significant expense of state registration or qualification.

***Our organizational documents and Delaware law make a takeover of our company more difficult, which may prevent certain changes in control and limit the market price of our common stock.***

Our certificate of incorporation and bylaws and Section 203 of the Delaware General Corporation Law contain provisions that may have the effect of deterring or delaying attempts by our stockholders to remove or replace management, engage in proxy contests and effect changes in control. These provisions include:

- the ability of our board of directors to create and issue preferred stock without stockholder approval, which could be used to implement anti-takeover devices;
- the authority for our board of directors to issue without stockholder approval up to the number of shares of common stock authorized in our certificate of incorporation, that, if issued, would dilute the ownership of our stockholders;
- the advance notice requirement for director nominations or for proposals that can be acted upon at stockholder meetings;
- a classified and staggered board of directors, which may make it more difficult for a person who acquires control of a majority of our outstanding voting stock to replace all or a majority of our directors;
- the prohibition on actions by written consent of our stockholders;
- the limitation on who may call a special meeting of stockholders;
- the prohibition on stockholders accumulating their votes for the election of directors; and
- the ability of stockholders to amend our bylaws only upon receiving a majority of the votes entitled to be cast by holders of all outstanding shares then entitled to vote generally in the election of directors, voting together as a single class.

In addition, as a Delaware corporation, we are subject to Delaware law, including Section 203 of the Delaware General Corporation Law. In general, Section 203 prohibits a Delaware corporation from engaging in any business combination with any interested stockholder for a period of three years following the date that the stockholder became an interested stockholder unless certain specific requirements are met as set forth in Section 203. These provisions, alone or together, could have the effect of deterring or delaying changes in incumbent management, proxy contests or changes in control.

These provisions also could discourage proxy contests and make it more difficult for you and other stockholders to elect directors and take other corporate actions. The existence of these provisions could limit the price that investors might be willing to pay in the future for shares of our common stock. Some provisions in our certificate of incorporation and bylaws may deter third parties from acquiring us, which may limit the market price of our common stock.

***We have not paid dividends in the past and do not expect to pay dividends in the future, and any return on investment may be limited to the value of our common stock.***

We have never paid dividends on our common stock and do not anticipate paying dividends on our common stock in the foreseeable future. The payment of dividends on our common stock will depend on our earnings, financial condition and other business and economic factors affecting us at such time as our board of directors may consider relevant. If we do not pay dividends, our common stock may be less valuable because a return on your investment will only occur if our stock price appreciates.

**ITEM 1B. UNRESOLVED STAFF COMMENTS**

Not applicable.

**ITEM 2. PROPERTIES**

We lease approximately 14,479 square feet of office/warehouse space in San Clemente, California under an operating lease that expires June 30, 2022.

**ITEM 3. LEGAL PROCEEDINGS**

The Company is not currently a party to any material litigation and the Company is not aware of any pending or threatened litigation against it that could have a material adverse effect on the Company's business, operating results or financial condition. The medical device industry in which the Company operates is characterized by frequent claims and litigation, including claims regarding patent and other intellectual property rights as well as improper hiring practices. As a result, the Company may be involved in various legal proceedings from time to time.

**ITEM 4. MINE SAFETY DISCLOSURES**

Not applicable.

**PART II.**

**ITEM 5. MARKET FOR REGISTRANT'S COMMON EQUITY, RELATED STOCKHOLDER MATTERS AND ISSUER PURCHASES OF EQUITY SECURITIES**

**Market Information**

Our common stock is traded on the OTCQB Market under the symbol RSLS. Price quotations on the OTCQB reflect inter-dealer prices, without retail mark-up, markdown or commission, and may not necessarily represent actual transactions.

**Number of Stockholders**

As of March 27, 2020, there were approximately 20 holders of record of our common stock.

**Securities Authorized for Issuance Under Equity Compensation Plans**

The information required by this Item regarding equity compensation plans is incorporated by reference to the information set forth in Part III, Item 12 of this Annual Report on Form 10-K.

**Unregistered Sales of Equity Securities**

During the period covered by this report, we did not sell any securities which were not registered under the Securities Act of 1933, as amended.

**Uses of Proceeds from Sale of Registered Securities**

None.

**Dividend Policy**

We have never paid cash dividends on our common stock. The board of directors presently intends to retain all earnings for use in our business and does not anticipate paying cash dividends in the foreseeable future. We do not have a dividend reinvestment plan or a direct stock purchase plan.

**Issuer Purchases of Equity Securities**

None.

**ITEM 6. SELECTED FINANCIAL DATA**

Not applicable.

## ITEM 7. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

*Except for the historical information contained herein, the matters discussed in this "Management's Discussion and Analysis of Financial Condition and Results of Operations," and elsewhere in this Form 10-K are forward-looking statements that involve risks and uncertainties. The factors listed in Item 1A "Risk Factors," as well as any cautionary language in this Form 10-K, provide examples of risks, uncertainties and events that may cause our actual results to differ materially from those projected. Except as may be required by law, we undertake no obligation to update any forward-looking statement to reflect events after the date of this report.*

### Overview

We are a developer of minimally invasive medical devices that advance bariatric surgery to treat obesity and metabolic diseases. Our current portfolio includes the LAP-BAND® Adjustable Gastric Banding System and the ReShape Vest™, an investigational device, to help treat more patients with obesity. There has been no revenue recorded for the ReShape Vest as the product is still in the development stage. Following our acquisition of the LAP-BAND product line in December 2018, we are no longer actively marketing the ReShape vBloc product. There have been no revenues or gross profits associated with the ReShape vBloc product since September 30, 2018.

### Financial Overview

### Results of Operations – Continuing Operations

The following table sets forth certain data from our operating results from the years ended December 31, 2019 and 2018, expressed as percentages of net revenue (in thousands):

| | Years Ended December 31, | | | |
|---|---|---|---|---|
| | 2019 | | 2018 | |
| Revenue | $ 15,089 | 100.0 % | $ 607 | 100.0 % |
| Cost of goods sold | 5,784 | 38.3 % | 164 | 27.0 % |
| Gross profit | 9,305 | 61.7 % | 443 | 73.0 % |
| **Operating expenses:** | | | | - |
| Sales and marketing | 4,847 | 32.1 % | 5,237 | 862.8 % |
| General and administrative | 17,224 | 114.1 % | 14,025 | 2,310.5 % |
| Research and development | 3,121 | 20.7 % | 5,722 | 942.7 % |
| Impairment of intangible assets and goodwill | 6,588 | 43.7 % | 14,005 | 2,307.2 % |
| Legal settlement | 1,500 | 9.9 % | — | — % |
| Loss on disposal of assets | 486 | 3.2 % | — | — % |
| Total operating expenses | 33,766 | 223.8 % | 38,989 | 6,423.2 % |
| Operating loss | (24,461) | (162.1)% | (38,546) | (6,350.2)% |
| **Other expense (income), net:** | | | | |
| Interest expense, net | 451 | 3.0 % | 12 | 2.0 % |
| Loss on extinguishment of debt | 71 | 0.5 % | - | - % |
| Warrant expense | 49,027 | 324.9 % | 145 | 23.9 % |
| (Gain) on foreign currency exchange | (247) | (1.6)% | - | - % |
| Other, net | 1,337 | 8.9 % | 11 | 1.8 % |
| Loss from continuing operations before income taxes | (75,100) | (497.7)% | (38,714) | (6,377.9)% |
| Income tax benefit | 893 | 5.9 % | 3,447 | 567.9 % |
| Loss from continuing operations | (74,207) | (491.8)% | (35,267) | (5,810.0)% |
| Loss from discontinued operations, net of tax | - | - % | (45,885) | (7,559.3)% |
| Net loss | (74,207) | (491.8)% | (81,152) | (13,369.4)% |
| Less: Down round adjustments for convertible preferred stock and warrants | - | - % | (3,079) | (507.2)% |
| Net loss attributable to common shareholders | $ (74,207) | (491.8)% | $ (84,231) | (13,876.6)% |

The following table sets forth certain data from our operating results for each of the fiscal quarters of 2019 (in thousands):

| (Unaudited) | For the three months ended March 31, 2019 | June 30, 2019 | September 30, 2019 | December 31, 2019 |
|---|---|---|---|---|
| Revenue | $ 3,074 | $ 4,450 | $ 3,515 | $ 4,050 |
| Cost of goods sold | 843 | 1,593 | 1,413 | 1,935 |
| Gross profit | 2,231 | 2,857 | 2,102 | 2,115 |
| **Operating expenses:** | | | | |
| Sales and marketing | 1,117 | 1,271 | 950 | 1,509 |
| General and administrative | 4,304 | 5,521 | 4,412 | 2,987 |
| Research and development | 1,056 | 960 | 858 | 247 |
| Impairment of intangible assets | — | 6,588 | — | — |
| Legal settlement | — | — | 1,500 | — |
| Loss on disposal of assets | — | — | — | 486 |
| Total operating expenses | 6,477 | 14,340 | 7,720 | 5,229 |
| Operating loss | (4,246) | (11,483) | (5,618) | (3,114) |
| **Other expense (income), net:** | | | | |
| Interest expense, net | 103 | 213 | 74 | 61 |
| Loss on extinguishment of debt | — | 71 | — | — |
| Warrant expense | 130 | 4,127 | 22,564 | 22,206 |
| (Gain) loss on foreign currency transactions | — | — | (229) | (18) |
| Other, net | (3) | 612 | 727 | 1 |
| Loss from continuing operations before income taxes | (4,476) | (16,506) | (28,754) | (25,364) |
| Income tax benefit | — | 586 | — | 307 |
| Net loss attributable to common shareholders | $ (4,476) | $ (15,920) | $ (28,754) | $ (25,057) |

**Non-GAAP Disclosures**

In addition to the financial information prepared in conformity with GAAP, we provide certain historical non-GAAP financial information. Management believes that these non-GAAP financial measures assist investors in making comparisons of period-to-period operating results and that, in some respects, these non-GAAP financial measures are more indicative of the Company's ongoing core operating performance than their GAAP equivalents.

Management believes that the presentation of this non-GAAP financial information provides investors with greater transparency and facilitates comparison of operating results across a broad spectrum of companies with varying capital structures, compensation strategies, derivative instruments, and amortization methods, which provides a more complete understanding of our financial performance, competitive position, and prospects for the future. However, the non-GAAP financial measures presented in this Form 10-K have certain limitations in that they do not reflect all of the costs associated with the operations of our business as determined in accordance with GAAP. Therefore, investors should consider non-GAAP financial measures in addition to, and not as a substitute for, or as superior to, measures of financial performance prepared in accordance with GAAP. Further, the non-GAAP financial measures presented by the Company may be different from similarly named non-GAAP financial measures used by other companies.

***Adjusted EBITDA***

Management uses Adjusted EBITDA in its evaluation of the Company's core results of operations and trends between fiscal periods and believes that these measures are important components of its internal performance measurement process. Adjusted EBITDA is defined as net loss before interest, taxes, depreciation and amortization, stock-based compensation, changes in fair value of liability warrants and other one-time costs. Management uses Adjusted EBITDA in its evaluation of the Company's core results of operations and trends between fiscal periods and believes that these measures are important components of its internal performance measurement process. Therefore, investors should consider non-GAAP financial measures in addition to, and not as a substitute for, or as superior to, measures of financial performance prepared in accordance with GAAP. Further, the non-GAAP financial measures presented by the Company may be different from similarly named non-GAAP financial measures used by other companies.

The following table contains a reconciliation of non-GAAP net loss to GAAP net loss attributable to common stockholders for the years ended December 31, 2019 and 2018 (in thousands).

| | Years Ended December 31, | |
|---|---|---|
| | 2019 | 2018 |
| GAAP net loss attributable to common stockholders | $ (74,207) | $ (35,267) |
| Adjustments: | | |
| Interest expense (income) net: | 451 | 12 |
| Income tax provision (benefit) | (893) | (3,447) |
| Depreciation and amortization | 1,706 | 440 |
| Stock compensation expense | 2,311 | 3,098 |
| Loss on debt extinguishment | 71 | — |
| Liability warrant expense | 49,027 | 145 |
| Loss on litigation settlement | 1,500 | — |
| Impairment of intangible assets and goodwill | 6,588 | 14,005 |
| Loss on disposal of assets | 486 | — |
| Other | 1,337 | 11 |
| Non-GAAP loss | $ (11,623) | $ (21,003) |

The following table contains a reconciliation of non-GAAP net loss to GAAP net loss attributable to common stockholders for each of the fiscal quarters of 2019 (in thousands):

| | For the three months ended | | | |
|---|---|---|---|---|
| (Unaudited) | March 31, 2019 | June 30, 2019 | September 30, 2019 | December 31, 2019 |
| GAAP net loss attributable to common stockholders | $ (4,476) | $ (15,920) | $ (28,754) | $ (25,057) |
| Adjustments: | | | | |
| Interest expense (income) net: | 103 | 213 | 74 | 61 |
| Income tax provision (benefit) | — | (586) | — | (307) |
| Depreciation and amortization | 433 | 430 | 423 | 420 |
| Stock compensation expense | 1,256 | 727 | (497) | 825 |
| Loss on debt extinguishment | — | 71 | — | — |
| Liability warrant expense | 130 | 4,127 | 22,564 | 22,206 |
| Loss on litigation settlement | — | — | 1,500 | — |
| Impairment of intangible assets | — | 6,588 | — | — |
| Loss on disposal of assets | — | — | — | 486 |
| Other | (3) | 612 | 727 | 1 |
| Non-GAAP loss | $ (2,557) | $ (3,738) | $ (3,963) | $ (1,365) |

**Results of operations**

*Revenue.* Revenue totaled $15.1 million for the year ended December 31, 2019. For the year ended December 31, 2018 revenue was $0.6 million. During 2019, revenue included sales of LAP-BAND in the U.S. and beginning in April and September 2019, in Australia and select countries throughout Europe, respectively. The Company made significant progress, increasing revenue $14.5 million over the same period last year. Revenue for the fourth quarter 2019 was approximately $4.1 million, an increase of $0.6 million over the third quarter, which was in line with our expectations. The primary reason for the increase is due to lower sales during July and August from seasonality that had also been seen industry-wide.

Revenue from continuing operations totaled $0.6 million for the year ended December 31, 2018. During 2018, revenue included sales of our recently acquired LAP-BAND product of $0.4 million and sales of our ReShape vBloc product of $0.2 million.

*Gross profit.* Gross profit for the fourth quarter and year ended December 31, 2019, was $2.1 million and $9.3 million, respectively, reflecting cost of sales associated with the established LAP-BAND product line. Gross profit as a percentage of total revenue for the three months and year ended December 31, 2019 was 52 percent and 62 percent, respectively. Gross profit was 60 percent for the third quarter ended September 30, 2019, 64 percent for the second quarter ended June 30, 2019, and 73 percent for the first three months of 2019. The lower gross profit rate is primarily the result of increased international sales which have lower margins than domestically. Also negatively affecting gross profit were various inventory write offs and reserves associated with the December 2018 LAP-BAND purchase.

*Sales and Marketing Expense.* Sales and marketing expense for the year ended December 31, 2019 decreased by $0.4 million or 7% to $4.8 million, as compared to $5.2 million for the same period last year. During the fourth quarter of 2019 sales and marketing expense was $1.5 million compared to $0.9 million during the third quarter of 2019, $1.3 million during the second quarter of 2019 and $1.1 million during the first quarter of 2019. The increase of sales and marketing expense during the fourth quarter of 2019 is partially due to the Company increasing its sales force late in the third quarter resulting in higher payroll related expenses, including sales commissions. Additionally, during the fourth quarter the Company attended multiple trade conventions, both domestic and international, and began its digital advertising initiative.

*General and Administrative Expense.* General and administrative expense for the year ended December 31, 2019 increased by $3.2 million, or 23% to $17.2 million, as compared to $14.0 million for the same period last year. General and administrative expense was $3.0 million, the lowest of the year, for the fourth quarter of 2019, compared to $4.4 million for the third quarter of 2019, $5.5 million for the second quarter of 2019 and $4.3 million for the first quarter of 2019. During the fourth quarter the Company began to realize the cost cutting efforts that have been implemented, which include changing various professional service providers, consolidating offices, and settling all litigation matters. During the first nine months of 2019, the Company transitioned managerial and operational operations from Minnesota to California, which resulted in moving expenses and approximately $1.0 million of severance costs primarily incurred during the second quarter. Additionally, during fiscal 2019, the Company incurred $0.6 million for a new ERP implementation and over $2.0 million of one-time litigation related expenditures.

*Research and Development Expense.* Research and development expense for the year ended December 31, 2019 decreased by $2.6 million, or 45%, to $3.1 million, as compared with $5.7 million for the same period last year. Research and development expense for the fourth quarter of 2019 was approximately $0.2 million compared to $0.8 million for the third quarter, $1.0 million for the second quarter and $1.1 million for the first quarter. Research and development expenses were primarily related to payroll related expenses and clinical trial expenses for the ReShape Vest.

*Impairment of Intangible Assets and Goodwill*. The Company incurred an impairment charge of $6.6 million for the year ended December 31, 2019, as compared with an impairment charge of $14.0 million for the same period last year. As a result of an impairment analysis performed during the second quarter of 2019, the Company determined there was an impairment of the indefinite-lived intangible asset recorded in connection with our acquisition of BarioSurg, Inc. (“BarioSurg”). We also assessed the recoverability of finite-lived intangible assets during the second quarter of 2019 and did not identify any impairment as a result of the performance of this analysis.

Based on an impairment analysis of our goodwill and intangible assets performed during the second quarter of 2018, impairment of intangible assets for the year ended December 31, 2018 is related to a goodwill impairment loss of $14.0 million, which eliminated the goodwill balance related to our acquisition of BarioSurg. There were no impairment charges recorded relative to the indefinite and finite-lived intangible assets in 2018. Refer to Note 9 to our Consolidated Financial statements for additional information about impairment of intangible assets.

*Legal Settlement.* During the quarter ended September 30, 2019, the Company recognized a contingent loss of $1.5 million relating to the patent infringement claim with Fulfillium. Under the Settlement Agreement, Fulfillium agreed to dismiss with prejudice the previously disclosed lawsuits by Fulfillium.

*Loss on Disposal of Assets.* The Company recorded a $0.5 million loss related to the disposal of long-term assets acquired in connection with the LAP-BAND purchase.

*Net Interest Expense and Loss on Extinguishment of Debt.* Net interest expense for the year ended December 31, 2019, increased from $12 thousand to $0.5 million as compared with the same period last year. It included accretion of

interest expense on the net present value of the asset purchase consideration payable of $0.3 million and the discount and deferred financing costs on the convertible subordinated debentures of $0.7 million. The noncash interest expense for the year ended December 31, 2019 was reduced by $0.5 million for the write-off of an embedded derivative liability recorded for the conversion features of the debentures that were eliminated as a result of the repayment of the debentures prior to their maturity date. In connection with the early repayment of the debentures in June 2019, we recorded a loss on extinguishment of debt of $0.1 million, which consisted of the unamortized debt discount and deferred financing costs. Refer to Note 10 to our Consolidated Financial statements for additional information about the asset purchase consideration payable and the convertible subordinated debentures.

*Warrant Expense*. Warrant expense for the year ended December 31, 2019 includes noncash expense of approximately $49.0 million for the value of the liability warrants issued in connection with our equity financing completed in June 2019 and September 2019 in excess of the proceeds received and changes in fair value of the warrant liability. As a result of the reverse stock split on November 12, 2019, the Company reclassified the warrant liability to equity. During 2018, we recorded warrant expense of $0.1 million for the change in fair value of certain warrants held by certain institutional investors for which the exercise price was reduced in connection with the sale of convertible subordinated debentures to those investors.

*Other, Net*. Other, net for the year ended December 31, 2019 includes $1.3 million of transaction costs required to be expensed as a result of the liability treatment for the warrants issued in connection with our June and September equity financings. See Note 12 to our Consolidated Financial statements for additional information about our June and September equity financings. For the year ended December 31, 2018, $11 thousand was expensed.

*Income Tax Benefit*. We recorded an income tax benefit of $0.9 million for the year ended December 31, 2019 for the reduction in the deferred tax liability associated with an indefinite-lived intangible asset, for which we recorded an impairment charge of $6.6 million during the three months ended June 30, 2019. The income tax benefit is net of an increase to the deferred tax valuation allowance of $1.1 million for the portion of the deferred tax liability reversal that had been netted with the deferred tax asset associated with U.S. federal net operating loss carryforwards that do not expire. The income tax benefit from continuing operation of $3.4 million for the year ended December 31, 2018 is attributable to the losses for U.S. federal income tax purposes, which, effective with the enactment of the 2017 Tax Cuts and Jobs Act, have an unlimited carryforward period.

**Results of Operations – Discontinued Operations**

Results of operations from discontinued operations reflect the activities of our Reshape Balloon product line, which we acquired as part of our acquisition of ReShape Medical, Inc. in October 2017 and sold in December 2018 in connection with our acquisition of the LAP-BAND product line assets. Loss from discontinued operations was $45.9 million for the year ended December 31, 2018. The loss in 2018 includes an impairment charge of $13.2 million for the full write-down of the goodwill recorded in connection with our acquisition of ReShape Medical. In addition, in connection with the determination of the fair value of the LAP-BAND assets acquired, no value was assigned to the ReShape Balloon product line assets sold as projections updated during the fourth quarter of 2018 indicated negative cash flows. Accordingly, the loss from discontinued operations for the year ended December 31, 2018 includes an impairment charge of $22.6 million for the full write-down of the ReShape Balloon product line assets disposed of. There was no income tax expense or benefit for discontinued operations.

**Liquidity and Capital Resources**

We have financed our operations to date principally through the sale of equity securities and debt financing. During the years ended December 31, 2019 and 2018, we received aggregate net proceeds of $15.0 million and $33.2 million, respectively, from equity offerings, and $0.3 million and $0.5 million, respectively, from the exercise of warrants to purchase common stock. As of December 31, 2019, we had $3.0 million of cash and cash equivalents, including $50 thousand of restricted cash.

Our anticipated operations include plans to (i) integrate the sales and operations of the Company with the newly acquired LAP-BAND product line in order to expand sales domestically and internationally as well as to obtain cost savings synergies, (ii) continue development of the ReShape Vest, (iii) seek opportunities to leverage our intellectual property portfolio and custom development services to provide third-party sales and licensing opportunities, and (iv) explore and capitalize on synergistic opportunities to expand our portfolio and offer future minimally invasive treatments

and therapies in the obesity continuum of care. The Company believes that it has the flexibility to manage the growth of its expenditures and operations depending on the amount of available cash flows, which could include reducing expenditures for marketing, clinical and product development activities. However, the Company will ultimately need to achieve sufficient revenues from product sales and obtain additional debt or equity financing to support its operations.

Management is currently pursuing various funding options, including seeking additional equity or debt financing as well as a strategic merger or other transaction to obtain additional funding to support the expansion of LAP-BAND product sales and to continue the development of, and to successfully commercialize, the ReShape Vest. While the acquisition of LAP-BAND product line does provide incremental revenues to the Company, total costs, including support for the European clinical trial of the ReShape Vest, are expected to exceed revenues for the foreseeable future. While there can be no assurance that the Company will be successful in its efforts, the Company has a long history of raising equity financing to fund its development activities. Should the Company be unable to obtain adequate financing in the near term, the Company's business, results of operations, liquidity and financial condition would be materially and negatively affected, and the Company would be unable to continue as a going concern. Additionally, there can be no assurance that, assuming the Company is able to strengthen its cash position, it will achieve sufficient revenue or profitable operations to continue as a going concern.

The following table summarizes our change in cash and cash equivalents (in thousands):

| | Year Ended December 31, | |
|---|---|---|
| | 2019 | 2018 |
| Net cash used by operating activities - continuing operations | $ (14,200) | $ (20,076) |
| Net cash used by operating activities - discontinued operations | — | (7,414) |
| Net cash used by investing activates | (2,014) | (10,328) |
| Cash provided by financing activities | 13,659 | 33,203 |
| Effect of exchange rate changes | (8) | — |
| Net change in cash and cash equivalents | $ (2,563) | $ (4,615) |

***Net Cash Used in Operating Activities - Continuing Operations***

Net cash used in operating activities from continuing operations was $14.2 million and $20.1 million for the years ended December 31, 2019 and 2018, respectively. Net cash used in operating activities from continuing operations for the year ended December 31, 2019, was primarily the result of our net loss of $74.2 million, partially offset by non-cash adjustments for amortization of intangible assets of $1.7 million, impairment of intangible assets of $6.6 million, stock-based compensation of $2.3 million, warrant expenses of $49.0 million and warrant issuance costs of $1.4 million. Increases to accounts receivable of $3.6 million, inventory of $0.3 million and prepaid expenses and other of $0.4 million resulted in cash used, partially offset by cash savings due to an increase in accounts payable, accrued liabilities and warranty liability of $3.0 million.

Net cash used in operating activities from continuing operations for the year ended December 31, 2018, was primarily a result of our net loss of $35.3 million, partially offset by non-cash adjustments for amortization of intangible assets of $0.2 million, impairment of intangible assets of $14.0 million and stock-based compensation of $3.1 million. Increases to accounts and other receivables of $0.5 million and prepaid expenses of $0.8 million resulted in cash used, offset by a decrease in inventory of $2.0 million and an increase in accounts payable and accrued liabilities of $0.8 million.

***Net Cash Used in Investing Activities***

Net cash used in investing activities from continuing operations was $2.0 million for the year ended December 31, 2019, as compared with $10.3 million for the year ended December 31, 2018. The investing activities in 2019 primarily reflects the first annual payment of $2.0 million paid in connection with our acquisition of the LAP-band product line. Investing activities for 2018 reflect our acquisition of the LAP-BAND product line, which included asset purchase consideration paid of $10.0 million and transaction costs paid of $0.3 million.

***Net Cash Provided by Financing***

Net cash provided by financing activities from continuing operations was $13.7 million and $33.2 million for the years ended December 31, 2019 and 2018, respectively. During the years ended December 31, 2019 and 2018, we received aggregate net proceeds of $13.7 million and $33.2 million, respectively, from equity offerings and $0.1 million and $0.5 million, respectively, from the exercise of warrants to purchase common stock. In connection with these equity transactions, we paid an aggregate of $40 thousand and $4.6 million of related transaction costs in 2019 and 2018, respectively. In 2019, we used a net $0.2 million related to issuance and pay down of the convertible subordinate debentures. In 2018, we used cash of $0.5 million to redeem 500 shares of our series D convertible preferred stock.

A portion of the net proceeds from the June 2019 equity financing was used to repay the $2.2 million face amount of convertible subordinated debentures that were issued at an original issue discount of 10 percent in March 2019.

***Discontinued Operations***

There were no activities related to discontinued operations for the year ended December 31, 2019. Net cash used in operating activities of discontinued operations of $7.4 million for the year ended December 31, 2018, reflects activities of the ReShape Balloon product line until its disposal on December 17, 2018. There were no investing or financing activities related to discontinued operations for the year ended December 31, 2018.

***Operating Capital and Capital Expenditure Requirements***

Our anticipated operations include plans to (i) integrate the sales and operations of the Company with the newly acquired LAP-BAND product line, (ii) continue development of the ReShape Vest, (iii) seek opportunities to leverage the Company's intellectual property portfolio and custom development services to provide third-party sales and licensing opportunities, and (iv) explore and capitalize on synergistic opportunities to expand our portfolio and offer future minimally invasive treatments and therapies in the obesity continuum of care. The Company believes that it has the flexibility to manage the growth of its expenditures and operations depending on the amount of available cash flows, which could include reducing expenditures for marketing, clinical and product development activities. However, the Company will ultimately need to achieve sufficient revenues from product sales and obtain additional equity or debt financing to support its operations.

Obtaining funds through the sale of additional equity and debt securities or the warrant holders' exercise of outstanding common stock warrants may result in dilution to our stockholders. If we raise additional funds through the issuance of debt securities, these securities could have rights senior to those of our common stock and could contain covenants that would restrict our operations. The sale of additional equity may require us to obtain approval from our stockholders to increase the number of shares of common stock we have authorized under our certificate of incorporation. We may require additional capital beyond our currently forecasted amounts. Any such required additional capital may not be available on reasonable terms, if at all. If we are unable to obtain additional financing, we may be required to reduce the scope of, delay, or eliminate some or all of, our planned research, development and commercialization activities, which could materially harm our business. In addition, if we raise additional funds through collaboration, licensing or other similar arrangements, it may be necessary to relinquish valuable rights to products or proprietary technologies, or grant licenses on terms that are not favorable.

Our forecast of the period of time through which our financial resources will be adequate to support our operations, the costs to complete development of products and the cost to commercialize our products are forward-looking statements and involve risks and uncertainties, and actual results could vary materially and negatively as a result of a number of factors, including the factors discussed in Part I, Item 1A, Risk Factors. We have based these estimates on assumptions that may prove to be wrong, and we could utilize our available capital resources sooner than we currently expect.

The Company's acquisition of the LAP-BAND product line provides incremental revenues and does not require further product development. In order to continue the development of, and to successfully commercialize the LAP-BAND and provide clinical support for the ReShape Vest, the Company's management is currently pursuing various funding options, including seeking additional equity or debt financing as well as a strategic merger or other transaction to obtain additional funding. The Company has a long history of raising equity financing to fund its development activities; however, there can be no assurance that the Company will continue to be successful in its efforts. Should the

Company be unable to obtain adequate financing in the near term, the Company's business, result of operations, liquidity and financial condition would be materially and negatively affected, and the Company would be unable to continue as a going concern. Additionally, there can be no assurance that, assuming the Company is able to strengthen its cash position, it will achieve sufficient revenue or profitable operations to continue as a going concern. The consolidated financial statements do not include any adjustments that might be necessary if the Company is unable to continue as a going concern.

Because of the numerous risks and uncertainties associated with the development of medical devices, such as our ReShape Vest, we are unable to estimate the exact amounts of capital outlays and operating expenditures necessary to complete the development of the ReShape Vest or other additional products and successfully deliver a commercial product to the market. Our future capital requirements will depend on many factors, including, but not limited to, the following:

- the cost and timing of establishing sales, marketing and distribution capabilities;
- the cost of establishing clinical and commercial supplies of our ReShape Vest and any products that we may develop;
- the rate of market acceptance of our ReShape Vest and any other product candidates;
- the cost of filing and prosecuting patent applications and defending and enforcing our patent and other intellectual property rights;
- the cost of defending, in litigation or otherwise, any claims that we infringe third-party patent or other intellectual property rights;
- the effect of competing products and market developments;
- the cost of explanting clinical devices;
- the terms and timing of any collaborative, licensing or other arrangements that we may establish;
- any revenue generated by sales of our LAP-BAND, ReShape Vest or our future products;
- the scope, rate of progress, results and cost of our clinical trials and other research and development activities;
- the cost and timing of obtaining any further required regulatory approvals; and
- the extent to which we invest in products and technologies, although we currently have no commitments or agreements relating to any of these types of transactions.

**Off-balance-sheet Arrangements**

Since our inception, we have not engaged in any off-balance-sheet arrangements, including the use of structured finance, special purpose entities or variable interest entities as defined by rules enacted by the SEC and FASB, and accordingly, no such arrangements are likely to have a current or future effect on our financial position, revenues or expenses, results of operations, liquidity, capital expenditures or capital resources.

**Critical Accounting Policies and Significant Judgments and Estimates**

Our management's discussion and analysis of our financial condition and results of operations are based on our consolidated financial statements, which have been prepared in accordance with accounting principles generally accepted in the United States. The preparation of these financial statements requires us to make estimates and assumptions that affect the reported amounts of assets and liabilities and the disclosure of contingent assets and liabilities at the date of the financial statements as well as the reported expenses during the reporting periods. We evaluate our

estimates and judgments on an ongoing basis. Actual results may differ materially from these estimates under different assumptions or conditions.

While our significant accounting policies are more fully described in Note 2 to our consolidated financial statements included in Item 8 of this Annual Report on Form 10-K, we believe that the following accounting policies and estimates are most critical to a full understanding and evaluation of our reported financial results.

***Revenue Recognition***

When we recognize revenue from the sale of our products, the amount of consideration we ultimately receive may vary depending upon the return terms and any sales rebates that we may offer, which are accounted for as variable consideration when estimating the amount of revenue to recognize. As discussed in Note 14 to the Consolidated Financial Statements, such variable consideration to date has not been material.

***Intangible Assets and Long-Lived Assets***

We acquire intangible assets in connection with business combinations and asset purchases. The acquired intangible assets are recorded at fair value, which is determined based on a discounted cash flow analysis. The determination of fair value requires significant estimates, including, but not limited to, the amount and timing of projected future cash flows, the discount rate used to discount those cash flows, the assessment of the asset's life cycle, including the timing and expected costs to complete in-process projects, and the consideration of legal, technical, regulatory, economic, and competitive risks.

IPR&D acquired in business combinations is reviewed for impairment annually, or whenever an event occurs or circumstances change that would indicate the carrying amount may be impaired. Additionally, management reviews the carrying amounts of other intangible and long-lived assets whenever events or circumstances indicate that the carrying amounts of an asset may not be recoverable. The impairment reviews require significant estimates about fair value, including estimation of future cash flows, selection of an appropriate discount rate, and estimates of long-term growth rates.

***Research and Development Expenses***

We record the estimated costs of research and development activities performed by third-party service providers based upon the estimated services provided but not yet invoiced and include these costs in accrued expenses and other payables in the Consolidated Balance Sheets and within research and development expense in the consolidated statements of operations. We accrue for these costs based on factors such as estimates of the work completed and in accordance with agreements established with its third-party service providers. As actual costs become known, the Company adjusts its accrued liabilities.

The Company’s CRO arrangement generally requires payments in advance of services. Upon making a payment, the Company makes a determination as to the amount to record as a deferred charge and the amount of research and development expense. The amount of CRO related costs included in research and development expense each period is based upon the Company’s estimate of the time period over which services will be performed, enrollment of patients, number of sites activated and level of effort to be expended. Any amount of advances paid in excess of expense recognized is included in prepaid expenses and other current assets on the Consolidated Balance Sheets. If the actual timing of the CRO’s performance of services or the level of effort varies from the Company’s estimate, the amount of prepaid CRO expense is adjusted accordingly.

We make significant judgments and estimates in determining the accrued balance and any deferred charges in each reporting period. Our understanding of factors such as the status and timing of services performed, the number of patients enrolled and the rate of patient enrollment may vary from our estimates and could result in us reporting amounts that are too high or too low in any particular period.

***Income Taxes***

Income taxes are accounted for under the asset and liability method. Deferred tax assets and liabilities are recognized for the future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax bases and operating loss and tax credit carry-forwards. 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. The effect on deferred tax assets and liabilities of a change in tax rates is recognized in income in the period that includes the enactment date. A valuation allowance for deferred income tax assets is recorded when it is more likely than not that some portion or all of the deferred income tax assets will not be realized. The Company's policy is to classify interest and penalties related to income taxes as income tax expense in the consolidated statements of operations.

**Recent Accounting Pronouncements**

See Note 2 to the Consolidated Financial Statements, for a discussion of new accounting standards that have been adopted and those not yet adopted.

**ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA**

**Index to Financial Statements**

## Report of Independent Registered Public Accounting Firm

Shareholders and the Board of Directors
ReShape Lifesciences Inc.
San Clemente, California

**Opinion on the Consolidated Financial Statements**

We have audited the accompanying consolidated balance sheet of ReShape Lifesciences Inc. (the "Company") as of December 31, 2019, the related consolidated statements of operations, comprehensive loss, stockholders' equity, and cash flows, for the year then ended, and the related notes (collectively referred to as the "consolidated financial statements"). In our opinion, the consolidated financial statements present fairly, in all material respects, the financial position of the Company at December 31, 2019, and the results of its operations and its cash flows for the year then ended, in conformity with accounting principles generally accepted in the United States of America.

We also have audited the adjustments to the 2018 consolidated financial statements to retrospectively apply the 1-for-120 reverse stock split in November 2019, as described in Note 2 to the consolidated financial statements. In our opinion, such adjustments are appropriate and have been properly applied. We were not engaged to audit, review, or apply any procedures to the 2018 consolidated financial statements of the Company other than with respect to the adjustments and, accordingly, we do not express an opinion or any other form of assurance on the 2018 consolidated financial statements taken as a whole.

**Going Concern Uncertainty**

The accompanying consolidated financial statements have been prepared assuming that the Company will continue as a going concern. As discussed in Note 3 to the consolidated financial statements, the Company has suffered recurring losses that raises substantial doubt about its ability to continue as a going concern. Management’s plans in regard to these matters are also described in Note 3. The consolidated financial statements do not include any adjustments that might result from the outcome of this uncertainty.

**Changes in Accounting Method Related to Leases**

As discussed in Notes 2 and 11 to the consolidated financial statements, the Company has changed its method for accounting for leases due to the adoption of Accounting Standards Codification 842 – Leases effective January 1, 2019 under the modified retrospective approach.

**Basis for Opinion**

These consolidated financial statements are the responsibility of the Company’s management. Our responsibility is to express an opinion on the Company’s consolidated financial statements based on our audit. 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 audit in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the consolidated financial statements are free of material misstatement, whether due to error or fraud. 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 audit, 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 audit included performing procedures to assess the risks of material misstatement of the consolidated financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the consolidated financial statements. Our audit also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the consolidated financial statements. We believe that our audit provides a reasonable basis for our opinion.

/s/ BDO USA, LLP

We have served as the Company’s auditor since 2019.
Costa Mesa, California
April 30, 2020

**REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

To the shareholders and the Board of Directors of ReShape Lifesciences Inc.

**Opinion on the Financial Statements**

We have audited, before the effects of the adjustments to retrospectively apply the effects of the November 2019 reverse stock split discussed in Note 2 to the consolidated financial statements, the consolidated balance sheet of ReShape Lifesciences Inc. and subsidiaries (the "Company") as of December 31, 2018, the related consolidated statements of operations, comprehensive loss, stockholders' equity, and cash flows, for the year ended December 31, 2018, and the related notes (collectively referred to as the "financial statements") (the 2018 financial statements before the effects of the retrospective adjustments discussed in Note 2 to the financial statements are not presented herein). In our opinion, the 2018 financial statements, before the effects of the adjustments to retrospectively apply the effects of the November 2019 reverse stock split discussed in Note 2 to the financial statements, present fairly, in all material respects, the financial position of the Company as of December 31, 2018, and the results of its operations and its cash flows for the years ended December 31, 2018, in conformity with principles generally accepted in the United States of America.

We were not engaged to audit, review, or apply any procedures to the adjustments to retrospectively apply the effects of the November 2019 reverse stock split discussed in Note 2 to the financial statements, and accordingly, we do not express an opinion or any other form of assurance about whether such retrospective adjustments are appropriate and have been properly applied. Those retrospective adjustments were audited by other auditors.

**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 audit in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the 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 audit, 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 audit 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 audit 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 audit provides a reasonable basis for our opinion.

/s/ Deloitte & Touche LLP

Minneapolis, Minnesota

May 16, 2019

We began serving as the Company's auditor in 2006. In 2019, we became the predecessor auditor.

**RESHAPE LIFESCIENCES INC.**

**Consolidated Balance Sheets**
(in thousands, except share and per share amounts)

| | December 31, 2019 | December 31, 2018 |
|---|---|---|
| **ASSETS** | | |
| Current assets: | | |
| Cash and cash equivalents | $ 2,935 | $ 5,548 |
| Restricted cash | 50 | — |
| Accounts and other receivables (net of allowance for bad debts of $709 at December 31, 2019 and $236 at December 31, 2018) | 4,096 | 917 |
| Finished goods inventory | 1,317 | 985 |
| Prepaid expenses and other current assets (Note 6) | 1,711 | 1,269 |
| Total current assets | 10,109 | 8,719 |
| Property and equipment, net | 16 | 64 |
| Operating lease right-of-use assets (Note 11) | 758 | — |
| Other intangible assets, net (Note 8) | 28,674 | 36,927 |
| Other assets | 99 | 563 |
| Total assets | $ 39,656 | $ 46,273 |
| **LIABILITIES AND STOCKHOLDERS' EQUITY** | | |
| Current liabilities: | | |
| Accounts payable | $ 4,263 | $ 1,627 |
| Accrued and other liabilities (Note 6) | 3,821 | 4,829 |
| Warranty liability, current (Note 14) | 105 | — |
| Asset purchase consideration payable, current (Note 10) | 1,909 | 1,907 |
| Operating lease liabilities, current (Note 11) | 291 | — |
| Total current liabilities | 10,389 | 8,363 |
| Asset purchase consideration payable, noncurrent (Note 10) | 2,728 | 4,403 |
| Operating lease liabilities, noncurrent (Note 11) | 477 | — |
| Warranty liability, noncurrent (Note 14) | 1,253 | — |
| Deferred income taxes | 702 | 1,844 |
| Total liabilities | 15,549 | 14,610 |
| Commitments and contingencies (Note 17) | | |
| Stockholders' equity: | | |
| Preferred stock, 5,000,000 shares authorized: | | |
| Series B convertible preferred stock, $0.01 par value; 3 and 159 shares issued and outstanding at December 31, 2019 and December 31, 2018, respectively | — | — |
| Series C convertible preferred stock, $0.01 par value; 95,388 shares issued and outstanding at December 31, 2019 and December 31, 2018 | 1 | 1 |
| Common stock, $0.001 par value; 275,000,000 shares authorized at December 31, 2019 and December 31, 2018; 391,739 and 73,092 shares issued and outstanding at December 31, 2019 and December 31, 2018, respectively | — | — |
| Additional paid-in capital | 517,311 | 450,652 |
| Accumulated deficit | (493,197) | (418,990) |
| Accumulated other comprehensive loss | (8) | — |
| Total stockholders' equity | 24,107 | 31,663 |
| Total liabilities and stockholders' equity | $ 39,656 | $ 46,273 |

See accompanying notes to consolidated financial statements.

**RESHAPE LIFESCIENCES INC.**

**Consolidated Statements of Operations**
(in thousands, except share and per share amounts)

| | Year Ended December 31, | |
|---|---|---|
| | 2019 | 2018 |
| Revenue | $ 15,089 | $ 607 |
| Cost of revenue | 5,784 | 164 |
| Gross profit | 9,305 | 443 |
| **Operating expenses:** | | |
| Sales and marketing | 4,847 | 5,237 |
| General and administrative | 17,224 | 14,025 |
| Research and development | 3,121 | 5,722 |
| Impairment of intangible assets and goodwill (Note 9) | 6,588 | 14,005 |
| Legal settlement | 1,500 | — |
| Loss on disposal of assets | 486 | — |
| Total operating expenses | 33,766 | 38,989 |
| Operating loss | (24,461) | (38,546) |
| **Other expense (income), net:** | | |
| Interest expense, net | 451 | 12 |
| Loss on extinguishment of debt (Note 10) | 71 | — |
| Warrant expense (Note 13) | 49,027 | 145 |
| Gain on foreign currency exchange | (247) | — |
| Offering costs and other, net | 1,337 | 11 |
| Loss from continuing operations before income taxes | (75,100) | (38,714) |
| Income tax benefit | 893 | 3,447 |
| Loss from continuing operations | (74,207) | (35,267) |
| Loss from discontinued operations, net of tax | — | (45,885) |
| Net loss | (74,207) | (81,152) |
| Less: Down round adjustments for convertible preferred stock and warrants | — | (3,079) |
| Net loss attributable to common shareholders | $ (74,207) | $ (84,231) |
| **Net loss per share - basic and diluted:** | | |
| Continuing operations | $ (42.93) | $ (4,107.77) |
| Discontinued operations | — | (4,915.37) |
| Net loss per share - basic and diluted | $ (42.93) | $ (9,023.14) |
| Shares used to compute basic and diluted net loss per share | 1,728,722 | 9,335 |

See accompanying notes to consolidated financial statements.

**RESHAPE LIFESCIENCES INC.**

**Consolidated Statements of Comprehensive Loss**
(in thousands)

| | Year Ended December 31, | |
|---|---|---|
| | 2019 | 2018 |
| Net loss | $ (74,207) | $ (81,152) |
| Other comprehensive income (loss), net of tax: | | |
| Foreign currency translation adjustments | (8) | — |
| Other comprehensive income (loss), net of tax | (8) | — |
| Comprehensive loss | $ (74,215) | $ (81,152) |

See accompanying notes to consolidated financial statements.

**RESHAPE LIFESCIENCES INC.**

**Consolidated Statements of Stockholders' Equity**
(in thousands, except share amounts)

| | Series B Convertible Preferred Stock | | Series C Convertible Preferred Stock | | Series D Convertible Preferred Stock | | Series E Convertible Preferred Stock | | Common Stock | | Additional Paid-in Capital | Accumulated Deficit | Accumulated Other Comprehensive Income (Loss) | Total Stockholders' Equity |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | Shares | Amount | Shares | Amount | Shares | Amount | Shares | Amount | Shares | Amount | | | | |
| **Balance December 31, 2017** | 6,055 | $ — | 95,388 | $ 1 | — | $ — | — | $ — | 123 | $ — | $ 411,125 | $ (334,759) | $ — | $ 76,367 |
| Net loss | — | — | — | — | — | — | — | — | — | — | — | (81,152) | — | (81,152) |
| Stock-based compensation expense | — | — | — | — | — | — | — | — | — | — | 3,098 | — | — | 3,098 |
| Down round adjustments for convertible preferred stock and warrants | — | — | — | — | — | — | — | — | — | — | 3,079 | (3,079) | — | — |
| April 2018 institutional sale of convertible preferred stock and warrants, net of issuance costs | — | — | — | — | 6,000 | — | — | — | — | — | 5,081 | — | — | 5,081 |
| 2018 institutional sales of common stock and warrants, net of issuance costs | — | — | — | — | — | — | — | — | 5,768 | — | 14,316 | — | — | 14,316 |
| Issuance of common stock and warrants in September 2018 public offering | — | — | — | — | — | — | — | — | 696 | — | 447 | — | — | 447 |
| Issuance of common stock and warrants in an at-the-market public offering, net of issuance costs | — | — | — | — | — | — | — | — | 52,197 | — | 13,385 | — | — | 13,385 |
| Redemption of convertible preferred stock | — | — | — | — | (500) | — | — | — | — | — | (500) | — | — | (500) |
| Conversion of convertible preferred stock into common stock | (5,896) | — | — | — | (5,500) | — | — | — | 4,873 | — | — | — | — | — |
| Issuance of common stock upon exercise of warrants, net of transaction costs | — | — | — | — | — | — | — | — | 9,435 | — | 621 | — | — | 621 |
| **Balance December 31, 2018** | 159 | $ — | 95,388 | $ 1 | — | $ — | — | $ — | 73,092 | $ — | $ 450,652 | $ (418,990) | $ — | $ 31,663 |
| Net loss | — | — | — | — | — | — | — | — | — | — | — | (74,207) | — | (74,207) |
| Other comprehensive income (loss), net of tax | — | — | — | — | — | — | — | — | — | — | — | — | (8) | (8) |
| Stock-based compensation expense, net | — | — | — | — | — | — | — | — | — | — | 2,311 | — | — | 2,311 |
| Warrant expense | — | — | — | — | — | — | — | — | — | — | — 130 | — | — | 130 |
| Sales of common stock and warrants, net of issuance and other costs | — | — | — | — | — | — | — | — | 199,167 | — | 434 | — | — | 434 |
| Warrant adjustment | — | — | — | — | — | — | — | — | — | — | (312) | — | — | (312) |
| Conversion of common stock into convertible preferred stock | — | — | — | — | — | — | 1,192,000 | 12 | (9,933) | — | (12) | — | — | — |
| Conversion of convertible preferred stock into common stock | (156) | — | — | — | — | — | (1,192,000) | (12) | 10,973 | — | 12 | — | — | — |
| Warrant liability reclassified to equity | — | — | — | — | — | — | — | — | — | — | 63,954 | — | — | 63,954 |
| Issuance of common stock upon exercise of warrants, net of transaction costs | — | — | — | — | — | — | — | — | 118,440 | — | 142 | — | — | 142 |
| **Balance December 31, 2019** | 3 | $ — | 95,388 | $ 1 | — | $ — | — | $ — | 391,739 | $ — | $ 517,311 | $ (493,197) | $ (8) | $ 24,107 |

See accompanying notes to consolidated financial statements.

**RESHAPE LIFESCIENCES INC.**

**Consolidated Statements of Cash Flows**
(in thousands)

| | Year Ended December 31, | |
|---|---|---|
| | **2019** | **2018** |
| **Cash flows from operating activities:** | | |
| Net loss | $ (74,207) | $ (81,152) |
| Loss from discontinued operations, net of tax | — | 45,885 |
| Adjustments to reconcile net loss to net cash used in operating activities: | | |
| Depreciation expense | 40 | 242 |
| Amortization of intangible assets | 1,666 | 198 |
| Impairment of intangible assets | 6,588 | 14,005 |
| Bad debt expense | 439 | 80 |
| Noncash interest expense | 451 | 14 |
| Loss on extinguishment of debt | 71 | — |
| Stock-based compensation | 2,311 | 3,098 |
| Warrant expense | 49,027 | 145 |
| Deferred income tax benefit | (1,143) | (3,448) |
| Loss on disposal of asset | 486 | — |
| Common stock warrant liability issuance costs | 1,442 | — |
| Other noncash items | 57 | — |
| Change in operating assets and liabilities: | | |
| Accounts and other receivables | (3,619) | (508) |
| Finished goods inventory | (332) | 1,978 |
| Prepaid expenses and other current assets | (442) | (802) |
| Accounts payable and accrued liabilities | 1,629 | (810) |
| Warranty liability | 1,358 | — |
| Other | (22) | 999 |
| **Net cash used in operating activities - continuing operations** | (14,200) | (20,076) |
| **Net cash used in operating activities - discontinued operations** | — | (7,414) |
| **Net cash used in operating activities** | (14,200) | (27,490) |
| **Cash flows from investing activities:** | | |
| Acquisition of LAP-BAND product line assets, including transaction costs | (2,000) | (10,279) |
| Purchases of property and equipment | (14) | (49) |
| **Net cash used in investing activities - continuing operations** | (2,014) | (10,328) |
| **Net cash used in investing activities** | (2,014) | (10,328) |
| **Cash flows from financing activities:** | | |
| Proceeds from issuance of subordinated convertible debentures | 2,000 | — |
| Payments of debt financing costs | (21) | — |
| Repayment of subordinated convertible debentures | (2,200) | — |
| Proceeds from warrants exercised | 142 | 513 |
| Proceeds from sale and issuance of equity securities | 478 | 37,745 |
| Proceeds from issuance of common stock warrant liabilities, net of issuance costs of $1,442 | 13,304 | — |
| Payments of equity issuance costs | (44) | (4,555) |
| Preferred stock redemption | — | (500) |
| **Net cash provided by financing activities - continuing operations** | 13,659 | 33,203 |
| **Net cash provided by financing activities** | 13,659 | 33,203 |
| **Effect of currency exchange rate changes on cash and cash equivalents** | (8) | — |
| **Net decrease in cash, cash equivalents and restricted cash** | (2,563) | (4,615) |
| **Cash, cash equivalents and restricted cash at beginning of period** | 5,548 | 10,163 |
| **Cash, cash equivalents and restricted cash at end of period** | $ 2,985 | $ 5,548 |
| **Noncash investing and financing activities:** | | |
| Acquisition of LAP-BAND product line assets, asset purchase consideration payable | $ — | $ 6,297 |
| Down round adjustment for convertible preferred stock and warrants | — | 3,079 |
| Conversion of common stock to convertible preferred stock | $ (1) | $ — |
| Common stock warrant liabilities reclassified to equity | 63,954 | — |

See accompanying notes to consolidated financial statements.

**ReShape Lifesciences Inc.**

**Notes to Consolidated Financial Statements**

## (1) Description of the Business and Risks and Uncertainties

***Description of Business***

ReShape Lifesciences Inc. (the "Company") was originally incorporated in the state of Minnesota in December 2002 and reincorporated in the state of Delaware in July 2004. In 2017, the Company changed its name from EnteroMedics Inc. to ReShape Lifesciences Inc. The Company is headquartered in San Clemente, California. The Company is a developer of minimally invasive medical devices that advance bariatric surgery to treat obesity and metabolic diseases. The Company's current portfolio and operating segments consist of the LAP-BAND® Adjustable Gastric Banding System and the ReShape Vest™, an investigational device, to help treat more patients with obesity. Refer to Note 14 for additional information about operating segments.

***Risks and Uncertainties***

The Company continues to devote significant resources to developing its product technology, commercialization activities and raising capital. These activities are subject to significant risks and uncertainties, including the ability to obtain additional financing, and there can be no assurance that the Company will be successful in obtaining additional financing on favorable terms, or at all. If adequate funds are not available, the Company may have to further reduce its cost structure until financing is obtained and/or delay development, or commercialization of products, or license to third parties the rights to commercialize products, or technologies that the Company would otherwise seek to commercialize. Refer to Note 3 for additional information about the Company's liquidity, going concern and management's plans.

The medical device industry is characterized by frequent and extensive litigation and administrative proceedings over patent and other intellectual property rights. Whether a product infringes a patent involves complex legal and factual issues, the determination of which is often difficult to predict, and the outcome may be uncertain until the court has entered final judgment and all appeals are exhausted. The Company's competitors may assert that its products or the use of the Company's products are covered by U.S. or foreign patents held by them. Refer to Note 17 for additional information about contingencies and litigation matters.

## (2) Summary of Significant Accounting Policies

*Basis of Presentation*

The Company has prepared the accompanying consolidated financial statements in conformity with accounting principles generally accepted in the United States of America ("GAAP").

*Reverse Stock Splits*

During the years ended December 31, 2019 and 2018, the Company's board of directors and stockholders approved the following reverse stock splits:

- 1-for-120 reverse split of the Company's outstanding common stock that became effective after the close of market on November 11, 2019. In addition, the Company's certificate of incorporation was amended to change the common stock par value from $0.01 per share to $0.001 per share. The par value of the Company's preferred stock was not changed.

- 1-for-15 reverse split of the Company's outstanding common stock that became effective after the close of market on June 1, 2018.

- 1-for-140 reverse split of the Company's outstanding common stock that became effective after the close of market on November 7, 2018.

Neither of the reverse stock splits in 2018 altered the par value of the Company's common stock or preferred stock. In connection with the reverse stock splits, proportional adjustments were made to the number of shares of common stock issuable upon exercise or conversion, and the per share exercise or conversion price, of the Company's outstanding warrants, stock options and convertible preferred stock, in each case in accordance with their terms. The reverse stock splits in 2019 and 2018 did not change the number of common or preferred shares authorized by the Company's certificate of incorporation. All par value, share and per-share amounts have been retroactively adjusted to reflect the reverse stock splits for all periods presented.

*Principles of Consolidation*

The accompanying consolidated financial statements include the accounts of the Company and its wholly-owned subsidiaries. All intercompany transactions and accounts have been eliminated in consolidation

*Use of Estimates*

The preparation of financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the amounts reported in the financial statements and accompanying notes. Actual results could differ from those estimates.

*Discontinued Operations*

The operating results of the ReShape Balloon product line prior to disposal have been reflected as discontinued operations in the Consolidated Financial Statements (see Note 5). In addition, the cash flows associated with discontinued operations are presented separately in the accompanying Consolidated Statements of Cash Flows. Unless otherwise noted, amounts in these Notes to the Consolidated Financial Statements exclude amounts attributable to discontinued operations.

*Cash and Cash Equivalents*

The Company considers highly liquid investments generally with maturities of 90 days or less when purchased to be cash equivalents. Cash equivalents are stated at cost, which approximates market value. The Company's cash equivalents are primarily in money market funds and certificates of deposit. The Company deposits its cash and cash equivalents in high-quality credit institutions.

*Restricted Cash*

Restricted cash represents $50 thousand related to a collateral money market account maintained by the Company as collateral in connection with corporate credit cards with Silicon Valley Bank at December 31, 2019. The Company did not have restricted cash at December 31, 2018.

The following table provides a reconciliation of cash, cash equivalents and restricted cash reported in the consolidated balance sheets to the same total reported in the consolidated statements of cash flows (in thousands):

| | December 31, 2019 | December 31, 2018 |
|---|---|---|
| Cash and cash equivalents | $ 2,935 | $ 5,548 |
| Restricted cash | 50 | — |
| Total cash, cash equivalents, and restricted cash in the consolidated statement of cash flows | $ 2,985 | $ 5,548 |

*Inventory*

The Company accounts for inventory at the lower of cost or net realizable value, where net realizable value is based on market prices less costs to sell. The Company establishes inventory reserves for obsolescence based upon specific identification of expired or unusable units with a corresponding provision included in cost of revenue. The allowance for excess and slow-moving inventory was $0.2 million and $3.4 million at December 31, 2019 and 2018, respectively.

*Property and Equipment, Net*

Property and equipment are stated at cost less accumulated depreciation and amortization. Depreciation of property and equipment is computed using the straight-line method over their estimated useful lives of five to seven years for furniture and equipment and three to five years for computer hardware and software. Leasehold improvements are amortized on a straight-line basis over the lesser of their useful life or the term of the lease. Upon retirement or sale, the cost and related accumulated depreciation or amortization are removed from the Consolidated Balance Sheets and the resulting gain or loss is reflected in the Consolidated Statements of Operations. Repairs and maintenance are expensed as incurred.

*Other Intangible Assets*

Intangible assets are recorded based on their fair values at the date of acquisition. Indefinite-lived intangible assets consist of in-process research and development (“IPR&D”) for the ReShape Vest recorded in connection with the Company’s acquisition of BarioSurg, Inc. (“BarioSurg”) in May 2017. Finite-lived intangible assets primarily consist of developed technology and trademarks/tradenames and are being amortized on a straight-line basis over their estimated useful lives. See Note 8 for additional information.

*Impairment of Indefinite-Lived and Long-Lived Assets*

Acquired IPR&D is subject to impairment testing until completion or abandonment of the project. Indefinite-lived intangible assets are reviewed for impairment annually, or whenever an event occurs or circumstances change that would indicate that the carrying amount may be impaired. An impairment loss is recognized when the asset's carrying value exceeds its fair value. See Note 9 for additional information.

The Company evaluates long-lived assets under the provisions of ASC 350 “Intangibles–Goodwill and Other” and ASC 360 “Property, Plant, and Equipment” which addresses financial accounting and reporting for the impairment of long-lived assets and for long-lived assets to be disposed of. For purposes of assessing the recoverability of long-lived assets, the Company has one asset group which includes all assets of the Company. For assets to be held and used, the Company compares the carrying amounts to future net undiscounted cash flows expected to be generated by such assets when events or changes in circumstances indicate the carrying amount of an asset may not be recoverable. Should an impairment exist, the impairment loss would be measured based on the excess carrying value of the assets over the assets’ fair value or estimates of future discounted cash flows.

*Income Taxes*

Income taxes are accounted for under the asset and liability method. Deferred tax assets and liabilities are recognized for the future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax bases and operating loss and tax credit carry-forwards. 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. The effect on deferred tax assets and liabilities of a change in tax rates is recognized in income in the period that includes the enactment date. A valuation allowance for deferred income tax assets is recorded when it is more likely than not that some portion or all of the deferred income tax assets will not be realized. The Company’s policy is to classify interest and penalties related to income taxes as income tax expense in the consolidated statements of operations.

*Equity*

Certain issuances of the Company’s convertible preferred stock and warrants classified within equity contain non-standard down round features that result in the strike price being reduced on the basis of the pricing of future equity offerings. The value of the effect of the down round feature when it is triggered is recorded similar to a dividend and as a numerator adjustment in the basic earnings per share calculation.

*Foreign Currency*

When the local currency of the Company's foreign subsidiaries is the functional currency, all assets and liabilities are translated into United States dollars at the rate of exchange in effect at the balance sheet date. Income and expense items are translated at the weighted-average exchange rate prevailing during the period. The effects of foreign currency translation adjustments for these subsidiaries are deferred and reported in stockholders’ equity as a component of Accumulated Other Comprehensive Loss. The effects of foreign currency transactions denominated in a currency other than an entity's functional currency are included in Gain on foreign currency exchange in the Consolidated Statements of Operations. The Company does not hedge foreign currency translation risk in the net assets and income it reports from these sources.

*Revenue Recognition*

The Company recognizes revenue when it satisfies a performance obligation by transferring control of the promised goods or services to its customers, in an amount that reflects the consideration the Company expects to be entitled to in exchange for those goods or services. Product sales consist of a single performance obligation that the Company satisfies at a point in time. The Company recognizes product revenue when the following events have occurred: (a) the Company has transferred physical possession of the products, (b) the Company has a present right to payment, (c) the customer has legal title to the products, and (d) the customer bears significant risks and rewards of ownership of the products.

For the Company’s LAP-BAND product, these criteria are met under the agreements with most customers upon product shipment. This includes sales to distributors, who sell the products to their customers, take title to the products and assume all risks of ownership at the time of shipment. Distributors are obligated to pay within specified terms regardless of when, if ever, they sell the products. For the Company’s ReShape vBloc product, these criteria were met when the product was implanted in the patient. Refer to Note 14 for additional information about the Company’s products and contractual arrangements.

Taxes collected from customers and remitted to governmental authorities are accounted for on a net basis. Accordingly, such amounts are excluded from revenues. Amounts billed to customers related to shipping and handling are included in revenues. Shipping and handling costs related to revenue producing activities are included in cost of sales.

*Research and Development Expenses*

Research and development expenses consist of costs incurred to further the Company’s research and development activities, including product development, clinical trial expenses, quality assurance, regulatory expenses, payroll and other personnel expenses, materials and consulting costs. Certain of these activities, such as pre-clinical studies and clinical trials, may be conducted by third-party service providers at the direction of the Company. In addition, during 2018, the Company entered into an arrangement with a Contract Research Organization (“CRO”) under which the CRO performs and manages research and development activities on the Company’s behalf.

The Company records the estimated costs of research and development activities performed by third-party service providers based upon the estimated services provided but not yet invoiced and includes these costs in accrued expenses and other payables in the Consolidated Balance Sheets and within research and development expense in the Consolidated Statements of Operations. The Company accrues for these costs based on factors such as estimates of the work completed and in accordance with agreements established with its third-party service providers. As actual costs become known, the Company adjusts its accrued liabilities.

The Company's CRO arrangement generally requires payments in advance of services. Upon making a payment, the Company makes a determination as to the amount to record as a deferred charge and the amount of research and development expense. The amount of CRO related costs included in research and development expense each period is expensed based on the Company's estimate of the time period over which services will be performed, enrollment of patients, number of sites activated and level of effort to be expended. Any amount of advances paid in excess of expense recognized is included in prepaid expenses and other current assets on the Consolidated Balance Sheets. If the actual timing of the CRO's performance of services or the level of effort varies from the Company's estimate, the amount of prepaid CRO expense is adjusted accordingly.

*Stock-Based Compensation*

The Company applies ASC 718 Compensation — Stock Compensation and accordingly records compensation expense for stock options over the vesting or service period using the fair value on the date of grant, as calculated by the Company using the Black-Scholes model. The Company's stock-based compensation plans are more fully described in Note 15.

*Net Loss Per Share*

Basic net loss per share is computed by dividing net loss by the weighted-average number of common shares outstanding during the period, including the prefunded warrants that were reclassified from warrant liability to equity as a result of the reverse stock split. Diluted net loss per share is based on the weighted-average common shares outstanding during the period plus dilutive potential common shares calculated using the treasury stock method. Such potentially dilutive shares are excluded when the effect would be to reduce a net loss per share. For purposes of basic and diluted per share computations, loss from continuing operations and net loss are reduced by the down round adjustments for convertible preferred stock and warrants.

The following table sets forth the potential shares of common stock that are not included in the calculation of diluted net loss per share because to do so would be anti-dilutive as of the end of each period presented:

| | December 31, | |
|---|---|---|
| | 2019 | 2018 |
| Stock options | 46 | 36 |
| Convertible preferred stock | 1,288 | 1,098 |
| Warrants | 7,142,428 | 127,540 |

*Concentration of Credit Risk, Interest Rate Risk and Foreign Currency Exchange Rate*

Financial instruments that potentially subject the Company to significant concentrations of credit risk consist primarily of cash and cash equivalents, restricted cash and trade accounts receivable. Cash and cash equivalents are primarily deposited in demand and money market accounts. At times, such deposits may be in excess of insured limits. Investments in money market funds are not considered to be bank deposits and are not insured or guaranteed by the federal deposit insurance company or other government agency. These money market funds seek to preserve the value of the investment at $1.00 per share; however, it is possible to lose money investing in these funds. The Company has not experienced any losses on its deposits of cash and cash equivalents. To minimize the risk associated with trade accounts receivable, management maintains relationships with the Company's customers that allow management to monitor current changes in business operations so the Company can respond as needed.

Substantially all of the Company's revenue is denominated in U.S. dollars. Only a small portion of revenue and expenses are denominated in foreign currencies, principally the Australian dollar and Euro for 2019. During the year ended December 31, 2018, the Company did not have any currency denominated outside of the U.S. dollar. The Company has not entered into any hedging contracts. Future fluctuations in the value of the U.S. dollar may affect the price competitiveness of the Company's products outside the U.S.

*Fair Value of Financial Instruments*

Fair value is defined as the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date (referred to as an "exit price"). Fair value of an asset or

liability considers assumptions that market participants would use in pricing the asset or liability, including consideration of non-performance risk.

Assets and liabilities are categorized into a three-level fair value hierarchy based on valuation inputs used to determine fair value.

Level 1 inputs are quoted prices in active markets for identical assets or liabilities.

Level 2 inputs are observable, either directly or indirectly.

Level 3 inputs are unobservable due to little or no corroborating market data.

The carrying amounts of the Company's financial instruments, including cash equivalents, accounts receivable, accounts payable and certain accrued and other liabilities approximate fair value due to their short-term maturities. Refer to Note 10 regarding the fair value of debt instruments and Note 12 regarding fair value measurements and inputs.

*Recent Accounting Pronouncements*

New accounting standards adopted by the Company in 2019 are discussed below or in the related notes, where appropriate.

In February 2016, the Financial Accounting Standards Board ("FASB") issued ASU No. 2016-02 Leases (Topic 842) that amended the guidance on leases. The amendment improves transparency and comparability among companies by recognizing lease assets and lease liabilities on the balance sheet and by disclosing key information about leasing arrangements. The guidance was effective for fiscal years beginning after December 15, 2018, including interim periods within those fiscal years. Reporting entities could elect to adjust comparative periods and record the cumulative effect adjustment at the beginning of the earliest comparative period, or to not adjust comparative periods and record the cumulative effect adjustment at the effective date.

The Company adopted the new guidance as of the effective date of January 1, 2019 using the modified retrospective approach with no adjustments to the comparative period presented in the financial statements. In addition, the Company elected the package of practical expedients permitted under the transition guidance to not reassess (1) whether any expired or existing contracts are, or contain, leases, (2) the lease classification for expired or existing leases, (3) initial direct costs for existing leases and (4) not recognize right-of-use assets for short-term leases.

The adoption of the guidance resulted in the recognition of right-of-use ("ROU") assets and lease liabilities for operating leases of approximately $1.2 million as of January 1, 2019. The guidance did not have an impact on the Company's Consolidated Statements of Operations or Cash Flows. See Note 11 for disclosures related to the Company's leases.

In June 2018, the FASB issued ASU No. 2018-07, Compensation – Stock Compensation (Topic 718), Improvements to Nonemployee Share-Based Payment Accounting, which is intended to simplify the accounting for nonemployee share-based payment transactions by expanding the scope of Topic 718 to include share-based payment transactions for acquiring goods and services from nonemployees. The guidance was effective for fiscal years and interim periods within those years beginning after December 15, 2018, with early adoption permitted. The Company adopted this guidance effective January 1, 2019. The adoption of this guidance had no effect on the Company's consolidated financial statements as there were no share-based payment transactions with nonemployees in 2018 and such transactions in prior years, all of which had an established measurement date, were not material.

New accounting standards not yet adopted are discussed below.

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 modifies the disclosure requirements on fair value measurements and is intended to improve the effectiveness of disclosures, including the consideration of costs and benefits. The guidance is effective on January 1, 2020. The Company does not expect the adoption of this guidance will have a material impact on its consolidated financial statements.

In August 2018, the FASB issued ASU 2018-15 Intangibles-Goodwill and Other-Internal-Use Software (Subtopic 350-40), Customer's Accounting for Implementation Costs Incurred in a Cloud Computing Arrangement That Is a Service Contract. The amendments in this update align the requirements for capitalizing implementation costs incurred in a hosting arrangement that is a service contract with the requirements for capitalizing implementation costs incurred to develop or obtain internal-use software (and hosting arrangements that include an internal-use software license). The ASU is effective for the Company on January 1, 2020. The Company does not expect the adoption of this guidance will have a material impact on its consolidated financial statements.

In June 2016, the FASB issued ASU 2016-13, Financial Instruments – Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments, which is intended to provide financial statement users with more useful information about expected credit losses on financial assets held by a reporting entity at each reporting date. In May 2019, the FASB issued ASU No. 2019-05, which amended the new standard by providing targeted transition relief. The new guidance replaces the existing incurred loss impairment methodology with a methodology that requires consideration of a broader range of reasonable and supportable forward-looking information to estimate all expected credit losses. In November 2019, the FASB issued 2019-11, which amended the new standard by providing additional clarification. This guidance is effective for the fiscal years and interim periods within those years beginning after December 15, 2022. The Company is currently evaluating the impact the guidance will have on its consolidated financial statements.

Various other accounting standards and interpretations have been issued with 2020 effective dates and effective dates subsequent to December 31, 2019. The Company has evaluated the recently issued accounting pronouncements that are currently effective or will be effective in 2020 and believe that none of them have had or will have a material effect on the Company's financial position, results of operations or cash flows.

**(3) Liquidity, Going Concern and Management's Plans**

The accompanying consolidated financial statements have been prepared assuming the Company will continue as a going concern. The Company currently is not generating revenue from operations that is significant relative to its level of operating expenses, and does not anticipate generating revenue sufficient to offset operating costs in the short-term to the next 18 months. The Company's history of operating losses, limited cash resources and lack of certainty regarding obtaining significant third-party reimbursement for its products, raise substantial doubt about its ability to continue as a going concern.

As of December 31, 2019, the Company had net negative working capital of $0.3 million. The Company's principal source of liquidity as of December 31, 2019 consisted of approximately $2.9 million of cash and cash equivalents, and $4.1 million of accounts receivable.

Additionally, there were uncertainties surrounding the impact of COVID-19 on our business and operations. The details of these uncertainties are contained in Note 18 to these consolidated financial statements.

The Company's anticipated operations include plans to (i) integrate the sales and operations of the Company with the newly acquired LAP-BAND product line, (ii) continue development of the ReShape Vest, (iii) seek opportunities to leverage the Company's intellectual property portfolio and custom development services to provide third-party sales and licensing opportunities, and (iv) explore and capitalize on synergistic opportunities to expand our portfolio and offer future minimally invasive treatments and therapies in the obesity continuum of care. The Company believes that it has the flexibility to manage the growth of its expenditures and operations depending on the amount of available cash flows, which could include reducing expenditures for marketing, clinical and product development activities. However, the Company will ultimately need to achieve sufficient revenues from product sales and obtain additional equity or debt financing to support its operations.

Management is currently pursuing various funding options, including seeking additional equity or debt financing as well as a strategic merger or other transaction to obtain additional funding to support the expansion of LAP-BAND product sales and to continue the development of, and to successfully commercialize, the ReShape Vest. While there can be no assurance that the Company will be successful in its efforts, the Company has a long history of raising equity financing to fund its development activities. Should the Company be unable to obtain adequate financing in the near term, the Company's business, result of operations, liquidity and financial condition would be materially and negatively

affected, and the Company would be unable to continue as a going concern. Additionally, there can be no assurance that, assuming the Company is able to strengthen its cash position, it will achieve sufficient revenue or profitable operations to continue as a going concern.

**(4) Acquisition**

***LAP-BAND Product Line Assets***

On December 17, 2018, the Company acquired from Apollo Endosurgery, Inc. ("Apollo") substantially all of the assets exclusively related to Apollo's LAP-BAND product line and Apollo acquired from the Company substantially all of the assets exclusively related to the Company's ReShape Balloon product line ("Asset Purchase Agreement"). In addition to the transfer to Apollo of the ReShape Balloon product line assets, the Company was required to pay Apollo cash consideration of $17.0 million, of which $10.0 million was paid at the closing of the transaction, $2.0 million was paid on the first anniversary of the closing date in December 2019, $2.0 million is payable on the second anniversary of the closing date and $3.0 million is payable on the third anniversary of the closing date. Pursuant to a transition services agreement, supply agreement and distribution agreement, Apollo served as the Company's distributor of the LAP-BAND product in select countries outside of the United States through December 2019, and will manufacture the LAP-BAND product for the Company for up to two years, and provide other specified services.

The Company evaluated the LAP-BAND product line asset acquisition under the guidance of ASU 2017-01, "Clarifying the Definition of a Business" and concluded that the group of assets acquired did not meet the definition of a business. Accordingly, the LAP-BAND product line asset purchase was accounted for as an asset acquisition and the assets acquired were recorded at their relative fair values during the fourth quarter of 2018. The disposal of the Reshape Balloon product line assets has been accounted for as a discontinued operation.

The total transaction cost for the assets acquired was comprised of the net present value of the consideration transferred plus the transaction costs. The Company determined that the ReShape Balloon product line assets transferred as part of the LAP-BAND product line purchase transaction had no value, as management's projections of the ReShape Balloon product line as of the transaction date indicated negative cash flows. See Note 5 for additional information regarding the sale to Apollo of the Reshape Balloon product line and Note 10 for additional information regarding the asset purchase consideration payable.

| | | |
|---|---|---|
| Asset purchase consideration paid at closing | $ | 10,000 |
| Aggregate asset purchase consideration payable | | 7,000 |
| Adjustment to net present value of asset purchase consideration payable | | (703) |
| Present value of asset purchase consideration | | 16,297 |
| Asset purchase transaction costs | | 500 |
| Fair value of ReShape Balloon product line assets transferred | | — |
| Total transaction cost | $ | 16,797 |

Under the asset acquisition method of accounting, the total transaction cost is allocated to the relative fair values of the assets acquired. The table below represents the allocation of the relative fair values of the LAP-BAND product line tangible and intangible assets acquired as of the December 17, 2018 acquisition date.

| | | |
|---|---|---|
| Developed technology/know-how | $ | 14,362 |
| Trademarks | | 955 |
| Inventory | | 994 |
| Fixed assets | | 486 |
| Total transaction cost | $ | 16,797 |

Apollo retained all other working capital associated with the LAP-BAND product line, including accounts receivable, accounts payable and certain accrued and other liabilities arising from operations before the closing of the Apollo transaction, and there was no transfer of workforce. The LAP-BAND related fixed assets were written off during 2019, as the Company does not plan to take possession of the assets. Prior to the fixed assets being written off they were included within other assets on the consolidated balance sheets.

The Company used the income approach valuation technique to measure the fair value of the intangible assets, based on the present value of their future economic benefits reflecting current market expectations. Specifically, the developed technology/know-how was valued using a multi-period excess earnings method and the relief from royalty method was used to value the trademark. The assumptions used in these fair value measurements are not observable in active markets and thus represent Level 3 fair value measurements.

**(5) Discontinued Operations**

Effective December 17, 2018, the Company sold substantially all of the assets exclusively related to its ReShape Balloon product line to Apollo in connection with the Company's acquisition of substantially all of the assets exclusively related to Apollo's LAP-BAND product line. The ReShape Balloon product line assets sold to Apollo consisted of inventory, property and equipment and the related intellectual property underlying the intangible assets. In connection with the Apollo transaction, the Company retained all other working capital associated with the ReShape Balloon product line, including accounts receivable, accounts payable and certain accrued and other liabilities arising from operations before the closing of the Apollo transaction, and there was no transfer of workforce. The ReShape Balloon product line was the primary operating activity of ReShape Medical, Inc. ("ReShape Medical"), a business the Company acquired in October 2017 and accounted for as a business combination. The purchase accounting was finalized during the fourth quarter of 2018 and did not result in any changes to the purchase price allocation. The operations of the ReShape Balloon product line are shown as discontinued operations in the accompanying Consolidated Financial Statements. See Note 4 for more information regarding the LAP-BAND product line acquisition.

In the second quarter of 2018, the Company recorded an impairment charge of $13.2 million for the full write-down of the goodwill recorded in connection with its acquisition of ReShape Medical. Refer to Note 9 for additional information regarding evaluation of goodwill for impairment. In connection with the determination of the fair value of the LAP-BAND assets acquired, no value was assigned to the ReShape Balloon product line assets sold as projections updated during the fourth quarter of 2018 indicated negative cash flows. Accordingly, the loss on disposal of discontinued operations consists of an impairment charge of $22.6 million for the full write-down of the ReShape Balloon product line assets disposed of, which had the following carrying values as of December 17, 2018 prior to the write-down:

| | |
|---|---|
| Inventory | $ 670 |
| Property and equipment, net | 42 |
| Other intangible assets, net | 21,884 |
| | $ 22,596 |

There were no assets associated with the ReShape Balloon product line at December 31, 2019 and 2018.

The components of loss from discontinued operations for the year ended December 31, 2018 consisted of the following:

| | Year Ended December 31, 2018 |
|---|---|
| Revenue | $ 2,285 |
| Loss from discontinued operations before income taxes | (45,885) |
| Income tax benefit | — |
| Loss from discontinued operations, net of tax | $ (45,885) |

## (6) Supplemental Balance Sheet Information

***Prepaid expenses and other current assets:***

| | December 31, 2019 | December 31, 2018 |
|---|---|---|
| Prepaid contract research organization expenses | $ 1,356 | $ 1,064 |
| Prepaid insurance | 190 | 58 |
| Other current assets | 165 | 147 |
| Total prepaid expenses and other current assets | $ 1,711 | $ 1,269 |

***Accrued and other liabilities:***

| | December 31, | |
|---|---|---|
| | 2019 | 2018 |
| Accrued professional services | $ 1,432 | $ 3,095 |
| Payroll and benefits | 1,021 | 1,146 |
| Taxes | 373 | — |
| Equity transaction related liability | 211 | — |
| Customer deposits | 202 | — |
| Accrued insurance premium | 87 | — |
| Other | 495 | 588 |
| Total accrued and other liabilities | $ 3,821 | $ 4,829 |

## (7) Property and Equipment

Property and equipment consist of the following:

| | December 31, | |
|---|---|---|
| | 2019 | 2018 |
| Furniture and equipment | $ 83 | $ 2,342 |
| Computer hardware and software | 78 | 782 |
| Leasehold improvements | 19 | 81 |
| | 180 | 3,205 |
| Less accumulated depreciation and amortization | (164) | (3,141) |
| Property and equipment, net | $ 16 | $ 64 |

Depreciation expense for the years ended December 31, 2019 and 2018 were approximately $40 thousand and $0.2 million, respectively.

**(8) Other Intangible Assets**

Other intangible assets consist of the following:

| | December 31, 2019 | | | |
|---|---|---|---|---|
| | Weighted Average Useful Life (years) | Gross Carrying Amount | Accumulated Amortization | Net Book Value |
| **Finite-lived intangible assets:** | | | | |
| Developed technology | 10.0 | $ 14,362 | $ (1,496) | $ 12,866 |
| Trademarks/Tradenames | 10.0 | 2,045 | (381) | 1,664 |
| Covenant not to compete | 3.0 | 76 | (65) | 11 |
| | 10.0 | 16,483 | (1,942) | 14,541 |
| **Indefinite-lived intangible assets:** | | | | |
| In-process research and development | indefinite | 14,133 | — | 14,133 |
| Total | | $ 30,616 | $ (1,942) | $ 28,674 |

| | December 31, 2018 | | | |
|---|---|---|---|---|
| | Weighted Average Useful Life (years) | Gross Carrying Amount | Accumulated Amortization | Net Book Value |
| **Finite-lived intangible assets:** | | | | |
| Developed technology | 10.0 | $ 14,362 | $ (60) | $ 14,302 |
| Trademarks/Tradenames | 10.0 | 2,045 | (177) | 1,868 |
| Covenant not to compete | 3.0 | 76 | (40) | 36 |
| | 10.0 | 16,483 | (277) | 16,206 |
| **Indefinite-lived intangible assets:** | | | | |
| In-process research and development | indefinite | 20,721 | — | 20,721 |
| Total | | $ 37,204 | $ (277) | $ 36,927 |

The gross amount and accumulated impairment loss of indefinite-lived intangible assets are as follows (in thousands):

| | December 31, | |
|---|---|---|
| | 2019 | 2018 |
| Gross amount | $ 20,721 | $ 20,721 |
| Accumulated impairment loss | (6,588) | — |
| Indefinite-lived intangible assets, net | $ 14,133 | $ 20,721 |

Amortization expense for the years ended December 31, 2019 and 2018 were approximately $1.7 million and $0.2 million, respectively.

Estimated amortization expense for each of the years ending December 31 is as follows:

| Year ending December 31, | |
|---|---|
| 2020 | $ 1,651 |
| 2021 | 1,641 |
| 2022 | 1,641 |
| 2023 | 1,641 |
| 2024 | 1,641 |
| Thereafter | 6,326 |
| | $ 14,541 |

**(9) Impairment of Intangible Assets**

***Second Quarter 2019***

The Company has completed the feasibility study for the ReShape Vest and began clinical trials in Europe in 2018. During the second quarter of 2019, the Company performed a qualitative impairment analysis of the IPR&D. Due to delays in the clinical trials experienced during the first six months of 2019, the Company revised its expectations of when revenues would commence for the ReShape Vest, thus reducing the projected near-term future net cash flows related to the ReShape Vest. As a result, the Company performed a quantitative impairment analysis of the IPR&D and recorded a one-time nonrecurring impairment charge of $6.6 million, for the excess of the carrying value over the estimated fair value. The fair value of the IPR&D was estimated using an income approach using Level 3 assumptions which included discounting the revised projected future net cash flows to their present value, with a discount rate of 22.4%.

The Company also assessed the recoverability of finite-lived intangible assets and did not identify any impairment as a result the performance of this analysis.

***Second Quarter 2018***

Subsequent to the Company's registered direct securities offering on April 3, 2018, the price of the Company's common stock declined significantly. Management determined that this event was an indicator of potential impairment as the magnitude of the decline indicated that the net equity of the Company may be in excess of its fair market value and conducted an impairment analysis during the second quarter of 2018. The Company determined that the carrying values of the assets of BarioSurg and ReShape Medical, both of which were acquired during 2017 and accounted for as business combinations, exceeded their current fair values. As a result, the Company recorded an impairment charge of $14.0 million for the full write-down of the goodwill recorded in connection with its acquisition of BarioSurg. In addition, as described in Note 5, discontinued operations for the year ended December 31, 2018 include a goodwill impairment charge for the full write-down of the goodwill recorded in connection with the Company's acquisition of ReShape Medical.

The fair market values were determined under an income approach using discounted cash flows. Fair value was calculated using a discounted cash flow analysis is classified within Level 3 of the fair value hierarchy and requires several assumptions including risk adjusted discount rates and financial forecasts. The determination of the fair value of the reporting unit and the allocation of that value to individual assets and liabilities within the reporting unit requires the Company to make significant estimates and assumptions. These estimates and assumptions primarily include, but are not limited to, the selection of appropriate peer group companies, control premiums appropriate for acquisitions in the industries in which the Company competes, the discount rate, terminal growth rates, and forecasts of revenue, operating income, and capital expenditures.

In conjunction with the evaluation of goodwill for impairment in the second quarter of 2018, the Company performed a qualitative impairment analysis on indefinite-lived intangible assets other than goodwill, and assessed the recoverability of finite-lived intangible assets. The Company did not identify any impairments of such indefinite-lived or finite-lived intangible assets as a result the performance of these analyses.

**(10) Debt**

***Asset Purchase Consideration Payable***

The Company granted Apollo a first security interest in substantially all of the Company's assets as security for the payment and performance when due of all of all of its obligations under the Asset Purchase Agreement, including the remaining asset purchase consideration. On October 28, 2019, the Company received the acknowledgement from Apollo of the termination of the security interest granted by the Company. The security interest was automatically terminated as a result of the Company completing a Qualified Financing, as defined in the Security Agreement, in connection with the

Company's previously disclosed Securities Purchase Agreement, dated June 13, 2019, and Warrant Exercise Agreement, dated September 23, 2019. The net present value of the secured asset purchase consideration payable was determined using a discount rate of 5.1%. At December 31, 2019 and 2018, the aggregate carrying value of the current and noncurrent asset purchase consideration payable of approximately $4.6 million and $6.3 million respectively, as adjusted for accretion of interest of approximately $0.3 million and an immaterial amount, respectively.

***Convertible Subordinated Debentures***

On March 29, 2019, the Company completed a private placement with certain healthcare focused institutional investors for the sale of secured subordinated original issue discount convertible debentures ("debentures") for a purchase price of $2.0 million. The debentures had a maturity of June 28, 2019 and a face amount of $2.2 million, reflecting a 10% original issue discount. The Company recorded an additional debt discount and a derivative liability for the fair value of the bifurcated embedded conversion features discussed below. The initial carrying amount of the debentures, net of discounts and deferred financing costs, was $1.5 million. The Company repaid the debentures on June 20, 2019 at their face amount of $2.2 million with proceeds from an equity financing which closed on June 18, 2019. In connection with the early repayment of the debentures, the Company recorded a loss on extinguishment of debt of $0.1 million, which consisted of the unamortized debt discount and deferred financing costs.

The debentures contained a conversion feature that provided that, at any time after June 28, 2019, if the debentures had not been repaid, but subject to certain investor ownership limitations, the debentures were convertible into shares of common stock at a conversion price equal to the lesser of $0.33 and 80% of the average of the lowest two volume weighted average prices of the Company's common stock during the 20 trading days prior to conversion. The Company analyzed the conversion features embedded in the debentures and determined that bifurcation and liability classification was required under ASC 815 due to the variable number of shares issuable upon conversion. The fair value of the bifurcated embedded conversion features was determined to be $0.5 million as of the issuance date using a Monte Carlo model and primarily Level 3 inputs. Upon the closing of the Company's equity financing and the Company's planned use of a portion of the proceeds to repay the debentures, the fair value of the embedded derivative liability was reduced to zero as the conversion feature was no longer available. The fair value adjustment to the embedded derivative liability of $0.5 million was recorded as a reduction to Interest Expense.

In connection with the financing, the Company amended the exercise price of warrants to purchase up to 66,667 shares of common stock held by the investors that were issued on November 28, 2018 from $180.00 per share to $1.20 per share. The value attributable to the exercise price reduction of $0.1 million was recorded in Warrant Expense and was estimated using the Black Scholes option pricing model using a risk-free interest rate of 2.2%, an expected term of 4.7 years, expected dividends of zero and expected volatility of 204.4%.

**(11) Leases**

On the date of adoption of Topic 842, the Company had noncancelable operating leases for office and warehouse space in San Clemente, California and noncancelable operating leases for certain office equipment that expire at various dates through 2022. Financing lease arrangements and the effects of any lease modifications have not been material. Certain of the Company's equipment leases include variable lease payments that are adjusted periodically based on actual usage. Lease and non-lease components are accounted for separately.

The Company determines the lease term as the noncancelable period of the lease, and may include options to extend or terminated the lease when reasonably certain that the Company will exercise that option. Leases with a term of 12 months or less are not recognized on the balance sheet. The Company uses its incremental borrowing rate based on the information available at lease commencement in determining the present value of unpaid lease payments. Right-of-use assets also include any lease payments made at or before lease commencement and any initial direct costs incurred, and exclude any lease incentives received.

Operating lease costs for the year ended December 31, 2019 were $0.4 million. Variable lease costs were not material.

Supplemental information related to operating leases is as follows:

| Balance Sheet Information at December 31, 2019 | | |
|---|---|---|
| Operating lease ROU assets | $ | 758 |
| | | |
| Operating lease liabilities, current portion | $ | 291 |
| Operating lease liabilities, long-term portion | | 477 |
| Total operating lease liabilities | $ | 768 |

| Cash Flow Information for the Year Ended December 31, 2019 | | |
|---|---|---|
| Cash paid for amounts included in the measurement of operating leases liabilities | $ | 432 |

Maturities of operating lease liabilities at December 31, 2019 were as follows:

| Twelve months ending December 31, | | |
|---|---|---|
| 2020 | $ | 323 |
| 2021 | | 331 |
| 2022 | | 166 |
| Total lease payments | | 820 |
| Less: imputed interest | | 52 |
| Total lease liabilities | $ | 768 |
| | | |
| Weighted-average remaining lease term at end of period (in years) | | 2.4 |
| Weighted-average discount rate at end of period | | 5.1 % |

***Disclosures related to periods prior to adopting the new lease guidance***

Future minimum lease commitments under noncancelable operating leases as of December 31, 2018 were as follows:

| Year ending December 31, | | |
|---|---|---|
| 2019 | $ | 449 |
| 2020 | | 332 |
| 2021 | | 331 |
| 2022 | | 166 |
| Total | $ | 1,278 |

For the year ended December 31, 2018, total rent expense recognized for all operating leases was $0.8 million.

**(12) Equity**

The Company may issue preferred stock, common stock, or both, in connection with underwritten public offerings, registered direct offerings, or business acquisitions. Such issuances of equity typically include the issuance or sale of warrants to purchase common stock. Certain issuances of convertible preferred stock and warrants may contain anti-dilutive features apart from customary adjustments for splits and reverse splits of common stock (collectively, “down round features”). When a series of convertible preferred stock contains this non-standard down round feature, the Company is required to adjust the conversion price in the event of future stock sales at a lower unit price. When warrants issued in connection with an equity transaction contain, or are amended to contain, this non-standard down round feature, the Company is required to adjust the exercise price upon the issuance of any shares of common stock or securities convertible into shares of common stock below the then-existing exercise price and evaluate and account for the value attributable to the reduced warrant exercise price. In the event down round adjustments are triggered, the values attributable to the adjustment to the convertible preferred stock conversion price and warrant exercise price are recorded as an increase to additional paid-in capital and increase to accumulated deficit.

As of December 31, 2019, the series B convertible preferred stock ("Series B Preferred Stock") and warrants issued to investors in August 2017 and warrants issued to investors in connection with the sale of common stock in June, July and August 2018, as amended, contain such down round features. At December 31, 2019, the exercise price of the warrants was $2.40 per share, as last reset effective with a direct financing completed on June 18, 2019.

All series of the Company's convertible preferred stock are classified in stockholders' equity, including those with the down round feature, when applicable to the equity transaction.

Warrants to purchase common stock are classified in stockholders' equity, including those issued with the down round feature, as they are both indexed to the Company's own stock and meet the scope exception in ASC 815 "Derivatives and Hedging."

Down round adjustments were not material during the year ended December 31, 2019. During the year ended December 31, 2018, the Company recorded a total of $0.2 million attributable to changes in the conversion price of convertible preferred stock and $2.9 million attributable to the reductions in the exercise price of warrants. The value attributable to the warrant exercise price reductions in 2018 was estimated using the Black Scholes model using risk-free interest rates ranging from 2.13% to 2.96%; expected lives ranging from less than one year to 9.4 years; expected dividends of zero and expected volatility ranging from 111.63% to 293.32%.

The Company had the following equity transactions during the years ended December 31, 2019 and 2018:

***September 2019 Issuance of Common Stock and Warrants***

On September 23, 2019, the Company entered into a warrant exercise agreement with the holders of Series B warrants issued in the June 2019 private placement. The holders agreed to early exercise 3,333,334 Series B warrants in the private placement in exchange for 69,167 shares of common stock and 3,264,167 common stock equivalents in the form of Series F prefunded warrants. The net proceeds from the early exercise of Series B warrants were approximately $6.9 million, after deducting placement agent fees and other transaction costs. As an incentive for the warrant holders to exercise their Series B warrant in full, the warrant holders were issued new five-year series E warrants to purchase up to 3,333,334 unregistered shares of the Company's common stock, in aggregate, at an exercise price of $6.00 per share, through a private placement. In connection with the registered direct offering, the placement agent received warrants to purchase 233,334 shares of common stock at an exercise price of $6.00 per share.

***June 2019 Issuance of Common Stock and Warrants***

On June 18, 2019, the Company completed a private placement with certain healthcare focused institutional investors for the sale of 130,000 shares of common stock at a purchase price of $2.40 per share and series C pre-funded warrants to purchase 3,203,334 shares of common stock at a purchase price of $2.28 per share. The exercise price of each pre-funded warrant is $0.12 per share. The Company also issued series A warrants to purchase 3,333,334 shares of common stock at an exercise price of $2.64 per share and series B warrants to purchase 3,333,334 shares of common stock at an exercise price of $2.40 per share. Net proceeds from the private placement were $6.9 million after deducting placement agent fees and other transaction costs. In connection with the registered direct offering, the placement agent received warrants to purchase 233,334 shares of common stock at an exercise price of $3.00 per share.

***November 2018 Issuance of Common Stock and Warrants***

On November 28, 2018, the Company completed a registered direct offering with two healthcare focused institutional investors which included the sale of 5,584 shares of common stock at a purchase price of $150.00 per share and pre-funded warrants to purchase 61,084 shares of common stock at a purchase price of $148.80 per share. The exercise price of each pre-funded warrant is $1.20 per share. The Company also issued Series A warrants to purchase 66,667 shares of common stock at an initial exercise price of $180.00 per share. In connection with the registered direct offering, the placement agent received warrants to purchase 4,667 shares of common stock at an exercise price of

$187.50 per share. Net proceeds from the registered direct offering were $9.1 million, after deducting placement agent fees and other transaction costs.

As discussed in Note 10, in connection with the debenture financing completed on March 29, 2019, the exercise price of the Series A warrants was adjusted to $1.20 per share.

***2018 At-the-Market Offering***

During the period from October 9, 2018 through November 28, 2018, the Company issued an aggregate of 52,197 shares of common stock in an at-the-market public offering ("2018 ATM") at an average price per share of $286.80. In connection with the ATM, the placement agent received warrants to purchase a total of 3,654 shares of common stock at exercise prices ranging from $151.80 per share to $897.06 per share. Net proceeds from the ATM were $13.4 million, after deducting placement agent fees and other transaction costs.

***September 2018 Issuance of Common Stock and Warrants and Exchange of Series D Convertible Preferred Stock for Common Stock and Warrants***

On September 20, 2018, the Company completed a public offering which included the issuance of 696 shares of common stock at a purchase price of $756.00 per share and warrants to purchase 348 shares of common stock at an exercise price of $756.00 per share. In connection with the public offering, the placement agent received warrants to purchase 49 shares of common stock at an exercise price of $945.00 per share. Net proceeds from the public offering were $0.4 million, after deducting placement agent fees and other transaction costs.

Pursuant to the terms of the April 2018 securities purchase agreement, on September 20, 2018, the purchasers exercised their right to exchange their shares of series D convertible preferred stock into the common stock and warrants included in the September 2018 public offering. As a result, an aggregate of 1,491 shares of series D convertible preferred stock was exchanged for the issuance of 237 shares of common stock and warrants to purchase 119 shares of common stock at an exercise price of $756.00 per share.

***August 2018 Issuance of Common Stock and Warrants***

On August 3, 2018, the Company completed a registered direct offering which included the sale of 60 shares of common stock at a purchase price of $10,080.00 per share and warrants to purchase 60 shares of common stock at an initial exercise price of $18,480.00 per share. In connection with the registered direct offering, the placement agent received warrants to purchase 5 shares of common stock at an exercise price of $12,600.00 per share. Net proceeds from the registered direct offering were $0.5 million, after deducting placement agent fees and other transaction costs.

***July 2018 Issuance of Common Stock and Warrants***

On July 12, 2018, the Company completed a registered direct offering which included the sale of 74 shares of common stock at a purchase price of $34,440.00 per share and warrants to purchase 74 shares of common stock at a purchase price of $2,100.00 per share. The initial exercise price of each warrant was $34,608.00 per share. In connection with the registered direct offering, the placement agent received warrants to purchase 6 shares of common stock at an exercise price of $45,679.20 per share. Net proceeds from the registered direct offering were $2.2 million, after deducting placement agent fees and other transaction costs.

***June 2018 Issuances of Common Stock and Warrants***

On June 21, 2018, the Company completed a registered direct offering which included the sale of 28 shares of common stock at a purchase price of $51,576.00 per share per share and warrants to purchase 28 shares of common stock at a purchase price of $2,100.00 per share. The initial exercise price of each warrant was $51,744.00 per share. In connection with the registered direct offering, the placement agent received warrants to purchase 2 shares of common stock at an exercise price of $67,032.00 per share. Net proceeds from the registered direct offering were $1.3 million, after deducting placement agent fees and other transaction costs. The Company used $0.5 million of the net proceeds of the offering to redeem 500 of the then currently 5,250 outstanding shares of its series D convertible preferred stock,

which the Company agreed to as an inducement to obtain the required consent of the holder of series D convertible preferred stock for the Company to complete the offering.

On June 9, 2018, the Company completed a registered direct offering which included the sale of 23 shares of common stock at a purchase price of $65,856.00 per share per share and warrants to purchase 17 shares of common stock at a purchase price of $2,100.00 per share. The initial exercise price of each warrant was $66,024.00 per share. In connection with the registered direct offering, the placement agent received warrants to purchase 2 shares of common stock at an exercise price of $84,168.00 per share. Net proceeds from the registered direct offering were $1.2 million, after deducting placement agent fees and other transaction costs.

***April 2018 Issuance of Convertible Preferred Stock and Warrants***

On April 3, 2018 the Company completed a registered direct offering which included the sale of 6,000 shares of series D convertible preferred stock, par value $0.01 per share ("Series D Preferred Stock"), at a purchase price of $1,000 per share and warrants to purchase 139 shares of common stock at an initial exercise price of $189,000.00 per share. Net proceeds from the registered direct offering were $5.1 million, after deducting placement agent fees and other transaction costs. In April 2019, the remaining warrants to purchase 137 shares of common stock, net of the warrants exercised in May 2018 as discussed in Note 13, expired in accordance with their terms.

***Conversions of Stock***

On February 1, 2019, pursuant to an exchange agreement with Sabby Volatility Warrant Master Fund, Ltd. ("Sabby") 9,993 shares of the Company's common stock were exchanged for an aggregate of 1,192,000 shares of series E convertible preferred stock, par value $0.01 per share ("Series E Preferred Stock") in a noncash transaction. Each share of Series E Preferred Stock was convertible into one share of common stock at Sabby's election pre-effect of the reverse stock split that occurred during November 2019. In April 2019, all shares of Series E Preferred Stock were converted into an equal number of shares of common stock. The November 2019 reverse stock split had no effect on this transaction.

During the years ended December 31, 2019 and 2018, 156 shares and 5,896 shares, respectively of Series B Preferred Stock were converted into 1,040 shares and 3,970 shares, respectively, of common stock. At December 31, 2019, the remaining 3 shares of Series B Preferred stock are convertible into 1,250 shares of common stock.

In addition to the shares of Series D Preferred Stock redeemed in connection with the registered direct offering completed on June 21, 2018, all of the remaining 5,500 shares of the Series D Preferred Stock were converted into 903 shares of common stock during the year ended December 31, 2018.

At December 31, 2019, the remaining 95,388 shares of Series C Convertible Preferred Stock, par value $0.01 per share, are convertible into 38 shares of common stock. The Series C Preferred Stock has no voting rights. In the event of any voluntary or involuntary liquidation of the Company, the Series C Preferred Stock holders shall be paid after other series of preferred stock, but take preferential treatment over common shareholders. The series C convertible preferred stock has a liquidation preference of $274.88 per share, or $692,691.05 per underlying share of common stock, or approximately $26.2 million in the aggregate. Holders of the series C convertible preferred stock have the right to convert their shares into shares of common stock instead of receiving the liquidation preference. In general, the series C convertible preferred stock is entitled to receive dividends (on an as-if-converted-to-common stock basis) actually paid on shares of common stock when, as and if such dividends are paid on shares of common stock. No other dividends will be paid on shares of series C convertible preferred stock.

**(13) Warrants**

The Company's grants of warrants to purchase common stock are primarily in connection with equity financings. See Note 12 for additional information about equity financings and the related issuance of warrants. Warrant activity was as follows:

| | Shares | |
|---|---|---|
| **Balance December 31, 2017** | 57 | |
| Issued | 136,916 | (1) |
| Exercised | (9,432) | (2), (3) |
| Cancelled | (1) | |
| **Balance December 31, 2018** | 127,540 | |
| Issued | 16,934,170 | (1) |
| Exercised | (3,451,642) | (2) |
| Cancelled | (139) | |
| **Balance December 31, 2019** | 13,609,929 | |

(1) Warrants issued in 2019 and 2018 include 6,467,501 and 61,084, respectively, of pre-funded warrants sold in connection with private placements completed on June 18, 2019 and September 23, 2019 ("June 2019 Pre-funded Warrants" and "September 2019 Pre-funded Warrants") and November 28, 2018 ("November 2018 Pre-funded Warrants"), respectively. The pre-funded warrants do not expire. In addition, in June 2019 institutional investors purchased 3,333,333 Series A warrants, 3,333,334 Series B warrants, and in September 2019 the institutional investors purchased 3,333,334 Series E warrants. As part of both the June 2019 and September 2019 purchases there were 466,668 of placement agent warrants issued. For further details of the June and September 2019 transactions, see Note 12 equity above. In addition to the November 2018 Pre-funded warrants, the investors acquired 66,667 2018 Series A warrants and there were 4,667 placement agent warrants. Throughout 2018, the Company sold 4,498 warrants to institutional investors.

(2) Warrants exercised in 2019 and 2018 include 51,667 and 9,417, respectively, of the November 2018 Pre-funded Warrants at their exercise price of $1.20 per share. Warrants exercised in 2019 also include 66,666 of the Series A warrants issued in November 2018 ("November 2018 Series A Warrants") at their exercise price of $1.20 per share, as adjusted. Warrants exercised in 2019 also include 3,333,334 of Series B warrants issued in June 2019. During August 2018, institutional investors exercised 8 warrants that were issued during August of 2017.

(3) On May 24, 2018, an institutional investor agreed to exercise an aggregate of 7 warrants to purchase common stock in exchange for a reduction in the warrant exercise price to $97,650.00 per share. The warrant exercise was accounted for as a warrant inducement and the related fair value adjustment to the exercised warrants of $0.1 million was recorded as Warrant expense in the Consolidated Statements of Operations for the year ended December 31, 2018. The value attributable to the exercise price reductions was estimated using the Black Scholes option pricing model using risk-free interest rates ranging from 2.28% to 2.65%; expected lives ranging from less than one year to 3.7 years; expected dividends of zero and expected volatility ranging from 120.44% to 142.78%.

***Warrant Liability***

The Company had liability warrants related to the June 2019 and September 2019 transactions, due to the variable price feature that was in effect until the reverse stock split occurred on November 12, 2019. The Company analyzed the variable price features and established a warrant liability of $16.0 million and $24.6 million related to the June 2019 transaction and September 2019 transaction, respectively. As the initial fair value of both offering exceeded the cash received the company recorded $8.3 million and $17.2 million as warrant expense for the June 2019 transaction and September 2019 transaction, respectively. The initial fair value and changes to fair value through September 30, 2019 were determined using a Monte Carlo simulation model. The Company re-evaluated the warrants subsequent to reverse stock split and determined that the price becoming fixed, the warrants should be reclassified from liability to equity. In addition, as the price was fixed the Company determined the Monte Carlo simulation model was no longer the appropriate model; therefore the Company used a Black Scholes calculation to determine the fair value of these warrants

at November 12, 2019. This resulted in the Company reclassifying $64.0 million of warrant liability to equity. The Company also recognized an additional $23.4 million of warrant expense for the changes in fair value of the liability warrants through November 12, 2019.

***Warrant Assumptions***

The following table provides the assumptions used to calculate initial fair value using a Monte Carlo simulation model:

| | Strike Price | Volatility | Remaining Life |
|---|---|---|---|
| Series A | $ 2.64 | 164.1 % | 5.22 |
| Series B | $ 2.40 | 164.1 % | 1.22 |
| Series E | $ 6.00 | 93.2 % | 5.11 |
| Series F | $ 0.12 | 93.2 % | 5.11 |

The following table provides the assumptions used at November 12, 2019, using a Black-Scholes model:

| | Warrants Outstanding | Strike Price | Volatility | Remaining Life | Risk Free Rate |
|---|---|---|---|---|---|
| Series A | 3,333,333 | $ 2.64 | 93.5 % | 5.1 | 1.73 % |
| Placement Agent - June | 233,334 | $ 3.00 | 93.5 % | 4.7 | 1.73 % |
| Series E | 3,333,334 | $ 6.00 | 93.5 % | 5.1 | 1.73 % |
| Series F | 3,264,167 | $ 0.12 | 93.5 % | 5.1 | 1.73 % |
| Placement Agent - September | 233,334 | $ 6.00 | 93.5 % | 4.9 | 1.73 % |

**(14) Revenue Disaggregation and Operating Segments**

The following table presents the Company's revenue disaggregated by product and geography:

| | Year Ended December 31, 2019 | | |
|---|---|---|---|
| | U.S. | OUS * | Total Revenues |
| LAP-BAND product | $ 13,309 | $ 1,780 | $ 15,089 |
| ReShape vBloc product | — | — | — |
| Total | $ 13,309 | $ 1,780 | $ 15,089 |

| | Year Ended December 31, 2018 | | |
|---|---|---|---|
| | U.S. | OUS * | Total Revenues |
| LAP-BAND product | $ 447 | $ 3 | $ 450 |
| ReShape vBloc product | 157 | — | 157 |
| Total | $ 604 | $ 3 | $ 607 |

- The next largest individual country outside the U.S. for the year ended December 31, 2019 was Australia, which was 7.7% of total revenues in 2019. Sales to Apollo for Europe were included in the U.S. sales column through quarter ended September 30, 2019. For quarter ended December 31, 2019, the Company recognized sales in Europe directly through their own distributors and sales channels and were included with OUS sales. All revenues outside the United States for the year ended December 31, 2018 were in Canada.

LAP-BAND product sales for the year ended December 31, 2018 are for the period from the date of acquisition of the product line assets of December 17, 2018 through December 31, 2018. As a result of the acquisition of the LAP-BAND product line, the Company has no longer been actively marketing its ReShape vBloc product. The Company's standard payment terms for its customers are generally 30 to 60 days after shipment.

***Variable Consideration***

The Company records revenue from customers in an amount that reflects the transaction price it expects to be entitled to after transferring control of the goods. Customers and distributors of the LAP-BAND product generally have the right to return or exchange products purchased for up to thirty days from the date of product shipment contingent upon a 10% restocking fee. Any such return or exchange of LAP-BAND products will be recorded as a reduction of revenue in the period incurred until sufficient historical information is available to enable management to estimate a returns reserve.

Certain LAP-BAND customers may receive volume rebates or discounts. Discounts are treated as a reduction in sales price and therefore corresponding revenue at the point of sale. Any volume rebates offered would be estimated and reserved as a reduction in revenue.

***Warranty***

The Company generally provides warranties against defects in materials and workmanship, and provides replacements at no charge to the customer, as long as the customer has notified the Company within 30 days of delivery and returns such products in accordance with the Company's instructions. As they are considered assurance-type warranties, the Company does not account for them as separate performance obligations. Warranty reserve requirements are based on a specific assessment of the products sold with warranties where a customer asserts a claim for warranty or a product defect.

For the vBloc product line, the Company has a 5 year warranty on all implantable parts. vBloc sales began in 2015 and ended in 2018, so this warranty will go through 2023.

***Contract Balances***

The Company records a receivable when it has an unconditional right to receive consideration after the performance obligations are satisfied.

***Practical Expedients***

The Company has elected the practical expedient not to determine whether contracts with customers contain significant financing components.

***Operating Segments***

The Company's operating segments consist of the LAP-BAND segment and the ReShape Vest segment. These two operating segments are reported based on the financial information provided to the Chief Operating Decision Maker (the Chief Executive Officer, or "CODM"). The Company's CODM evaluates segment performance based on gross profit. The Company's CODM does not use operating segment assets information to allocate resources or to assess performance of the operating segments and thus total segment assets have not been disclosed

The Company acquired the established LAP-BAND product line in December 2018, and the LAP-BAND product line accounted for all of the Company's revenues and gross profit for the year ended December 31, 2019. There were no revenues or gross profit recorded for the ReShape Vest operating segment in 2019 or 2018 because the ReShape Vest is still in the development stage.

The Company's CODM does not evaluate performance related to ReShape vBloc, as revenues and gross profit for the year ended December 31, 2018 were insignificant, and there have been no revenues or gross profit associated with the ReShape vBloc product since September 30, 2018. In addition, the Company is no longer actively marketing the ReShape vBloc product.

**(15) Stock-based Compensation**

The ReShape Lifesciences Inc. Second Amended and Restated 2003 Stock Incentive Plan (the "Plan") provides for the grant of stock options or other stock-based awards to employees, officers, non-employee directors and outside

consultants of the Company. In 2018, the Company's stockholders approved an amendment to the Plan that increased the number of shares authorized for issuance by 26 shares. The Plan amendment in 2018 also added an automatic share increase provision that provides for an annual increase on January 1 of each year beginning in 2019 such that the number of shares of common stock authorized for issuance under the Plan is equal to 15% of the total shares of common stock outstanding, on an as converted basis, as of the last day of the immediately preceding fiscal year. The increased number of shares available for issuance under the Plan is subject to adjustment in accordance with certain provisions of the Plan. As of January 1, 2020, the number of shares authorized for issuance increased from 30,200 to 2,100,443 and there were 2,100,397 shares of common stock available for issuance under the Plan.

The Plan is administered by the board of directors, which determines the types of awards to be granted, including the number of shares subject to the awards, the exercise price and the vesting schedule. Options granted under the Plan expire no later than ten years from the date of grant. The exercise price of each option may not be less than 100% of the fair market value of the common stock at the date of grant, except if an incentive stock option is granted to a Plan participant possessing more than 10% of the Company's common stock, as defined by the Plan, the exercise price may not be less than 110% of the fair value of the common stock at the date of grant. Employee stock options generally vest over four years.

In addition to the stock options granted pursuant to the Plan, the Company from time to time grants options to individuals as an inducement to accepting positions as employees (Inducement Grants). These Inducement Grants are made at the discretion of the board of directors and are issued outside of the Plan. Each of the Inducement Grants vests over a period of up to four years from the date of the officer's employment agreement.

Stock option activity for the Plan is as follows:

| | Shares | Weighted Average Exercise Price Per Share | Weighted Average Remaining Contractual Life (years) |
|---|---|---|---|
| **Outstanding at December 31, 2017** | 12 | $ 6,448,015.13 | |
| Shares reserved | — | — | |
| Options granted | 16 | 164,566.19 | |
| Options exercised | — | — | |
| Options cancelled | — | — | |
| **Outstanding at December 31, 2018** | 28 | 2,957,210.16 | |
| Options granted | — | — | |
| Options exercised | — | — | |
| Options cancelled | — | — | |
| **Outstanding at December 31, 2019** | 28 | 2,957,210.16 | 7.6 |
| **Exercisable at December 31, 2019** | 17 | 4,579,286.97 | 7.6 |
| **Vested and expected to vest at December 31, 2019** | 28 | 2,957,210.16 | 7.9 |

As of December 31, 2019, stock options under the Plan that were outstanding, exercisable and vested and expected to vest under had no intrinsic value.

Stock option activity for Inducement Grants is summarized below:

| | Shares | Weighted Average Exercise Price Per Share | Weighted Average Remaining Contractual Life (years) |
|---|---|---|---|
| **Outstanding at December 31, 2017** | 8 | $ 651,710.83 | |
| Options granted | 10 | 113,808.24 | |
| Options exercised | — | — | |
| Options cancelled | — | — | |
| **Outstanding at December 31, 2018** | 18 | 352,876.06 | |
| Options granted | — | — | |
| Options exercised | — | — | |
| Options cancelled | — | — | |
| **Outstanding at December 31, 2019** | 18 | 352,876.06 | 8.1 |
| **Exercisable at December 31, 2019** | 18 | 352,876.06 | 8.1 |
| **Vested and expected to vest at December 31, 2019** | 18 | 352,876.06 | 8.1 |

As of December 31, 2019, Inducement Grants outstanding, exercisable and vested and expected to vest had no intrinsic value.

The weighted-average assumptions used in the Black-Scholes option pricing model to estimate the grant date fair value of stock options granted during the year ended December 31, 2018 were as follows:

| | |
|---|---|
| Risk-free interest rate | 2.85% |
| Expected term (in years) | 6.25 |
| Expected dividend yield | 0% |
| Expected volatility | 121.52% |

*Risk-Free Interest Rate.* The risk-free interest rate is estimated using the U.S. Treasury yield curve and is based on the expected term of the award.

*Expected Term.* The expected term of stock option awards granted is estimated based on the "simplified" method described in the SEC Staff Accounting Bulletin, Topic 14: *Share-Based Payment*. The Company uses historical data to estimate stock option forfeitures.

*Expected Dividends.* The Company has never paid dividends on its common stock and has no plans to pay dividends on its common stock.

*Expected Volatility.* Expected volatility is estimated based on the Company's historical stock price volatility and expected stock price volatility over the term of the awards.

There were no stock options granted during the year ended December 31, 2019. The total estimated grant date fair value of stock options granted during the year ended December 31, 2018 was $3.5 million. Compensation cost for stock options granted to employees is based on the estimated grant-date fair value and is recognized over the vesting period of the applicable award on a straight-line basis.

Compensation expense related to stock options was recognized as follows:

| | Year Ended December 31, | |
|---|---|---|
| | 2019 | 2018 |
| Selling and marketing | $ 151 | $ 269 |
| General and administrative | 2,115 | 2,655 |
| Research and development | 45 | 174 |
| Total | $ 2,311 | $ 3,098 |

As of December 31, 2019, there was approximately $2.0 million of total unrecognized compensation related to unvested stock option awards, which is expected to be recognized over a weighted-average period of 2.2 years.

**(16) Income Taxes**

Income tax expense (benefit) consists of the following:

| | Year ended December 31, | |
|---|---|---|
| | 2019 | 2018 |
| Deferred: | | |
| Federal | $ (276) | $ (3,586) |
| State | (867) | 138 |
| Deferred income tax benefit | (1,143) | (3,448) |
| Current: | | |
| Federal | — | — |
| State | 18 | 1 |
| Foreign | 232 | — |
| Total income tax benefit, net | $ (893) | $ (3,447) |

A reconciliation of the U.S. federal statutory income tax rate to the Company's effective income tax rate is as follows:

| | Year ended December 31, | |
|---|---|---|
| | 2019 | 2018 |
| Income tax benefit at U.S. federal statutory rate | 21.0 % | 21.0 % |
| State income tax benefit, net of federal benefit | 3.9 % | — % |
| Other permanent differences | (14.9)% | (0.4)% |
| Goodwill impairment | — % | (7.6)% |
| Research and development credit | (0.2)% | 0.9 % |
| Change in state tax rate | — % | (1.1)% |
| Foreign rate differential | (0.1)% | — % |
| Other adjustments | 0.3 % | — % |
| Change in valuation allowance | (8.8)% | (3.9)% |
| Effective income tax rate | 1.2 % | 8.9 % |

The components of deferred tax assets and liabilities are as follows:

| | December 31, | |
|---|---|---|
| | 2019 | 2018 |
| Deferred tax assets: | | |
| Start-up costs | $ 1,208 | $ 1,239 |
| Capitalized research and development costs | 612 | 728 |
| Reserves and accruals | 8,180 | 7,465 |
| Property and equipment | 55 | — |
| Research and development credit | 1,194 | 1,334 |
| Lease liability | 118 | — |
| State and local taxes | 4 | — |
| Net operating loss carryforwards | 27,860 | 22,721 |
| Total gross deferred tax assets | 39,231 | 33,487 |
| Valuation allowance | (36,349) | (29,904) |
| Deferred tax assets, net of valuation allowance | 2,882 | 3,583 |
| Intangible assets | (3,396) | (5,385) |
| Operating lease right-of-use assets | (188) | — |
| Property and equipment | — | (42) |
| Total gross deferred tax liabilities | (3,584) | (5,427) |
| Net deferred tax liability | $ (702) | $ (1,844) |

In assessing the realization of deferred tax assets, management considers whether it is more likely than not that some portion or all of the deferred tax assets will not be realized. The ultimate realization of deferred tax assets is dependent upon the generation of future taxable income during periods in which those temporary differences become deductible. Based on the level of historical losses, projections of losses in future periods and potential limitations pursuant to changes in ownership under Internal Revenue Code (“IRC”) Section 382, the Company provided a valuation allowance at both December 31, 2019 and 2018. The remaining net deferred tax liability at both December 31, 2019 and 2018 is the result of the deferred tax liability associated with the indefinite-lived intangible asset, which was $3.5 million and $5.1 million, respectively; less the deferred tax asset associated with U.S. federal net operating loss carryforwards that do not expire of $2.4 million and $3.3 million, respectively, and state net operating loss carryforwards that do not expire of $0.4 million for 2019.

As of December 31, 2019 and 2018, the Company had U.S. federal net operating loss carryforwards of $68.0 million and $47.5 million, respectively. Of the total U.S. federal net operating loss carryforwards at December 31, 2019, $1.2 million will be limited as a result of Section 382 as described below and will expire unused. Losses generated in 2019 and 2018 will carryover indefinitely. The Company had state net operating loss carryforwards at December 31, 2019 and $0.2 million at December 31, 2018, respectively and had foreign net operating loss carryforwards of $220.9 million and $198.3 million at December 31, 2019 and 2018, respectively. Net operating loss carryforwards of the Company are subject to review and possible adjustment by the taxing authorities. With certain exceptions (e.g. the net operating loss carryforwards), the Company is no longer subject to U.S. federal, state or local examinations by tax authorities for years prior to 2016. There are no tax examinations currently in progress.

The Company’s ability to utilize its net operating loss carryforwards, tax credits, and built-in items of deduction, including capitalized start-up costs and research and development costs, has been, and may continue to be substantially limited due to ownership changes. These ownership changes limit the amount of net operating loss carryforwards, credits and built-in items of deduction that can be utilized annually to offset future taxable income. In general, an ownership change, as defined in IRC Section 382, results from a transaction or series of transactions over a three-year period resulting in an ownership change of more than 50% of the outstanding stock of a company by certain stockholders or public groups. In 2018, the Company completed an IRC Section 382 review and determined that ownership changes had occurred, which resulted in the determination that $0.3 million of U.S. federal net operating loss carryforwards and $3.5 million of U.S. federal research and development credit will expire unused as a result of ownership changes and the resulting Section 382 limitations. Further, an aggregate of $40.8 million of other future tax deductible amounts have been reduced. Both the deferred tax assets and the deferred tax valuation allowance were reduced by $67.2 million for the tax effect of these lost benefits, with no net effect on results of operations for the year ended December 31, 2018. Due to the valuation allowance against deferred tax assets at December 31, 2019, the net effect of any further limitation will have no impact on results of operations.

**(17) Commitments and Contingencies**

***Employee Arrangements and Other Compensation***

Certain members of management are entitled to severance benefits payable upon termination following a change in control, which would approximate $1.7 million at December 31, 2019. The Company also has agreements with certain employees to pay bonuses based on targeted performance criteria. As of December 31, 2019 and 2018, approximately $0.6 million and $0.3 million was accrued for performance bonuses, which is included in accrued liabilities in the consolidated balance sheets.

***Purchase Commitments***

The Company generally purchases its products and accessories from a limited group of third-party suppliers through purchase orders. The Company had $0.8 million of purchase commitments as of December 31, 2019, for which the Company has not received the goods or services and which are expected to be purchased primarily within one year. These purchase commitments were made to secure better pricing and to ensure the Company will have the necessary inventory to meet anticipated near term demand. Although open purchase orders are considered enforceable and legally binding, the Company may be able to cancel, reschedule, or adjust requirements prior to supplier fulfillment.

***Litigation***

*Fulfillium.* On April 20, 2017, Fulfillium, Inc. filed a complaint against ReShape Medical, Inc. (which the Company acquired in October 2017 and which is now a wholly owned subsidiary of the Company) in the U.S. District Court for the District of Delaware, which alleged misappropriation of trade secrets and infringement of two U.S. Patents ("Fulfillium I"). On July 28, 2017, ReShape Medical moved to dismiss both the trade secret claim and certain aspects of the patent infringement claim, and to transfer the litigation to the U.S. District Court for the Central District of California. On October 16, 2017, the Court granted ReShape Medical's motion to dismiss the trade secret and willful infringement claims, and ordered the case transferred to the U.S. District Court for the Central District of California. Fulfillium twice amended its complaint, narrowing its original trade secret claim and adding further patent infringement claims and additional parties. On June 4, 2018, ReShape Medical filed a motion to dismiss the patent infringement claims for lack of standing, which the Court granted on July 5, 2018. On August 10, 2018, the Court dismissed without prejudice the trade secret claim for lack of subject matter jurisdiction and terminated the case. Fulfillium appealed these dismissals and ReShape Medical appealed the grant and denial of certain attorney fee awards. On July 20, 2018, Fulfillium filed a new complaint against ReShape Lifesciences Inc. (and its wholly owned subsidiary ReShape Medical LLC) in the U.S. District Court for the Central District of California ("Fulfillium II") reasserting the patent infringement claims asserted in Fulfillium I. On August 15, 2018, Fulfillium amended its complaint in Fulfillium II to reassert the trade secret misappropriation claim asserted in Fulfillium I against ReShape Medical LLC and others. On September 7, 2018, Fulfillium filed a complaint in California state court alleging the same trade secret misappropriation claim asserted in both Fulfillium I and Fulfillium II. On November 7, 2018, the Court dismissed the non-Company parties from Fulfillium II. On April 20, 2018, ReShape Medical filed Inter Partes Review ("IPR") petitions with the Patent Trial and Appeal Board of the U.S. Patent and Trademark Office (the "PTAB") to have all claims of both of the originally asserted Fulfillium patents canceled as unpatentable over various combinations of prior art. On November 6, 2018, the PTAB denied those petitions. The parties held a mediation on April 9, 2019, but were unable to resolve the matter. On September 6, 2019, the Company entered into a confidential settlement agreement (the "Settlement Agreement") with Fulfillium pursuant to which Fulfillium agreed to dismiss with prejudice the previously-disclosed lawsuits filed by Fulfillium against the Company in exchange for $1.5 million in cash, $0.5 million of which was paid following the settlement and the remaining $1.0 million of which will be payable in four quarterly installments beginning in January 2020. The Company has recorded a contingent loss relating to the settlement of $1.5 million in its consolidated financial statements for the period ended December 31, 2019.

*Alpha and Iroquois.* On July 12, 2018, Alpha Capital Anstalt ("Alpha") filed a complaint against the Company in the U.S. District Court for the Southern District of New York. In August 2017, Alpha acquired shares of the Company's series B convertible preferred stock and warrants to purchase shares of the Company's common stock in an underwritten public offering. Pursuant to the terms of the series B convertible preferred stock and warrants, the conversion price of the series B convertible preferred stock and exercise price of the warrants was subject to adjustment in the case of, among other things, dilutive issuances of securities by the Company. The complaint alleged breach of contract, claiming that the Company should have adjusted the conversion price of the series B convertible preferred stock and exercise price of the

warrants to not less than $50,400.00 per share, rather than the $189,000.00 per share to which the Company actually adjusted such conversion price and exercise price, in connection with its registered direct offering of series D convertible preferred stock and warrants to purchase common stock that it completed and announced in April 2018. On July 26, 2018, Iroquois Capital Investment Group, LLC and Iroquois Master Fund, Ltd. ("Iroquois") filed a complaint against the Company in the U.S. District Court for the Southern District of New York, with substantially the same claims and seeking substantially the same relief as Alpha's complaint described above, except that Iroquois claimed that the conversion price of the series D convertible preferred stock and exercise price of the warrants should have been adjusted to $22,680.00 per share. Following a mediation held on June 20, 2019, the parties each entered into a mutually agreeable settlement agreement resolving the issues raised in the complaints filed by each Alpha and Iroquois. Pursuant to the settlement agreements, each lawsuit has been dismissed with prejudice.

The Company is not currently a party to any material litigation and the Company is not aware of any pending or threatened litigation against it that could have a material adverse effect on the Company's business, operating results or financial condition. The medical device industry in which the Company operates is characterized by frequent claims and litigation, including claims regarding patent and other intellectual property rights as well as improper hiring practices. As a result, the Company may be involved in various legal proceedings from time to time.

***Product Liability Claims***

The Company is exposed to product liability claims that are inherent in the testing, production, marketing and sale of medical devices. Management believes any losses that may occur from these matters are adequately covered by insurance, and the ultimate outcome of these matters will not have a material effect on the Company's financial position or results of operations. The Company is not currently a party to any product liability litigation and is not aware of any pending or threatened product liability litigation that could have a material adverse effect on the Company's business, operating results or financial condition.

**(18) Subsequent Events**

***Change of Control Plan***

On February 28, 2020, the Board of Directors (the "Board") of the Company approved and adopted the Company's Change in Control Plan (the "Plan"), which provides for certain benefits and payments to members of the Board and certain members of our senior management team in the event of a Change in Control. Capitalized terms and phrases used but not defined herein will have the respective meanings given to them in the Plan.

The Plan was adopted to ensure that the Company will have the continued dedication of members of the Board and certain members of our senior management team, to diminish the distraction of such individuals that may occur as a result of a Change in Control, and to provide such individuals with compensation upon a Change in Control that is competitive with that of other similarly situated companies.

In the event of a Change in Control, a participant is entitled to receive a grant of shares of the Company's common stock immediately prior to the effective time of the Change in Control such that the total number of shares of common stock owned by the participant would equal the participant's target percentage if such participant's then current ownership percentage is less than their target percentage, which is calculated assuming the conversion of any outstanding shares of preferred stock and the exercise of any outstanding warrants, stock options and other equity-based awards.

The target percentage for participants are as follows:

| Participant | Position | Target % |
|---|---|---|
| Barton Bandy | President and CEO and Director | 4.00 % |
| Thomas Stankovich | Chief Financial Officer | 1.25 % |
| Other senior management team members as a group | Various senior management team | 2.50 % |
| Total senior management team | | 7.75 % |
| Dan Gladney | Chairman of the Board | 2.00 % |
| Gary Blackford | Director | 1.00 % |
| Lori McDougal | Director | 1.00 % |
| Arda Minocherhomjee | Director | 1.00 % |
| Total Board | | 5.00 % |
| Total senior management team and Board | | 12.75 % |

Participation in the Plan is contingent upon the participant entering into a Participation Agreement. In order to receive the benefits under this Plan, a participant must additionally sing a release of claims against the Company.

The Plan has a duration of ten years from the effective date, unless (a) the Plan is extended by the Board, (b) a Change in Control occurs while the Plan is in effect, or (c) the Board terminates the Plan in accordance therewith.

***Financing***

On March 25, 2020, the Company executed a credit agreement up to $3.5 million, with an institutional investor (the “Lender”), who holds warrants in connection with the June and September 2019 transactions. On the day of closing, the Company received $2.5 million and the additional $1.0 million may be drawn from time to time 30 days after the closing date but prior to five months after the closing date, in $500 thousand increments per draw. The credit facility matures six months after the closing date and bears interest at LIBOR plus 2.5%. In conjunction with this credit agreement, the Lender exercised its warrants to purchase an aggregate of 5,085,834 shares of common stock with a current exercise price of $0.12 per warrant on April 15, 2020. In addition, the Company will issue to the Lender 1,200,000 Series G warrants to purchase an aggregate of 1,200,000 shares of common stock. The Series G warrants have an exercise price per share of common stock as the lessor of $3.70 or the average of the two lowest volume weighted average prices (“VWAPs”) for the common stock ten trading days prior to the date of exercise.

On March 31, 2020, the Company and the Lender amended the Series G warrant agreement to set the exercise price at $3.70 per share of common stock.

***COVID-19***

On January 30, 2020, the World Health Organization (“WHO”) announced a global health emergency because of a new strain of coronavirus originating in Wuhan, China (the “COVID-19 outbreak”) and the risks to the international community as the virus spreads globally beyond its point of origin. In March 2020, the WHO classified the COVID-19 outbreak as a pandemic, based on the rapid increase in exposure globally. The full impact of the COVID-19 outbreak continues to evolve as of the date of this report. As such, it is uncertain as to the full magnitude that the pandemic will have on the Company’s financial condition, liquidity, and future results of operations. Management is actively monitoring the global situation on its financial condition, liquidity, operations, suppliers, industry, and workforce. On April 16, 2020, the Company implemented various short-term cost reductions and cash flow improvement actions, such as reducing the compensation for executives, management and key employees and decreasing operating expenses where possible. In addition, the Company also identified temporary headcount reductions and made the decision to furlough a portion of its workforce. Given the daily evolution of the COVID-19 outbreak and the global responses to curb its spread, the Company is not able to estimate the effects of the COVID-19 outbreak on its results of operations, financial condition, or liquidity for fiscal year 2020.

***CARES Act***

On March 27, 2020, President Trump signed into law the "Coronavirus Aid, Relief and Economic Security Act ("CARES Act"). The CARES Act, among other things, includes provisions relating to refundable payroll tax credits, deferment of employer side social security payments, net operating loss carryback periods, alternative minimum tax credit refunds, modifications to the net interest deduction limitations, increased limitations on qualified charitable contributions and technical corrections to tax depreciation methods for qualified improvement property.

On April 24, 2020, the Company entered into a loan agreement ("PPP Loan") with Silicon Valley Bank ("SVB") under the Paycheck Protection Program (the "PPP"), which is part of the CARES Act administered by the United States Small Business Administration ("SBA"). As part of the application for these funds, the Company in good faith, has certified that the current economic uncertainty made the loan request necessary to support the ongoing operations of the Company. This certification further requires the Company to take into account our current business activity and our ability to access other sources of liquidity sufficient to support ongoing operations in a manner that is not significantly detrimental to the business. Under this program, the Company received proceeds of $1.0 million, from the PPP Loan. In accordance with the requirements of the PPP, the Company intends to use proceeds from the PPP Loan primarily for payroll costs, rent and utilities. The PPP Loan has a 1.00% interest rate per annum, matures on April 24, 2022 and is subject to the terms and conditions applicable to loans administered by the SBA under the PPP. Under the terms of PPP, all or certain amounts of the PPP Loan may be forgiven if they are used for qualifying expenses as described in the CARES Act, which the Company continues to evaluate.

The Company continues to examine the impact that the CARES Act may have on our business. Currently the Company is unable to determine the impact that the CARES Act will have on our financial condition, results of operation or liquidity.

**ITEM 9. CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE**

On October 22, 2019, the Audit Committee of the Board of Directors of the Company appointed BDO USA, LLP ("BDO") as the Company's independent registered public accounting firm. There have been no disagreements with BDO subsequent to October 22, 2019.

On September 4, 2019, the Company dismissed Deloitte & Touche LLP ("Deloitte") as the Company's independent registered public accounting firm. Deloitte has served as the Company's independent registered public accounting firm since 2006. For the year ended December 31, 2019 and subsequent interim periods through September 4, 2019 there were no disagreements.

**ITEM 9A. CONTROLS AND PROCEDURES**

**Evaluation of Disclosure Controls and Procedures**

The Company's management, including the Chief Executive Officer and Chief Financial Officer, performed an evaluation of the effectiveness of the design and operation of the Company's disclosure controls and procedures (as defined in Rule 13a-15(e) under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), as of December 31, 2019.

Based on their evaluation, the Chief Executive Officer and Chief Financial Officer have concluded as of December 31, 2019 that the Company's disclosure controls and procedures are designed at a reasonable assurance level and are effective in providing reasonable assurance that the information required to be disclosed by the Company in the reports it files or submits under the Exchange Act, is recorded, processed, summarized, and reported within the time periods specified in the SEC's rules and forms, and that such information is accumulated and communicated to the Company's management, including the Chief Executive Officer and Chief Financial Officer, as appropriate, to allow timely decisions regarding required disclosure.

**Management's Report on Internal Control Over Financial Reporting**

The Company's management, including the Chief Executive Officer and Chief Financial Officer, is responsible for establishing and maintaining adequate internal control over financial reporting, as such term is defined in Rule 13a-15(f) under the Exchange Act. Under the supervision and with the participation of the Company's management, including the Chief Executive Officer and Chief Financial Officer, the Company conducted an evaluation of the effectiveness of its internal control over financial reporting based on the framework in *Internal Control–Integrated Framework (2013)* issued by the Committee of sponsoring Organizations of the Treadway Commission (COSO). Based on that evaluation, the Company's management concluded that its internal control over financial reporting was effective as of December 31, 2019.

**Changes in Internal Control Over Financial Reporting**

No changes in our internal control over financial reporting occurred during our most recent fiscal quarter that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

We believe that a control system, no matter how well designed and operated, cannot provide absolute assurance that the objectives of the control system are met, and no evaluation of controls can provide absolute assurance that all control issues and instances of fraud, if any, within any company have been detected.

**ITEM 9B. OTHER INFORMATION**

None.

## PART III.

Certain information required by Part III is omitted from this report, and is incorporated by reference to our Definitive Proxy Statement to be filed with the SEC pursuant to Regulation 14A (the Proxy Statement) in connection with our 2019 Annual Meeting of Stockholders.

### ITEM 10. DIRECTORS, EXECUTIVE OFFICERS AND CORPORATE GOVERNANCE

The information required by this Item concerning our directors and executive officers is hereby incorporated by reference to the sections of our Proxy Statement under the headings “Nominees,” “Executive Officers,” “Delinquent Section 16(a) Reports” and “Board Meetings and Committees—Audit Committee.”

We have adopted a code of business conduct and ethics, which applies to all directors and employees, including executive officers, including, without limitation, our principal executive officer, principal financial officer, principal accounting officer and persons performing similar functions. A copy of this code of business conduct and ethics is available on our website at *www.reshapelifesciences.com* (under “Investors,” “Corporate Governance”) and we intend to satisfy the disclosure requirement under Item 5.05 of Form 8-K regarding any waivers from or amendments to any provision of the code of business conduct and ethics by disclosing such information on the same website.

In addition, we intend to promptly disclose (1) the nature of any amendment to our code of business conduct and ethics that applies to our principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions and (2) the nature of any waiver, including an implicit waiver, from a provision of our code of business conduct and ethics that is granted to one of these specified officers, the name of such person who is granted the waiver and the date of the waiver on our website in the future.

### ITEM 11. EXECUTIVE COMPENSATION

The information required by this Item is hereby incorporated by reference to the sections of our Proxy Statement entitled “Director Compensation,” “Executive Compensation,” “Compensation Committee Interlocks and Insider Participation” and “Compensation Committee Report.”

### ITEM 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT AND RELATED STOCKHOLDER MATTERS

**(a) Equity Compensation Plans**

The following table sets forth information as of December 31, 2019 with respect to our equity compensation plans:

| Plan Category | Number of Securities to be Issued Upon Exercise of Outstanding Options, Warrants and Rights | Weighted-Average Exercise Price of Outstanding Options, Warrants and Rights | Number of Securities Remaining Available for Future Issuance Under Equity Compensation Plans (Excluding Securities Reflected in Second Column) |
|---|---|---|---|
| Equity compensation plans approved by security holders | 2,530,755 (1) | $ 8.68 | — (2) |
| Equity compensation plans not approved by security holders | 1,299,692 (3) | 3.75 | — |
| Total | 3,830,447 | $ 7.01 | — |

(1) Consists of options awarded under the Second Amended and Restated 2003 Stock Incentive Plan, which was amended (the “Plan), as amended.

(2) Represents the maximum number of shares of common stock available to be awarded under the Plan as of December 31, 2019. Pursuant to an automatic share increase provision in the Plan that provides for an annual increase on the first day of each year beginning in 2019 such that the number of shares of common stock available under the Plan equals 15% of the total shares of common stock outstanding as of the last day of the immediately preceding fiscal year, an additional 2,070,271 shares of common stock became available for issuance under the Plan on January 1, 2020.

(3) Consists of the inducement grants awarded to newly hired executives and other employees, see Note 12 to our consolidated financial statements included in Part II, Item 8 of this Annual Report on Form 10-K.

**(b) Security Ownership**

The information required by this Item is hereby incorporated by reference to the section of our Proxy Statement entitled “Security Ownership of Certain Beneficial Owners and Management.”

**ITEM 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS, AND DIRECTOR INDEPENDENCE**

The information required by this Item is hereby incorporated by reference to the section of our Proxy Statement entitled “Certain Relationships and Related Transactions, and Director Independence.”

**ITEM 14. PRINCIPAL ACCOUNTING FEES AND SERVICES**

The information required by this Item is hereby incorporated by reference to the section of our Proxy Statement entitled “Principal Accountant Fees and Services” and “Administration of Engagement of Independent Auditor.”

**PART IV.**

**ITEM 15. EXHIBITS AND FINANCIAL STATEMENT SCHEDULES**

(a) The following documents are filed as part of this report:

1. Consolidated Financial Statements. See “Index to Consolidated Financial Statements” in Part II, Item 8 herein.
2. Financial Statement Schedules. Other schedules are not applicable and have not been included herein.
3. Exhibits

**ITEM 16. FORM 10-K SUMMARY**

Not applicable

## EXHIBIT INDEX

| Exhibit Number | Description of Document |
|---|---|
| 2.1 | Asset Purchase Agreement, dated December 17, 2018, by and between the Company and Apollo Endosurgery, Inc. (incorporated by reference to Exhibit 2.1 to the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission on December 19, 2018). |
| 3.1 | Sixth Amended and Restated Certificate of Incorporation of the Company. (Incorporated herein by reference to Exhibit 3.1 to the Company's Current Report on Form 8-K filed on December 28, 2016 (File No. 1-33818)). |
| 3.2 | Amended and Restated Bylaws of the Company, as currently in effect. (Incorporated herein by reference to Exhibit 3.4 to Amendment No. 1 to the Company's Registration Statement on Form S-1 filed on July 6, 2007 (File No. 333-143265)). |
| 3.3 | Certificate of Designation of Series B Convertible Preferred Stock (incorporated by reference to Exhibit 3.1 to the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission on August 16, 2017). |
| 3.4 | Certificate of Designation of Series C Convertible Preferred Stock (incorporated by reference to Exhibit 3.1 to the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission on October 3, 2017). |
| 3.5 | Certificate of Designation of Series E Convertible Preferred Stock (incorporated by reference to Exhibit 3.1 to the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission on February 4, 2019). |
| 3.6 | Certificate of Amendment to Sixth Amended and Restated Certificate of Incorporation of the Company, dated October 20, 2017 (incorporated by reference to Exhibit 3.1 to the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission on October 23, 2017). |
| 3.7 | Certificate of Amendment to Sixth Amended and Restated Certificate of Incorporation of the Company, dated October 26, 2017 (incorporated by reference to Exhibit 3.1 to the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission on October 30, 2017). |
| 3.8 | Certificate of Amendment to Sixth Amended and Restated Certificate of Incorporation, dated June 1, 2018 (incorporated by reference to Exhibit 3.1 to the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission on June 1, 2018). |
| 3.9* | Certificate of Amendment to Sixth Amended and Restated Certificate of Incorporation, dated November 7, 2018 (incorporated by reference to Exhibit 3.1 to the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission on November 7, 2018). |
| 3.10 | Certificate of Amendment to Sixth Amended and Restated Certificate of Incorporation of the Company, dated November 8, 2019 (incorporated by reference to Exhibit 3.1 to the Company's Quarterly Report on Form 10-Q filed with the Securities and Exchange Commission on November 14, 2019). |
| 4.1* | Description of Registrant's Securities |
| 4.2 | Form of Secured Subordinated Original Issue Discount Convertible Debenture due June 28, 2019 (incorporated by reference to Exhibit 10.2 to the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission on April 3, 2019. |
| 4.3 | Form of Series A Common Stock Purchase Warrant issued November 28, 2018 (incorporated by reference to Exhibit 4.1 to the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission on November 28, 2018). |
| 4.4 | Form of Pre-Funded Common Stock Purchase Warrant issued November 28, 2018 (incorporated by reference to Exhibit 4.2 to the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission on November 28, 2018). |

| Exhibit Number | Description of Document |
|---|---|
| 4.5 | Form of Placement Agent's Common Stock Purchase Warrant issued November 28, 2018 (incorporated by reference to Exhibit 4.3 to the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission on November 28, 2018). |
| 4.6 | Form of Common Stock Purchase Warrant issued September 20, 2018 (incorporated by reference to Exhibit 4.1 to the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission on September 20, 2018). |
| 4.7 | Form of Placement Agent's Common Stock Purchase Warrant issued September 20, 2018 (incorporated by reference to Exhibit 4.2 to the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission on September 20, 2018). |
| 4.8 | Form of Common Stock Purchase Warrant issued August 3, 2018 (incorporated by reference to Exhibit 4.1 to the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission on August 2, 2018). |
| 4.9 | Form of Placement Agent's Common Stock Purchase Warrant issued August 3, 2018 (incorporated by reference to Exhibit 4.2 to the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission on August 2, 2018). |
| 4.10 | Form of Common Stock Purchase Warrant issued July 12, 2018 (incorporated by reference to Exhibit 4.1 to the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission on July 12, 2018). |
| 4.11 | Form of Placement Agent's Common Stock Purchase Warrant issued July 12, 2018 (incorporated by reference to Exhibit 4.2 to the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission on July 12, 2018). |
| 4.12 | Form of Common Stock Purchase Warrant issued June 21, 2018 (incorporated by reference to Exhibit 4.1 to the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission on June 21, 2018). |
| 4.13 | Form of Placement Agent's Common Stock Purchase Warrant issued June 21, 2018 (incorporated by reference to Exhibit 4.2 to the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission on June 21, 2018). |
| 4.14 | Form of Common Stock Purchase Warrant issued June 8, 2018 (incorporated by reference to Exhibit 4.1 to the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission on June 8, 2018). |
| 4.15 | Form of Placement Agent's Common Stock Purchase Warrant issued June 8, 2018 (incorporated by reference to Exhibit 4.2 to the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission on June 8, 2018). |
| 4.16 | Form of Common Stock Purchase Warrant issued April 3, 2018 (incorporated by reference to Exhibit 4.1 to the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission on April 3, 2018). |
| 4.17 | Form of Warrant, dated August 16, 2017 (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission on August 16, 2017). |
| 4.18 | Form of Series C Warrant, dated as of July 8, 2015, by and between the Company and several accredited investors. (Incorporated herein by reference to Exhibit 4.2 to the Company's Current Report on Form 8-K filed on July 7, 2015 (File No. 1-33818)). |
| 4.19 | Form of Warrant. (Incorporated herein by reference to Exhibit 4.2 to the Company's Current Report on Form 8-K filed on November 5, 2015 (File No. 1-33818)). |
| 4.20 | Form of Warrant to purchase shares of Common Stock. (Incorporated herein by reference to Exhibit 4.3 to the Company's Registration Statement on Form S-1 filed on January 11, 2017 (File No. 333-213704)). |

| Exhibit Number | Description of Document |
|---|---|
| 10.1 | Security Agreement, dated December 17, 2018, by and between the Company and Apollo Endosurgery, Inc. (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission on December 19, 2018). |
| 10.2 | Form of Securities Purchase Agreement, dated March 28, 2019, by and between the Company and the holders of Secured Subordinated Original Issue Discount Convertible Debentures due June 28, 2019 (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission on April 3, 2019). |
| 10.3 | Form of Security Agreement, dated March 28, 2019, by and between the Company and the holders of Secured Subordinated Original Issue Discount Convertible Debentures due June 28, 2019 (incorporated by reference to Exhibit 10.3 to the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission on April 3, 2019). |
| 10.4 | Form of Registration Rights Agreement, dated March 28, 2019, by and between the Company and the holders of Secured Subordinated Original Issue Discount Convertible Debentures due June 28, 2019 (incorporated by reference to Exhibit 10.4 to the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission on April 3, 2019). |
| 10.5† | Second Amended and Restated 2003 Stock Incentive Plan, as amended on May 23, 2018 (incorporated by reference to Exhibit 10.2 to the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission on May 25, 2018). |
| 10.6† | Form of Stock Option Grant Notice and Stock Option Agreement under Second Amended and Restated 2003 Stock Incentive Plan (Incorporated herein by reference to Exhibit 10.6 to the Company's Quarterly Report on Form 10-Q filed on November 14, 2017). |
| 10.7 | Form of Indemnification Agreement entered into by and between the Company and each of its executive officers and directors. (Incorporated herein by reference to Exhibit 10.17 to Amendment No. 1 to the Company's Registration Statement on Form S-1 filed on July 6, 2007 (File No. 333-143265)). |
| 10.8† | Executive Employment Agreement, dated October 28, 2015, by and between the Company and Dan W. Gladney. (Incorporated herein by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed on November 2, 2015 (File No. 1-33818)). |
| 10.9† | Executive Employment Agreement, dated January 19, 2016, by and between the Company and Naqeeb "Nick" Ansari. (Incorporated herein by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed on January 22, 2016 (File No. 1-33818)). |
| 10.10† | Executive Employment Agreement, dated October 3, 2016, by and between the Company and Scott Youngstrom. (Incorporated herein by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed on October 6, 2016 (File No. 1-33818)). |
| 10.11† | Executive Employment Agreement, dated as of May 22, 2017, by and between the Company and Dr. Raj Nihalani (incorporated by reference to Exhibit 10.2 to the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission on May 23, 2017). |
| 10.12 | Non-Competition and Non-Solicitation Agreement, dated as of May 22, 2017, by and between the Company and Dr. Raj Nihalani (incorporated by reference to Exhibit 10.4 to the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission on May 23, 2017). |
| 10.13† | 2017 Employment Inducement Incentive Award Plan (incorporated by reference to Exhibit 10.4 to the Company's Quarterly Report on Form 10-Q filed on November 14, 2017). |
| 10.14† | Form of Stock Option Grant Notice and Stock Option Agreement under 2017 Employment Inducement Incentive Award Plan (incorporated by reference to Exhibit 10.5 to the Company's Quarterly Report on Form 10-Q filed on November 14, 2017 (File No. 1-33818)). |
| 10.15† | Management Incentive Plan. (Incorporated herein by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed on February 12, 2008 (File No. 1-33818)). |

| Exhibit Number | Description of Document |
|---|---|
| 10.16† | Amendments to the Management Incentive Plan described in Item 5.02(e). (Incorporated herein by reference to Item 5.02(e) of the Company's Current Report on Form 8-K filed on May 10, 2016 (File No. 1-33818)). |
| 10.17† | Amendments to the Management Incentive Plan described in Item 5.02(e). (Incorporated herein by reference to Item 5.02(e) of the Company's Current Report on Form 8-K filed on September 20, 2016 (File No. 1-33818)). |
| 10.18 | Lease agreement, entered into January 20, 2017, by and between ReShape Medical, Inc. and San Clemente Holdings, LLC (incorporated by reference to Exhibit 10.38 to the Company's Annual Report on Form 10-K filed on April 2, 2018). |
| 10.19 | Clinical Trial Agreement by and between the Company and Southern California Permanente Medical Group effective as of June 1, 2017 (Incorporated herein by reference to Exhibit 10.1 to the Company's Quarterly Report on Form 10-Q filed on May 15, 2017 (File No. 1-33818)). |
| 10.20† | Retention bonus agreement, dated April 12, 2019, by and between ReShape Lifesciences Inc. and Scott P. Youngstrom (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission on April 17, 2019). |
| 10.21 | Form of Securities Purchase Agreement, dated June 13, 2019, by and between the Company and the purchasers party thereto (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission on June 19, 2019). |
| 10.22 | Form of Series A Warrant issued June 18, 2019 (incorporated by reference to Exhibit 10.2 to the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission on June 19, 2019). |
| 10.23 | Form of Series B Warrant issued June 18, 2019 (incorporated by reference to Exhibit 10.3 to the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission on June 19, 2019). |
| 10.24 | Form of Series C Pre-Funded Warrant issued June 18, 2019 (incorporated by reference to Exhibit 10.4 to the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission on June 19, 2019). |
| 10.25 | Form of Registration Rights Agreement, dated June 18, 2019 (incorporated by reference to Exhibit 10.5 to the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission on June 19, 2019). |
| 10.26 | Form of Warrant Exercise Agreement dated September 23, 2019 (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission on September 30, 2019). |
| 10.27 | Form of Series E Warrant (incorporated by reference to Exhibit 10.2 to the Company's Current Report on Form 8-K files with the Securities and Exchange Commission on September 30, 2019). |
| 10.28 | Form of Series F Warrant (incorporated by reference to Exhibit 10.3 to the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission on September 30, 2019). |
| 10.29 | Form of Amended and Restated Registration Rights agreement (incorporated by reference to Exhibit 10.4 to the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission on September 30, 2019. |
| 10.30† | ReShape Lifesciences Inc. Change in Control Plan, dated as of February 28, 2020 (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission on March 5, 2020). |
| 10.31* | Credit Agreement, dated March 25, 2020, by and between the Company and Armistice Capital Master Fund Ltd. |
| 10.32* | Guarantee and Collateral Agreement, dated March 25, 2020, by and between the Company, ReShape Medical LLC and Armistice Capital Master Fund Ltd. |

| Exhibit Number | Description of Document |
|---|---|
| 10.33* | Registration Rights Agreement, dated March 25, 2020, by and between the Company and Armistice Capital Master Fund Ltd. |
| 10.34* | Series G Common Stock Purchase Warrant, dated March 25, 2020, issued by the Company to Armistice Capital Master Fund Ltd. |
| 14.1 | Code of Conduct and Ethics of the Company. (Incorporated herein by reference to Exhibit 14.1 to the Company's Registration Statement on Form S-1 filed on May 25, 2007 (File No. 333-143265)). |
| 21.1 | Subsidiaries of ReShape Lifesciences Inc. |
| 23.1* | Consent of BDO USA LLP, Independent Registered Public Accounting Firm. |
| 23.2* | Consent of Deloitte & Touche LLP, Independent Registered Public Accounting Firm. |
| 24.1* | Power of Attorney (included on signature page to this Form 10-K). |
| 31.1* | Certification of Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002. |
| 31.2* | Certification of Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002. |
| 32.1* | Certification of Chief Executive Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002. |
| 32.2* | Certification of Chief Financial Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002. |
| 101* | Financial statements from the Annual Report on Form 10-K of the Company for the year ended December 31, 2019, formatted in Extensible Business Reporting Language: (i) the Consolidated Statements of Operations, (ii) the Consolidated Balance Sheets, (iii) the Consolidated Statements of Stockholders' Equity; (iv) the Consolidated Statements of Cash Flows and (v) the Notes to Consolidated Financial Statements. |

* Filed herewith.

† Indicates management contract or compensation plan or agreement.

**SIGNATURES**

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

**RESHAPE LIFESCIENCES INC.**

By: /S/ BARTON P. BANDY
**Barton P. Bandy**
**President and Chief Executive Officer**

Dated: April 30, 2020

**POWERS OF ATTORNEY**

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints Barton P. Bandy and Thomas Stankovich, and each of them, as his true and lawful attorney-in-fact and agent, with full power of substitution and resubstitution, for him and in his name, place and stead, in any and all capacities, to sign any and all amendments to this report, and to file the same, with exhibits thereto and other documents in connection therewith, with the Securities 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 and necessary to be done, as fully 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 substitutes may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the Registrant and in the capacities and on the dates indicated.

| Signature | Title | Date |
|---|---|---|
| /S/ BARTON P. BANDY<br>**Barton P. Bandy** | President, and Chief Executive Officer<br>(principal executive officer) | April 30, 2020 |
| /S/ THOMAS STANKOVICH<br>**Thomas Stankovich** | Senior Vice President and<br>Chief Financial Officer<br>(principal financial and accounting officer) | April 30, 2020 |
| /S/ DAN W. GLADNEY<br>**Dan W. Gladney** | Chairman of the Board | April 30, 2020 |
| /S/ GARY D. BLACKFORD<br>**Gary D. Blackford** | Director | April 30, 2020 |
| /S/ LORI C. MCDOUGAL<br>**Lori McDougal** | Director | April 30, 2020 |
| /S/ ARDA MINOCHERHOMJEE<br>**Arda Minocherhomjee** | Director | April 30, 2020 |

**RESHAPE LIFESCIENCES INC.**
**DESCRIPTION OF SECURITIES REGISTERED PURSUANT TO SECTION 12 OF THE SECURITIES EXCHANGE ACT OF 1934**

ReShape Lifesciences Inc., a Delaware corporation ("ReShape," "we," "us" and "our"), has only one class of securities registered under Section 12 of the Securities Exchange Act of 1934, as amended: our common stock, par value $0.001 per share ("common stock").

The following description of our common stock is a summary and does not purport to be complete. It is subject to and qualified in its entirety by reference to our Sixth Amended and Restated Certificate of Incorporation, as amended (the "Certificate of Incorporation"), and our Amended and Restated Bylaws (the "Bylaws"), which are filed as exhibits to our Annual Report on Form 10-K for the fiscal year ended December 31, 2019 and are incorporated by reference herein. We encourage you to read our Certificate of Incorporation, our Bylaws and the applicable provisions of the General Corporation Law of the State of Delaware (the "DGCL") for additional information.

**Authorized Shares**

Our Certificate of Incorporation authorizes the issuance of up to 280,000,000 shares of capital stock, consisting of 275,000,000 shares of common stock and 5,000,000 shares of preferred stock, par value $0.001 per share ("preferred stock"). As of December 31, 2019, we had 391,739 shares of common stock outstanding.

In accordance with a certificate of designation filed on August 16, 2017, which has been filed as an exhibit to our Annual Report on Form 10-K for the fiscal year ended December 31, 2019, we designated shares of preferred stock as Series B Convertible Preferred Stock, 3 shares of which remained issued and outstanding as of December 31, 2019, which are convertible into 1,250 shares of common stock. Additionally, in accordance with a certificate of designation filed on October 3, 2017, which has been filed as an exhibit to our Annual Report on Form 10-K for the fiscal year ended December 31, 2019, we designated shares of preferred stock as Series C Convertible Preferred Stock, 95,388 shares of which remained issued and outstanding as of December 31, 2019, which are convertible into 38 shares of common stock.

Our Board of Directors is authorized, subject to limitations prescribed by law, to provide by resolution or resolutions for the issuance of shares of preferred stock from time to time in one or more series, and, by filing a certificate pursuant to the applicable law of the State of Delaware, to establish the number of shares to be included in each such series, and to fix the voting powers, if any, designations, powers, preferences, and relative, participating, optional or other rights, if any, of the shares of each such series, and any qualifications, limitations and restrictions thereof.

We may amend from time to time our Certificate of Incorporation to increase the number of authorized shares of common stock or preferred stock. Any such amendment would require the approval of the holders of a majority of the voting power of the shares entitled to vote thereon.

**Voting Rights**

The holders of shares of our common stock are entitled to vote on all matters to be voted on by the stockholders of ReShape; provided, however, that, except as otherwise required by law, holders of common stock shall not be entitled to vote on certain amendments to our Certificate of Incorporation that relate only to the terms of one or more outstanding series of preferred stock. On all matters to be voted on by the holders of the common stock, the holders are entitled to one vote per share. Our common stock does not have cumulative voting rights.

Our Certificate of Incorporation provides that our Board of Directors is divided into three classes. All elections of directors are determined by a plurality of the votes cast. Except as otherwise required by law, our Certificate of Incorporation or our Bylaws, all other matters are decided by the vote of the holders of stock having a majority of the votes cast by the holders of all stock entitled to vote on such question that are present in person or by proxy at a meeting of stockholders.

**Dividend Rights**

Subject to the rights of the holders of any series of preferred stock, and subject to any other provisions of our Certificate of Incorporation, holders of common stock are entitled to receive such dividends and other distributions in cash, stock of any corporation or property of ReShape as may be declared thereon by our Board of Directors from time to time out of our assets or funds legally available for that purpose. When and as dividends are declared on the common stock, holders of our common stock are entitled to share equally, share for share, in such dividends.

**Liquidation Rights**

In the event of any liquidation, dissolution or winding-up of our affairs, holders of our common stock will be entitled to share ratably in our assets that are remaining after payment or provision for payment of all of our debts and obligations and after liquidation payments to holders of outstanding shares of preferred stock, if any.

**Other Rights and Preferences**

The holders of common stock have no preferences or rights of conversion, exchange, pre-emption or other subscription rights. There are no redemption or sinking fund provisions applicable to our common stock. The rights, preferences and privileges of the holders of our 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 our Board of Directors may designate and issue in the future. Our Certificate of Incorporation and Bylaws do not restrict the ability of a holder of our common stock to transfer his, her or its shares of common stock. All currently outstanding shares of our common stock are fully paid and non-assessable.

**Transfer Agent and Registrar**

The transfer agent and registrar for our common stock is EQ Shareowner Services.

**Listing**

Our common stock is listed on the OTCQB under the symbol “RSLS.”

**Anti-Takeover Effects of Certain Provisions of our Certificate of Incorporation and Bylaws and the DGCL**

Our Certificate of Incorporation and Bylaws and the DGCL contain provisions that may have the anti-takeover effect of delaying, deferring or preventing a change in control of ReShape.

***Anti-Takeover Provisions in our Certificate of Incorporation and Bylaws***

Our Certificate of Incorporation and Bylaws contain the following anti-takeover provisions that may have the anti-takeover effect of delaying, deferring or preventing a change in control of ReShape:

- We have shares of common stock and preferred stock available for future issuance without stockholder approval. The existence of unissued and unreserved common stock and preferred stock may enable our Board of Directors to issue shares to persons friendly to current management or to issue preferred stock with terms that could render more difficult or discourage a third-party attempt to obtain control of us by means of a merger, tender offer, proxy contest or otherwise, thereby protecting the continuity of our management.

- Subject to the rights of the holders of any series of preferred stock to elect additional directors under specified circumstances, our Board of Directors is classified into three classes, each of which serves for three years, with one class being elected each year.

- Subject to the rights of the holders of any series of preferred stock then outstanding, directors may be removed from office at any time, only for cause, and only by the affirmative vote of the holders of at least a majority of the voting power of the then outstanding shares of stock of ReShape entitled to vote generally in the election of directors, voting together as a single class.

- Subject to the rights of the holders of any series of preferred stock then outstanding, newly created directorships resulting from any increase in the authorized number of directors or any vacancies in our Board of Directors resulting from death, resignation, retirement, disqualification or other cause may be filled only by a majority vote of the directors then in office, even if less than a quorum.

- Stockholders may only take action at annual or special meetings of the stockholders, and stockholders may not act by written consent.

- Special meetings of the stockholders may be called only by our Board of Directors or the Chairman of the Board. Business transacted at special meetings shall be confined to the purpose or purposes stated in the notice.

- Our Board of Directors may adopt, amend, repeal or otherwise alter, from time to time, our Bylaws without any action on the part of the stockholders in accordance with our Bylaws; provided, however, that any bylaws made by our Board of Directors and any and all powers conferred by any of said bylaws may be amended, altered or repealed by the affirmative vote of the holders of at least a majority of the voting power of the then outstanding shares of capital stock of ReShape entitled to vote generally in the election of directors, voting together as a single class.

- Stockholders must follow advance notice procedures to submit nominations of candidates for election to our Board of Directors at an annual or special meeting of the stockholders. Stockholders must also follow advance notice procedures to submit proposals of business to be brought before an annual or special meeting of the stockholders.

***Delaware Business Combination Statute***

We are a Delaware corporation, and we are subject to Section 203 of the DGCL, known as the Delaware Business Combination Statute. In general, Section 203 of the DGCL prohibits a publicly-held Delaware corporation from engaging in a "business combination" with an "interested stockholder" for a period of three years following the time the person became an interested stockholder, unless:

- Prior to the time the stockholder became an interested stockholder, the board of directors of the corporation approved either the business combination or the transaction that resulted in the stockholder becoming an interested stockholder;

- Upon consummation of the transaction that resulted in the stockholder becoming an interested stockholder, the interested stockholder owned at least 85% of the voting stock of the corporation outstanding at the time the transaction commenced, exclusive of shares owned by directors who are also officers and by certain employee stock plans; or

- At or subsequent to such time, the business combination is approved by the board of directors and authorized at an annual or special meeting of the stockholders by the affirmative vote of at least two-thirds of the outstanding voting stock that is not owned by the interested stockholder.

Generally, a "business combination" includes a merger, asset or stock sale, or other transaction resulting in a financial benefit to the interested stockholder. Generally, an "interested stockholder" is a person who, together with affiliates and associates, owns 15% or more of a corporation's voting stock or is the corporation's affiliate or associate and was the owner of 15% or more of the corporation's outstanding voting stock at any time within the three-year period immediately before the date of determination.

# CREDIT AGREEMENT

This Credit Agreement ("Agreement") dated as of March 25, 2020 between ReShape Lifesciences Inc., a Delaware corporation ("Borrower"), and Armistice Capital Master Fund Ltd., a Cayman Islands exempted company ("Lender").

In consideration of the mutual agreements herein contained, the parties hereto agree as follows:

Section 1. Definitions; Interpretation.

1.1. Definitions.

When used herein the following terms shall have the following meanings:

Account has the meaning set forth in the Guarantee and Collateral Agreement.

Acquisition means any transaction or series of related transactions 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 all or substantially all of any business or division of a Person, (b) the acquisition of in excess of 50% of the capital stock, partnership interests, membership interests or equity of any Person, or otherwise causing any Person to become a Subsidiary, or (c) a merger or consolidation or any other combination with another Person (other than a Person that is already a Subsidiary).

Affiliate of any Person means (a) any other Person which, directly or indirectly, controls or is controlled by or is under common control with such Person, (b) any officer or director of such Person and (c) with respect to Lender, any entity administered or managed by Lender or an Affiliate or investment advisor thereof which is engaged in making, purchasing, holding or otherwise investing in commercial loans. A Person shall be deemed to be "controlled by" any other Person if such Person possesses, directly or indirectly, power to vote 10% or more of the securities (on a fully diluted basis) having ordinary voting power for the election of directors or managers or power to direct or cause the direction of the management and policies of such Person whether by contract or otherwise. Unless expressly stated otherwise herein, Lender shall not be deemed an Affiliate of Borrower or of any Subsidiary.

Agreement has the meaning set forth in the Preamble.

Authorized Officer means any of the (a) chief executive officer, (b) president, (c) chief financial officer or (d) senior financial officer.

Board means the Board of Directors of the Borrower.

Borrower has the meaning set forth in the Preamble.

Business Day means any day on which commercial banks are open for commercial banking business in New York, New York and, in the case of a Business Day which relates to the determination of the LIBOR Rate, on which dealings are carried on in the London interbank eurodollar market.

Capital Lease means, with respect to any Person, any lease of (or other agreement conveying the right to use) any real or personal property by such Person that, in conformity with GAAP, is accounted for as a capital lease on the balance sheet of such Person.

Change in Control means, the consummation of any of the following:

(i) any "person" (as such term is used in Sections 13(d) and 14(d)(2) of the Exchange Act) who did not own shares of the capital stock of the Borrower as of the Closing Date shall, together with his, her or its Affiliates and Associates (as such terms are defined in Rule 12b-2 promulgated under the Exchange Act), become the "Beneficial Owner" (as such term is defined in Rule 13d-3 promulgated under the Exchange Act), directly or indirectly, of securities of the Borrower representing 50% or more of the combined voting power of the Borrower's then outstanding securities (any such person being hereinafter referred to as an "Acquiring Person");

(ii) the Continuing Directors cease to constitute a majority of the Borrower's Board;

(iii) there should occur (A) any consolidation or merger involving the Borrower and the Borrower shall not be the continuing or surviving corporation or the shares of the Borrower's capital stock shall be converted into cash, securities or other property; provided, however, that this subclause (A) shall not apply to a merger or consolidation in which (1) the Borrower is the surviving corporation and (2) the stockholders of the Borrower immediately prior to the transaction have the same proportionate ownership of the capital stock of the surviving corporation immediately after the transaction; (B) any sale, lease, exchange or other transfer (in one transaction or a series of related transactions) of all or substantially all of the assets of the Borrower; or (C) any liquidation or dissolution of the Borrower; or

(iv) the majority of the Continuing Directors determine, in their sole and absolute discretion, that there has been a Change in Control.

Closing Date means the date on which Lender makes the Closing Date Term Loan hereunder.

Closing Date Term Loan Commitment means $2,500,000.

Closing Date Term Loan has the meaning set forth in Section 2.1.1.

Collateral has the meaning set forth in the Guarantee and Collateral Agreement.

Collateral Access Agreement means an agreement in form and substance reasonably satisfactory to Lender pursuant to which a lessor of real property on which Collateral is stored or otherwise located, or a warehouseman, processor or other bailee of Inventory or other property owned by any Loan Party, acknowledges the Liens of Lender and waives or subordinates any Liens held by such Person on such property, and, in the case of any such agreement with a lessor, permits Lender reasonable access to any Collateral stored or otherwise located thereon.

Collateral Documents means, collectively, the Guarantee and Collateral Agreement, any Collateral Access Agreement, each account control agreement and each other agreement or instrument pursuant to or in connection with which any Loan Party grants a security interest in any Collateral securing the Obligations to Lender, each as amended, restated or otherwise modified from time to time.

Commitment means the Closing Date Term Loan Commitment and the Delayed Draw Term Loan Commitment.

Common Stock means the common stock of Borrower, par value $0.001 per share, and any other class of securities into which such securities may hereafter be reclassified or changed.

Common Stock Equivalents means any securities of Borrower which would entitle the holder thereof to acquire at any time Common Stock, including, without limitation, any debt, preferred stock, right,

option, warrant or other instrument that is at any time convertible into or exercisable or exchangeable for, or otherwise entitles the holder thereof to receive, Common Stock.

Contingent Obligation means any agreement, undertaking or arrangement by which any Person guarantees, endorses or otherwise becomes or is contingently liable upon (by direct or indirect agreement, contingent or otherwise, to provide funds for payment, to supply funds to or otherwise to invest in a debtor, or otherwise to assure a creditor against loss) any Debt, or guarantees the payment of dividends or other distributions upon the shares of any other Person. The amount of any Person's obligation in respect of any Contingent Obligation shall (subject to any limitation set forth therein) be deemed to be the principal amount of the debt, obligation or other liability supported thereby or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by such Person in good faith.

Continuing Directors means (a) any member of the Board who was a director (or comparable manager) of Borrower on the Closing Date, and (b) any individual who becomes a member of the Board after the Closing Date if such individual was approved, appointed or nominated for election to the Board by a majority of the Continuing Directors.

Debt of any Person means, without duplication, (a) all indebtedness of such Person for borrowed money, (b) all indebtedness evidenced by bonds, debentures, notes or similar instruments (including, without limitation, any notes issued to sellers in connection with an Acquisition), (c) all obligations of such Person as lessee under Capital Leases which have been or should be recorded as liabilities on a balance sheet of such Person in accordance with GAAP, (d) all obligations of such Person to pay the deferred purchase price of property or services (excluding accrued expenses, licenses and purchases of software to the extent that such Person may terminate the payment obligations thereunder at will, and trade accounts payable), (e) all indebtedness secured by a Lien on the property of such Person, whether or not such indebtedness shall have been assumed by such Person, (f) all obligations, contingent or otherwise, with respect to letters of credit (whether or not drawn), banker's acceptances and surety bonds issued for the account of such Person, (g) all Contingent Obligations of such Person with respect to indebtedness, (h) all indebtedness of any partnership of which such Person is a general partner and (i) all obligations of such Person under conditional sale or other title retention agreements relating to property or assets purchased by such Person.

Default means any event described in Section 8.1 that, if it continues uncured during an applicable grace period, will, with the lapse of such grace period or the giving of notice or both, constitute an Event of Default.

Delayed Draw Term Loan Commitment means $1,000,000.

Delayed Draw Term Loans has the meaning set forth in Section 2.1.2.

Dollar and $ mean lawful money of the United States of America.

Domestic Subsidiary means any Subsidiary that is incorporated or organized under the laws of a State within the United States of America or the District of Columbia.

Environmental Claim means all written claims by any governmental, regulatory or judicial authority or other Person alleging potential liability or responsibility for violation of any Environmental Law, or for release or injury to the environment or any Person or property.

Environmental Laws means all present or future federal, state or local laws, statutes, common law duties, rules, regulations, ordinances and codes, together with all binding and enforceable administrative

orders, directed duties, requests, licenses, authorizations and permits of, and agreements with, any governmental authority, in each case relating to any matter arising out of or relating to health and safety, or pollution or protection of the environment or workplace, including any of the foregoing relating to the presence, use, production, generation, handling, transport, treatment, storage, disposal, distribution, discharge, release, control or cleanup of any Hazardous Substance.

Equity Interest means the interest of any (a) shareholder in a corporation; (b) partner in a partnership (whether general, limited, limited liability or joint venture); (c) member in a limited liability company; or (d) other Person having any other form of equity security or ownership interest.

ERISA means the Employee Retirement Income Security Act of 1974, as amended.

Event of Default means any of the events described in Section 8.1.

Excluded Taxes means any of the following Taxes imposed on or with respect to a Lender or required to be withheld or deducted from a payment to Lender: (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of Lender being organized under the laws of, or having its principal office or, in the case of Lender, its applicable lending office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) in the case of a Lender, U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan or Commitment pursuant to a law in effect on the date on which (i) such Lender acquires such interest in the Loan or Commitment or (ii) such Lender changes its lending office, except in each case to the extent, that pursuant to Section 3.1, amounts with respect to such Taxes were payable either to such Lender's assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its lending office and (c) any U.S. federal withholding Taxes imposed under FATCA.

Exempt Accounts means any deposit accounts, securities accounts or other similar accounts (i) into which there is deposited no funds other than those intended solely to cover wages for employees of the Loan Parties; (ii) constituting employee withholding accounts and contain only funds deducted from pay otherwise due to employees for services rendered to be applied toward the tax obligations of such employees; (iii) constituting Trust Accounts or other escrow accounts; (iv) in which there is not maintained at any point in time funds on deposit greater than $500,000 in the aggregate for all such accounts pursuant to this clause (iv); and (v) in which there is deposited cash collateral in respect of Debt permitted by Section 7.1(n).

FATCA means Sections 1471 through 1474 of the IRC, 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 regulations or official interpretations thereof and any agreements entered into pursuant to Section 1471(b)(1) of the IRC.

Fiscal Quarter means a fiscal quarter of a Fiscal Year.

Fiscal Year means the fiscal year of Borrower which period shall be the 12-month period ending on December 31 of each year.

Foreign Subsidiary means any Subsidiary (a) that is not incorporated or organized under the laws of a State within the United States of America or the District of Columbia, and that is a "controlled foreign corporation" within the meaning of Section 957 of the IRC with respect to which a Loan Party is a "US Shareholder" within the meaning of Section 951(b) of the IRC or (b) that has no material assets other than the capital stock of one or more Subsidiaries described in clause (a) and other assets relating to an ownership interest in any such capital stock or subsidiaries.

FRB means the Board of Governors of the Federal Reserve System or any successor thereto.

GAAP means generally accepted accounting principles in effect in the United States of America set forth from time to time in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board (or agencies with similar functions of comparable stature and authority within the U.S. accounting profession), which are applicable to the circumstances as of the date of determination; provided, that Financial Accounting Standard No. 150 shall be disregarded of the purposes of this Agreement.

Governmental Authority means any nation or government, any state or other political subdivision thereof, and any agency, branch of government, department or Person exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government.

Guarantee and Collateral Agreement means the Guarantee and Collateral Agreement dated as of the Closing Date by each Loan Party signatory thereto in favor of Lender.

Guarantor has the meaning set forth in the Guarantee and Collateral Agreement.

Hazardous Substances means hazardous waste, hazardous substance, pollutant, contaminant, toxic substance, oil, hazardous material or chemical or other hazardous of toxic substance regulated by any Environmental Law.

Indemnified Taxes means (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of any Loan Party under any Loan Document and (b) to the extent not otherwise described in (a), Other Taxes.

Infringement or Infringing when used with respect to Intellectual Property Rights, means any infringement, misappropriation, dilution or other violation of Intellectual Property Rights.

Intellectual Property has the meaning set forth in the Section 5.13.

Intellectual Property Rights means all actual or prospective rights in connection with any Intellectual Property or other proprietary rights, including all patents, patent applications, registrations and applications for registration, common law rights, trade secret rights and any other proprietary rights in connection with Intellectual Property anywhere in the world.

Inventory has the meaning set forth in the Guarantee and Collateral Agreement.

Investment means, with respect to any Person, (a) the purchase of any debt or equity security of any other Person, (b) the making of any loan or advance to any other Person, (c) becoming obligated with respect to a Contingent Obligation in respect of Debt of any other Person (other than travel and similar advances to employees in the ordinary course of business) or (d) the making of an Acquisition.

IRC means the U.S. Internal Revenue Code of 1986, as amended.

Legal Costs means (a) with respect to Lender pursuant to Section 9.4, (i) all reasonable and documented out-of-pocket fees and expenses of any one outside counsel to Lender, (ii) all reasonable and documented out-of-pocket fees and expenses of necessary outside local counsel to Lender, and (iii) all court costs and similar legal expenses, in each case, to the extent reimbursable by Borrower under this Agreement, and (b) with respect to all other Persons, (i) all reasonable fees and charges of any counsel, accountants auditors, appraisers, consultants and other professionals to such Persons and (ii) all court costs and similar legal costs.

Lender has the meaning set forth in the Preamble.

LIBOR Rate means, with respect to any Loan, the greater of (a) a rate per annum equal to the offered rate for deposits in Dollars for a one-month period and for the amount of the applicable Loan that appears on the Reuters Screen LIBOR01 Page at 11:00 a.m. London time (or, if not so appearing, as published in the "Money Rates" section of The Wall Street Journal) two Business Days prior to the date of determination; provided that if neither of the foregoing is available, the rate shall be the arithmetic mean of the rates quoted by three major banks in New York City, selected by the Lender at approximately 11:00 a.m., New York time, two (2) Business Days prior to the date of determination for loans in U.S. Dollars to leading European banks for a one-month period and in a principal amount of not less than U.S. $1,000,000, and (b) 1.50% per annum.

Lien means, with respect to any Person, any interest granted by such Person in any real or personal property, asset or other right owned or being purchased or acquired by such Person which secures payment or performance of any obligation and shall include any mortgage, lien, encumbrance, charge in the nature of a security interest, whether arising by contract, as a matter of law, by judicial process or otherwise.

Loan Documents means this Agreement, the Notes, the Collateral Documents, and all documents, instruments and agreements delivered in connection with the foregoing.

Loan Party means Borrower and each Guarantor.

Loans means the Closing Date Term Loan and the Delayed Draw Term Loans, collectively.

Margin Stock means any "margin stock" as defined in Regulation T, U or X of the FRB.

Material Adverse Effect means (a) a material adverse change in, or a material adverse effect upon, the financial condition, operations, assets, business or properties of Loan Parties taken as a whole, (b) a material impairment of the ability of the Loan Parties taken as a whole to perform any of their Obligations under any Loan Document, (c) a material adverse effect on the rights and remedies of the Lender under any Loan Document or (d) a material adverse effect upon the legality, validity, binding effect or enforceability against any Loan Party of any Loan Document to which it is a party.

Maturity Date means (a) the later of (i) September 24, 2020 or (ii) if Borrower exercises the first or second extension option pursuant to Section 2.3, the date set forth in Section 2.3, or (b) such earlier date on which the Commitments terminate pursuant to Section 8.

Note means a promissory note executed by Borrower in favor of a Lender hereunder pursuant to this Agreement, substantially in the form of Exhibit A.

Obligations means all liabilities, indebtedness and obligations (monetary (including post-petition interest, allowed or not) or otherwise) of any Loan Party under this Agreement, any other Loan 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.

OFAC has the meaning set forth in Section 6.4(a).

Other Connection Taxes means, with respect to any Lender, Taxes imposed as a result of a present or former connection between such Lender and the jurisdiction imposing such Tax (other than connections arising from 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 Loan Document, or sold or assigned an interest in any Loan or Loan Document).

Other Taxes means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment.

Paid in Full, Pay in Full or Payment in Full means, with respect to any Obligations, the payment in full in cash of all such Obligations (other than contingent indemnification obligations to the extent no claim giving rise thereto has been asserted).

Permitted Acquisition means any Acquisition by any Loan Party in each case to the extent that:

(a)each of the following conditions precedent shall have been satisfied in a manner reasonably satisfactory to Lender in its sole discretion;

(i) Lender shall receive (A) not less than 30 days prior written notice before such Loan Party becomes bound under any agreement to complete such Acquisition, which notice shall include a reasonably detailed description of the proposed terms of such Acquisition and identify the anticipated closing date thereof and (B) not less than 15 days before such Loan Party becomes bound under any agreement to complete such Acquisition, substantially final drafts of all material definitive documents for such transaction;

(ii) such Acquisition shall be structured as (A) an asset acquisition by Borrower or a Guarantor, (B) a merger of the Target with and into Borrower or a Guarantor, with Borrower or such Guarantor as the surviving corporation in such merger, or (C) a purchase of no less than 100% of the equity interests of the Target by Borrower or a Guarantor;

(iii) Lender shall receive evidence that effective as of the closing date of such Acquisition the applicable Target has in place insurance satisfying the requirements of Section 6.3;

(iv) Lender (A) is granted a first priority perfected Lien (subject only to Permitted Liens) on all Collateral being acquired pursuant to such Acquisition (and, in the case of an Acquisition involving the purchase of any applicable Target's equity interests, all of such purchased equity interests to the extent constituting Collateral shall be pledged to Lender, and such Target shall guarantee the Obligations and grant to Lender, a first priority perfected Lien (subject only to Permitted Liens) on such Person's assets) and (B) will be provided such other documents, instruments and legal opinions as Lender shall reasonably request in connection therewith, all such documents, instruments and opinions

to be delivered no later than ten (10) Business Days after the closing of such Acquisition (or such longer period as agreed by Lender in its sole discretion) and shall each be in form and substance reasonably satisfactory to Lender in its sole discretion;

(v) all material consents necessary for such Acquisition (including such consents as Lender deems reasonably necessary) have been acquired and such Acquisition is consummated in accordance with the applicable acquisition documents and applicable law; and

(b) 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 Target; and

(c) no Event of Default is in existence or would occur immediately after giving effect to such Acquisition.

Permitted Debt has the meaning set forth in Section 7.1.

Permitted Investment has the meaning set forth in Section 7.6.

Permitted Liens means Liens permitted by Section 7.2.

Person means any natural person, corporation, partnership, trust, limited liability company, association, governmental authority or unit, or any other entity, whether acting in an individual, fiduciary or other capacity.

Subordinated Debt means any unsecured Debt of Borrower or a Subsidiary which has subordination terms which have been approved in writing by Lender in its sole discretion.

Subsidiary means, with respect to any Person, a corporation, partnership, limited liability company or other entity of which such Person owns, directly or indirectly, such number of outstanding Equity Interests as to have more than 50% of the ordinary voting power for the election of directors or other managers of such corporation, partnership, limited liability company or other entity. Unless the context otherwise requires, each reference to Subsidiaries herein shall be a reference to Subsidiaries of Borrower.

Target means the Person, or business or substantially all of the assets of a Person, acquired in an Acquisition.

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 date on which Lender has funded Delayed Draw Term Loans in an aggregate principal amount equal to the Delayed Draw Term Loan Commitment, (b) September 24, 2020 and (c) the date on which the Delayed Draw Term Loan Commitment terminates pursuant to Section 8.

Trust Accounts means those trust accounts maintained by Borrower or its Subsidiaries to receive and hold in trust for payment to the federal government of the United States of America, payments on the account of holders of student loans.

Wholly-Owned Domestic Subsidiary means a Wholly-Owned Subsidiary that is a Domestic Subsidiary.

Wholly-Owned Subsidiary means, as to any Person, another Person all of the equity interests of which (except directors' or employees' qualifying shares or other minimal share allocations required by the law of the jurisdiction of organization or allocated for tax considerations) are at the time directly or indirectly owned by such Person and/or another Wholly-Owned Subsidiary of such Person.

Withholding Agent means any Loan Party.

1.2. Interpretation.

In the case of this Agreement and each other Loan Document, (a) the meanings of defined terms are equally applicable to the singular and plural forms of the defined terms; (b) Annex, Exhibit, Schedule and Section references are to such Loan Document unless otherwise specified; (c) the term "including" is not limiting and means "including but not limited to"; (d) in the computation of periods of time from a specified date to a later specified date, the word "from" means "from and including"; the words "to" and "until" each mean "to but excluding", and the word "through" means "to and including"; (e) unless otherwise expressly provided in such Loan Document, (i) references to agreements and other contractual instruments shall be deemed to include all subsequent amendments, restatements, supplements, replacements, extensions, renewals, and other modifications thereto, but only to the extent such amendments and other modifications are not prohibited by the terms of any Loan Document, and (ii) references to any statute or regulation shall be construed as including all statutory and regulatory provisions amending, replacing, supplementing or interpreting such statute or regulation; (f) this Agreement and the other Loan Documents may use several different limitations, tests or measurements to regulate the same or similar matters, all of which are cumulative and each shall be performed in accordance with its terms; and (g) all references to "knowledge", "aware" or "awareness" or other similar terms of any Loan Party means the actual knowledge of the chief executive officer or chief financial officer of Borrower, (i) the words "asset" and "property" shall be construed as having the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights in this Agreement and the other Loan Documents are the result of negotiations among and have been reviewed by counsel to Borrower, Lender and the other parties hereto and thereto and are the products of all parties; accordingly, they shall not be construed against Borrower or Lender merely because of Borrower’s or Lender’s involvement in their preparation.

Section 2. Credit Facilities.

2.1. Commitments.

On and subject to the terms and conditions of this Agreement, Lender agrees as follows:

2.1.1. Closing Date Term Loan Commitments.

Lender agrees to make a loan to Borrower (each such loan, a "Closing Date Term Loan") on the Closing Date in an amount equal to the Closing Date Term Loan Commitment. The Commitment of Lender to make Closing Date Term Loan shall terminate concurrently with the making of the Closing Date Term Loan on the Closing Date.

2.1.2. Delayed Draw Term Loan Commitments.

Lender agrees to make a loan to Borrower (each such loan, a "Delayed Draw Term Loan") from time to time after the Closing Date, in a principal amount not to exceed the Delayed Draw Term Loan Commitment; provided, that the Lender will make the initial Delayed Draw Term Loan no sooner than 30 days after Closing Date and any subsequent Delayed Draw Term Loan no sooner than 30 days after the date

of any previous Delayed Draw Term Loan. The Commitment of Lender to make Delayed Draw Term Loans shall terminate on the Termination Date.

2.2. Warrants.

(a) On a date that is no sooner than April 1, 2020 and no later than April 15, 2020, Lender will exercise its warrants to purchase an aggregate of 5,085,834 shares of Common Stock with a current exercise price of $0.12 per share.

(b)As inducement to Lender to make the Loan, Borrower will issue to Lender a warrant (the " Warrant") to purchase an aggregate of 1,200,000 shares of Common Stock, substantially in the form attached hereto as Exhibit B.

2.3. Borrowing Procedures.

Borrower shall give written notice or telephonic notice (followed promptly by written confirmation thereof) to Lender of each proposed borrowing of a Delayed Draw Term Loan not later than 1:00 p.m. Eastern time at least three Business Days prior to the proposed date of such borrowing. Each such notice shall be effective upon receipt by Lender, shall be irrevocable, and shall specify the date and amount of such borrowing. Not later than 1:00 p.m. Eastern time on the date of a proposed Delayed Draw Term Loan borrowing, Lender, so long as the conditions precedent set forth in Section 4.2 with respect to such borrowing have been satisfied, shall pay over the requested Delayed Draw Term Loan to Borrower on the requested borrowing date. Each borrowing shall be on a Business Day. Each borrowing of Delayed Draw Term Loans shall be in an aggregate amount of at least $500,000 (or if less, the remaining undrawn amount of the Delayed Draw Term Loan Commitment).

2.4. Loan Accounting.

2.4.1. Recordkeeping.

Lender shall record in its records the date and amount of each Loan made by Lender, and each repayment thereof. The aggregate unpaid principal amount so recorded shall be rebuttably presumptive evidence of the principal amount of the Loans owing and unpaid. The failure to so record any such amount or any error in so recording any such amount shall not, however, limit or otherwise affect the Obligations of Borrower hereunder or under any Note to repay the principal amount of the Loans hereunder, together with all interest accruing thereon.

2.4.2. Notes.

Promptly following the request of Lender, the Loans shall be evidenced by a Note, payable to Lender in a face principal amount equal to the outstanding principal balance of the Loans at such date and payable in such amounts and on such dates as are set forth herein.

2.5. Interest.

2.5.1. Interest Rates.

Borrower promises to pay interest on the unpaid principal amount of each Loan for the period commencing on the date of such Loan until such Loan is paid in full at a rate per annum equal to the sum of the LIBOR Rate plus 2.5%; provided, that at any time an Event of Default exists, if elected by Lender, the Applicable Margin corresponding to each Loan or Obligation shall be increased by two percentage points per annum effective as of the date upon which such Event of Default first occurred or

such later date determined Lender in writing; provided, further that, (i) any such increase may thereafter be rescinded by Lender and (ii) upon the occurrence of an Event of Default under Section 8.1.1 or 8.1.3, any such increase described in the foregoing clause (i) shall occur automatically. In no event shall interest payable by Borrower to Lender hereunder exceed the maximum rate permitted under applicable law, and if any such provision of this Agreement is in contravention of any such law, such provision shall be deemed modified to limit such interest to the maximum rate permitted under such law.

2.5.2. Interest Payment Dates.

Accrued interest on each Loan shall be payable in arrears on the last day of each Fiscal Quarter, upon a prepayment of such Loan in accordance with Section 2.7 and at maturity in cash; provided that if the last day of a Fiscal Quarter would otherwise end on a day that is not a Business Day, interest shall be paid on the preceding Business Day. After maturity and at the election of Lender at any time an Event of Default exists, all accrued interest on all Loans shall be payable in cash on written demand at the rates specified in Section 2.5.1.

2.5.3. Computation of Interest.

Interest shall be computed for the actual number of days elapsed on the basis of a year of 365/366 days.

2.6. Prepayment.

At any time after 30 days of the Closing Date, Borrower may from time to time, on at least one Business Day's written notice or telephonic notice (followed promptly by written confirmation thereof) to Lender not later than 2:00 p.m. Eastern time on such day, prepay the Loans in whole or in part (without premium or penalty), plus all accrued but unpaid interest thereon as of such payment date. Such notice to Lender shall specify the date and amount of prepayment. All prepayments of Loans pursuant to this Section 2.6 shall be applied to the Loans and then to the scheduled installments thereof in such order as directed by Borrower.

2.7. Repayment.

The Closing Date Term Loan and any Delayed Draw Term Loan shall be due on the Maturity Date.

Payment.

2.7.1. Making and Settlement of Payments.

All payments of principal of or interest on the Loans, and of all fees, shall be made by Borrower to Lender without setoff, recoupment or counterclaim and in immediately available funds at the office specified by Lender not later than 2:00 p.m. Eastern time on the date due, and funds received after that hour shall be deemed to have been received by Lender on the following Business Day.

2.7.2. Reserved.

2.7.3. Payment Dates.

If any payment of principal or interest with respect to any of the Loans, or of any fees, falls due on a day which is not a Business Day, then such due date shall be extended to the immediately following Business Day (unless such immediately following Business Day is the first Business Day of a calendar

month, in which case such due date shall be the immediately preceding Business Day) and, in the case of principal, additional interest shall accrue and be payable for the period of any such extension.

2.7.4. Set-off.

Borrower agrees that Lender and its Affiliates have all rights of set-off and bankers' lien provided by applicable law, and in addition thereto, Borrower agrees that at any time an Event of Default has occurred and is continuing, Lender may apply to the payment of any Obligations of Borrower hereunder then due and owing, any and all balances, credits, deposits, accounts or moneys (other than money held in Exempt Accounts excluding Exempt Accounts described in clause (iv) of the definition of Exempt Accounts) Borrower then or thereafter with Lender.

Section 3. Taxes; Yield Protection.

3.1. Taxes.

(a) For purposes of this Section 3.1, the term “applicable law” includes FATCA.

(b) All payments of principal and interest on the Loans and all other amounts payable hereunder or under any other Loan Document shall be made without deduction or withholding for any Taxes, except as required by applicable law. If any applicable law (as determined in the good faith discretion of an applicable Withholding Agent) requires the deduction or withholding of any Tax from any such payment by a Withholding Agent, then the applicable Withholding Agent shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable law and, if such Tax is an Indemnified Tax, then the sum payable by the applicable Loan Party shall be increased as necessary so that after such deduction or withholding has been made (including such deductions and withholdings applicable to additional sums payable under this Section) Lender receives an amount equal to the sum it would have received had no such deduction or withholding been made.

(c) The Loan Parties shall timely pay to the relevant Governmental Authority in accordance with applicable law, or at the option of the relevant Lender timely reimburse it for the payment of, any Other Taxes.

(d) The Loan Parties shall jointly and severally indemnify each Lender, within 10 days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section) payable or paid by such Lender or required to be withheld or deducted from a payment to such Lender and any reasonable expenses arising therefrom or with respect thereto whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Borrower by the Lender shall be conclusive absent manifest error. If Borrower reasonably believes that such Taxes were not correctly or legally asserted, such Lender will use reasonable efforts to cooperate with Borrower to obtain a refund of such Taxes as long as such efforts would not result in any unreimbursed costs or expenses, provided, such amounts have accrued on or after the day which is 180 days prior to the date on which such Lender first made demand therefor; provided, that if the event giving rise to such costs or reductions has retroactive effect, such 180 day period shall be extended to include the period of retroactive effect; and, provided further that if Borrower reasonably believes that such Taxes were not correctly or legally asserted, such Lender will use reasonable efforts to cooperate with Borrower to obtain a refund of such Taxes as long as such efforts would not result in any unreimbursed costs or expenses shall equal the amount such Person would have received had such Taxes not been asserted.

(e) As soon as practicable after any payment of Taxes by any Loan Party to a Governmental Authority pursuant to this Section 3.1, such Loan Party shall deliver to the relevant Lender the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to such Lender.

Section 4. Conditions Precedent.

The obligation of Lender to make the Loans is subject to the satisfaction or waiver of the following conditions precedent:

4.1. Initial Credit Extension.

The obligation of Lender to make the Closing Date Loans is subject to the satisfaction or waiver of following conditions precedent, each of which shall be reasonably satisfactory in all respects to Lender:

4.1.1. Fees.

Borrower shall have paid all fees, reasonable costs and reasonable out-of-pocket expenses, due and payable under this Agreement and the other Loan Documents on the Closing Date, it being agreed and understood that fees due to Lender's counsel are capped at $30,000.

4.1.2. Delivery of Loan Documents.

Borrower shall have delivered the following documents in form and substance reasonably satisfactory to Lender (and, as applicable, duly executed and dated the Closing Date or an earlier date reasonably satisfactory to Lender):

(a) Agreement and Note. This Agreement and the Note.

(b) Collateral Documents. The Guarantee and Collateral Agreement, all other Collateral Documents, and all instruments, documents, certificates and agreements executed or delivered pursuant thereto (including, if applicable, Intellectual Property security agreements and pledged Collateral, with undated irrevocable transfer powers executed in blank).

(c) Financing Statements. Properly completed Uniform Commercial Code financing statements and other filings and documents required by law or the Loan Documents to provide Lender perfected Liens (subject only to Permitted Liens) in the Collateral.

(d) Lien Searches. Copies of Uniform Commercial Code search reports listing all effective financing statements (other than with respect to this Agreement) filed against any Loan Party, with copies of such financing statements.

(e) Authorization Documents. For each Loan Party, such Person's (i) articles of incorporation, certificate of incorporation or certificate of formation (or similar formation document), certified by the appropriate governmental authority, (ii) good standing certificates in its state of incorporation (or formation) and in each other state in which it is required to be qualified to do business pursuant to its representation in Section 5.1, (iii) bylaws, operating agreement or partnership agreement (or similar governing document), (iv) resolutions of its board of directors (or similar governing body) approving and authorizing such Person's execution, delivery and performance of the Loan Documents to which it is party and the transactions contemplated thereby, and (v) signature and incumbency certificates

of its officers executing any of the Loan Documents, all certified by its secretary or an assistant secretary (or similar officer) as being in full force and effect without modification.

(f) Insurance. Certificates of insurance, together with endorsements containing a lender's loss payable endorsement in the Lender's favor with respect to property insurance and, with all liability insurance, naming the Lender as an additional insured.

4.1.3. Representations and Warranties.

The representations and warranties of Borrower or any other Loan Party set forth in this Agreement and the other Loan Documents shall be true and correct in all material respects with the same effect as if then made (except to the extent stated to relate to a specific earlier date, in which case such representations and warranties shall be true and correct in all material respects as of such earlier date).

4.1.4. Absence of Event of Default.

No Event of Default or Default shall have then occurred and be continuing.

4.1.5. Material Adverse Effect.

No litigation, proceeding, injunction, writ, restraining order or other order that has or would reasonably be expected to have a Material Adverse Effect shall be pending before or have been issued and remain outstanding by any Governmental Authority.

4.1.6. Warrant.

Borrower shall deliver a fully executed Warrant.

4.1.7. Registration Rights Agreement.

Borrower shall deliver a fully executed registration rights agreement, substantially in the form attached hereto as Exhibit C.

4.1.8. Other Documents.

Borrower shall deliver such other documents as Lender may reasonably require in connection with this Agreement.

4.2. Delayed Draw Term Loans.

The obligation of Lender to make Delayed Draw Term Loans is subject to the satisfaction or waiver of the following conditions precedent: (a) the representations and warranties of Borrower or any other Loan Party set forth in this Agreement and the other Loan Documents shall be true and correct in all material respects with the same effect as if then made (except to the extent stated to relate to a specific earlier date, in which case such representations and warranties shall be true and correct in all material respects as of such earlier date), and (b) no Event of Default or Default shall have then occurred and be continuing. Each request by Borrower for the making of a Delayed Draw Term Loan shall be deemed to constitute a representation and warranty by Borrower that the conditions precedent set forth in Section 4.2 will be satisfied or waived at the time of the making of such Loan and giving effect thereto.

Section 5. Representations and Warranties.

To induce Lender to enter into this Agreement and make Loans hereunder, Borrower represents and warrants to Lender that, after giving effect to the transactions contemplated by the Loan Documents, on the Closing Date:

5.1. Organization.

Borrower is a corporation validly existing and in good standing under the laws of the State of Delaware; each other Loan Party is validly existing and in good standing under the laws of the jurisdiction of its organization; and each Loan Party is duly qualified to do business in each jurisdiction where, because of the nature of its activities or properties, such qualification is required, except for such jurisdictions where the failure to so qualify would not reasonably be expected to have a Material Adverse Effect.

5.2. Authorization; No Conflict.

Each of Borrower and each other Loan Party is duly authorized to execute and deliver each Loan Document to which it is a party, Borrower is duly authorized to borrow monies hereunder, and each of Borrower and each other Loan Party is duly authorized to perform its Obligations under each Loan Document to which it is a party. The execution, delivery and performance by Borrower of this Agreement and by each of Borrower and each other Loan Party of each Loan Document to which it is a party, and the borrowings by Borrower hereunder, do not and will not (a) require any consent or approval of any governmental agency or authority (other than any consent or approval which has been obtained and is in full force and effect and the filing of applicable Uniform Commercial Code financing statements and other filings), (b) conflict with (i) any provision of applicable law, (ii) the charter, by-laws or other organizational documents of Borrower or any other Loan Party or (iii) any agreement, indenture, instrument or other document, or any judgment, order or decree, which is binding upon Borrower or any other Loan Party or any of their respective properties or (c) require, or result in, the creation or imposition of any Lien on any asset of Borrower, any Subsidiary or any other Loan Party (other than Liens in favor of Lender created pursuant to the Collateral Documents) in each case of the foregoing clauses (a), (b) and (c), except where the failure to do so could not reasonably be expected to result in a Material Adverse Effect.

5.3. Validity; Binding Nature.

Each of this Agreement and each other Loan Document to which Borrower or any other Loan Party is a party is the legal, valid and binding obligation of such Person, enforceable against such Person in accordance with its terms, subject to bankruptcy, insolvency and similar laws affecting the enforceability of creditors' rights generally and to general principles of equity.

5.4. Litigation.

No litigation (including derivative actions), arbitration proceeding or governmental investigation or proceeding is pending or, to Borrower's knowledge, threatened in writing against any Loan Party which would reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect.

5.5. Ownership of Properties; Liens.

Each of Borrower and each other Loan Party owns good and, in the case of real property, marketable title to all of its properties and assets, real and personal, tangible and intangible, of any nature whatsoever other than Intellectual Property free and clear of all Liens, charges and claims, except Permitted Liens.

5.6. Investment Company Act.

Neither Borrower nor any other Loan Party is an "investment company" or a company "controlled" by an "investment company" or a "subsidiary" of an "investment company", within the meaning of the Investment Company Act of 1940.

5.7. No Default.

No Event of Default or Default exists or would result from the incurrence by any Loan Party of any Debt hereunder or under any other Loan Document.

5.8. Margin Stock.

Neither Borrower nor any other Loan Party is engaged principally, or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying Margin Stock. No portion of the Obligations is secured directly or indirectly by Margin Stock.

5.9. Taxes.

Each of Borrower and each other Loan Party has filed all tax returns and reports required by law to have been filed by it and has paid all taxes and governmental charges thereby shown to be or otherwise owing, except (i) for taxes and other governmental charges which in the aggregate (x) would not reasonably be expected to result in a Material Adverse Effect and (y) would not result in the creation of a Lien other than a Permitted Lien, and (ii) any such taxes or charges which are being diligently contested in good faith by appropriate proceedings and for which adequate reserves in accordance with GAAP shall have been set aside on its books.

5.10. Solvency.

On the Closing Date, and immediately prior to and after giving effect to each borrowing of Loans hereunder and the use of the proceeds thereof, the fair salable value of Borrower's and its Subsidiaries' consolidated assets (including goodwill minus disposition costs) exceeds the fair value of Borrower's and its Subsidiaries liabilities; Borrower is not left with unreasonably small capital after the transactions contemplated by this Agreement; and Borrower is able to pay its debts (including trade debts) as they mature and has not stopped paying its debts as they fall due and the value of its assets is not less than the value of its liabilities (taking into account Contingent Obligations).

5.11. Environmental Matters.

The on-going operations of Borrower and each other Loan Party comply in all respects with all Environmental Laws, except such non-compliance which could not (if enforced in accordance with applicable law) reasonably be expected to result in a Material Adverse Effect. Borrower and each other Loan Party have obtained, and maintained in good standing, all licenses, permits, authorizations and registrations required under any Environmental Law and necessary for their respective ordinary course operations, and Borrower and each other Loan Party are in compliance with all material terms and conditions thereof, except in each case where the failure to do so could not reasonably be expected to result in material liability to Borrower or any other Loan Party and could not reasonably be expected to result in a Material Adverse Effect. None of Borrower, any other Loan Party or any of their respective properties or operations is subject to any outstanding written order from or agreement with any Federal, state or local governmental authority, nor subject to any judicial or docketed administrative proceeding, respecting any Environmental Law, Environmental Claim or Hazardous Substance that would reasonably be expected to

result in a Material Adverse Effect. There are no Hazardous Substances or other conditions or circumstances existing with respect to any property, or arising from operations prior to the Closing Date, of Borrower or any other Loan Party that could reasonably be expected to result in a Material Adverse Effect. Neither Borrower nor any other Loan Party has any underground storage tanks that are not properly registered or permitted under applicable Environmental Laws or that are leaking or disposing of Hazardous Substances, except, in each case, as would not reasonably be expected to have a Material Adverse Effect.

5.12. Insurance.

Borrower and each other Loan Party and their respective properties are insured with financially sound and reputable insurance companies which are not Affiliates of Borrower, in such amounts, with such deductibles and covering such risks as are customarily carried by similarly situated companies engaged in similar businesses and owning similar properties in localities where Borrower or such other Loan Party operates.

5.13. Intellectual Property.

Borrower and each other Loan Party owns and possesses or has a license or other right to use all patents, patent rights, know how, propriety processes, inventions, trademarks, trademark rights, trade names, trade name rights, trade secrets, trade dress, mask works, service marks, service mark rights, copyrights, works of authorship, compilations of information, know-how, confidential information, designs, developments, software, databases and methods anywhere in the world, including, but not limited to, technology related to lap band and vest technology (collectively, "Intellectual Property"), free and clear of all Liens except Permitted Liens, as are necessary for the conduct of the business of Borrower and the other Loan Parties, without any Infringement to Borrower's knowledge, upon rights of others, other than, in each case, as could not reasonably be expected to have a Material Adverse Effect.

5.14. Labor Matters.

Neither Borrower nor any other Loan Party is subject to any labor or collective bargaining agreement as of the Closing Date. There are no existing, and no Loan Party has received notice of any threatened, strikes, lockouts or other labor disputes involving Borrower or any other Loan Party that singly or in the aggregate could reasonably be expected to have a Material Adverse Effect. Hours worked by and payment made to employees of Borrower and the other Loan Parties are not in violation of the Fair Labor Standards Act or any other applicable law, rule or regulation dealing with such matters, except where such violations would not be reasonably expected to have a Material Adverse Effect.

Section 6. Affirmative Covenants.

From and after the Closing Date and until the date on which all Obligations have been Paid in Full and the Commitments have been terminated, Borrower agrees that, unless at any time Lender shall otherwise expressly consent in writing, it will:

6.1. Information.

Furnish to Lender, in each case in form and detail reasonably acceptable to Lender:

6.1.1. Reports to SEC and Shareholders.

Promptly upon the filing or sending thereof, copies of (a) all regular, periodic or special reports of each Loan Party filed with the Securities Exchange Commission, (b) all registration statements of each Loan Party filed with the Securities Exchange Commission (other than on Form S-8) and (c) all

proxy statements or other material communications made to security holders generally. Documents required to be delivered hereunder (to the extent any such documents are included in materials otherwise filed with the SEC) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date (i) on which Borrower posts such documents, or provides a link thereto or other direction as to where such information is posted; or (ii) on which such documents are posted Borrower's behalf on an Internet or intranet website, if any, to which Lender has access; provided that Borrower shall deliver paper copies of such documents to Lender upon request.

6.1.2. Notice of Default; Litigation; Intellectual Property; Other Matters.

Promptly, and in any even within five (5) Business Days, upon any Authorized Officer obtaining knowledge of any of the following, written notice describing the same and the steps being taken by Borrower or the applicable Loan Party affected thereby with respect thereto:

(a) the occurrence of an Event of Default or a Default;

(b) any litigation, arbitration or governmental investigation or proceeding not previously disclosed by Borrower to Lender which has been instituted or, to the knowledge of Borrower, is threatened against Borrower or any other Loan Party or to which any of the properties of any thereof is subject which could reasonably be expected to have a Material Adverse Effect;

(c) any cancellation or material change in any insurance maintained by Borrower or any other Loan Party that could reasonably be expected to result in a Material Adverse Effect;

(d) notice of (i) any Infringement on its material Intellectual Property Rights by others, (ii) written claims that a Loan Party is Infringing on another Person's Intellectual Property Rights and (iii) any threatened (in writing) cancellation, termination or material limitation of its material Intellectual Property Rights;

(e) copies of all copyright and trademark registrations, copyright and trademark applications, patents issued and patent applications filed after the date hereof anywhere in the world with respect to its material Intellectual Property Rights, or any abandonment, expiration of lapsing thereof; and

(f) any other event (including (i) any violation of any Environmental Law or the assertion of any Environmental Claim or (ii) the enactment or effectiveness of any law, rule or regulation) which could reasonably be expected to have a Material Adverse Effect.

6.1.3. Other Information.

Promptly from time to time, such other information concerning Borrower and any other Loan Party as Lender may reasonably request. In no event shall the requirements set forth in this Section 6.1.3 require any Loan Party to provide (a) information restricted by a third party confidentiality agreement in the ordinary course of business to the extent such disclosure to Lender is prohibited thereby and (b) other information (i) in respect of which disclosure to Lender (or its representatives or contractors) is prohibited by Law or (ii) that is subject to attorney client or similar privilege or constitutes attorney work-product.

6.2. Books; Records; Inspections.

Keep, and cause each other Loan Party to keep, its books and records in accordance with sound business practices sufficient to allow the preparation of financial statements in accordance with GAAP in all material respects; and permit, and cause each other Loan Party to permit, at any reasonable time during normal business hours and with reasonable prior notice not more than once per year (or at any time without

notice if an Event of Default exists), Lender or any representative thereof to (i) visit any or all of its offices, to discuss its financial matters with its officers and its independent auditors (and Borrower hereby authorizes such independent auditors to discuss such financial matters with Lender or any representative thereof, so long as Borrower or its representative is given the opportunity to be present) (ii) inspect the properties and operations of Loan Parties, and (iii) inspect, examine, audit, check and make copies of and extracts from the books, records, computer data, computer programs, journals, orders, receipts, correspondence and other data relating to any Collateral. All such visits, inspections, examinations or audits by Lender shall be at Borrower's expense, provided that so long as no Event of Default or Default exists, Borrower shall not be required to reimburse Lender for visits more frequently than once each Fiscal Year or in an amount in excess of $10,000 in the aggregate in any Fiscal Year and Borrower shall not be required to reimburse Lender for any inspections, examinations, appraisals and audits.

6.3. Maintenance of Property; Insurance.

(a) Keep, and cause each other Loan Party to keep, all property useful and necessary in the business of Borrower or such other Loan Party in good working order and condition, ordinary wear and tear and casualty and condemnation excepted, except to the extent the failure to do so would reasonably be expected to result in a Material Adverse Effect.

(b) Maintain, and cause each other Loan Party to maintain, with responsible insurance companies, such insurance coverage as shall be required by all laws, governmental regulations and court decrees and orders applicable to it and such other insurance, to such extent and against such hazards and liabilities, as is customarily maintained by companies similarly situated. Upon request of Lender, Borrower shall furnish to Lender a certificate setting forth in reasonable detail the nature and extent of all insurance maintained by Borrower and each other Loan Party.

(c) Unless Borrower provides Lender with evidence of the continuing insurance coverage required by this Agreement, Lender may purchase insurance at Borrower's expense to protect Lender’s interests in the Collateral. This insurance may, but need not, protect Borrower's and each other Loan Party's interests. The coverage that Lender purchases may, but need not, pay any claim that is made against Borrower or any other Loan Party in connection with the Collateral. Borrower may later cancel any insurance purchased by Lender, but only after providing Lender with evidence that Borrower has obtained the insurance coverage required by this Agreement. If Lender purchases insurance for the Collateral, as set forth above, Borrower will be responsible for the costs of that insurance, including interest and any other charges that may be imposed with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance and the costs of the insurance may be added to the principal amount of the Loans owing hereunder.

6.4. Compliance with Laws; Payment of Taxes and Liabilities.

(a) Comply, and cause each other Loan Party to comply with all applicable laws, rules, regulations, decrees, orders, judgments, licenses and permits, except where failure to comply could not reasonably be expected to have a Material Adverse Effect; (b) without limiting clause (a) above, ensure, and cause each other Loan Party to ensure, that no person who owns a controlling interest in or otherwise controls a Loan Party is or shall be (i) listed on the Specially Designated Nationals and Blocked Person List maintained by the Office of Foreign Assets Control ("OFAC"), Department of the Treasury, and/or any other similar lists maintained by OFAC pursuant to any authorizing statute, Executive Order or regulation or (ii) a person designated under Section 1(b), (c) or (d) or Executive Order No. 13224 (September 23, 2001), any related enabling legislation or any other similar Executive Orders; (c) without limiting clause (a) above, comply and cause each other Loan Party to comply, with all applicable Bank Secrecy Act and anti-money laundering laws and regulations and (d) pay, and cause each other Loan Party to pay, prior to delinquency,

all Taxes and other governmental charges against it or any of its property, as well as claims of any kind which, if unpaid, could become a Lien on any of its property; provided that the foregoing shall not require Borrower or any other Loan Party to pay any such Tax, charge or claim so long as (i) it shall contest the validity thereof in good faith by appropriate proceedings and shall set aside on its books adequate reserves with respect thereto in accordance with GAAP or (ii) the nonpayment of such tax or charge would not (x) reasonably be expected to result in a Material Adverse Effect, and (y) would not result in the creation of a Lien other than a Permitted Lien.

6.5. Maintenance of Existence.

Maintain and preserve, and cause each other Loan Party to maintain and preserve, (a) its existence and good standing in the jurisdiction of its organization and (b) its qualification to do business and good standing in each jurisdiction where the nature of its business makes such qualification necessary, other than any such jurisdiction where the failure to be qualified or in good standing could not reasonably be expected to have a Material Adverse Effect.

6.6. Environmental Matters.

If any release or disposal of Hazardous Substances shall occur or shall have occurred on any real property or any other assets of Borrower or any other Loan Party, cause, or direct the applicable Loan Party to cause, the prompt containment and removal of such Hazardous Substances and the remediation of such real property or other assets as is necessary to comply with all Environmental Laws, except where the failure to comply (x) would not reasonably be expected to result in a Material Adverse Effect and (y) would not result in the creation of a Lien other than a Permitted Lien. Without limiting the generality of the foregoing, Borrower shall, and shall cause each other Loan Party to, comply with each valid Federal or state judicial or administrative order requiring the performance at any real property by Borrower or any other Loan Party of activities in response to the release or threatened release of a Hazardous Substance, except where the failure to comply (x) would not reasonably be expected to result in a Material Adverse Effect and (y) would not result in the creation of a Lien other than a Permitted Lien.

6.7. Further Assurances.

(a)Take, and cause each other Loan Party to take, such actions as are necessary and as Lender may reasonably request from time to time to ensure that the Obligations of Borrower and each other Loan Party under the Loan Documents are secured by a first priority perfected Lien in favor of Lender (subject only to the Permitted Liens) on substantially all of the Collateral (other than Excluded Property (as defined in the Guarantee and Collateral Agreement)) of Borrower and each other Loan Party (other than Foreign Subsidiaries), in each case including (a) the execution and delivery, if applicable, of guaranties, security agreements, pledge agreements, financing statements and other documents, and the filing or recording of any of the foregoing and (b) the delivery of certificated securities and other Collateral with respect to which perfection is obtained by possession; provided that in no event shall (x) a Foreign Subsidiary guarantee the Obligations or any Loan Party or (y) a Loan Party be required to obtain any leasehold mortgage.

(b)Following the Closing Date, upon the reasonable request of the Lender, the Loan Parties shall use commercially reasonable efforts to cause each landlord with respect to any leased location specified by the Lender to deliver a Collateral Access Agreement.

(c)Within ten (10) days after the Closing Date, Borrower shall deliver to Lender such documents as Lender shall reasonably request to evidence the termination of any security interest filed or

recorded in the Intellectual Property (other than such security interests in favor of Lender) as in existence on the Closing Date.

Section 7. Negative Covenants.

From and after the Closing Date and until the date on which all Obligations have been Paid in Full and the Commitments have been terminated, Borrower agrees that, unless at any time Lender shall otherwise expressly consent in writing, it will:

7.1. Debt.

Not, and not permit any other Loan Party to, create, incur, assume or suffer to exist any Debt, except the following ("Permitted Debt"):

(a)Obligations under this Agreement and the other Loan Documents;

(b)Debt incurred in connection with Liens permitted under Section 7.2(b);

(c)Debt secured by Liens permitted by Section 7.2(c), and extensions, renewals and refinancings thereof;

(d)Reserved;

(e)Contingent Obligations arising with respect to customary indemnification obligations or purchase price adjustments or similar obligations in connection with asset dispositions, Permitted Acquisitions or Permitted Investments;

(f)Reserved;

(g)Contingent Obligations (i) by endorsement of instruments for deposit or collection in the ordinary course of business, (ii) consisting of guarantees of Debt incurred for the benefit of any other Loan Party if the primary obligation is permitted elsewhere in this Section 7.1 or (iii) with respect to statutory, surety and appeal bonds, performance bonds and other similar obligations (including with respect to workers' compensation claims);

(h)accrual and capitalization of interest on any Permitted Debt;

(i)Debt incurred in connection with the financing of insurance premiums;

(j)Debt in respect of netting services, cash management services, overdraft protections and otherwise in connection with deposit accounts, so long as such Debt is incurred in the ordinary course of business;

(k)Debt and Contingent Obligations arising in connection with the Existing Letters of Credit and any other letters of credit issued at the request of any Loan Party in the ordinary course of such Loan Party’s business;

(l)Subordinated Debt;

(m) Reserved;

(n)Debt incurred by Borrower under customary agreements consisting of indemnification, adjustment of purchase price or similar obligations entered into in connection with asset dispositions, Permitted Acquisitions and Permitted Investments, or from guarantees or letters of credit, securing the performance of any Obligor pursuant to such agreements, incurred or contracted for in connection with asset dispositions, Permitted Acquisitions and such Permitted Investments;

(o)Debt representing deferred compensation, severance, pension and health and welfare retirement benefits or the equivalent thereof to current and former employees of Borrower incurred in the ordinary course of business or existing on the Closing Date;

(p)Debt owed to Apollo Endosurgery, Inc. outstanding on the date hereof; and

(q)Debt assumed or acquired by Borrower or any Subsidiary in connection with a Permitted Acquisition; provided that such Debt exists at the time that such Person becomes a Subsidiary and is not created in contemplation of or in connection with such Person becoming a Subsidiary and extensions, renewals and replacements of any such Debt that do not increase the outstanding principal amount thereof (immediately prior to giving effect to such extension, renewal or replacement, other than with respect to the accrual of interest, fees or other similar costs imposed as a result of the refinancing) or shorten the maturity or the weighted average life thereof.

7.2. Liens.

Not, and not permit any other Loan Party to, create or permit to exist any Lien on any of its real or personal properties, assets or rights of whatsoever nature (whether now owned or hereafter acquired), except any of the following ("Permitted Liens"):

(a)Liens for Taxes or other governmental charges not at the time delinquent or thereafter payable without penalty or that are being diligently contested in good faith by appropriate proceedings and for which it maintains adequate reserves in accordance with GAAP;

(b)Liens arising in the ordinary course of business (such as (i) Liens of carriers, warehousemen, mechanics, landlords, repairmen and materialmen and other similar Liens imposed by law and (ii) Liens incurred in connection with worker's compensation, unemployment compensation, deferred compensation, supplemental retirement plans and other types of social security (excluding Liens arising under ERISA) or in connection with surety bonds, bids, performance bonds and similar obligations or pledges or deposits in connection with insurance, leases, or other contracts or bids) for sums not overdue or being diligently contested in good faith by appropriate proceedings and not involving any deposits or advances or borrowed money or the deferred purchase price of property or services and, in each case, for which it maintains adequate reserves in accordance with GAAP and the execution or other enforcement of which is effectively stayed;

(c)subject to the limitation set forth in Section 7.1(c), (i) Liens arising in connection with Capital Leases (and attaching only to the property being leased, proceeds, accessions and substitutions thereof), (ii) Liens existing on fixed assets at the time of the acquisition thereof by Borrower or any Subsidiary (and not created in contemplation of such acquisition) and (iii) Liens that constitute purchase money security interests on any fixed assets securing Debt incurred for the purpose of financing all or any part of the cost of acquiring such property, provided that any such Lien attaches to such fixed assets within 90 days of the acquisition thereof and attaches solely to the fixed assets so acquired;

(d)attachments, appeal bonds, judgments and other similar Liens, for sums not constituting an Event of Default arising in connection with court proceedings; provided that the execution

or other enforcement of such Liens is effectively stayed and the claims secured thereby are being actively contested in good faith and by appropriate proceedings;

(e)zoning restrictions, easements, rights of way, restrictions, minor defects or irregularities in title and other similar Liens not interfering in any material respect with the ordinary conduct of the business of Borrower or any Subsidiary;

(f)Liens arising under the Loan Documents;

(g)the replacement, refinancing, restructuring, extension or renewal of any Lien permitted by clause (c) above upon or in the same property subject thereto (and proceeds thereof) arising out of the extension, renewal, refinancing, restructuring, or replacement of the Debt secured thereby (without increase in the amount thereof except accrued interest, fees and expenses, and premium paid in connection with such extension, renewal, replacement, restructuring and refinancing thereof);

(h)Liens on insurance policies and the proceeds thereof securing the financing of the premiums with respect thereto;

(i)Any interest or title of a licensor, sublicensor, lessor or sublessor under any license or lease agreement (including licenses and leases pertaining to intellectual property) and any precautionary uniform commercial code financing statements filed in connection therewith granted to any Loan Party in the ordinary course of business to the extent limited to the item licensed, leased, sublicensed or subleased;

(j)Licenses, sublicenses, leases or subleases granted to third Persons in the ordinary course of business;

(k)Liens which arise under Article 4 of the UCC on items in collection and documents and proceeds related thereto;

(l)Liens deemed to exist in connection with Permitted Investments that constitute repurchase obligations;

(m)Liens in favor of customs and revenue authorities arising in the ordinary course of business and as a matter of law to secure the payment of customs duties in connection with importation of goods; and

(n)earnest money deposits of cash or Cash Equivalent Investments made in good faith in connection with any letter of intent or purchase agreement with respect to a transaction expressly permitted hereunder.

7.3. Restricted Payments.

Not, and not permit any other Loan Party to, (a) make any dividend or other distribution to any of its equity holders, in their capacity as equity holders, (b) purchase or redeem any of its equity interests or any warrants, options or other rights in respect thereof, (c) pay any management fees or similar fees to any of its equity holders or any Affiliate thereof, (d) make any redemption, prepayment (whether mandatory or optional), defeasance, repurchase or any other payment in respect of any Subordinated Debt or (e) set aside funds for any of the foregoing. Notwithstanding the foregoing,

(i) so long as no Default has occurred and is then continuing or would result from such payment, Borrower may reimburse expenses and pay fees and indemnifications in respect of

the services provided by directors in the ordinary course of business and consistent with Borrower's recent public disclosures; and

(ii) Borrower may make payments to employees that are stockholders pursuant to the termination provisions of employment agreements.

7.4. Modification of Organizational Documents.

Not permit the charter, by-laws or other organizational documents of Borrower or any other Loan Party to be amended or modified in any way which could reasonably be expected to materially adversely affect the interests of Lender.

7.5. Use of Proceeds.

Use the proceeds of the Loans, solely (a) to pay fees and expenses in connection with the closing of this Agreement and (b) for working capital and other general business purposes of Borrower and not use or permit any proceeds of any Loan to be used, either directly or indirectly, for the purpose, whether immediate, incidental or ultimate, of "purchasing or carrying" any Margin Stock.

7.6. Subsequent Financings.

Until December 31, 2021, if Borrower intends to enter into any agreement to issue any shares of Common Stock or Common Stock Equivalents or to incur any Debt (a "Financing Transaction"), Borrower shall deliver to Lender a notice setting forth in reasonable detail the proposed structure of the Financing Transaction. Upon receipt of such notice, Lender shall have ten (10) days to provide Borrower with a preliminary indication of whether or not Lender is interested in entering into an agreement regarding the Financing Transaction and 30 days to submit an offer to Borrower regarding such Financing Transaction (such 30 day period, the "Review Period"). During the Review Period, Borrower shall not enter into any agreement regarding the Financing Transaction or enter into any arrangement that limits Borrower's ability to negotiate with Lender or discuss the Financing Transaction with Lender.

7.7. Intellectual Property.

Enter into any material agreement that would reasonably be expected to affect Lender's security interest in the Intellectual Property or Intellectual Property Rights.

7.8. Investments.

Not, and not permit any other Loan Party to make any Investment, except the following, ("Permitted Investments"):

(a) investments in direct obligations of the United States of America or any agency or instrumentality thereof whose obligations constitute full faith and credit obligations of the United States of America having a maturity of one year or less, commercial paper issued by U.S. corporations rated "A-1" or "A-2" by Standard & Poor's Ratings Services or "P-1" or "P-2" by Moody's Investors Service or certificates of deposit or bankers' acceptances having a maturity of one year or less issued by members of the Federal Reserve System having deposits in excess of $100,000,000 (which certificates of deposit or bankers' acceptances are fully insured by the Federal Deposit Insurance Corporation);

(b) prepaid rent not exceeding one month or security deposits;

(c) investments in cash and cash equivalents;

(d) reserved;

(e) investments acquired in connection with the settlement of delinquent Accounts in the ordinary course of business or in connection with the bankruptcy or reorganization of suppliers or customers;

(f) extensions of trade credit in the ordinary course of business;

(g) reserved;

(h) deposits made in the ordinary course of business to secure the performance of leases or other contractual arrangement;

(i) to the extent constituting an investment, any capital expenditures and any other expenditures permitted under this Agreement;

(j) advances in the form of prepayments of expenses to a vendor, supplier or trade creditor in the ordinary course of business;

(k) investments in deposit accounts and securities accounts opened in the ordinary course of business and in compliance with the terms of the Loan Documents;

(l) travel advances or loans to any employees and officers of any Loan Party not exceeding at any one time an aggregate of $10,000;

(m) investments constituting Permitted Debt;

(n) investments constituting Permitted Acquisitions;

(o) non-cash consideration received pursuant to the consummation of asset dispositions and Permitted Acquisitions, in each case as permitted under this Agreement; and

(p) investments existing on the date of this Agreement and disclosed in writing to Lender.

7.9. Transactions With Affiliates.

Not enter into any transaction with any Affiliates after the Closing Date.

Section 8. Events of Default; Remedies.

8.1. Events of Default.

Following the Closing Date, each of the following shall constitute an Event of Default under this Agreement:

8.1.1. Non-Payment of Credit.

Default in the payment when due of the principal of any Loan; or default, and continuance thereof for three (3) days, in the payment when due of any other Obligations, including any interest, fee, or other amount payable by any Loan Party hereunder or under any other Loan Document.

8.1.2. Bankruptcy; Insolvency.

(a)Any Loan Party becomes insolvent or generally fails to pay, or admits in writing its inability or refusal to pay, debts as they become due; or

(b)Any Loan Party applies for, consents to, or acquiesces in the appointment of a trustee, receiver or other custodian for such Loan Party or any property thereof, or makes a general assignment for the benefit of creditors; or in the absence of such application, consent or acquiescence, a trustee, receiver or other custodian is appointed for any Loan Party or for a substantial part of the property of any thereof and is not discharged within 60 days; or any bankruptcy, reorganization, debt arrangement, or other case or proceeding under any bankruptcy or insolvency law, or any dissolution or liquidation proceeding, is commenced in respect of any Loan Party, and if such case or proceeding is not commenced by such Loan Party, it is consented to or acquiesced in by such Loan Party, or remains for 60 days undismissed; or any Loan Party takes any action to authorize, or in furtherance of, any of the foregoing.

8.1.3. Non-Compliance with Loan Documents.

(a) Failure by Borrower to comply with or to perform any covenant set forth in Section 6 and Section 7, or (b) the failure of any Loan Party to comply with or to perform any other provision of this Agreement or any other Loan Document applicable to it (and not constituting an Event of Default under any other provision of this Section 8 and continuance of such failure described in this clause (b) for five (5) Business Days after the earlier to occur of (i) any Authorized Officer of any Loan Party knows or in the exercise of reasonable due diligence should have known of any such failure, or (ii) the delivery of notice thereof to Borrower by Lender.

8.1.4. Representations; Warranties.

Any representation or warranty made by any Loan Party herein or any other Loan Document is breached or is false or misleading in any material respect, or any schedule, certificate, financial statement, report, notice or other writing furnished by any Loan Party to Lender in connection herewith is false or misleading in any material respect on the date as of which the facts therein set forth are stated or certified; provided that it is acknowledged and agreed that projections as to future events provided by the Loan Parties are not to be viewed as facts or as a guarantee of performance or achievement of a particular result, are subject to significant uncertainties and contingencies many of which are beyond the control of the Loan Parties, no assurances can be given that such projections will be realized and actual results during the periods covered by any such projections and forecasts may differ significantly from projected or forecasted results and such differences may be material).

8.1.5. Invalidity of Collateral Documents.

Any Collateral Document shall cease to be in full force and effect (other than in accordance with its terms); or any Loan Party (or any Person by, through or on behalf of any Loan Party) shall contest in any manner the validity, binding nature or enforceability of any Collateral Document.

8.1.6. Change in Control.

A Change in Control shall occur.

8.2. Remedies.

In addition to all other rights and remedies provided by applicable laws and terms of the Loan Documents, if any Event of Default described in Section 8.1.2 shall occur, the Commitments shall immediately terminate and the Loans and all other Obligations shall become immediately due and payable, without presentment, demand, protest or notice of any kind; and, if any other Event of Default shall occur and be continuing, Lender may declare the Commitments to be terminated in whole or in part and/or declare all or any part of the Loans and other Obligations to be due and payable, whereupon the Commitments shall immediately terminate (or be reduced, as applicable) and/or the Loans and other Obligations shall become immediately due and payable (in whole or in part, as applicable), all without presentment, demand, protest or notice of any kind. Lender shall promptly advise Borrower of any such declaration, but failure to do so shall not impair the effect of such declaration.

Section 9. Miscellaneous.

9.1. Waiver; Amendments.

(a)No amendment, modification or waiver of, or consent with respect to, any provision of this Agreement or any of the other Loan Documents (or any subordination and intercreditor agreement or other subordination provisions relating to any Subordinated Debt) shall in any event be effective unless the same shall be in writing and signed by Borrower (with respect to Loan Documents to which Borrower is a party) and by Lender and then any such amendment, modification, waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

(b)No delay on the part of Lender in the exercise of any right, power or remedy shall operate as a waiver thereof, nor shall any single or partial exercise by any of them of any right, power or remedy preclude other or further exercise thereof, or the exercise of any other right, power or remedy.

9.2. Notices.

All notices hereunder shall be in writing (including facsimile or other electronic (including .pdf) transmission) and shall be sent to the applicable party at its address shown on Annex I or at such other address as such party may, by written notice received by the other parties, have designated as its address for such purpose. Notices sent by facsimile or other electronic transmission shall be deemed to have been given when sent; notices sent by mail shall be deemed to have been given three Business Days after the date when sent by registered or certified mail, postage prepaid; and notices sent by hand delivery or overnight courier service shall be deemed to have been given when received.

9.3. Computations.

Unless otherwise specifically provided herein, any accounting term used in this Agreement shall have the meaning customarily given such term in accordance with GAAP, and all financial computations (including with respect to the character or amount of any asset or liability or item of income or expense, or any consolidation or other accounting computation) hereunder shall be computed in accordance with GAAP consistently applied.

9.4. Costs; Expenses.

Borrower agrees to pay promptly following written demand all reasonable and documented out-of-pocket costs and expenses of Lender (including Legal Costs, and for the avoidance of doubt, such costs and expenses for accountants, auditors, appraisers, consultants and other professionals) in connection with the preparation, delivery and administration (including perfection and protection of Collateral) of this Agreement, the other Loan Documents and all other documents provided for herein or delivered or to be delivered hereunder or in connection herewith (including any proposed or actual amendment, supplement or waiver to any Loan Document), and all reasonable and documented out-of-pocket costs and expenses (including Legal Costs and the other costs and expenses described above) incurred by Lender after an Event of Default in connection with the collection of the Obligations and enforcement of this Agreement, the other Loan Documents or any such other documents. In addition, Borrower agrees to pay (promptly following written demand), and to save Lender harmless from all liability for, any fees of Borrower's auditors in connection with any reasonable exercise by Lender of its rights pursuant to Section 6.2 (subject to the limitations set forth therein). All Obligations provided for in this Section 9.4 shall survive repayment of the Loans, cancellation of the Notes, and termination of this Agreement).

9.5. Assignments.

Lender may assign all or any portion of Lender's Loans and Commitments without the prior consent of Borrower; provided, however, that Borrower will be notified of the assignment.

9.6. Confidentiality; Competitor Matters.

(a) Lender agrees to maintain as confidential all information provided to them by any Loan Party, except that Lender may disclose such information (a) to Persons employed or engaged by Lender or any of their Affiliates in evaluating, approving, structuring or administering the Loans and the Commitments; (b) to any assignee or participant or potential assignee or participant that has agreed to comply with the covenant contained in this Section 9.6 (and any such assignee or participant or potential assignee or participant may disclose such information to Persons employed or engaged by them as described in clause (a) above); (c) as required or requested by any federal or state regulatory authority or examiner, or any insurance industry association, or as reasonably believed by Lender to be compelled by any court decree, subpoena or legal or administrative order or process as long as Borrower has received prior notice and the opportunity to seek a protective order; (d) as, on the advice of Lender’s counsel, is required by law; (e) in connection with the exercise of any right or remedy under the Loan Documents or in connection with any litigation to which Lender is a party; (f) to any nationally recognized rating agency or investor of a Lender that requires access to information about a Lender’s investment portfolio in connection with ratings issued or investment decisions with respect to Lender; and (g) that ceases to be confidential through no fault of Lender.

(b) Captions.

Captions used in this Agreement are for convenience only and shall not affect the construction of this Agreement.

9.7. Nature of Remedies.

All Obligations of Borrower and rights of Lender expressed herein or in any other Loan Document shall be in addition to and not in limitation of those provided by applicable law. No failure to exercise and no delay in exercising, on the part of Lender, any right, remedy, power or privilege hereunder, shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege

hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

9.8. Counterparts.

This Agreement may be executed in any number of counterparts and by the different parties hereto on separate counterparts and each such counterpart shall be deemed to be an original, but all such counterparts shall together constitute but one and the same Agreement. Receipt by facsimile or other electronic method of any executed signature page to this Agreement or any other Loan Document shall constitute effective delivery of such signature page. This Agreement and the other Loan Documents to the extent signed and delivered by means of a facsimile machine or other electronic transmission (including "pdf"), shall be treated in all manner and respects and for all purposes as an original agreement or amendment and shall be considered to have the same binding legal effect as if it were the original signed version thereof delivered in person. No party hereto or to any such other Loan Document shall raise the use of a facsimile machine or other electronic transmission to deliver a signature or the fact that any signature or agreement or amendment was transmitted or communicated through the use of a facsimile machine or other electronic transmission as a defense to the formation or enforceability of a contract and each such party forever waives any such defense.

9.9. Severability.

The illegality or unenforceability of any provision of this Agreement or any instrument or agreement required hereunder shall not in any way affect or impair the legality or enforceability of the remaining provisions of this Agreement or any instrument or agreement required hereunder.

9.10. Entire Agreement.

This Agreement, together with the other Loan Documents, embodies the entire agreement and understanding among the parties hereto and supersedes all prior or contemporaneous agreements and understandings of such Persons, verbal or written, relating to the subject matter hereof and thereof and any prior arrangements made with respect to the payment by (or any indemnification for) Borrower of any fees, costs or expenses payable to or incurred (or to be incurred) by or on behalf of Lender.

9.11. Indemnification.

(a) Except for losses, claims, damages or liability arising out of the gross negligence or willful misconduct of Lender, Borrower hereby agrees (i) to indemnify and hold harmless Lender, its officers, agents, (including outside legal counsel), directors, employees successors and assigns (the "**Indemnified Parties**") from and against any and all losses, claims, damages, penalties, liabilities, fees (including, without limitation, any reasonable broker's or finder's fees), reasonable costs or expenses to which Lender, its officers, agents and employees, or any one or more of them, may become subject under any law, contract or agreement in connection with the carrying out of the transactions contemplated by this Agreement or any other Loan Document and (ii) to reimburse Lender, its officers, agents and employees for any and all reasonable out-of-pocket legal and other expenses (including reasonable attorneys' fees and costs, whether incurred at trial, on appeal, in bankruptcy proceedings, or otherwise) incurred by Lender, its officers, agents and employees, or any one or more of them, in connection with investigating any such losses, claims, damages, penalties, liabilities, fees (including, without limitation, any broker's or finder's fees), reasonable costs or expenses or in connection with defending any actions relating thereto. Lender agrees, at the request and reasonable expense of Borrower, to cooperate in the making of any investigation in defense of any such claim and promptly to assert any or all of the rights and privileges and defenses, which may be available to Lender.

(b) Notwithstanding anything to the contrary contained in this Agreement or the other Loan Documents and in addition to the indemnification provided in Section 9.11, Borrower hereby agrees to indemnify and hold harmless Lender from and against any and all losses, claims, damages, penalties, liabilities, fees, reasonable costs or expenses (including reasonable legal fees, whether incurred at trial, on appeal, in bankruptcy proceedings or otherwise) directly or indirectly resulting from, due to or arising out of (i) any misrepresentation of information furnished to Lender by or on behalf of Borrower, (ii) any breach, violation, untruthfulness or inaccuracy of any representation or warranty of Borrower under any of the Loan Documents, or (iii) any breach or violation of or noncompliance with any covenant or agreement of Borrower under any of the Loan Documents. Borrower's liability under this Section 9.11 shall not be limited by any other provision of this Agreement.

(c) The provisions of this Section 9.11 shall survive the payment of the Obligations and the termination of this Agreement.

9.12. Successors; Assigns.

This Agreement shall be binding upon and shall inure to the benefit of Borrower and Lender and their respective successors and permitted assigns. No other Person shall be a direct or indirect legal beneficiary of, or have any direct or indirect cause of action or claim in connection with, this Agreement or any of the other Loan Documents. Borrower may not assign or transfer any of its rights or Obligations under this Agreement without the prior written consent of Lender.

9.13. Governing Law.

THIS AGREEMENT AND EACH NOTE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO CONFLICT OF LAWS PRINCIPLES.

9.14. Forum Selection; Consent to Jurisdiction.

ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, SHALL BE BROUGHT AND MAINTAINED EXCLUSIVELY IN THE STATE AND, TO THE EXTENT PERMITTED BY APPLICABLE LAW, FEDERAL COURTS LOCATED IN THE COUNTY OF NEW YORK, STATE OF NEW YORK; PROVIDED THAT ANY SUIT SEEKING ENFORCEMENT AGAINST ANY COLLATERAL OR OTHER PROPERTY MAY BE BROUGHT, AT LENDER'S OPTION, IN THE COURTS OF ANY JURISDICTION WHERE SUCH COLLATERAL OR OTHER PROPERTY MAY BE FOUND. BORROWER HEREBY EXPRESSLY AND IRREVOCABLY SUBMITS TO THE JURISDICTION OF THE STATE AND FEDERAL COURTS SITTING IN THE STATE OF NEW YORK AND THE COUNTY OF NEW YORK FOR THE PURPOSE OF ANY SUCH LITIGATION AS SET FORTH ABOVE. BORROWER AND LENDER FURTHER IRREVOCABLY CONSENTS TO THE SERVICE OF PROCESS BY REGISTERED MAIL, POSTAGE PREPAID, OR BY PERSONAL SERVICE WITHIN OR WITHOUT THE STATE OF NEW YORK. BORROWER AND LENDER HEREBY EXPRESSLY AND IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY SUCH LITIGATION BROUGHT IN ANY SUCH COURT REFERRED TO ABOVE AND ANY CLAIM THAT ANY SUCH LITIGATION HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

9.15. Waiver of Jury Trial.

EACH OF BORROWER AND LENDER HEREBY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS UNDER THIS AGREEMENT, ANY NOTE, ANY OTHER LOAN DOCUMENT AND ANY AMENDMENT, INSTRUMENT, DOCUMENT OR AGREEMENT DELIVERED OR WHICH MAY IN THE FUTURE BE DELIVERED IN CONNECTION HEREWITH OR THEREWITH OR ARISING FROM ANY LENDING RELATIONSHIP EXISTING IN CONNECTION WITH ANY OF THE FOREGOING, AND AGREES THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY.

[*signature pages follow*]

The parties hereto have caused this Agreement to be duly executed and delivered by their duly authorized officers as of the date first set forth above.

RESHAPE LIFESCIENCES INC.,
as Borrower

By: /s/ Barton P. Bandy
Name: Barton P. Bandy
Title: Chief Executive Officer

ARMISTICE CAPITAL MASTER FUND LTD.,
as Lender

By: /s/ Steven Boyd
Name: Steven Boyd
Title: CIO of Armistice Capital, LLC, the Investment Manager

**ANNEX I**

Addresses

ReShape Lifesciences Inc.
1001 Calle Amanecer
San Clemente, California 92673
Attention: Bart Bandy, Chief Executive Officer Telephone: 949-429-6680

Armistice Capital Master Fund Ltd.,
510 Madison Avenue, 7th Floor
New York, New York 10022
Attention: Daniel Radden
Telephone: (212) 231-4930

Address for Payments:

JPMorgan Chase Bank, N.A., New York
ABA: 021000021
Beneficiary: A/C No: 066001633
A/C Name: J.P. Morgan Securities LLC
For Credit to A/C Armistice Capital Master Fund Ltd.
A/C # 102-53544

**Exhibit A**

Form of Note

$ _____ _____

The undersigned ("Borrower"), for value received, promises to pay to Armistice Capital Master Fund Ltd. (the "Lender") the aggregate unpaid amount of all Loans made to Borrower by Lender pursuant to the Credit Agreement referred to below, such principal amount (which such amount may change over time pursuant to the Credit Agreement) to be payable on the dates set forth in the Credit Agreement.

Borrower further promises to pay interest on the unpaid principal amount of each Loan from the date of such Loan until such Loan is paid in full, payable at the rate(s) and at the time(s) set forth in the Credit Agreement. Payments of both principal and interest are to be made in lawful money of the United States of America.

This Note evidences indebtedness incurred under, and is subject to the terms and provisions of, the Credit Agreement, dated as of March 25, 2020 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the "Credit Agreement"; terms not otherwise defined herein are used herein as defined in the Credit Agreement), between Borrower and Lender, to which Credit Agreement reference is hereby made for a statement of the terms and provisions under which this Note may or must be paid prior to its due date or its due date accelerated.

This Note is made under and governed by the laws of the State of New York applicable to contracts made and to be performed entirely within such State.

RESHAPE LIFESCIENCES INC.

By:_____
Title: _____

**Exhibit B**

Form of Warrant

(see attached)

NEITHER THIS SECURITY NOR THE SECURITIES FOR WHICH THIS SECURITY IS EXERCISABLE HAVE BEEN REGISTERED WITH THE U.S. SECURITIES AND EXCHANGE COMMISSION OR THE SECURITIES COMMISSION OF ANY STATE IN RELIANCE UPON AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND, ACCORDINGLY, MAY NOT BE OFFERED OR SOLD EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OR PURSUANT TO AN AVAILABLE EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND IN ACCORDANCE WITH APPLICABLE STATE SECURITIES LAWS. THIS SECURITY AND THE SECURITIES ISSUABLE UPON EXERCISE OF THIS SECURITY MAY BE PLEDGED IN CONNECTION WITH A BONA FIDE MARGIN ACCOUNT OR OTHER LOAN SECURED BY SUCH SECURITIES.

**SERIES G COMMON STOCK PURCHASE WARRANT RESHAPE LIFESCIENCES INC.**

Warrant Shares: 1,200,000 Initial Exercise Date: March 25, 2020

THIS SERIES G COMMON STOCK PURCHASE WARRANT (the "***Warrant***") certifies that, for value received, Armistice Capital Master Fund Ltd. or its assigns (the "***Holder***") is entitled, upon the terms and subject to the limitations on exercise and the conditions hereinafter set forth, at any time on or after the date hereof (the "***Initial Exercise Date***") and until the fifth anniversary of the Initial Exercise Date (the "***Termination Date***") but not thereafter, to subscribe for and purchase from ReShape Lifesciences Inc., a Delaware corporation (the "***Company***"), up to 1,200,000 shares (as subject to adjustment hereunder, the "***Warrant Shares***") of Common Stock. The purchase price of one share of Common Stock under this Warrant shall be equal to the Exercise Price, as defined in Section 2(b).

Section 1.[RESERVED]

Section 2. Exercise.

a) Exercise of Warrant. Exercise of the purchase rights represented by this Warrant may be made, in whole or in part, at any time or times on or after the Initial Exercise Date and on or before the Termination Date by delivery to the Company of a duly executed facsimile copy or PDF copy submitted by e-mail (or e-mail attachment) of the Notice of Exercise in the form attached hereto as Exhibit A (the "***Notice of Exercise***"). Within the earlier of (i) two (2) Trading Days and (ii) the number of Trading Days comprising the Standard Settlement Period (as defined in Section 2(d)(i) herein) following the date of exercise as aforesaid, the Holder shall deliver the aggregate Exercise Price for the Warrant Shares specified in the applicable Notice of Exercise by wire transfer or cashier's check drawn on a United States bank unless the cashless

exercise procedure specified in Section 2(c) below is specified in the applicable Notice of Exercise. No ink-original Notice of Exercise shall be required, nor shall any medallion guarantee (or other type of guarantee or notarization) of any Notice of Exercise be required. Notwithstanding anything herein to the contrary, the Holder shall not be required to physically surrender this Warrant to the Company until the Holder has purchased all of the Warrant Shares available hereunder and the Warrant has been exercised in full, in which case, the Holder shall surrender this Warrant to the Company for cancellation within three (3) Trading Days of the date on which the final Notice of Exercise is delivered to the Company. Partial exercises of this Warrant resulting in purchases of a portion of the total number of Warrant Shares available hereunder shall have the effect of lowering the outstanding number of Warrant Shares purchasable hereunder in an amount equal to the applicable number of Warrant Shares purchased. The Holder and the Company shall maintain records showing the number of Warrant Shares purchased and the date of such purchases. The Company shall deliver any objection to any Notice of Exercise within one (1) Trading Day of receipt of such notice. **The Holder and any assignee, by acceptance of this Warrant, acknowledge and agree that, by reason of the provisions of this paragraph, following the purchase of a portion of the Warrant Shares hereunder, the number of Warrant Shares available for purchase hereunder at any given time may be less than the amount stated on the face hereof.**

b) Exercise Price. The aggregate exercise price per share of Common stock under this Warrant shall be the lesser of $3.70 or the average of the two lowest VWAPs for the Common Stock during the ten (10) Trading Days immediately prior to the date of Exercise, subject to adjustment hereunder (the "***Exercise Price***").

c) Cashless Exercise. If at any time after the six-month anniversary of the Closing Date, there is no effective registration statement registering, or no current prospectus available for, the resale of the Warrant Shares by the Holder, then this Warrant may also be exercised, in whole or in part, at such time by means of a "cashless exercise" in which the Holder shall be entitled to receive a number of Warrant Shares equal to the quotient obtained by dividing [(A-B) (X)] by (A), where:

(A) = as applicable: (i) the VWAP on the Trading Day immediately preceding the date of the applicable Notice of Exercise if such Notice of Exercise is (1) both executed and delivered pursuant to Section 2(a) hereof on a day that is not a Trading Day or (2) both executed and delivered pursuant to Section 2(a) hereof on a Trading Day prior to the opening of "regular trading hours" (as defined in Rule 600(b)(64) of Regulation NMS promulgated under the federal securities laws) on such Trading Day, (ii) at the option of the Holder, either
(y) the VWAP on the Trading Day immediately preceding the date of the applicable Notice of Exercise or (z) the Bid Price of the Common Stock on the principal Trading Market as reported by Bloomberg L.P. as of the time of the Holder's execution of the applicable Notice of Exercise if such Notice of Exercise is executed during "regular trading hours" on a Trading Day and is delivered within two (2) hours thereafter (including until two (2) hours after the close of "regular trading hours" on a Trading Day) pursuant to

Section 2(a) hereof or (iii) the VWAP on the date of the applicable Notice of Exercise if the date of such Notice of Exercise is a Trading Day and such Notice of Exercise is both executed and delivered pursuant to Section 2(a) hereof after the close of "regular trading hours" on such Trading Day;

(B) = the Exercise Price of this Warrant, as adjusted hereunder; and

(X) = the number of Warrant Shares that would be issuable upon exercise of this Warrant in accordance with the terms of this Warrant if such exercise were by means of a cash exercise rather than a cashless exercise.

If Warrant Shares are issued in such a cashless exercise, the parties acknowledge and agree that in accordance with Section 3(a)(9) of the Securities Act, the Warrant Shares shall take on the characteristics of the Warrants being exercised, and the holding period of the Warrant Shares being issued may be tacked on to the holding period of this Warrant. The Company agrees not to take any position contrary to this Section 2(c).

"***Bid Price***" means, for any date, the price determined by the first of the following clauses that applies: (a) if the Common Stock is then listed or quoted on a Trading Market, the bid price of the Common Stock for the time in question (or the nearest preceding date) on the Trading Market on which the Common Stock is then listed or quoted as reported by Bloomberg L.P. (based on a Trading Day from 9:30 a.m. (New York City time) to 4:02 p.m. (New York City time)), (b) if OTCQB or OTCQX is not a Trading Market, the volume weighted average price of the Common Stock for such date (or the nearest preceding date) on OTCQB or OTCQX as applicable, (c) if the Common Stock is not then listed or quoted for trading on OTCQB or OTCQX and if prices for the Common Stock are then reported in the "Pink Sheets" published by OTC Markets Group, Inc. (or a similar organization or agency succeeding to its functions of reporting prices), the most recent bid price per share of the Common Stock so reported, or (d) in all other cases, the fair market value of a share of Common Stock as mutually determined by the Company and the Holder, *provided* that, if the Company and the Holder are unable to agree upon the fair market value of such share of Common Stock, then the fair market value as determined by an independent appraiser selected in good faith by the Holders of a majority in interest of the Securities then outstanding and reasonably acceptable to the Company, the fees and expenses of which shall be paid by the Company.

"***VWAP***" means, for any date, the price determined by the first of the following clauses that applies: (a) if the Common Stock is then listed or quoted on a Trading Market, the daily volume weighted average price of the Common Stock for such date (or the nearest preceding date) on the Trading Market on which the Common Stock is then listed or quoted as reported by Bloomberg L.P. (based on a Trading Day from 9:30 a.m. (New York City time) to 4:02 p.m. (New York City time)), (b) if OTCQB or OTCQX is not a Trading Market, the volume weighted average price of the Common Stock for such date (or the nearest preceding date) on OTCQB or OTCQX as applicable, (c) if the Common Stock is not then listed or quoted for trading on OTCQB or OTCQX and if prices for the Common Stock are then reported in the "Pink Sheets" published by OTC

Markets Group, Inc. (or a similar organization or agency succeeding to its functions of reporting prices), the most recent bid price per share of the Common Stock so reported, or (d) in all other cases, the fair market value of a share of Common Stock as determined by an independent appraiser selected in good faith by the Holders of a majority in interest of the Securities then outstanding and reasonably acceptable to the Company, the fees and expenses of which shall be paid by the Company.

Notwithstanding anything herein to the contrary, on the Termination Date, this Warrant shall be automatically exercised via cashless exercise pursuant to this Section 2(c).

d)Mechanics of Exercise.

i. Delivery of Warrant Shares Upon Exercise. The Company shall cause the Warrant Shares purchased hereunder to be transmitted by the Transfer Agent to the Holder by crediting the account of the Holder's or its designee's balance account with The Depository Trust Company through its Deposit or Withdrawal at Custodian system ("***DWAC***") if the Company is then a participant in such system and either (A) there is an effective registration statement permitting the issuance of the Warrant Shares to or resale of the Warrant Shares by the Holder or (B) the Warrant Shares are eligible for resale by the Holder without volume or manner-of-sale limitations pursuant to Rule 144 (assuming cashless exercise of the Warrants), and otherwise by physical delivery of a certificate or book-entry notation, registered in the Company's share register in the name of the Holder or its designee, for the number of Warrant Shares to which the Holder is entitled pursuant to such exercise to the address specified by the Holder in the Notice of Exercise by the date that is the earliest of (i) two (2) Trading Days after the delivery to the Company of the Notice of Exercise,
(ii) one (1) Trading Day after delivery of the aggregate Exercise Price to the Company and (iii) the number of Trading Days comprising the Standard Settlement Period after the delivery to the Company of the Notice of Exercise (such date, the "***Warrant Share Delivery Date***"). Upon delivery of the Notice of Exercise, the Holder shall be deemed for all corporate purposes to have become the holder of record of the Warrant Shares with respect to which this Warrant has been exercised, irrespective of the date of delivery of the Warrant Shares, *provided* that payment of the aggregate Exercise Price (other than in the case of a cashless exercise) is received by the Warrant Share Delivery Date. If the Company fails for any reason to deliver to the Holder the Warrant Shares subject to a Notice of Exercise by the Warrant Share Delivery Date, the Company shall pay to the Holder, in cash, as liquidated damages and not as a penalty, for each $1,000 of Warrant Shares subject to such exercise (based on the VWAP of the Common Stock on the date of the applicable Notice of Exercise), $10 per Trading Day (increasing to $20 per Trading Day on the fifth Trading Day after such liquidated damages begin to accrue) for each Trading Day after such

Warrant Share Delivery Date until such Warrant Shares are delivered or Holder rescinds such exercise. The Company agrees to maintain a transfer agent that is a participant in the FAST program so long as this Warrant remains outstanding and exercisable. As used herein, "***Standard Settlement Period***" means the standard settlement period, expressed in a number of Trading Days, on the Company's primary Trading Market with respect to the Common Stock as in effect on the date of delivery of the Notice of Exercise.

ii. Delivery of New Warrants Upon Exercise. If this Warrant shall have been exercised in part, the Company shall, at the request of a Holder and upon surrender of this Warrant certificate, at the time of delivery of the Warrant Shares, deliver to the Holder a new Warrant evidencing the rights of the Holder to purchase the unpurchased Warrant Shares called for by this Warrant, which new Warrant shall in all other respects be identical with this Warrant.

iii. Rescission Rights. If the Company fails to cause the Transfer Agent to transmit to the Holder the Warrant Shares pursuant to Section 2(d)(i) by the Warrant Share Delivery Date, then the Holder will have the right to rescind such exercise.

iv. Compensation for Buy-In on Failure to Timely Deliver Warrant Shares Upon Exercise. In addition to any other rights available to the Holder, if the Company fails to cause the Transfer Agent to transmit to the Holder the Warrant Shares in accordance with the provisions of Section 2(d)(i) above pursuant to an exercise on or before the Warrant Share Delivery Date, and if after such date the Holder is required by its broker to purchase (in an open market transaction or otherwise) or the Holder's brokerage firm otherwise purchases, shares of Common Stock to deliver in satisfaction of a sale by the Holder of the Warrant Shares which the Holder anticipated receiving upon such exercise (a "***Buy-In***"), then the Company shall (A) pay in cash to the Holder the amount, if any, by which (x) the Holder's total purchase price (including brokerage commissions, if any) for the shares of Common Stock so purchased exceeds (y) the amount obtained by multiplying (1) the number of Warrant Shares that the Company was required to deliver to the Holder in connection with the exercise at issue times (2) the price at which the sell order giving rise to such purchase obligation was executed, and (B) at the option of the Holder, either reinstate the portion of the Warrant and equivalent number of Warrant Shares for which such exercise was not honored (in which case such exercise shall be deemed rescinded) or deliver to the Holder the number of shares of Common Stock that would have been issued had the Company timely complied with its exercise and delivery obligations hereunder. For example, if the Holder purchases Common Stock having a total purchase price of
$11,000 to cover a Buy-In with respect to an attempted exercise of shares of

Common Stock with an aggregate sale price giving rise to such purchase obligation of $10,000, under clause (A) of the immediately preceding sentence the Company shall be required to pay the Holder $1,000. The Holder shall provide the Company written notice indicating the amounts payable to the Holder in respect of the Buy-In and, upon request of the Company, evidence of the amount of such loss. Nothing herein shall limit a Holder's right to pursue any other remedies available to it hereunder, at law or in equity including, without limitation, a decree of specific performance and/or injunctive relief with respect to the Company's failure to timely deliver shares of Common Stock upon exercise of the Warrant as required pursuant to the terms hereof.

v. No Fractional Shares or Scrip. No fractional shares or scrip representing fractional shares shall be issued upon the exercise of this Warrant. As to any fraction of a share which the Holder would otherwise be entitled to purchase upon such exercise, the Company shall, at its election, either pay a cash adjustment in respect of such final fraction in an amount equal to such fraction multiplied by the Exercise Price or round up to the next whole share.

vi. Charges, Taxes and Expenses. Issuance of Warrant Shares shall be made without charge to the Holder for any issue or transfer tax or other incidental expense in respect of the issuance of such Warrant Shares, all of which taxes and expenses shall be paid by the Company, and such Warrant Shares shall be issued in the name of the Holder or in such name or names as may be directed by the Holder; *provided*, *however*, that in the event that Warrant Shares are to be issued in a name other than the name of the Holder, this Warrant when surrendered for exercise shall be accompanied by the Assignment Form attached hereto as Exhibit B duly executed by the Holder and the Company may require, as a condition thereto, the payment of a sum sufficient to reimburse it for any transfer tax incidental thereto. The Company shall pay all Transfer Agent fees required for same-day processing of any Notice of Exercise and all fees to the Depository Trust Company (or another established clearing corporation performing similar functions) required for same-day electronic delivery of the Warrant Shares.

vii. Closing of Books. The Company will not close its stockholder books or records in any manner which prevents the timely exercise of this Warrant, pursuant to the terms hereof.

e)[RESERVED]

f)[RESERVED]

Section 3. Certain Adjustments.

a) Stock Dividends and Splits. If the Company, at any time while this Warrant is outstanding: (i) pays a stock dividend or otherwise makes a distribution or distributions on shares of its Common Stock or any other equity or equity equivalent securities payable in shares of Common Stock (which, for avoidance of doubt, shall not include any shares of Common Stock issued by the Company upon exercise of this Warrant), (ii) subdivides outstanding shares of Common Stock into a larger number of shares, (iii) combines (including by way of reverse stock split) outstanding shares of Common Stock into a smaller number of shares or (iv) issues by reclassification of shares of the Common Stock any shares of capital stock of the Company, then in each case the Exercise Price shall be multiplied by a fraction of which the numerator shall be the number of shares of Common Stock (excluding treasury shares, if any) outstanding immediately before such event and of which the denominator shall be the number of shares of Common Stock outstanding immediately after such event, and the number of shares issuable upon exercise of this Warrant shall be proportionately adjusted such that the aggregate Exercise Price of this Warrant shall remain unchanged. Any adjustment made pursuant to this Section 3(a) shall become effective immediately after the record date for the determination of stockholders entitled to receive such dividend or distribution and shall become effective immediately after the effective date in the case of a subdivision, combination or re-classification.

b)[RESERVED]

c) Subsequent Rights Offerings. In addition to any adjustments pursuant to Section 3(a) above, if at any time the Company grants, issues or sells any Common Stock Equivalents or rights to purchase stock, warrants, securities or other property pro rata to the record holders of any class of shares of Common Stock (the "***Purchase Rights***"), then the Holder will be entitled to acquire, upon the terms applicable to such Purchase Rights, the aggregate Purchase Rights which the Holder could have acquired if the Holder had held the number of shares of Common Stock acquirable upon complete exercise of this Warrant immediately before the date on which a record is taken for the grant, issuance or sale of such Purchase Rights, or, if no such record is taken, the date as of which the record holders of shares of Common Stock are to be determined for the grant, issue or sale of such Purchase Rights.

d) Pro Rata Distributions. During such time as this Warrant is outstanding, if the Company shall declare or make any dividend or other distribution of its assets (or rights to acquire its assets) to holders of shares of Common Stock, by way of return of capital or otherwise (including, without limitation, any distribution of cash, stock or other securities, property or options by way of a dividend, spin off, reclassification, corporate rearrangement, scheme of arrangement or other similar transaction) (a "***Distribution***"), at any time after the issuance of this Warrant, then, in each such case, the Holder shall be entitled to participate in such Distribution to the same extent that the Holder would have participated therein if the Holder had held the number of shares of Common Stock acquirable upon complete exercise of this Warrant immediately before the date of which a record is taken for such Distribution, or, if no such record is taken, the date as of which the record holders of shares of Common Stock are to be determined for the participation

in such Distribution. To the extent that this Warrant has not been partially or completely exercised at the time of such Distribution, such portion of the Distribution shall be held in abeyance for the benefit of the Holder until the Holder has exercised this Warrant.

e) Fundamental Transaction. If, at any time while this Warrant is outstanding, (i) the Company, directly or indirectly, in one or more related transactions effects any merger or consolidation of the Company with or into another Person, (ii) the Company, directly or indirectly, effects any sale, lease, license, assignment, transfer, conveyance or other disposition of all or substantially all of its assets in one or a series of related transactions, (iii) any, direct or indirect, purchase offer, tender offer or exchange offer (whether by the Company or another Person) is completed pursuant to which holders of Common Stock are permitted to sell, tender or exchange their shares for other securities, cash or property and has been accepted by the holders of 50% or more of the outstanding Common Stock, (iv) the Company, directly or indirectly, in one or more related transactions effects any reclassification, reorganization or recapitalization of the Common Stock or any compulsory share exchange pursuant to which the Common Stock is effectively converted into or exchanged for other securities, cash or property, or (v) the Company, directly or indirectly, in one or more related transactions consummates a stock or share purchase agreement or other business combination (including, without limitation, a reorganization, recapitalization, spin-off or scheme of arrangement) with another Person or group of Persons whereby such other Person or group acquires more than 50% of the outstanding shares of Common Stock (not including any shares of Common Stock held by the other Person or other Persons making or party to, or associated or affiliated with the other Persons making or party to, such stock or share purchase agreement or other business combination) (each a "***Fundamental Transaction***"), then, upon any subsequent exercise of this Warrant, the Holder shall have the right to receive, for each Warrant Share that would have been issuable upon such exercise immediately prior to the occurrence of such Fundamental Transaction, at the option of the Holder (without regard to any limitation in Section 2(e) or Section 2(f) on the exercise of this Warrant), the number of shares of Common Stock of the successor or acquiring corporation or of the Company, if it is the surviving corporation, and any additional consideration (the "***Alternate Consideration***") receivable as a result of such Fundamental Transaction by a holder of the number of shares of Common Stock for which this Warrant is exercisable immediately prior to such Fundamental Transaction (without regard to any limitation in Section 2(e) or Section 2(f) on the exercise of this Warrant). For purposes of any such exercise, the determination of the Exercise Price shall be appropriately adjusted to apply to such Alternate Consideration based on the amount of Alternate Consideration issuable in respect of one share of Common Stock in such Fundamental Transaction, and the Company shall apportion the Exercise Price among the Alternate Consideration in a reasonable manner reflecting the relative value of any different components of the Alternate Consideration. If holders of Common Stock are given any choice as to the securities, cash or property to be received in a Fundamental Transaction, then the Holder shall be given the same choice as to the Alternate Consideration it receives upon any exercise of this Warrant following such Fundamental Transaction. Notwithstanding anything to the contrary, in the event of a Fundamental Transaction, the Company or any Successor Entity (as defined below) shall, at the Holder's option, exercisable at any time

concurrently with, or within 30 days after, the consummation of the Fundamental Transaction (or, if later, the date of the public announcement of the applicable Fundamental Transaction), purchase this Warrant from the Holder by paying to the Holder an amount of cash equal to the Black Scholes Value (as defined below) of the remaining unexercised portion of this Warrant on the date of the consummation of such Fundamental Transaction; *provided*, *however*, that, if the Fundamental Transaction is not within the Company's control, including not approved by the Company's Board of Directors, Holder shall only be entitled to receive from the Company or any Successor Entity, as of the date of consummation of such Fundamental Transaction, the same type or form of consideration (and in the same proportion), at the Black Scholes Value of the unexercised portion of this Warrant, that is being offered and paid to the holders of Common Stock of the Company in connection with the Fundamental Transaction, whether that consideration be in the form of cash, stock or any combination thereof, or whether the holders of Common Stock are given the choice to receive from among alternative forms of consideration in connection with the Fundamental Transaction. "Black Scholes Value" means the value of this Warrant based on the Black-Scholes Option Pricing Model obtained from the "OV" function on Bloomberg, L.P. ("***Bloomberg***") determined as of the day of consummation of the applicable Fundamental Transaction for pricing purposes and reflecting (A) a risk-free interest rate corresponding to the U.S. Treasury rate for a period equal to the time between the date of the public announcement of the applicable Fundamental Transaction and the Termination Date, (B) an expected volatility equal to the Remaining Day volatility, wherein "Remaining Day" shall be equal to the number of days remaining on the term of this Warrant on the date of the public announcement of the applicable Fundamental Transaction, obtained from the HVT function on Bloomberg as of the Trading Day immediately following the public announcement of the applicable Fundamental Transaction, (C) the underlying price per share used in such calculation shall be the greater of (i) the sum of the price per share being offered in cash, if any, plus the value of any non-cash consideration, if any, being offered in such Fundamental Transaction and (ii) the greater of (x) the last VWAP immediately prior to the public announcement of such Fundamental Transaction and
(y) the last VWAP immediately prior to the consummation of such Fundamental Transaction and (D) a remaining option time equal to the time between the date of the public announcement of the applicable Fundamental Transaction and the Termination Date. The payment of the Black Scholes Value will be made by wire transfer of immediately available funds within five Business Days of the Holder's election (or, if later, on the effective date of the Fundamental Transaction). The Company shall cause any successor entity in a Fundamental Transaction in which the Company is not the survivor (the "***Successor Entity***") to assume in writing all of the obligations of the Company under this Warrant and the Transaction Documents in accordance with the provisions of this Section 3(e) pursuant to written agreements in form and substance reasonably satisfactory to the Holder and approved by the Holder (without unreasonable delay) prior to such Fundamental Transaction and shall, at the option of the Holder, deliver to the Holder in exchange for this Warrant a security of the Successor Entity evidenced by a written instrument substantially similar in form and substance to this Warrant which is exercisable for a corresponding number of shares of capital stock of such Successor Entity (or its parent entity) equivalent to the shares of Common Stock

acquirable and receivable upon exercise of this Warrant (without regard to any limitations on the exercise of this Warrant) prior to such Fundamental Transaction, and with an exercise price which applies the exercise price hereunder to such shares of capital stock (but taking into account the relative value of the shares of Common Stock pursuant to such Fundamental Transaction and the value of such shares of capital stock, such number of shares of capital stock and such exercise price being for the purpose of protecting the economic value of this Warrant immediately prior to the consummation of such Fundamental Transaction), and which is reasonably satisfactory in form and substance to the Holder. Upon the occurrence of any such Fundamental Transaction, the Successor Entity shall succeed to, and be substituted for (so that from and after the date of such Fundamental Transaction, the provisions of this Warrant and the Transaction Documents referring to the "Company" shall refer instead to the Successor Entity), and may exercise every right and power of the Company and shall assume all of the obligations of the Company under this Warrant and the Transaction Documents with the same effect as if such Successor Entity had been named as the Company herein.

f) Calculations. All calculations under this Section 3 shall be made to the nearest cent or the nearest 1/100th of a share, as the case may be. For purposes of this Section 3, the number of shares of Common Stock deemed to be issued and outstanding as of a given date shall be the sum of the number of shares of Common Stock (excluding treasury shares, if any) issued and outstanding.

g) Notice to Holder.

i. Adjustment to Exercise Price. Whenever the Exercise Price is adjusted pursuant to any provision of this Section 3, the Company shall promptly deliver to the Holder by facsimile or email a notice setting forth the Exercise Price after such adjustment and any resulting adjustment to the number of Warrant Shares and setting forth a brief statement of the facts requiring such adjustment.

ii. Notice to Allow Exercise by Holder. If (A) the Company shall declare a dividend (or any other distribution in whatever form) on the Common Stock, (B) the Company shall declare a special nonrecurring cash dividend on or a redemption of the Common Stock, (C) the Company shall authorize the granting to all holders of the Common Stock rights or warrants to subscribe for or purchase any shares of capital stock of any class or of any rights, (D) the approval of any stockholders of the Company shall be required in connection with any reclassification of the Common Stock, any consolidation or merger to which the Company is a party, any sale or transfer of all or substantially all of the assets of the Company, or any compulsory share exchange whereby the Common Stock is converted into other securities, cash or property, or (E) the Company shall authorize the voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Company, then, in each case, the Company shall cause to be delivered by facsimile or email to the Holder at its last facsimile number or email address

as it shall appear upon the Warrant Register of the Company, at least 20 calendar days prior to the applicable record or effective date hereinafter specified, a notice stating (x) the date on which a record is to be taken for the purpose of such dividend, distribution, redemption, rights or warrants, or if a record is not to be taken, the date as of which the holders of the Common Stock of record to be entitled to such dividend, distributions, redemption, rights or warrants are to be determined or (y) the date on which such reclassification, consolidation, merger, sale, transfer or share exchange is expected to become effective or close, and the date as of which it is expected that holders of the Common Stock of record shall be entitled to exchange their shares of the Common Stock for securities, cash or other property deliverable upon such reclassification, consolidation, merger, sale, transfer or share exchange; *provided* that the failure to deliver such notice or any defect therein or in the delivery thereof shall not affect the validity of the corporate action required to be specified in such notice. To the extent that any notice provided in this Warrant constitutes, or contains, material, non-public information regarding the Company or any of the Subsidiaries, the Company shall simultaneously file such notice with the Commission pursuant to a Current Report on Form 8-K. The Holder shall remain entitled to exercise this Warrant during the period commencing on the date of such notice to the effective date of the event triggering such notice except as may otherwise be expressly set forth herein.

Section 4. Transfer of Warrant.

a) Transferability. Subject to compliance with any applicable securities laws and the conditions set forth in Section 4(d) hereof, this Warrant and all rights hereunder (including, without limitation, any registration rights) are transferable, in whole or in part, upon surrender of this Warrant at the principal office of the Company or its designated agent, together with a written assignment of this Warrant substantially in the form attached hereto duly executed by the Holder or its agent or attorney and funds sufficient to pay any transfer taxes payable upon the making of such transfer. Upon such surrender and, if required, such payment, the Company shall execute and deliver a new Warrant or Warrants in the name of the assignee or assignees, as applicable, and in the denomination or denominations specified in such instrument of assignment, and shall issue to the assignor a new Warrant evidencing the portion of this Warrant not so assigned, and this Warrant shall promptly be cancelled. Notwithstanding anything herein to the contrary, the Holder shall not be required to physically surrender this Warrant to the Company unless the Holder has assigned this Warrant in full, in which case, the Holder shall surrender this Warrant to the Company within three (3) Trading Days of the date on which the Holder delivers an assignment form to the Company assigning this Warrant in full. The Warrant, if properly assigned in accordance herewith, may be exercised by a new holder for the purchase of Warrant Shares without having a new Warrant issued.

b) New Warrants. This Warrant may be divided or combined with other Warrants upon presentation hereof at the aforesaid office of the Company, together with a

written notice specifying the names and denominations in which new Warrants are to be issued, signed by the Holder or its agent or attorney. Subject to compliance with Section 4(a), as to any transfer that may be involved in such division or combination, the Company shall execute and deliver a new Warrant or Warrants in exchange for the Warrant or Warrants to be divided or combined in accordance with such notice. All Warrants issued on transfers or exchanges shall be dated the Initial Exercise Date and shall be identical with this Warrant except as to the number of Warrant Shares issuable pursuant thereto.

c) Warrant Register. The Company shall register this Warrant, upon records to be maintained by the Company for that purpose (the "***Warrant Register***"), in the name of the record Holder hereof from time to time. The Company may deem and treat the registered Holder of this Warrant as the absolute owner hereof for the purpose of any exercise hereof or any distribution to the Holder, and for all other purposes, absent actual notice to the contrary.

d)[RESERVED]

e) Representation by the Holder. The Holder, by the acceptance hereof, represents and warrants that it is acquiring this Warrant and, upon any exercise hereof, will acquire the Warrant Shares issuable upon such exercise, for its own account and not with a view to or for distributing or reselling such Warrant Shares or any part thereof in violation of the Securities Act or any applicable state securities law, except pursuant to sales registered or exempted under the Securities Act.

Section 5. Miscellaneous.

a) No Rights as Stockholder Until Exercise. This Warrant does not entitle the Holder to any voting rights, dividends or other rights as a stockholder of the Company prior to the exercise hereof as set forth in Section 2(d)(i), except as expressly set forth in Section 3.

b) Loss, Theft, Destruction or Mutilation of Warrant. The Company covenants that upon receipt by the Company of evidence reasonably satisfactory to it of the loss, theft, destruction or mutilation of this Warrant or any stock certificate relating to the Warrant Shares, and in case of loss, theft or destruction, of indemnity or security reasonably satisfactory to it (which, in the case of the Warrant, shall not include the posting of any bond), and upon surrender and cancellation of such Warrant or stock certificate, if mutilated, the Company will make and deliver a new Warrant or stock certificate of like tenor and dated as of such cancellation, in lieu of such Warrant or stock certificate.

c) Saturdays, Sundays, Holidays, etc. If the last or appointed day for the taking of any action or the expiration of any right required or granted herein shall not be a Business Day, then, such action may be taken or such right may be exercised on the next succeeding Business Day.

d) Authorized Shares.

The Company covenants that, during the period the Warrant is outstanding, it will reserve from its authorized and unissued Common Stock a sufficient number of shares to provide for the issuance of the Warrant Shares upon the exercise of any purchase rights under this Warrant. The Company further covenants that its issuance of this Warrant shall constitute full authority to its officers who are charged with the duty of issuing the necessary Warrant Shares upon the exercise of the purchase rights under this Warrant. The Company will take all such reasonable action as may be necessary to assure that such Warrant Shares may be issued as provided herein without violation of any applicable law or regulation, or of any requirements of the Trading Market upon which the Common Stock may be listed. The Company covenants that all Warrant Shares that may be issued upon the exercise of the purchase rights represented by this Warrant will, upon exercise of the purchase rights represented by this Warrant and payment for such Warrant Shares in accordance herewith, be duly authorized, validly issued, fully paid and nonassessable and free from all taxes, liens and charges created by the Company in respect of the issue thereof (other than taxes in respect of any transfer occurring contemporaneously with such issue).

Except and to the extent as waived or consented to by the Holder, the Company shall not by any action, including, without limitation, amending its certificate of incorporation or through any reorganization, transfer of assets, consolidation, merger, dissolution, issue 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, but will at all times in good faith assist in the carrying out of all such terms and in the taking of all such actions as may be necessary or appropriate to protect the rights of Holder as set forth in this Warrant against impairment. Without limiting the generality of the foregoing, the Company will (i) not increase the par value of any Warrant Shares above the amount payable therefor upon such exercise immediately prior to such increase in par value, (ii) take all such action as may be necessary or appropriate in order that the Company may validly and legally issue fully paid and nonassessable Warrant Shares upon the exercise of this Warrant and
(iii) use commercially reasonable efforts to obtain all such authorizations, exemptions or consents from any public regulatory body having jurisdiction thereof, as may be, necessary to enable the Company to perform its obligations under this Warrant.

Before taking any action which would result in an adjustment in the number of Warrant Shares for which this Warrant is exercisable or in the Exercise Price, the Company shall obtain all such authorizations or exemptions thereof, or consents thereto, as may be necessary from any public regulatory body or bodies having jurisdiction thereof.

e) Governing Law. All questions concerning the construction, validity, enforcement and interpretation of the Transaction Documents shall be governed by and construed and enforced in accordance with the internal laws of the State of New York, without regard to the principles of conflicts of law thereof. Each party agrees that all legal Proceedings concerning the interpretations, enforcement and defense of the transactions contemplated by this Agreement and any other Transaction Documents (whether brought against a party hereto or its respective affiliates, directors, officers, shareholders, partners, members, employees or agents) shall be commenced exclusively in the state and federal courts sitting in the City of New York. Each party hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in the City of New York, Borough of Manhattan for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein (including with respect to the enforcement of any of the Transaction Documents), and hereby irrevocably waives, and agrees not to assert in any Action or Proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such Action or Proceeding is improper or is an inconvenient venue for such Proceeding. Each party hereby irrevocably waives personal service of process and consents to process being served in any such Action or Proceeding by mailing a copy thereof via registered or certified mail or overnight delivery (with evidence of delivery) to such party at the address in effect for notices to it under this Agreement and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any other manner permitted by law.

f) Restrictions. The Holder acknowledges that the Warrant Shares acquired upon the exercise of this Warrant, if not registered and the Holder does not utilize cashless exercise, will have restrictions upon resale imposed by state and federal securities laws.

g) Nonwaiver and Expenses. No course of dealing or any delay or failure to exercise any right hereunder on the part of Holder shall operate as a waiver of such right or otherwise prejudice the Holder's rights, powers or remedies. Without limiting any other provision of this Warrant [or the Exercise Agreement], if the Company willfully and knowingly fails to comply with any provision of this Warrant, which results in any material damages to the Holder, the Company shall pay to the Holder such amounts as shall be sufficient to cover any costs and expenses including, but not limited to, reasonable attorneys' fees, including those of appellate proceedings, incurred by the Holder in collecting any amounts due pursuant hereto or in otherwise enforcing any of its rights, powers or remedies hereunder.

h) Notices. Any and all notices or other communications or deliveries required or permitted to be provided hereunder shall be in writing and shall be deemed given and effective on the earliest of: (a) the date of transmission, if such notice or communication is delivered via facsimile at the facsimile number or email attachment at the email address as set forth on the signature pages attached hereto at or prior to 5:30 p.m. (New York City time) on a Trading Day, (b) the next Trading Day after the date of

transmission, if such notice or communication is delivered via facsimile at the facsimile number or email attachment at the email address as set forth on the signature pages attached hereto on a day that is not a Trading Day or later than 5:30 p.m. (New York City time) on any Trading Day, (c) the second (2) Trading Day following the date of mailing, if sent by U.S. nationally recognized overnight courier service or (d) upon actual receipt by the party to whom such notice is required to be given. The address for such notices and communications shall be as set forth on the signature pages attached hereto. To the extent that any notice constitutes, or contains material, non-public information regarding the Company or any of the Subsidiaries, the Company shall simultaneously file such notice with the Commission pursuant to a Current Report on Form 8-K.

i) Limitation of Liability. No provision hereof, in the absence of any affirmative action by the Holder to exercise this Warrant to purchase Warrant Shares, and no enumeration herein of the rights or privileges of the Holder, shall give rise to any liability of the Holder for the purchase price of any Common Stock or as a stockholder of the Company, whether such liability is asserted by the Company or by creditors of the Company.

j) Remedies. The Holder, in addition to being entitled to exercise all rights granted by law, including recovery of damages, will be entitled to specific performance of its rights under this Warrant. The Company agrees that monetary damages would not be adequate compensation for any loss incurred by reason of a breach by it of the provisions of this Warrant and hereby agrees to waive and not to assert the defense in any action for specific performance that a remedy at law would be adequate.

k) Successors and Assigns. Subject to applicable securities laws, this Warrant and the rights and obligations evidenced hereby shall inure to the benefit of and be binding upon the successors and permitted assigns of the Company and the successors and permitted assigns of Holder. The provisions of this Warrant are intended to be for the benefit of any Holder from time to time of this Warrant and shall be enforceable by the Holder or holder of Warrant Shares.

l) Amendment. This Warrant may be modified or amended or the provisions hereof waived with the written consent of the Company and the Holder.

m) Severability. Wherever possible, each provision of this Warrant shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Warrant shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provisions or the remaining provisions of this Warrant.

n) Headings. The headings used in this Warrant are for the convenience of reference only and shall not, for any purpose, be deemed a part of this Warrant.

**********

*(Signature Page Follows)*

IN WITNESS WHEREOF, the Company has caused this Warrant to be executed by its officer thereunto duly authorized as of the date first above indicated.

**RESHAPE LIFESCIENCES INC.**

By: _____
Name:
Title:

**EXHIBIT A**

**NOTICE OF EXERCISE**

TO: **RESHAPE LIFESCIENCES INC.**

(1)The undersigned hereby elects to purchase _____Warrant Shares of the Company pursuant to the terms of the attached Warrant (only if exercised in full), and tenders herewith payment of the exercise price in full, together with all applicable transfer taxes, if any.

(2) Payment shall take the form of (check applicable box):

[ ] in lawful money of the United States; or

[ ] if permitted, the cancellation of such number of Warrant Shares as is necessary, in accordance with the formula set forth in subsection 2(c), to exercise this Warrant with respect to the maximum number of Warrant Shares purchasable pursuant to the cashless exercise procedure set forth in subsection 2(c).

(3)Please issue said Warrant Shares in the name of the undersigned or in such other name as is specified below:

_____

The Warrant Shares shall be delivered to the following DWAC Account Number:

_____

_____

_____

(4) Accredited Investor. The undersigned is an "accredited investor" as defined in Regulation D promulgated under the Securities Act of 1933, as amended.

[SIGNATURE OF HOLDER]

Name of Investing
Entity:_____

*Signature of Authorized*
*Signatory of Investing*
*Entity*:_____

Name of
Authorized _____

Signatory: _____

Title of Authorized
Signatory: _____

Date: _____

**EXHIBIT B**

**ASSIGNMENT FORM**

*(To assign the foregoing Warrant, execute this form and supply required information. Do not use this form to purchase shares.)*

FOR VALUE RECEIVED, the foregoing Warrant and all rights evidenced thereby are hereby assigned to

Name: _____
(Please Print)

Address: _____
(Please Print)

Phone Number: _____

Email Address: _____

Dated: _____, _____

Holder's Signature: _____

Holder's Address: _____

**Exhibit C**

Form of Registration Rights Agreement

(see attached)

**REGISTRATION RIGHTS AGREEMENT**

This Registration Rights Agreement (this "***Agreement***") is made and entered into as of [____] [ ], 2020, between ReShape Life Sciences, Inc., a Delaware corporation (the "***Company***"), and the purchaser signatory hereto (the "***Purchaser***").

This Agreement is made pursuant to the Securities Purchase Agreement, dated as of the date hereof, between the Company and the Purchaser (the "***Purchase Agreement***").

The Company and the Purchaser hereby agrees as follows:

1. Definitions.

As used in this Agreement, the following terms shall have the following meanings: "***Advice***" shall have the meaning set forth in Section 6(d).

"***Commission***" means the United States Securities and Exchange Commission.

"***Common Stock***" means the common stock of the Company, par value $0.01 per share, and any other class of securities into which such securities may hereafter be reclassified or changed.

"***Effectiveness Date***" means, with respect to the Initial Registration Statement required to be filed hereunder, the later of (i) the 90th calendar day following the date hereof (or, in the event of a "full review" by the Commission, the 120th calendar day following the date hereof); *provided, however*, that in the event the Company is notified by the Commission that one or more of the above Registration Statements will not be reviewed or is no longer subject to further review and comments, the Effectiveness Date as to such Registration Statement shall be the fifth Trading Day following the date on which the Company is so notified if such date precedes the dates otherwise required above, provided, further, if such Effectiveness Date falls on a day that is not a Trading Day, then the Effectiveness Date shall be the next succeeding Trading Day.

"***Effectiveness Period***" shall have the meaning set forth in Section 2(a).

"***Event***" shall have the meaning set forth in Section 2(d).

"***Event Date***" shall have the meaning set forth in Section 2(d).

"***Filing Date***" means, with respect to the Initial Registration Statement required hereunder, the 60th calendar day following the date hereof and, with respect to any additional Registration Statements which may be required pursuant to Section 2(c) or Section 3(c), the earliest practical date on which the Company is permitted by SEC Guidance to file such additional Registration Statement related to the Registrable Securities.

"***Holder***" means the holder of Registrable Securities.

"***Indemnified Party***" shall have the meaning set forth in Section 5(c).

"***Indemnifying Party***" shall have the meaning set forth in Section 5(c).

"***Initial Registration Statement***" means the initial Registration Statement filed pursuant to this Agreement.

"***Losses***" shall have the meaning set forth in Section 5(a).

"***Plan of Distribution***" shall have the meaning set forth in Section 2(a).

"***Prospectus***" means the prospectus included in a Registration Statement (including, without limitation, a prospectus that includes any information previously omitted from a prospectus filed as part of an effective registration statement in reliance upon Rule 430A promulgated by the Commission pursuant to the Securities Act), as amended or supplemented by any prospectus supplement, with respect to the terms of the offering of any portion of the Registrable Securities covered by a Registration Statement, and all other amendments and supplements to the Prospectus, including post-effective amendments, and all material incorporated by reference or deemed to be incorporated by reference in such Prospectus.

"***Registrable Securities***" means, as of any date of determination, (a) all Shares,
(b) all Warrant Shares then issued and issuable upon exercise of the Warrants (assuming on such date the Warrants are exercised in full without regard to any exercise limitations therein), (c) any additional shares of Common Stock issued and issuable in connection with any anti-dilution provisions in the Purchase Agreement and the Warrants (in each case, without giving effect to any limitations on exercise set forth in the Warrants) and
(d) any securities issued or then issuable upon any stock split, dividend or other distribution, recapitalization or similar event with respect to the foregoing; *provided*, *however*, that any such Registrable Securities shall cease to be Registrable Securities (and the Company shall not be required to maintain the effectiveness of any, or file another, Registration Statement hereunder with respect thereto) for so long as (a) a Registration Statement with respect to the sale of such Registrable Securities is declared effective by the Commission under the Securities Act and such Registrable Securities have been disposed of by the Holder in accordance with such effective Registration Statement, (b) such Registrable Securities have been previously sold in accordance with Rule 144, or (c) such securities become eligible for resale without volume or manner-of- sale restrictions and without current public information pursuant to Rule 144, as set forth in a written opinion letter to such effect, addressed, delivered and acceptable to the Transfer Agent and the Holder.

"***Registration Statement***" means any registration statement required to be filed hereunder pursuant to Section 2(a) and any additional registration statements

contemplated by Section 2(c) or Section 3(c), including (in each case) the Prospectus, amendments and supplements to any such registration statement or Prospectus, including pre- and post-effective amendments, all exhibits thereto, and all material incorporated by reference or deemed to be incorporated by reference in any such registration statement.

"***Rule 144***" means Rule 144 promulgated by the Commission pursuant to the Securities Act, as such Rule may be amended or interpreted from time to time, or any similar rule or regulation hereafter adopted by the Commission having substantially the same purpose and effect as such Rule.

"***Rule 415***" means Rule 415 promulgated by the Commission pursuant to the Securities Act, as such Rule may be amended or interpreted from time to time, or any similar rule or regulation hereafter adopted by the Commission having substantially the same purpose and effect as such Rule.

"***Rule 424***" means Rule 424 promulgated by the Commission pursuant to the Securities Act, as such Rule may be amended or interpreted from time to time, or any similar rule or regulation hereafter adopted by the Commission having substantially the same purpose and effect as such Rule.

"***Selling Stockholder Questionnaire***" shall have the meaning set forth in Section 3(a).

"***SEC Guidance***" means (i) any publicly-available written or oral guidance of the Commission staff, or any comments, requirements or requests of the Commission staff and (ii) the Securities Act.

"***Securities Act***" means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

"***Series G Warrants***" means, collectively, the Series G Common Stock purchase warrants, which Warrants shall be exercisable immediately, subject to the Issuable Maximum, have an exercise price equal to $[_] per share (subject to adjustment as provided therein) and have a term of exercise equal to [ ].

"***Trading Day***" means a day on which the principal Trading Market is open for trading.

"***Trading Market***" means any of the following markets or exchanges on which the Common Stock is listed or quoted for trading on the date in question: the NYSE American, the Nasdaq Capital Market, the Nasdaq Global Market, the Nasdaq Global Select Market, the New York Stock Exchange, OTCQB or OTCQX (or any successors to any of the foregoing).

"***Transfer Agent***" means EQ Shareowner Services (f/k/a Wells Fargo Shareowner Services), the current transfer agent of the Company, with a mailing address of 1110 Centre Pointe Curve, Suite 101, Mendota Heights, Minnesota 55120 and a facsimile number of 651-450-4078, and any successor transfer agent of the Company.

"***Warrants***" means, collectively, the Series G Warrants.

"***Warrant Shares***" means the shares of Common Stock issuable upon exercise of the Warrants.

2. Shelf Registration.

(a)On or prior to each Filing Date, the Company shall prepare and file with the Commission a Registration Statement covering the resale of all of the Registrable Securities that are not then registered on an effective Registration Statement for an offering to be made on a continuous basis pursuant to Rule 415. Each Registration Statement filed hereunder shall be on Form S-3 (except if the Company is not then eligible to register for resale the Registrable Securities on Form S-3, in which case such registration shall be on another appropriate form in accordance herewith, subject to the provisions of Section 2(e)) and shall contain (unless otherwise directed by the Holder) substantially the "Plan of Distribution" attached hereto as Annex A; *provided*, *however*, that the Holder shall not be required to be named as an "underwriter" without the Holder's express prior written consent. Subject to the terms of this Agreement, the Company shall use its best efforts to cause a Registration Statement filed under this Agreement (including, without limitation, under Section 3(c)) to be declared effective under the Securities Act as promptly as possible after the filing thereof, but in any event no later than the applicable Effectiveness Date, and shall use its best efforts to keep such Registration Statement continuously effective under the Securities Act until the date that all Registrable Securities covered by such Registration Statement (i) have been sold, thereunder or pursuant to Rule 144, or (ii) may be sold without volume or manner-of-sale restrictions pursuant to Rule 144 and without the requirement for the Company to be in compliance with the current public information requirement under Rule 144, as determined by the counsel to the Company pursuant to a written opinion letter to such effect, addressed and acceptable to the Transfer Agent and the Holder (the "***Effectiveness Period***"). The Company shall request effectiveness of a Registration Statement as of 5:00 p.m. (New York City time) on a Trading Day. The Company shall immediately notify the Holder by e-mail of the effectiveness of a Registration Statement on the same Trading Day that the Company telephonically confirms effectiveness with the Commission, which shall be the date requested for effectiveness of such Registration Statement. The Company shall, by 9:30 a.m. (New York City time) on the Trading Day after the effective date of such Registration Statement, file a final Prospectus with the Commission as required by Rule 424. Failure to so notify the Holder within one (1) Trading Day of such notification of effectiveness or failure to file a final Prospectus as foresaid shall be deemed an Event under Section 2(d).

(b)Notwithstanding the registration obligations set forth in Section 2(a), if the Commission informs the Company that all of the Registrable Securities cannot, as a result of the application of Rule 415, be registered for resale as a secondary offering on a single registration statement, the Company agrees to promptly inform the Holder thereof and use its commercially reasonable efforts to file amendments to the Initial Registration Statement as required by the Commission, covering the maximum number of Registrable Securities permitted to be registered by the Commission, on Form S-3 or such other form available to register for resale the Registrable Securities as a secondary offering, subject to the provisions of Section 2(e); with respect to filing on Form S-3 or other appropriate form; *provided*, *however*, that prior to filing such amendment, the Company shall be obligated to use diligent efforts to advocate with the Commission for the registration of all of the Registrable Securities in accordance with the SEC Guidance, including without limitation, Compliance and Disclosure Interpretation 612.09.

(c)Notwithstanding any other provision of this Agreement, if the Commission or any SEC Guidance sets forth a limitation on the number of Registrable Securities permitted to be registered on a particular Registration Statement as a secondary offering (and notwithstanding that the Company used diligent efforts to advocate with the Commission for the registration of all or a greater portion of Registrable Securities), unless otherwise directed in writing by the Holder, the number of Registrable Securities to be registered on such Registration Statement will be reduced as follows:

a. First, the Company shall reduce or eliminate any securities to be included other than Registrable Securities; and

b. Second, the Company shall reduce Registrable Securities represented by Warrant Shares underlying the Series G Warrants.

In the event of a cutback hereunder, the Company shall give the Holder at least five (5) Trading Days prior written notice along with the calculations as to the Holder's allotment. In the event the Company amends the Initial Registration Statement in accordance with the foregoing, the Company will use its best efforts to file with the Commission, as promptly as allowed by Commission or SEC Guidance provided to the Company or to registrants of securities in general, one or more registration statements on Form S-3 or such other form available to register for resale those Registrable Securities that were not registered for resale on the Initial Registration Statement, as amended.

(d)If: (i) the Initial Registration Statement is not filed on or prior to its Filing Date (if the Company files the Initial Registration Statement without affording the Holder the opportunity to review and comment on the same as required by Section 3(a) herein, the Company shall be deemed to have not satisfied this clause (i)), or (ii) the Company fails to file with the Commission a request for acceleration of a Registration Statement in accordance with Rule 461 promulgated by the Commission pursuant to the Securities Act, within five Trading Days of the date that the Company is notified (orally or in writing, whichever is earlier) by the Commission that such Registration Statement will not be "reviewed" or will not be subject to further review, or (iii) prior to the effective

date of a Registration Statement, the Company fails to file a pre-effective amendment and otherwise respond in writing to comments made by the Commission in respect of such Registration Statement within ten (10) calendar days after the receipt of comments by or notice from the Commission that such amendment is required in order for such Registration Statement to be declared effective, or (iv) a Registration Statement registering for resale all of the Registrable Securities is not declared effective by the Commission by the Effectiveness Date of the Initial Registration Statement, or (v) after the effective date of a Registration Statement, such Registration Statement ceases for any reason to remain continuously effective as to all Registrable Securities included in such Registration Statement, or the Holder is otherwise not permitted to utilize the Prospectus therein to resell such Registrable Securities, for more than ten (10) consecutive calendar days or more than an aggregate of fifteen (15) calendar days (which need not be consecutive calendar days) during any 12-month period (any such failure or breach being referred to as an "***Event***", and for purposes of clauses (i) and (iv), the date on which such Event occurs, and for purpose of clause (ii) the date on which such five (5) Trading Day period is exceeded, and for purpose of clause (iii) the date which such ten (10) calendar day period is exceeded, and for purpose of clause (v) the date on which such ten (10) or fifteen (15) calendar day period, as applicable, is exceeded being referred to as "***Event Date***"), then, in addition to any other rights the Holder may have hereunder or under applicable law, on each such Event Date and on each monthly anniversary of each such Event Date (if the applicable Event shall not have been cured by such date) until the applicable Event is cured, the Company shall pay to the Holder an amount in cash, as partial liquidated damages and not as a penalty, equal to the product of 1.0% multiplied by the aggregate Subscription Amount paid by the Holder pursuant to the Purchase Agreement. If the Company fails to pay any partial liquidated damages pursuant to this Section in full within seven days after the date payable, the Company will pay interest thereon at a rate of 18% per annum (or such lesser maximum amount that is permitted to be paid by applicable law) to the Holder, accruing daily from the date such partial liquidated damages are due until such amounts, plus all such interest thereon, are paid in full. The partial liquidated damages pursuant to the terms hereof shall apply on a daily pro rata basis for any portion of a month prior to the cure of an Event. Notwithstanding anything to the contrary contained herein, no liquidated damages shall accrue as to any Registrable Securities that are subject to a cut- back pursuant to Section 2(c) ("***Cut Back Shares")*** until such date as the Company is able to effect the registration of such Cut Back Shares in accordance with any restrictions required by the Commission. From and after the date that such restrictions are terminated, all of the provisions of this Section 2(d) shall again be applicable to such Cut Back Shares; provided, however, that the Filing Date and Effectiveness Date for the Registration Statement including such Cut Back Shares shall be based on the termination date of such restriction.

(e)If Form S-3 is not available for the registration of the resale of Registrable Securities hereunder, the Company shall (i) register the resale of the Registrable Securities on another appropriate form and (ii) undertake to register the Registrable Securities on Form S-3 as soon as such form is available, provided that the Company shall maintain the effectiveness of the Registration Statement then in effect until such

time as a Registration Statement on Form S-3 covering the Registrable Securities has been declared effective by the Commission.

(f)Notwithstanding anything to the contrary contained herein, in no event shall the Company be permitted to name the Holder or affiliate of the Holder as an Underwriter without the prior written consent of the Holder.

3. Registration Procedures.

In connection with the Company's registration obligations hereunder, the Company shall:

(a)Not less than five (5) Trading Days prior to the filing of each Registration Statement and not less than one (1) Trading Day prior to the filing of any related Prospectus or any amendment or supplement thereto (including any document that would be incorporated or deemed to be incorporated therein by reference), the Company shall (i) furnish to the Holder copies of all such documents proposed to be filed, which documents (other than those incorporated or deemed to be incorporated by reference) will be subject to the review of the Holder, and (ii) cause its officers and directors, counsel and independent registered public accountants to respond to such inquiries as shall be necessary, in the reasonable opinion of counsel to the Holder, to conduct a reasonable investigation within the meaning of the Securities Act. The Company shall not file a Registration Statement or any such Prospectus or any amendments or supplements thereto to which the Holder shall reasonably object in good faith, provided that, the Company is notified of such objection in writing no later than five (5) Trading Days after the Holder have been so furnished copies of a Registration Statement or one (1) Trading Day after the Holder has been so furnished copies of any related Prospectus or amendments or supplements thereto. The Holder agrees to furnish to the Company a completed questionnaire in the form attached to this Agreement as Annex B (a "***Selling Stockholder Questionnaire***") on a date that is not less than two (2) Trading Days prior to the Filing Date or by the end of the fourth (4th) Trading Day following the date on which the Holder receives draft materials in accordance with this Section.

(b)(i) Prepare and file with the Commission such amendments, including post- effective amendments, to a Registration Statement and the Prospectus used in connection therewith as may be necessary to keep a Registration Statement continuously effective as to the applicable Registrable Securities for the Effectiveness Period and prepare and file with the Commission such additional Registration Statements in order to register for resale under the Securities Act all of the Registrable Securities, (ii) cause the related Prospectus to be amended or supplemented by any required Prospectus supplement (subject to the terms of this Agreement), and, as so supplemented or amended, to be filed pursuant to Rule 424, (iii) respond as promptly as reasonably possible to any comments received from the Commission with respect to a Registration Statement or any amendment thereto and provide as promptly as reasonably possible to the Holder true and complete copies of all correspondence from and to the Commission relating to a Registration Statement (provided that, the Company shall excise any information

contained therein which would constitute material non-public information regarding the Company or any of its Subsidiaries), and (iv) comply in all material respects with the applicable provisions of the Securities Act and the Exchange Act with respect to the disposition of all Registrable Securities covered by a Registration Statement during the applicable period in accordance (subject to the terms of this Agreement) with the intended methods of disposition by the Holder as set forth in such Registration Statement as so amended or in such Prospectus as so supplemented.

(c)If during the Effectiveness Period, the number of Registrable Securities at any time exceeds 100% of the number of shares of Common Stock then registered in a Registration Statement, then the Company shall file as soon as reasonably practicable, but in any case prior to the applicable Filing Date, an additional Registration Statement covering the resale by the Holder of not less than the number of such Registrable Securities.

(d)Notify the Holder of Registrable Securities to be sold (which notice shall, pursuant to clauses (iii) through (vi) hereof, be accompanied by an instruction to suspend the use of the Prospectus until the requisite changes have been made) as promptly as reasonably possible (and, in the case of (i)(A) below, not less than one (1) Trading Day prior to such filing) and (if requested by any such Person) confirm such notice in writing no later than one (1) Trading Day following the day (i)(A) when a Prospectus or any Prospectus supplement or post-effective amendment to a Registration Statement is proposed to be filed, (B) when the Commission notifies the Company whether there will be a "review" of such Registration Statement and whenever the Commission comments in writing on such Registration Statement, and (C) with respect to a Registration Statement or any post-effective amendment, when the same has become effective, (ii) of any request by the Commission or any other federal or state governmental authority for amendments or supplements to a Registration Statement or Prospectus or for additional information, (iii) of the issuance by the Commission or any other federal or state governmental authority of any stop order suspending the effectiveness of a Registration Statement covering any or all of the Registrable Securities or the initiation of any Proceedings for that purpose, (iv) of the receipt by the Company of any notification with respect to the suspension of the qualification or exemption from qualification of any of the Registrable Securities for sale in any jurisdiction, or the initiation or threatening of any Proceeding for such purpose, (v) of the occurrence of any event or passage of time that makes the financial statements included in a Registration Statement ineligible for inclusion therein or any statement made in a Registration Statement or Prospectus or any document incorporated or deemed to be incorporated therein by reference untrue in any material respect or that requires any revisions to a Registration Statement, Prospectus or other documents so that, in the case of a Registration Statement or the Prospectus, as the case may be, it will not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading, and (vi) of the occurrence or existence of any pending corporate development with respect to the Company that the Company believes may be material and that, in the determination of the Company, makes it not in the best interest of the Company to allow continued

availability of a Registration Statement or Prospectus; *provided*, *however*, that in no event shall any such notice contain any information which would constitute material, non-public information regarding the Company or any of its Subsidiaries.

(e)Use its best efforts to avoid the issuance of, or, if issued, obtain the withdrawal of (i) any order stopping or suspending the effectiveness of a Registration Statement, or (ii) any suspension of the qualification (or exemption from qualification) of any of the Registrable Securities for sale in any jurisdiction, at the earliest practicable moment.

(f)Furnish to the Holder, without charge, at least one conformed copy of each such Registration Statement and each amendment thereto, including financial statements and schedules, all documents incorporated or deemed to be incorporated therein by reference to the extent requested by such Person, and all exhibits to the extent requested by such Person (including those previously furnished or incorporated by reference) promptly after the filing of such documents with the Commission, provided that any such item which is available on the EDGAR system (or successor thereto) need not be furnished in physical form.

(g)Subject to the terms of this Agreement, the Company hereby consents to the use of such Prospectus and each amendment or supplement thereto by the Holder in connection with the offering and sale of the Registrable Securities covered by such Prospectus and any amendment or supplement thereto, except after the giving of any notice pursuant to Section 3(d).

(h)Prior to any resale of Registrable Securities by the Holder, use its commercially reasonable efforts to register or qualify or cooperate with the Holder in connection with the registration or qualification (or exemption from the Registration or qualification) of such Registrable Securities for the resale by the Holder under the securities or Blue Sky laws of such jurisdictions within the United States as the Holder reasonably requests in writing, to keep each registration or qualification (or exemption therefrom) effective during the Effectiveness Period and to do any and all other acts or things reasonably necessary to enable the disposition in such jurisdictions of the Registrable Securities covered by each Registration Statement, provided that the Company shall not be required to qualify generally to do business in any jurisdiction where it is not then so qualified, subject the Company to any material tax in any such jurisdiction where it is not then so subject or file a general consent to service of process in any such jurisdiction.

(i)If requested by the Holder, cooperate with the Holder to facilitate the timely preparation and delivery of certificates representing Registrable Securities to be delivered to a transferee pursuant to a Registration Statement, which certificates shall be free, to the extent permitted by the Purchase Agreement, of all restrictive legends, and to enable such Registrable Securities to be in such denominations and registered in such names as the Holder may request.

(j)Upon the occurrence of any event contemplated by Section 3(d), as promptly as reasonably possible under the circumstances taking into account the Company's good faith assessment of any adverse consequences to the Company and its stockholders of the premature disclosure of such event, prepare a supplement or amendment, including a post-effective amendment, to a Registration Statement or a supplement to the related Prospectus or any document incorporated or deemed to be incorporated therein by reference, and file any other required document so that, as thereafter delivered, neither a Registration Statement nor such Prospectus will contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading. If the Company notifies the Holder in accordance with clauses (iii) through (vi) of Section 3(d) above to suspend the use of any Prospectus until the requisite changes to such Prospectus have been made, then the Holder shall suspend use of such Prospectus. The Company will use its best efforts to ensure that the use of the Prospectus may be resumed as promptly as is practicable. The Company shall be entitled to exercise its right under this Section 3(j) to suspend the availability of a Registration Statement and Prospectus, subject to the payment of partial liquidated damages otherwise required pursuant to Section 2(d), for a period not to exceed 60 calendar days (which need not be consecutive days) in any 12-month period.

(k)Otherwise use commercially reasonable efforts to comply with all applicable rules and regulations of the Commission under the Securities Act and the Exchange Act, including, without limitation, Rule 172 under the Securities Act, file any final Prospectus, including any supplement or amendment thereof, with the Commission pursuant to Rule 424 under the Securities Act, promptly inform the Holder in writing if, at any time during the Effectiveness Period, the Company does not satisfy the conditions specified in Rule 172 and, as a result thereof, the Holder is required to deliver a Prospectus in connection with any disposition of Registrable Securities and take such other actions as may be reasonably necessary to facilitate the registration of the Registrable Securities hereunder.

(l)The Company shall use its best efforts to obtain and maintain eligibility for use of Form S-3 (or any successor form thereto) for the registration of the resale of Registrable Securities.

(m)The Company may require the Holder to furnish to the Company a certified statement as to the number of shares of Common Stock beneficially owned by the Holder and, if required by the Commission, the natural persons thereof that have voting and dispositive control over the shares. During any periods that the Company is unable to meet its obligations hereunder with respect to the registration of the Registrable Securities solely because the Holder fails to furnish such information within three Trading Days of the Company's request, any liquidated damages that are accruing at such time as to the Holder only shall be tolled and any Event that may otherwise occur solely because of such delay shall be suspended as to the Holder only, until such information is delivered to the Company.

4. Registration Expenses. All fees and expenses incident to the performance of or compliance with, this Agreement by the Company shall be borne by the Company whether or not any Registrable Securities are sold pursuant to a Registration Statement. The fees and expenses referred to in the foregoing sentence shall include, without limitation, (i) all registration and filing fees (including, without limitation, fees and expenses of the Company's counsel and independent registered public accountants) (A) with respect to filings made with the Commission, (B) with respect to filings required to be made with any Trading Market on which the Common Stock is then listed for trading, and (C) in compliance with applicable state securities or Blue Sky laws reasonably agreed to by the Company in writing (including, without limitation, fees and disbursements of counsel for the Company in connection with Blue Sky qualifications or exemptions of the Registrable Securities), (ii) printing expenses (including, without limitation, expenses of printing certificates for Registrable Securities), (iii) messenger, telephone and delivery expenses, (iv) fees and disbursements of counsel for the Company, (v) Securities Act liability insurance, if the Company so desires such insurance, and (vi) fees and expenses of all other Persons retained by the Company in connection with the consummation of the transactions contemplated by this Agreement. In addition, the Company shall be responsible for all of its internal expenses incurred in connection with the consummation of the transactions contemplated by this Agreement (including, without limitation, all salaries and expenses of its officers and employees performing legal or accounting duties), the expense of any annual audit and the fees and expenses incurred in connection with the listing of the Registrable Securities on any securities exchange as required hereunder. In no event shall the Company be responsible for any broker or similar commissions of the Holder or, except to the extent provided for in the Transaction Documents, any legal fees or other costs of the Holder.

5. Indemnification.

(a) Indemnification by the Company. The Company shall, notwithstanding any termination of this Agreement, indemnify and hold harmless the Holder, the officers, directors, members, partners, agents, brokers (including brokers who offer and sell Registrable Securities as principal as a result of a pledge or any failure to perform under a margin call of Common Stock), investment advisors and employees (and any other Persons with a functionally equivalent role of a Person holding such titles, notwithstanding a lack of such title or any other title) of each of them, each Person who controls any the Holder (within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act) and the officers, directors, members, stockholders, partners, agents and employees (and any other Persons with a functionally equivalent role of a Person holding such titles, notwithstanding a lack of such title or any other title) of each such controlling Person, to the fullest extent permitted by applicable law, from and against any and all losses, claims, damages, liabilities, costs (including, without limitation, reasonable attorneys' fees) and expenses (collectively, "***Losses***"), as incurred, arising out of or relating to (1) any untrue or alleged untrue statement of a material fact contained in a Registration Statement, any Prospectus or any form of prospectus or in any amendment or supplement thereto or in any preliminary prospectus, or arising out of or relating to any omission or alleged omission of a material fact required to be stated therein or necessary to make the statements therein (in the case of any Prospectus or supplement thereto, in light of the circumstances under which they were made) not

misleading or (2) any violation or alleged violation by the Company of the Securities Act, the Exchange Act or any state securities law, or any rule or regulation thereunder, in connection with the performance of its obligations under this Agreement, except to the extent, but only to the extent, that (i) such untrue statements or omissions are based solely upon information regarding the Holder furnished in writing to the Company by the Holder expressly for use therein, or to the extent that such information relates to the Holder or the Holder's proposed method of distribution of Registrable Securities and was reviewed and expressly approved in writing by the Holder expressly for use in a Registration Statement, such Prospectus or in any amendment or supplement thereto (it being understood that the Holder has approved Annex A hereto for this purpose) or (ii) in the case of an occurrence of an event of the type specified in Section 3(d)(iii)-(vi), the use by the Holder of an outdated, defective or otherwise unavailable Prospectus after the Company has notified the Holder in writing that the Prospectus is outdated, defective or otherwise unavailable for use by the Holder and prior to the receipt by the Holder of the Advice contemplated in Section 6(d). The Company shall notify the Holder promptly of the institution, threat or assertion of any Proceeding arising from or in connection with the transactions contemplated by this Agreement of which the Company is aware. Such indemnity shall remain in full force and effect regardless of any investigation made by or on behalf of such indemnified person and shall survive the transfer of any Registrable Securities by the Holder in accordance with Section 6(h).

(b) Indemnification by the Holder. The Holder shall indemnify and hold harmless the Company, its directors, officers, agents and employees, each Person who controls the Company (within the meaning of Section 15 of the Securities Act and Section 20 of the Exchange Act), and the directors, officers, agents or employees of such controlling Persons, to the fullest extent permitted by applicable law, from and against all Losses, as incurred, to the extent arising out of or based solely upon: any untrue or alleged untrue statement of a material fact contained in any Registration Statement, any Prospectus, or in any amendment or supplement thereto or in any preliminary prospectus, or arising out of or relating to any omission or alleged omission of a material fact required to be stated therein or necessary to make the statements therein (in the case of any Prospectus or supplement thereto, in light of the circumstances under which they were made) not misleading (i) to the extent, but only to the extent, that such untrue statement or omission is contained in any information so furnished in writing by the Holder to the Company expressly for inclusion in such Registration Statement or such Prospectus or (ii) to the extent, but only to the extent, that such information relates to the Holder's information provided in the Selling Stockholder Questionnaire or the proposed method of distribution of Registrable Securities and was reviewed and expressly approved in writing by the Holder expressly for use in a Registration Statement (it being understood that the Holder has approved Annex A hereto for this purpose), such Prospectus or in any amendment or supplement thereto. In no event shall the liability ofa Holder be greater in amount than the dollar amount of the proceeds (net of all expenses paid by the Holder in connection with any claim relating to this Section 5 and the amount of any damages the Holder has otherwise been required to pay by reason of such untrue statement or omission) received by the Holder upon the sale of the Registrable Securities included in the Registration Statement giving rise to such indemnification obligation.

(c) Conduct of Indemnification Proceedings. If any Proceeding shall be brought or asserted against any Person entitled to indemnity hereunder (an "***Indemnified Party***"), such Indemnified Party shall promptly notify the Person from whom indemnity is sought (the "***Indemnifying Party***") in writing, and the Indemnifying Party shall have the right to assume the defense thereof, including the employment of counsel reasonably satisfactory to the Indemnified Party and the payment of all fees and expenses incurred in connection with defense thereof, provided that the failure of any Indemnified Party to give such notice shall not relieve the Indemnifying Party of its obligations or liabilities pursuant to this Agreement, except (and only) to the extent that it shall be finally determined by a court of competent jurisdiction (which determination is not subject to appeal or further review) that such failure shall have materially and adversely prejudiced the Indemnifying Party.

An Indemnified Party shall have the right to employ separate counsel in any such Proceeding and to participate in the defense thereof, but the fees and expenses of such counsel shall be at the expense of such Indemnified Party or Parties unless: (1) the Indemnifying Party has agreed in writing to pay such fees and expenses, (2) the Indemnifying Party shall have failed promptly to assume the defense of such Proceeding and to employ counsel reasonably satisfactory to such Indemnified Party in any such Proceeding, or (3) the named parties to any such Proceeding (including any impleaded parties) include both such Indemnified Party and the Indemnifying Party, and counsel to the Indemnified Party shall reasonably believe that a material conflict of interest is likely to exist if the same counsel were to represent such Indemnified Party and the Indemnifying Party (in which case, if such Indemnified Party notifies the Indemnifying Party in writing that it elects to employ separate counsel at the expense of the Indemnifying Party, the Indemnifying Party shall not have the right to assume the defense thereof and the reasonable fees and expenses of no more than one separate counsel shall be at the expense of the Indemnifying Party). The Indemnifying Party shall not be liable for any settlement of any such Proceeding effected without its written consent, which consent shall not be unreasonably withheld or delayed. No Indemnifying Party shall, without the prior written consent of the Indemnified Party, effect any settlement of any pending Proceeding in respect of which any Indemnified Party is a party, unless such settlement includes an unconditional release of such Indemnified Party from all liability on claims that are the subject matter of such Proceeding.

Subject to the terms of this Agreement, all reasonable fees and expenses of the Indemnified Party (including reasonable fees and expenses to the extent incurred in connection with investigating or preparing to defend such Proceeding in a manner not inconsistent with this Section) shall be paid to the Indemnified Party, as incurred, within ten Trading Days of written notice thereof to the Indemnifying Party, provided that the Indemnified Party shall promptly reimburse the Indemnifying Party for that portion of such fees and expenses applicable to such actions for which such Indemnified Party is finally determined by a court of competent jurisdiction (which determination is not subject to appeal or further review) not to be entitled to indemnification hereunder.

(d) Contribution. If the indemnification under Section 5(a) or 5(b) is unavailable to an Indemnified Party or insufficient to hold an Indemnified Party harmless for any Losses, then each Indemnifying Party shall contribute to the amount paid or payable by such Indemnified Party, in such proportion as is appropriate to reflect the relative fault of the Indemnifying Party and Indemnified Party in connection with the actions, statements or omissions that resulted in such Losses as well as any other relevant equitable considerations. The relative fault of such Indemnifying Party and Indemnified Party shall be determined by reference to, among other things, whether any action in question, including any untrue or alleged untrue statement of a material fact or omission or alleged omission of a material fact, has been taken or made by, or relates to information supplied by, such Indemnifying Party or Indemnified Party, and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such action, statement or omission. The amount paid or payable by a party as a result of any Losses shall be deemed to include, subject to the limitations set forth in this Agreement, any reasonable attorneys' or other fees or expenses incurred by such party in connection with any Proceeding to the extent such party would have been indemnified for such fees or expenses if the indemnification provided for in this Section was available to such party in accordance with its terms.

The parties hereto agree that it would not be just and equitable if contribution pursuant to this Section 5(d) were determined by pro rata allocation or by any other method of allocation that does not take into account the equitable considerations referred to in the immediately preceding paragraph. In no event shall the contribution obligation of the Holder of Registrable Securities be greater in amount than the dollar amount of the proceeds (net of all expenses paid by the Holder in connection with any claim relating to this Section 5 and the amount of any damages the Holder has otherwise been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission) received by it upon the sale of the Registrable Securities giving rise to such contribution obligation.

The indemnity and contribution agreements contained in this Section are in addition to any liability that the Indemnifying Parties may have to the Indemnified Parties.

6. Miscellaneous.

(a) Remedies. In the event of a breach by the Company or by the Holder of its obligations under this Agreement, the Holder or the Company, as the case may be, in addition to being entitled to exercise all rights granted by law and under this Agreement, including recovery of damages, shall be entitled to specific performance of its rights under this Agreement. Each of the Company and the Holder agree that monetary damages would not provide adequate compensation for any losses incurred by reason of a breach by it of any of the provisions of this Agreement and hereby further agrees that, in the event of any action for specific performance in respect of such breach, it shall not assert or shall waive the defense that a remedy at law would be adequate.

(b) No Piggyback on Registrations; Prohibition on Filing Other Registration Statements. Neither the Company nor any of its security holders (other than the Holder in such capacity pursuant hereto) may include securities of the Company in any Registration Statements other than the Registrable Securities. The Company shall not file any other registration statements until all Registrable Securities are registered pursuant to a Registration Statement that is declared effective by the Commission, provided that this Section 6(b) shall not prohibit the Company from filing amendments to registration statements filed prior to the date of this Agreement.

(c)[RESERVED]

(d) Discontinued Disposition. By its acquisition of Registrable Securities, the Holder agrees that, upon receipt of a notice from the Company of the occurrence of any event of the kind described in Section 3(d)(iii) through (vi), the Holder will forthwith discontinue disposition of such Registrable Securities under a Registration Statement until it is advised in writing (the "***Advice***") by the Company that the use of the applicable Prospectus (as it may have been supplemented or amended) may be resumed. The Company will use its best efforts to ensure that the use of the Prospectus may be resumed as promptly as is practicable. The Company agrees and acknowledges that any periods during which the Holder is required to discontinue the disposition of the Registrable Securities hereunder shall be subject to the provisions of Section 2(d).

(e) Piggy-Back Registrations. If, at any time during the Effectiveness Period, there is not an effective Registration Statement covering all of the Registrable Securities and the Company shall determine to prepare and file with the Commission a registration statement relating to an offering for its own account or the account of others under the Securities Act of any of its equity securities, other than on Form S-4 or Form S-8 (each as promulgated under the Securities Act) or their then equivalents relating to equity securities to be issued solely in connection with any acquisition of any entity or business or equity securities issuable in connection with the Company's stock option or other employee benefit plans, then the Company shall deliver to the Holder a written notice of such determination and, if within fifteen days after the date of the delivery of such notice, the Holder shall so request in writing, the Company shall include in such registration statement all or any part of such Registrable Securities the Holder requests to be registered; *provided*, *however*, that the Company shall not be required to register any Registrable Securities pursuant to this Section 6(e) that are eligible for resale pursuant to Rule 144 (without volume restrictions or current public information requirements) promulgated by the Commission pursuant to the Securities Act or that are the subject of a then effective Registration Statement that is available for resales or other dispositions by the Holder.

(f) Amendments and Waivers. The provisions of this Agreement, including the provisions of this sentence, may not be amended, modified or supplemented, and waivers or consents to departures from the provisions hereof may not be given, unless the same shall be in writing and signed by the Company and the Holder. No consideration shall be offered or paid to any Person to amend or consent to a waiver or modification of any provision of this Agreement unless the same consideration also is offered to all of the parties to this Agreement.

(g) Notices. Any and all notices or other communications or deliveries required or permitted to be provided hereunder shall be delivered as set forth in the Purchase Agreement.

(h) Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the successors and permitted assigns of each of the parties and shall inure to the benefit of the Holder. The Company may not assign (except by merger) its rights or obligations hereunder without the prior written consent of the Holder. The Holder may assign its rights hereunder in the manner and to the Persons as permitted under Section 5.7 of the Purchase Agreement.

(i) No Inconsistent Agreements. Neither the Company nor any of its Subsidiaries has entered, as of the date hereof, nor shall the Company or any of its Subsidiaries, on or after the date of this Agreement, enter into any agreement with respect to its securities, that would have the effect of impairing the rights granted to the Holder in this Agreement or otherwise conflicts with the provisions hereof. Except as set forth on Schedule 6(i), neither the Company nor any of its Subsidiaries has previously entered into any agreement granting any registration rights with respect to any of its securities to any Person that have not been satisfied in full.

(j) Execution and Counterparts. This Agreement may be executed in two or more counterparts, all of which when taken together shall be considered one and the same agreement and shall become effective when counterparts have been signed by each party and delivered to the other party, it being understood that both parties need not sign the same counterpart. In the event that any signature is delivered by facsimile transmission or by e-mail delivery of a ".pdf" format data file, such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or ".pdf" signature page were an original thereof.

(k) Governing Law. All questions concerning the construction, validity, enforcement and interpretation of this Agreement shall be determined in accordance with the provisions of the Purchase Agreement.

(l) Cumulative Remedies. The remedies provided herein are cumulative and not exclusive of any other remedies provided by law.

(m) Severability. If any term, provision, covenant or restriction of this Agreement is held by a court of competent jurisdiction to be invalid, illegal, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions set forth herein shall remain in full force and effect and shall in no way be affected, impaired or invalidated, and the parties hereto shall use their commercially reasonable efforts to find and employ an alternative means to achieve the same or substantially the same result as that contemplated by such term, provision, covenant or restriction. It is hereby stipulated and declared to be the intention of the parties that they would have executed the remaining terms, provisions, covenants and restrictions without including any of such that may be hereafter declared invalid, illegal, void or unenforceable.

(n) Headings. The headings in this Agreement are for convenience only, do not constitute a part of the Agreement and shall not be deemed to limit or affect any of the provisions hereof.

**********

*(Signature Pages Follow)*

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

**RESHAPE LIFESCIENCES INC.**

By: _____
Name:
Title:

Name of Holder: _____

*Signature of Authorized Signatory of Holder*: _____

Name of Authorized Signatory: _____

Title of Authorized Signatory: _____

**Annex A**

Plan of Distribution

The Selling Stockholder (the "***Selling Stockholder***") of the securities and any of its pledgees, assignees and successors-in-interest may, from time to time, sell any or all of their securities covered hereby on the principal Trading Market or any other stock exchange, market or trading facility on which the securities are traded or in private transactions. These sales may be at fixed or negotiated prices. The Selling Stockholder may use any one or more of the following methods when selling securities:

- ordinary brokerage transactions and transactions in which the broker-dealer solicits purchasers;
- block trades in which the broker-dealer will attempt to sell the securities as agent but may position and resell a portion of the block as principal to facilitate the transaction;
- purchases by a broker-dealer as principal and resale by the broker-dealer for its account;
- an exchange distribution in accordance with the rules of the applicable exchange;
- privately negotiated transactions;
- settlement of short sales;
- in transactions through broker-dealers that agree with the Selling Stockholder to sell a specified number of such securities at a stipulated price per security;
- through the writing or settlement of options or other hedging transactions, whether through an options exchange or otherwise;
- a combination of any such methods of sale; or
- any other method permitted pursuant to applicable law.

The Selling Stockholder may also sell securities under Rule 144 or any other exemption from registration under the Securities Act of 1933, as amended (the "***Securities Act***"), if available, rather than under this prospectus.

Broker-dealers engaged by the Selling Stockholder may arrange for other brokers-dealers to participate in sales. Broker-dealers may receive commissions or discounts from the Selling Stockholder (or, if any broker-dealer acts as agent for the purchaser of securities, from the purchaser) in amounts to be negotiated, but, except as set forth in a supplement to this Prospectus, in the case of an agency transaction not in excess of a customary brokerage

commission in compliance with FINRA Rule 2440; and in the case of a principal transaction a markup or markdown in compliance with FINRA IM-2440.

In connection with the sale of the securities or interests therein, the Selling Stockholder may enter into hedging transactions with broker-dealers or other financial institutions, which may in turn engage in short sales of the securities in the course of hedging the positions they assume. The Selling Stockholder may also sell securities short and deliver these securities to close out their short positions, or loan or pledge the securities to broker-dealers that in turn may sell these securities. The Selling Stockholder may also enter into option or other transactions with broker-dealers or other financial institutions or create one or more derivative securities which require the delivery to such broker-dealer or other financial institution of securities offered by this prospectus, which securities such broker-dealer or other financial institution may resell pursuant to this prospectus (as supplemented or amended to reflect such transaction).

The Selling Stockholder and any broker-dealers or agents that are involved in selling the securities may be deemed to be “underwriters” within the meaning of the Securities Act in connection with such sales. In such event, any commissions received by such broker-dealers or agents and any profit on the resale of the securities purchased by them may be deemed to be underwriting commissions or discounts under the Securities Act. The Selling Stockholder has informed the Company that it does not have any written or oral agreement or understanding, directly or indirectly, with any person to distribute the securities.

The Company is required to pay certain fees and expenses incurred by the Company incident to the registration of the securities. The Company has agreed to indemnify the Selling Stockholder against certain losses, claims, damages and liabilities, including liabilities under the Securities Act.

We agreed to keep this prospectus effective until the earlier of (i) the date on which the securities may be resold by the Selling Stockholder without registration and without regard to any volume or manner-of-sale limitations by reason of Rule 144, without the requirement for the Company to be in compliance with the current public information under Rule 144 under the Securities Act or any other rule of similar effect or (ii) all of the securities have been sold pursuant to this prospectus or Rule 144 under the Securities Act or any other rule of similar effect. The resale securities will be sold only through registered or licensed brokers or dealers if required under applicable state securities laws. In addition, in certain states, the resale securities covered hereby may not be sold unless they have been registered or qualified for sale in the applicable state or an exemption from the registration or qualification requirement is available and is complied with.

Under applicable rules and regulations under the Exchange Act, any person engaged in the distribution of the resale securities may not simultaneously engage in market making activities with respect to the common stock for the applicable restricted period, as defined in Regulation M, prior to the commencement of the distribution. In addition, the Selling Stockholder will be subject to applicable provisions of the Exchange Act and the rules and regulations thereunder, including Regulation M, which may limit the timing of purchases and sales of the common stock by the Selling Stockholder or any other person. We will make copies

of this prospectus available to the Selling Stockholder and have informed them of the need to deliver a copy of this prospectus to each purchaser at or prior to the time of the sale (including by compliance with Rule 172 under the Securities Act).

RESHAPE LIFESCIENCES INC.

**Selling Stockholder Notice and Questionnaire**

The undersigned beneficial owner of common stock (the "***Registrable Securities***") of ReShape Lifesciences Inc., a Delaware corporation (the "***Company***"), understands that the Company has filed or intends to file with the Securities and Exchange Commission (the "***Commission***") a registration statement (the "***Registration Statement***") for the registration and resale under Rule 415 of the Securities Act of 1933, as amended (the "***Securities Act***"), of the Registrable Securities, in accordance with the terms of the Registration Rights Agreement (the "***Registration Rights Agreement***") to which this document is annexed. A copy of the Registration Rights Agreement is available from the Company upon request at the address set forth below. All capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in the Registration Rights Agreement.

Certain legal consequences arise from being named as a selling stockholder in the Registration Statement and the related prospectus. Accordingly, holders and beneficial owners of Registrable Securities are advised to consult their own securities law counsel regarding the consequences of being named or not being named as a selling stockholder in the Registration Statement and the related prospectus.

**NOTICE**

The undersigned beneficial owner (the "***Selling Stockholder***") of Registrable Securities hereby elects to include the Registrable Securities owned by it in the Registration Statement.

The undersigned hereby provides the following information to the Company and represents and warrants that such information is accurate:

**QUESTIONNAIRE**

**1. Name.**

(a) Full Legal Name of Selling Stockholder

_____

(b) Full Legal Name of Registered Holder (if not the same as (a) above) through which Registrable Securities are held:

_____

(c) Full Legal Name of Natural Control Person (which means a natural person who directly or indirectly alone or with others has power to vote or dispose of the securities covered by this Questionnaire):

_____

**2. Address for Notices to Selling Stockholder:**

_____
_____
_____
Telephone: _____
Fax: _____
Contact
Person: _____

**3. Broker-Dealer Status:**

(a) Are you a broker-dealer?

Yes ☐ No ☐

(b) If "yes" to Section 3(a), did you receive your Registrable Securities as compensation for investment banking services to the Company?

Yes ☐ No ☐

Note: If "no" to Section 3(b), the Commission's staff has indicated that you should be identified as an underwriter in the Registration Statement.

(c) Are you an affiliate of a broker-dealer?

Yes ☐ No ☐

(d) If you are an affiliate of a broker-dealer, do you certify that you purchased the Registrable Securities in the ordinary course of business, and at the time of the purchase of the Registrable Securities to be resold, you had no agreements or understandings, directly or indirectly, with any person to distribute the Registrable Securities?

Yes ☐ No ☐

Note: If "no" to Section 3(d), the Commission's staff has indicated that you should be identified as an underwriter in the Registration Statement.



**4. Beneficial Ownership of Securities of the Company Owned by the Selling Stockholder.**

*Except as set forth below in this Item 4, the undersigned is not the beneficial or registered owner of any securities of the Company other than the securities issuable pursuant to the Purchase Agreement.*

(a) Type and Amount of other securities beneficially owned by the Selling Stockholder:

_____

_____

**5. Relationships with the Company:**

*Except as set forth below, neither the undersigned nor any of its affiliates, officers, directors or principal equity holders (owners of 5% of more of the equity securities of the undersigned) has held any position or office or has had any other material relationship with the Company (or its predecessors or affiliates) during the past three years.*

State any exceptions here:

_____

_____

The undersigned agrees to promptly notify the Company of any material inaccuracies or changes in the information provided herein that may occur subsequent to the date hereof at any time while the Registration Statement remains effective; provided, that the undersigned shall not be required to notify the Company of any changes to the number of securities held or owned by the undersigned or its affiliates.

By signing below, the undersigned consents to the disclosure of the information contained herein in its answers to Items 1 through 5 and the inclusion of such information in the Registration Statement and the related prospectus and any amendments or supplements thereto. The undersigned understands that such information will be relied upon by the Company in connection with the preparation or amendment of the Registration Statement and the related prospectus and any amendments or supplements thereto.

IN WITNESS WHEREOF the undersigned, by authority duly given, has caused this Notice and Questionnaire to be executed and delivered either in person or by its duly authorized agent.

Date: _____

Beneficial Owner: _____

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By: _____
Name:
Title:

**PLEASE SEND A COPY (OR EMAIL A .PDF COPY) OF THE COMPLETED AND EXECUTED NOTICE AND QUESTIONNAIRE TO:**

# GUARANTEE AND COLLATERAL AGREEMENT

dated as of March 25, 2020

among

RESHAPE LIFESCIENCES INC.
and

RESHAPE MEDICAL LLC

as Grantors,

and

ARMISTICE CAPITAL MASTER FUND LTD.,
as Lender

**GUARANTEE AND COLLATERAL AGREEMENT**

Guarantee and Collateral Agreement, dated as of March 25, 2020 (this "Agreement"), made by each signatory hereto (together with any other Person that becomes a party hereto as provided herein, ("Grantors"), in favor of Armistice Capital Master Fund Ltd., a Cayman Islands exempted company ("Lender").

Lender has agreed to extend credit to ReShape Lifesciences Inc., a Delaware corporation ("Borrower"') pursuant to the Credit Agreement (as defined below). Borrower is affiliated with each other Grantor. The proceeds of credit extended under the Credit Agreement will be used in part to enable Borrower to make valuable transfers to Grantors in connection with the operation of their respective businesses. Borrower and the other Grantors are engaged in interrelated businesses, and each Grantor will derive substantial direct and/or indirect benefit from extensions of credit under the Credit Agreement.

It is a condition precedent to Lender's obligation to extend credit under the Credit Agreement that Grantors shall have executed and delivered this Agreement to Lender.

In consideration of the premises and to induce Lender to enter into the Credit Agreement and to induce Lender to extend credit thereunder, each Grantor hereby agrees with Lender, as follows:

1. Definitions.

1.1 Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement, and the following terms are used herein as defined in the UCC (as defined below): Accounts, Certificated Security, Chattel Paper, Commercial Tort Claims, Control, Deposit Accounts, Documents, Electronic Chattel Paper, Equipment, Farm Products, Goods, Health-Care-Insurance Receivables, Instruments, Inventory, Letter-of-Credit Rights and Supporting Obligations. Unless otherwise expressly stated to the contrary herein, the interpretation of terms in this Agreement shall be governed by the rules set forth in Section 1.2 of the Credit Agreement.

1.2 When used herein the following terms shall have the following meanings:

Agreement has the meaning set forth in the preamble hereto.

Borrower has the meaning set forth in the preamble hereto.

Borrower Obligations means all Obligations of Borrower.

Collateral means (a) all of each Grantor's right, title and interest in and to Accounts, Chattel Paper (including Electronic Chattel Paper), Deposit Accounts, Documents, Equipment, Farm Products, General Intangibles, Goods, Health-Care-Insurance Receivables, Instruments, Intellectual Property, Inventory, Investment Property, Letter-of-Credit Rights, Supporting Obligations, Identified Claims and other personal property, in each case whether now owned or at any time hereafter acquired or arising, (b) all books and records pertaining to any of the foregoing, (c) all Proceeds and products of any of the foregoing and (d) all collateral security and guarantees

given by any Person with respect to any of the foregoing; provided, that the Collateral (nor any defined term used in the definition thereof) shall not include the Excluded Property. Where the context requires, terms relating to the Collateral or any part thereof, when used in relation to a Grantor, shall refer to such Grantor's Collateral or the relevant part thereof.

Copyrights means all copyrights arising under the laws of the United States, any other country or any political subdivision thereof, and any other rights in works of authorship whether registered or unregistered and whether published or unpublished, all registrations and recordings and tangible media thereof, and all applications in connection therewith, including all registrations and applications in the United States Copyright Office and any foreign copyright offices, and the right to obtain all renewals and extensions of any of the foregoing, along with any moral rights or any equivalent rights.

Copyright Licenses means all written agreements naming any Grantor as licensor or licensee, granting any right under any Copyright, including the grant of rights to manufacture, reproduce, distribute, exploit and sell materials derived from any Copyright.

Credit Agreement means the Credit Agreement of even date herewith between Borrower and Lender, as amended, supplemented, restated or otherwise modified from time to time.

Excluded Property means, with respect to a Grantor, (a) motor vehicles and other assets subject to certificates of title, (b) "intent-to-use" Trademarks for which a statement of use has not been filed and accepted with the U.S. Patent and Trademark Office and any other Intellectual Property if the grant of a Lien on or security interest in such Intellectual Property would result in the cancellation or voiding of such Intellectual Property, (c) any receivable paid into a Trust Account (as defined in the Credit Agreement) and the balance of any such Trust Account maintained by any Grantor for the benefit of an agency of the federal government of the United States of America, (d) Exempt Accounts (excluding accounts constituting Exempt Accounts pursuant to clause (a)(iv) of the definition thereof), (e) any assets owned by such Grantor that are subject to a purchase money security interest or a Capital Lease permitted under the Credit Agreement, but only to the extent that the agreements governing such purchase money security interest or Capital Lease prohibit the granting of other Liens in such assets and any necessary consent required for the granting of other Liens in such assets has not been obtained; (f) any property of the type expressly excluded from the definitions of Investment Property and Pledged Equity; (g) any item of General Intangibles that is now or hereafter held by such Grantor but only to the extent that such item of General Intangibles (or any agreement evidencing such item of General Intangibles) contains a term or is subject to a rule of law, statute or regulation that restricts, prohibits, or requires a consent (that has not been obtained) of a Person (other than such Grantor) to, the creation, attachment or perfection of the security interest granted herein, and any such restriction, prohibition and/or requirement of consent is effective and enforceable under applicable law and is not rendered ineffective by applicable law (including, without limitation, pursuant to Sections 9-406, 9-407, 9-408 or 9-409 of the UCC), and (h) real property owned by any Grantor, interests in real property leases of any Grantor and any fixtures thereon; provided, however, that (x) Excluded Property shall not include any Proceeds of any item of General Intangibles or Proceeds of any other Excluded Property unless such Proceeds themselves constitute Excluded Property pursuant to clauses (a), (b), (c), (d), (e), (f), (g) or (h) above, and (y) any item of General Intangibles or other Excluded Property that at any time ceases to satisfy the criteria for Excluded

Property (whether as a result of the applicable Grantor obtaining any necessary consent, any change in any rule of law, statute or regulation, or otherwise), shall no longer be Excluded Property.

General Intangibles means all "general intangibles" as such term is defined in Section 9-102 of the UCC and, in any event, including with respect to any Grantor, all contracts, agreements, instruments and indentures in any form, and portions thereof, to which such Grantor is a party or under which such Grantor has any right, title or interest or to which such Grantor or any property of such Grantor is subject, as the same from time to time may be amended, supplemented or otherwise modified, including, without limitation, (a) all rights of such Grantor to receive moneys due and to become due to it thereunder or in connection therewith, (b) all rights of such Grantor to damages arising thereunder and (c) all rights of such Grantor to perform and to exercise all remedies thereunder.

Grantors has the meaning set forth in the preamble hereto.

Guarantor Obligations means, with respect to each Guarantor, all of such Guarantor's Obligations.

Guarantors means the collective reference to each Grantor other than Borrower.

Identified Claims means the Commercial Tort Claims described on Schedule 7.

Intellectual Property means the collective reference to all rights, priorities and privileges relating to intellectual property anywhere in the world, including Copyrights, Copyright Licenses, Patents, Patent Licenses, Trademarks and Trademark Licenses, and all rights to sue at law or in equity for any past, present or future infringement, misappropriation, dilution or other impairment thereof, including the right to receive all proceeds and damages therefrom, including, but not limited to, Copyrights, Patents and Trademarks related to lap band and vest technology.

Intercompany Note means any promissory note evidencing loans made by any Grantor to any other Grantor.

Investment Property means the collective reference to (a) all "investment property" as such term is defined in Section 9-102 of the UCC (other than the equity interest of any Foreign Subsidiary or Excluded Foreign Holding Company excluded from the definition of Pledged Equity), (b) all "financial assets" as such term is defined in Section 8-102(a)(9) of the UCC, and (c) whether or not constituting "investment property" as so defined, all Pledged Notes and all Pledged Equity.

Issuers means the collective reference to each issuer of any Investment Property which constitutes Collateral.

Lender has the meaning set forth in the preamble hereto.

Patents means (a) all letters patent of the United States, any other country or any political subdivision thereof or any international or regional body, all reissues, renewals and extensions thereof, (b) all applications for letters patent of the United States or any other country and all

political subdivisions thereof or any international or regional bodies, continuations, divisionals and continuations-in-part thereof, and any patents maturing therefrom (c) the inventions disclosed or claimed therein, and (d) all rights to obtain any reissues or extensions of the foregoing.

Patent Licenses means all written agreements providing for the grant by or to any Grantor of any right to make, manufacture, use, import, export, offer for sale or sell any invention covered in whole or in part by a Patent.

Permitted Liens means the Liens permitted under Section 7.2 of the Credit Agreement.

Pledged Equity means the equity interests listed on Schedule 1, together with any other equity interests, certificates, options or rights of any nature whatsoever in respect of the equity interests of any Person that may be issued or granted to, or held by, any Grantor while this Agreement is in effect; provided that in no event shall more than 65% of the total outstanding equity interests of any Foreign Subsidiary or Excluded Foreign Holding Company constitute Pledged Equity.

Pledged Notes means all promissory notes listed on Schedule 1, all Intercompany Notes at any time issued to any Grantor and all other promissory notes issued to or held by any Grantor (other than any individual promissory note which is less than $1,000,000 in principal amount, up to an aggregate of $3,500,000 for all such promissory notes excluded thereby at any time).

Proceeds means all “proceeds” as such term is defined in Section 9-102 of the UCC and, in any event, shall include all dividends or other income from the Investment Property, collections thereon or distributions or payments with respect thereto.

Receivable means any right to payment for goods sold or leased or for services rendered, whether or not such right is evidenced by an Instrument or Chattel Paper and whether or not it has been earned by performance (including any Accounts); it being acknowledged and agreed by Lender that any receivable paid into a Trust Account maintained by any Grantor for the benefit of an agency of the United States of America shall not be deemed to be a receivable within the meaning of this Agreement.

Secured Obligations means, collectively, Borrower Obligations and Guarantor Obligations.

Securities Act means the Securities Act of 1933, as amended.

Trademarks means (a) all trademarks, trade names, corporate names, company names, business names, fictitious business names, service marks, logos, designs and other source or business identifiers, and all goodwill associated therewith, now existing or hereafter adopted or acquired, all registrations and recordings thereof, and all applications in connection therewith, whether in the United States Patent and Trademark Office or in any similar office or agency of the United States, any State thereof or any other country or any political subdivision o international or regional body thereof, or otherwise, and all common-law rights related thereto, and (b) the right to obtain all renewals thereof.

Trademark Licenses means, collectively, each written agreement providing for the grant by or to any Grantor of any right to use any Trademark.

UCC means the Uniform Commercial Code as in effect on the date hereof and from time to time in the State of New York, provided that if by reason of mandatory provisions of law, the perfection or the effect of perfection or non-perfection of the security interests in any Collateral or the availability of any remedy hereunder is governed by the Uniform Commercial Code as in effect on or after the date hereof in any other jurisdiction, "UCC" means the Uniform Commercial Code as in effect in such other jurisdiction for purposes of the provisions hereof relating to such perfection or effect of perfection or non-perfection or availability of such remedy.

2. Guarantee.

2.1 Guarantee.

(a) Each of the Guarantors hereby, jointly and severally, unconditionally and irrevocably, guarantees to Lender and its successors, indorsees, transferees and permitted assigns, the prompt and complete payment and performance by Borrower when due (whether at the stated maturity, by acceleration or otherwise) of Borrower Obligations.

(b) Anything herein or in any other Loan Document to the contrary notwithstanding, the maximum liability of each Guarantor hereunder and under the other Loan Documents shall in no event exceed the amount which can be guaranteed by such Guarantor under applicable federal and state laws relating to the insolvency of debtors or any applicable laws relating to fraudulent conveyances or fraudulent transfers (after giving effect to the right of contribution established in Section 2.2). The provisions of this Section 2.1(b) shall be implemented automatically without the need for any amendment or modification to the Loan Documents.

(c) Each Guarantor agrees that the Secured Obligations may at any time and from time to time exceed the amount of the liability of such Guarantor hereunder without impairing the guarantee contained in this Section 2 or affecting the rights and remedies of the Lender hereunder.

(d) The guarantee contained in this Section 2 shall remain in full force and effect until all of the Secured Obligations shall have been Paid in Full.

(e) No payment made by Borrower, any of the Guarantors, any other guarantor or any other Person or received or collected by Lender from Borrower, any of the Guarantors, any other guarantor or any other Person by virtue of any action or proceeding or any set-off or appropriation or application at any time or from time to time in reduction of or in payment of the Secured Obligations shall be deemed to modify, reduce, release or otherwise affect the liability of any Guarantor hereunder which shall, notwithstanding any such payment (other than any payment made by such Guarantor in respect of the Secured Obligations or any payment received or collected from such Guarantor in respect of the Secured Obligations), remain liable for the Secured Obligations up to the maximum liability of such Guarantor hereunder until the Secured Obligations are Paid in Full.

2.2 Right of Contribution. Each Guarantor hereby agrees that to the extent that a Guarantor shall have paid more than its proportionate share of any payment made hereunder, such Guarantor shall be entitled to seek and receive contribution from and against any other Guarantor hereunder which has not paid its proportionate share of such payment. Each Guarantor's right of contribution shall be subject to the terms and conditions of Section 2.3. The provisions of this Section 2.2 shall in no respect limit the obligations and liabilities of any Guarantor to Lender, and each Guarantor shall remain liable to Lender for the full amount guaranteed by such Guarantor hereunder.

2.3 No Subrogation. Notwithstanding any payment made by any Guarantor hereunder or any set-off or application of funds of any Guarantor by Lender, no Guarantor shall be entitled to be subrogated to any of the rights of Lender against Borrower or any other Guarantor or any collateral security or guarantee or right of offset held by Lender for the payment of the Secured Obligations, nor shall any Guarantor seek or be entitled to seek any contribution or reimbursement from Borrower or any other Guarantor in respect of payments made by such Guarantor hereunder, until all of the Secured Obligations are Paid in Full; provided that any such right of contribution or reimbursement against any Borrower or any other Guarantor (including any right under Section 2.2) shall be irrevocably and automatically waived in the event the Pledged Equity or other equity securities of such Borrower or other Guarantor are sold or otherwise transferred or disposed of in connection with the exercise of rights and remedies by Agent (including in connection with a consensual sale, transfer or other disposition in lieu of foreclosure) and in connection with such sale or transfer, all or a portion of the Secured Obligations are Paid in Full. If any amount shall be paid to any Guarantor on account of such subrogation rights at any time when all of the Secured Obligations shall not have been Paid in Full, such amount shall be held by such Guarantor in trust for Lender, segregated from other funds of such Guarantor, and shall, forthwith upon receipt by such Guarantor, be turned over to Lender in the form received by such Guarantor (duly indorsed by such Guarantor to Lender, if required), to be applied against the Secured Obligations in accordance with Lender's sole discretion.

2.4 Amendments, etc. with respect to the Secured Obligations. Each Guarantor shall remain obligated hereunder notwithstanding that, without any reservation of rights against any Guarantor and without notice to or further assent by any Guarantor, any demand for payment of any of the Secured Obligations made by Lender may be rescinded by Lender and any of the Secured Obligations continued, and the Secured Obligations, or the liability of any other Person upon or for any part thereof, or any collateral security or guarantee therefor or right of offset with respect thereto, may, from time to time, in whole or in part, be renewed, extended, amended, modified, accelerated, compromised, waived, surrendered or released by Lender, and the Credit Agreement and the other Loan Documents and any other documents executed and delivered in connection therewith may be amended, modified, supplemented or terminated, in whole or in part, as Lender may deem advisable from time to time, and any collateral security, guarantee or right of offset at any time held by Lender for the payment of the Secured Obligations may be sold, exchanged, waived, surrendered or released. Lender shall not have any obligation to protect, secure, perfect or insure any Lien at any time held by it as security for the Secured Obligations or for the guarantee contained in this Section 2 or any property subject thereto.

2.5 Guarantee Absolute and Unconditional. Each Guarantor waives to the maximum extent permitted by applicable law any and all notice of the creation, renewal, extension or accrual

of any of the Secured Obligations and notice of or proof of reliance by Lender upon the guarantee contained in this Section 2 or acceptance of the guarantee contained in this Section 2; the Secured Obligations, and any of them, shall conclusively be deemed to have been created, contracted or incurred, or renewed, extended, amended or waived, in reliance upon the guarantee contained in this Section 2, and all dealings between Borrower and any of the Guarantors, on the one hand, and Lender, on the other hand, likewise shall be conclusively presumed to have been had or consummated in reliance upon the guarantee contained in this Section 2. Each Guarantor waives to the maximum extent permitted by applicable law (a) diligence, presentment, protest, demand for payment and notice of default or nonpayment to or upon Borrower or any of the Guarantors with respect to the Secured Obligations, (b) notice of the existence or creation or non-payment of all or any of the Secured Obligations, and (c) all diligence in collection or protection of or realization upon any Secured Obligations or any security for or guaranty of any Secured Obligations. Each Guarantor understands and agrees that the guarantee contained in this Section 2 shall be construed as a continuing, absolute and unconditional guarantee of payment without regard to (i) the validity or enforceability of the Credit Agreement or any other Loan Document, any of the Secured Obligations or any other collateral security therefor or guarantee or right of offset with respect thereto at any time or from time to time held by Lender, (ii) any defense, set-off or counterclaim (other than a defense of payment or performance) whatsoever which may at any time be available to or be asserted by Borrower or any other Person against Lender, or (iii) any other circumstance whatsoever (with or without notice to or knowledge of Borrower or such Guarantor) which constitutes, or might be construed to constitute, an equitable or legal discharge of Borrower for the Secured Obligations (other than a defense of payment or performance), or of such Guarantor under the guarantee contained in this Section 2, in bankruptcy or in any other instance. When making any demand hereunder or otherwise pursuing its rights and remedies hereunder against any Guarantor, Lender may, but shall be under no obligation to, make a similar demand on or otherwise pursue such rights and remedies as it may have against Borrower, any other Guarantor or any other Person or against any collateral security or guarantee for the Secured Obligations or any right of offset with respect thereto, and any failure by Lender to make any such demand, to pursue such other rights or remedies or to collect any payments from Borrower, any other Guarantor or any other Person or to realize upon any such collateral security or guarantee or to exercise any such right of offset, or any release of Borrower, any other Guarantor or any other Person or any such collateral security, guarantee or right of offset, shall not relieve any Guarantor of any obligation or liability hereunder, and shall not impair or affect the rights and remedies, whether express, implied or available as a matter of law, of Lender against any Guarantor. For the purposes hereof “demand” shall include the commencement and continuance of any legal proceedings. Each Guarantor waives any right that it may have under such applicable law to require that Agent commence action against Borrower or any other person or against any of the Collateral.

Lender may, from time to time, at its sole discretion and without notice to any Guarantor (or any of them), take any or all of the following actions: (a) retain or obtain a security interest in any property to secure any of the Secured Obligations or any obligation hereunder, (b) retain or obtain the primary or secondary obligation of any obligor or obligors with respect to any of the Secured Obligations, (c) extend or renew any of the Secured Obligations for one or more periods (whether or not longer than the original period), alter or exchange any of the Secured Obligations, or release or compromise any obligation of any Guarantor or any obligation of any nature of any other obligor with respect to any of the Secured Obligations, (d) release any guaranty or right of

offset or its security interest in, or surrender, release or permit any substitution or exchange for, all or any part of any property securing any of the Secured Obligations or any obligation hereunder, or extend or renew for one or more periods (whether or not longer than the original period) or release, compromise, alter or exchange any obligations of any nature of any obligor with respect to any such property, and (e) resort to any Guarantor for payment of any of the Secured Obligations when due, whether or not Lender shall have resorted to any property securing any of the Secured Obligations or any obligation hereunder or shall have proceeded against any other Guarantor or any other obligor primarily or secondarily obligated with respect to any of the Secured Obligations.

2.6 Payments. Each Guarantor hereby guarantees that payments hereunder will be paid to Lender without set-off or counterclaim (other than for the defense of payment or performance in full) in Dollars at the office of Lender specified in the Credit Agreement.

2.7 Financial Condition. Each Guarantor hereby assumes responsibility for being and remaining informed of the financial condition of Borrower and of all other circumstances bearing upon the risk of nonpayment of amounts owing under the Credit Agreement which diligent inquiry would reveal and agrees that Lender shall not have a duty to advise such Guarantor of information known to it regarding such condition or any such circumstances.

3. Grant of Security Interest.

Each Grantor hereby grants to Lender a security interest in all of its Collateral, as collateral security for the prompt and complete payment and performance when due (whether at the stated maturity, by acceleration or otherwise) of the Secured Obligations.

4. Representations and Warranties.

To induce Lender to enter into the Credit Agreement and to induce Lender to make extensions of credit to Borrower thereunder, each Grantor jointly and severally hereby represents and warrants to Lender that:

4.1 Title. Except for Permitted Liens, the Grantors own each item of the Collateral free and clear of any and all Liens.

4.2 Perfected First Priority Liens. The security interests granted pursuant to this Agreement pursuant to Article 8 and Article 9 of the UCC (a) upon completion of the filings and other actions specified on Schedule 2 (which, in the case of all filings and other documents referred to on Schedule 2, shall be delivered to Lender in completed and, if applicable, duly executed form on the Closing Date or on such later date as permitted by the terms of this Agreement or the Credit Agreement) will constitute valid perfected security interests as of such date (to the extent perfection can be accomplished by such filing or action) in all of the Collateral in favor of Lender as collateral security for each Grantor's Obligations, enforceable in accordance with the terms hereof against all creditors of each Grantor (subject to the effects of bankruptcy, insolvency and similar laws affecting the enforceability of creditors' rights generally and to general equitable principles) and any Persons purporting to purchase any Collateral from each Grantor, and (b) are prior to all other Liens on the Collateral in existence on the date hereof except for Permitted Liens.

4.3 Grantor Information. On the date hereof, Schedule 3 sets forth (a) each Grantor's jurisdiction of organization, (b) the location of each Grantor's chief executive office, (c) each Grantor's exact legal name as it appears on its organizational documents, (d) each Grantor's federal employer identification number, and (e) each Grantor's organizational identification number.

4.4 Collateral Locations. On the date hereof, Schedule 4 sets forth (a) each place of business of each Grantor (including its chief executive office), (b) all locations where all Inventory and the Equipment owned by each Grantor is kept, except (i) Inventory and Equipment that is "in transit" or out for repair or restoration, or (ii) Inventory and Equipment in the possession of employees in the ordinary course of business, and (c) whether each such Collateral location and place of business (including each Grantor's chief executive office) is owned or leased (and if leased, specifies the complete name and notice address of each lessor). On the date hereof, no Collateral is located outside the United States or (except for Inventory and Equipment within the scope of clause (b) above) in the possession of any lessor, bailee, warehouseman or consignee, except as indicated on Schedule 4.

4.5 Certain Property. None of the Collateral constitutes, or is the Proceeds of, (a) Farm Products, (b) Health-Care-Insurance Receivables or (c) vessels, aircraft or any other property subject to any certificate of title or other registration statute of the United States, any State or other jurisdiction, except for motor vehicles owned by the Grantors and used by employees of the Grantors in the ordinary course of business and subject to clause (a) of the definition of Excluded Property.

4.6 Investment Property.

(a) The shares of Pledged Equity pledged by each Grantor hereunder constitute all the issued and outstanding equity interests of each Issuer owned by such Grantor or, in the case of any Foreign Subsidiary or Excluded Foreign Holding Company, 65% of all issued and outstanding equity interests of such Foreign Subsidiary or Excluded Foreign Holding Company. All certificates, if any evidencing the Pledged Equity pledged by any Grantor hereunder as of the date hereof have been delivered to Lender.

(b) All of the Pledged Equity issued by any Subsidiary of any Grantor has been duly and validly issued and, if shares of corporate stock, is fully paid and nonassessable (to the extent applicable). Each Grantor has the right and requisite authority to pledge, assign, transfer, deliver, deposit and set over the Pledged Equity owned by such Grantor to Lender as provided herein. No consent, approval, authorization or other order or other action by, and no notice to or filing with, any governmental entity or any other Person which has not yet been obtained or made is required either (i) for the pledge by any Grantor of the Pledged Equity pursuant to this Agreement or (ii) for the exercise by Lender of the voting or other rights in respect of the Pledged Equity provided for in this Agreement or the remedies in respect of the Pledged Equity pursuant to this Agreement, except as may be required in connection with such disposition by laws affecting the offering and sale of securities generally or the UCC. The pledge by each Grantor of such Grantor's Pledged Equity pursuant to this Agreement does not violate (i) the charter, by-laws, operating agreement or other organizational documents of any Grantor or any Issuer that is a Subsidiary of any Grantor, or any indenture, mortgage or agreement to which any Grantor or issuer

is bound, or (ii) any restriction on such transfer or encumbrance of Pledged Equity with respect to any Issuer that is a Subsidiary of any Grantor, or (iii) any securities law or other applicable law, in each case to with respect to the foregoing clauses (i), (ii) and (iii), except where such violation could not reasonably be expected to result in a Material Adverse Effect. With respect to any Pledged Equity constituting certificated securities, the delivery of the certificate representing such Pledged Equity endorsed to Lender or in blank will perfect Lender's security interest in such Pledged Equity and any proceeds thereof by "control" (within the meaning of the applicable UCC).

(c) Schedule 1 lists all Investment Property owned by each Grantor as of the Closing Date. Each Grantor is the record and beneficial owner of, and has good and marketable title to, the Investment Property pledged by it hereunder, free of any and all Liens or options in favor of any other Person, except the security interest created by this Agreement and, in the case of Investment Property which does not constitute Pledged Equity or Pledged Notes, for Permitted Liens.

4.7 Receivables.

(a) No amount payable to such Grantor under or in connection with any Receivable is evidenced by any Instrument or Chattel Paper which has not been delivered to Lender unless delivery thereof is excused by the provisions of Section 5.1 hereof.

(b) The amounts represented by such Grantor to Lender from time to time as owing to such Grantor in respect of the Receivables (to the extent such representations are required by any of the Loan Documents) will at all such times be accurate in all material respects.

4.8 Intellectual Property.

(a) On the date hereof, Schedule 5 lists all patented or registered Intellectual Property (and all applications for Patents or registrations thereof), material Copyright Licenses, material Trademark Licenses and material Patent Licenses owned by each Grantor.

(b) On the date hereof, all material Intellectual Property owned by such Grantor is valid, subsisting, in-force, unexpired and enforceable, has not been abandoned, expired or lapsed and, to such Grantor's knowledge, all such material Intellectual Property and all physical manifestations, embodiments or uses thereof does not infringe, misappropriate or dilute the Intellectual Property rights of any other Person.

(c) On the date hereof, except as set forth in Schedule 5, none of the Intellectual Property owned by any Grantor is the subject of any licensing or franchise agreement pursuant to which such Grantor is the licensor or franchisor.

(d) To the knowledge of Grantors, no holding, decision or judgment has been rendered by any governmental or administrative authority which would limit, invalidate, render unenforceable, cancel or question the validity or enforceability of, or any Grantor's rights in, any Intellectual Property owned by any Grantor in any material respect (other than office actions issued in the ordinary course of prosecution of any pending applications for Patents or applications for registration of other Intellectual Property).

(e) No action or proceeding is pending, or, to the knowledge of such Grantor, threatened in writing, on the date hereof (i) seeking to limit, invalidate, render unenforceable, cancel or question the validity or enforceability of any material Intellectual Property owned by such Grantor or any Grantor's ownership interest therein, or (ii) which, if adversely determined, could reasonably be expected to have a Material Adverse Effect.

(f) Each Grantor owns and possesses or has a license or other right to use all Intellectual Property as is necessary for the conduct of the businesses of such Grantor, without any infringement upon, misappropriation of or dilution of rights of others which could reasonably be expected to have a Material Adverse Effect.

4.9 Deposit and Other Accounts. All Deposit Accounts and all other accounts maintained by each Grantor as of the date hereof (other than Exempt Accounts) are described on Schedule 6 hereto, which description includes for each such account the name of the Grantor maintaining such account, the name, address, telephone and fax numbers of the financial institution at which such account is maintained, the account number and the account officer, if any, of such account.

4.10 Credit Agreement. Each Grantor makes each of the representations and warranties made by Borrower in Sections 5.1, 5.2, 5.3, 5.10 and 5.12 of the Credit Agreement to the extent applicable to such Grantor (which representations and warranties shall be deemed to have been renewed upon each borrowing under the Credit Agreement, except to the extent such representations and warranties relate to a specific earlier date, in which case such representations and warranties shall be true and correct in all material respects (without duplication of any materiality qualifiers) as of such earlier date). Such representations and warranties are incorporated herein by this reference as if fully set forth herein.

5. Covenants.

Each Grantor covenants and agrees with Lender that, from and after the date of this Agreement until the Secured Obligations shall have been Paid in Full:

5.1 Delivery of Instruments, Certificated Securities and Chattel Paper. If any amount payable under or in connection with any of the Collateral with a value in excess of $1,000,000 individually or $3,500,000 in the aggregate for all Grantors at any time shall be or become evidenced by any Instrument, Certificated Security or Chattel Paper, other than checks for deposit, such Instrument, Certificated Security or Chattel Paper shall be promptly (within five (5) Business Days) following receipt thereof delivered to Lender, duly indorsed in a manner reasonably satisfactory to Lender, to be held as Collateral pursuant to this Agreement and in the case of such Chattel Paper constituting Electronic Chattel Paper, the applicable Grantor shall cause Lender to have control thereof within the meaning set forth in Section 9-105 of the UCC. In the event that an Event of Default shall have occurred and be continuing, upon the request of Lender, any Instrument, Certificated Security or Chattel Paper not theretofore delivered to Lender and at such time being held by any Grantor shall be promptly (within five (5) Business Days of a written request) delivered to Lender, duly indorsed in a manner reasonably satisfactory to Lender, to be held as Collateral pursuant to this Agreement and in the case of Electronic Chattel Paper, the

applicable Grantor shall cause Lender to have control thereof within the meaning set forth in Section 9-105 of the UCC.

5.2 Maintenance of Perfected Security Interest: Further Documentation.

(a) Such Grantor shall maintain the security interest created by this Agreement as a perfected security interest in the Collateral having the priority described in Section 4.2 and shall defend such security interest against the claims and demands (other than with respect to matters of priority with respect to Permitted Liens where such Permitted Liens are not prohibited from having priority over the security interests granted herein) of all Persons whomsoever.

(b) At any time and from time to time, promptly following the written request of Lender, and at the sole expense of such Grantor, such Grantor will promptly and duly execute and deliver, and have recorded, such further instruments and documents and take such further actions as Lender may reasonably request for the purpose of obtaining or preserving the full benefits of this Agreement and of the rights, and powers herein granted, including (i) filing any financing or continuation statements under the UCC (or other similar laws) in effect in any jurisdiction with respect to the security interests created hereby, and (ii) in the case of Investment Property, Deposit Accounts (other than Exempt Accounts), Electronic Chattel Paper with a face amount in excess of $1,000,000 individually and $3,500,000 in the aggregate for all Grantors and Letter of Credit Rights with respect to Letters of Credit with a face amount in excess of $1,000,000 individually and $3,500,000 in the aggregate for all Grantors and any other relevant Collateral, taking any actions necessary to enable Lender to obtain "control" (within the meaning of the applicable UCC) with respect thereto, in each case pursuant to documents in form and substance reasonably satisfactory to Lender.

(d) Each Grantor authorizes Lender to, at any time and from time to time, file financing statements, continuation statements, and amendments thereto that describe the Collateral (including describing the Collateral as "all assets" of each Grantor, or words of similar effect), and which contain any other information required pursuant to the UCC for the sufficiency of filing office acceptance of any financing statement, continuation statement, or amendment, and each Grantor agrees to furnish any such information to Lender promptly upon Lender's reasonable request. Any such financing statement, continuation statement, or amendment may be signed (to the extent signature of a Grantor is required under applicable law) by Lender on behalf of any Grantor and may be filed at any time in any jurisdiction.

(e) Each Grantor shall, at any time and from time to time, take such steps as Lender may reasonably request for Lender (i) use commercially reasonable efforts to obtain an acknowledgement, in form and substance reasonably satisfactory to Lender, of any bailee having possession of any of the Collateral with a value exceeding $1,000,000 individually or $3,500,000 in the aggregate for all such bailees, stating that the bailee holds such Collateral for Lender, (ii) to obtain "control" of any letter-of-credit rights, or electronic chattel paper (as such terms are defined by the UCC with corresponding provisions thereof defining what constitutes "control" for such items of Collateral) in each case with a value in excess of $1,000,000 individually or $3,500,000 in the aggregate, with any agreements establishing control to be in form and substance reasonably satisfactory to Lender, and (iii) otherwise to insure the continued perfection and priority of

Lender's security interest in any of the Collateral and of the preservation of its rights therein as granted or purported to be granted hereunder or under any of the other Loan Documents.

5.3 Changes in Locations, Name, etc. Such Grantor shall not, except upon ten (10) Business Days' prior written notice (or such lesser notice to which Lender may agree in writing in its sole discretion) to Lender and delivery to Lender of all additional financing statements and other documents reasonably requested by Lender as to the validity, perfection and priority of the security interests provided for herein:

(i) change the location of its chief executive office from that specified on Schedule 3 or in any subsequent notice delivered pursuant to this Section 5.3; or

(ii) change its name, identity or corporate or limited liability company structure or jurisdiction of organization.

(b) Notices. Such Grantor will advise Lender promptly upon obtaining knowledge thereof, in reasonable detail, of any Lien (other than Permitted Liens) on any of the Collateral which would adversely affect the ability of Lender to exercise any of its remedies hereunder.

5.4 Investment Property.

(a) All certificates and/or instruments evidencing the Pledged Equity on the date hereof shall be delivered to and held or on behalf of the Lender pursuant hereto. All Pledged Equity shall be accompanied by (a) duly executed instruments of transfer to be assigned in blank ("Instrument of Transfer"), substantially in the form of Annex II attached hereto or otherwise in form and substance satisfactory to Lender, (b) a duly executed irrevocable proxy, in substantially the form of Annex III hereto ("Irrevocable Proxy"), and (c) to the extent the Issuer thereof is a Subsidiary of any Grantor, a duly acknowledged equity interest registration page, in blank, from the applicable Issuer, substantially in the form of Annex IV hereto or otherwise in form and substance reasonably satisfactory to Lender. If such Grantor shall hereafter become entitled to receive or shall receive any certificate, option or rights in respect of the equity interests of any Issuer constituting Collateral, whether in addition to, in substitution of, as a conversion of, or in exchange for, any of the Pledged Equity, or otherwise in respect thereof, such Grantor shall accept the same as the agent of Lender, hold the same in trust for Lender and deliver the same promptly to Lender in the form received, duly indorsed by such Grantor to Lender, if required, together with an undated Instrument of Transfer covering such certificate duly executed in blank by such Grantor and with, if Lender so requests, signature guaranteed, to be held by Lender, subject to the terms hereof, as additional Collateral for the Secured Obligations. If any Grantor acquires Pledged Equity with respect to any Issuer following the date hereof that is not an Issuer of Pledged Equity as of the date hereof, such Grantor shall deliver an executed Irrevocable Proxy and (to the extent the Issuer thereof is a Subsidiary of any Grantor) a Registration Page with respect to such new Issuer to Lender. Upon the occurrence and during the continuance of an Event of Default, (i) any sums paid upon or in respect of the Investment Property upon the liquidation or dissolution of any Issuer shall be paid over to Lender to be held, at Lender's option, either by it hereunder as additional Collateral for the Secured Obligations or applied to the Secured Obligations as provided in Section 6.5, and (ii) in case any distribution of capital shall be made on or in respect of the

Investment Property or any property which constitutes Collateral shall be distributed upon or with respect to the Investment Property pursuant to the recapitalization or reclassification of the capital of any Issuer or pursuant to the reorganization thereof, the property so distributed shall, unless otherwise subject to a perfected Lien in favor of Lender, be delivered to Lender to be held, at Lender's option, either by it hereunder as additional Collateral for the Secured Obligations or applied to the Secured Obligations as provided in Section 6.5. Upon the occurrence and during the continuance of an Event of Default, if any sums of money or property so paid or distributed in respect of the Investment Property shall be received by such Grantor, such Grantor shall, until such money or property is paid or delivered to Lender, hold such money or property in trust for Lender, segregated from other funds of such Grantor, as additional Collateral for the Secured Obligations.

(b) Without the prior written consent of Lender (which consent shall not be unreasonably withheld, delayed or conditioned with respect to clause (i) below), such Grantor will not (i) vote to enable, or take any other action to permit, any Issuer to issue any equity interests of any nature or to issue any other securities or interests convertible into or granting the right to purchase or exchange for any equity interests of any nature of any Issuer (except pursuant to a transaction permitted by the Credit Agreement where such equity interests are issued to such Grantor and pledged pursuant to this Agreement) or to alter the voting rights with respect to any equity interests of any Issuer in any nature (ii) sell, assign, transfer, exchange, or otherwise dispose of, or grant any option with respect to, the Investment Property or Proceeds thereof (except pursuant to a transaction expressly permitted by the Credit Agreement) other than, with respect to Investment Property not constituting Pledged Equity or Pledged Notes, any such action which is not prohibited by the Credit Agreement, (iii) create, incur or permit to exist any Lien or option in favor of, or any claim of any Person with respect to, any of the Investment Property or Proceeds thereof, or any interest therein, except for Permitted Liens, or (iv) enter into any agreement or undertaking restricting the right or ability of such Grantor or Agent to sell, assign or transfer any of the Investment Property or Proceeds thereof, except, with respect to such Investment Property, shareholders' agreements entered into by such Grantor with respect to Persons in which such Grantor maintains an ownership interest of 50% or less.

(c) In the case of each Grantor (other than Parent) which is an Issuer, such Issuer agrees that (i) it will be bound by the terms of this Agreement relating to the Investment Property issued by it and will comply with such terms insofar as such terms are applicable to it, (ii) it will notify Lender promptly in writing of the occurrence of any of the events described in Section 5.4(a) with respect to the Investment Property issued by it and (iii) the terms of Sections 6.3(c) and 6.7 and each Irrevocable Proxy with respect to the Pledged Equity of such Grantor shall apply to such Grantor with respect to all actions that may be required of it pursuant to Section 6.3(c) or 6.7 or such Irrevocable Proxy regarding the Investment Property issued by it.

5.5 Intellectual Property.

(a) Such Grantor (either itself or through licensees) will (i) continue to use each material Trademark owned by such Grantor and make appropriate filings evidencing such use to the extent required by applicable law to maintain such material Trademark in full force with respect to each class of goods for which such material Trademark is currently used, free from any claim of abandonment for non-use, (ii) use such material Trademark with the appropriate notice of registration and all other notices and legends required by applicable law to avoid any loss of rights,

in each country or jurisdiction in which Grantor has rights in such material Trademark as of the date hereof (iii) not adopt or use any other Trademark which is confusingly similar or a colorable imitation of such material Trademark unless such Grantor shall grant to Lender a perfected security interest in such mark pursuant to this Agreement, and (iv) not (and not knowingly permit any licensee or sublicensee thereof to) knowingly do any act or knowingly omit to do any act whereby such material Trademark may become invalidated, forfeited, lapsed, abandoned, expired or impaired in any way.

(b) Such Grantor (either itself or through licensees) will not knowingly do any act, or knowingly omit to do any act, whereby any material Patent owned by such Grantor may become invalidated, forfeited, lapsed, abandoned, expired or dedicated to the public or otherwise impaired.

(c) Such Grantor (either itself or through licensees) will not (and will not knowingly permit any licensee or sublicensee thereof to) knowingly do any act or knowingly omit to do any act whereby any material Copyright owned by such Grantor may become invalidated, forfeited, lapsed, abandoned, expired or dedicated to the public domain or otherwise impaired.

(d) Such Grantor (either itself or through licensees) will not do any act that knowingly uses any Intellectual Property to infringe, misappropriate or dilute the intellectual property rights of any other Person.

(e) Such Grantor will notify Lender immediately (but in any event within thirty (30) days) if it knows that any application or registration or issued patent for any material Intellectual Property owned by such Grantor may become invalidated, forfeited, lapsed, abandoned, expired, impaired in any way or dedicated to the public (other than through expiration of their full statutory term), or of any materially adverse determination in any proceeding against such Grantor (including the institution of, or any such determination in any proceeding in the United States Patent and Trademark Office, the United States Copyright Office or any court or tribunal in any country or jurisdiction) regarding, such Grantor's ownership of, or the validity or enforceability of, any material Intellectual Property owned by such Grantor or such Grantor's right to register the same or to own and maintain the same (other than office actions issued in the ordinary course of prosecution of any pending applications for Patents or applications for registration of other Intellectual Property).

(f) Whenever such Grantor, either by itself or through any agent, employee, licensee or designee, files an application for the registration of any Intellectual Property with the United States Patent and Trademark Office, the United States Copyright Office or any similar office or agency in any other country or any political subdivision thereof or any regional or international body, such Grantor shall report such filing to Lender concurrently with the next delivery of financial statements of Borrower pursuant to Section 6.1.1 or 6.1.2 of the Credit Agreement, as applicable. Upon the request of Lender, such Grantor shall execute and deliver, and have recorded, any and all agreements, instruments, documents, and papers as Lender may reasonably request to evidence Lender's security interest in any Copyright, Patent or Trademark or other Intellectual Property owned by such Grantor and the goodwill and general intangibles of such Grantor relating thereto or represented thereby.

(g) Such Grantor will take all reasonable and necessary, as determined in its reasonably business judgment, steps to maintain and pursue each application (and to obtain the relevant registration or issued patent) and to maintain the validity, in-force status and enforceability of each registration and issued patent of all material Intellectual Property owned by it.

(h) In the event that any Intellectual Property owned by such Grantor is, to the knowledge of such Grantor, infringed upon or misappropriated or diluted by a third party, such Grantor shall (i) take such actions as such Grantor shall reasonably deem appropriate under the circumstances to protect such Intellectual Property and (ii) if such Intellectual Property is of material economic value, promptly (and in any event within ten (10) Business Days) notify Lender after it learns thereof and, to the extent, in its reasonable judgment, such Grantor determines it appropriate under the circumstances, sue for infringement, misappropriation or dilution, to seek injunctive relief where appropriate and to recover any and all damages for such infringement, misappropriation or dilution.

5.6 Reserved.

5.7 Other Matters. If requested by Lender, each of the Grantors shall use commercially reasonable efforts to cause to be delivered to Lender a Collateral Access Agreement with respect to Borrower's chief executive office in a form reasonably satisfactory to Lender, and each of the Grantors shall, at the written request of Lender, use commercially reasonable efforts to cause to be delivered to Lender a Collateral Access Agreement with respect to other leased real property or other locations (including bailee and third party warehouse locations) where (a) books and records are not duplicated at the chief executive office or (b) Collateral having a fair market value in excess of $1,000,000 individually and $3,500,000 in the aggregate for such locations are located. Such requirement may be waived at the option of Lender.

5.8 Commercial Tort Claims. If any Grantor shall at any time acquire any Commercial Tort Claim in excess of $1,000,000, such Grantor shall promptly (following knowledge of the existence thereof) notify Lender thereof in writing, therein providing a reasonable description and summary thereof, and upon delivery thereof to Lender, such Grantor shall be deemed to thereby grant to Lender (and such Grantor hereby grants to Lender) a security interest in such Commercial Tort Claim and all proceeds thereof.

5.9 Credit Agreement. Each of the Grantors covenants that it will, and, if necessary, will cause or enable Borrower to, fully comply with each of the covenants and other agreements set forth in the Credit Agreement applicable to such Grantor or Borrower, as applicable.

6. Remedial Provisions.

6.1 Reserved.

6.2 Communications with Obligors: Grantors Remain Liable.

(a) For the purpose of enabling Lender to exercise rights and remedies under this Agreement after the occurrence and during the continuation of an Event of Default, each Grantor hereby grants to Lender an irrevocable (except upon Payment in Full of the Secured

Obligations and termination of this Agreement), nonexclusive, worldwide, sublicensable, assignable, perpetual license (exercisable without payment of royalty or other compensation to such Grantor) to make, use, sell, offer for sale, import, export, reproduce, make derivatives works based upon, license or sublicense, and otherwise commercially exploit any Intellectual Property now owned or hereafter acquired by such Grantor during the continuation of any Event of Default, and wherever the same may be located, and including in such license access to all media in which any of the licensed items may be recorded or stored and to all computer software, accounts and programs used for the compilation or printout thereof.

6.3 Investment Property.

(a) Unless an Event of Default shall have occurred and be continuing and Lender shall have given notice to the relevant Grantor of Lender's intent to exercise its corresponding rights pursuant to Section 6.3(b), each Grantor shall be permitted to receive all cash dividends and distributions paid in respect of the Pledged Equity and all payments made in respect of the Pledged Notes, to the extent permitted in the Credit Agreement, and to exercise all voting and other rights with respect to the Investment Property; provided, that no vote shall be cast or other right exercised or action taken which could impair the Collateral or which would be inconsistent with or result in any violation of any provision of the Credit Agreement, this Agreement or any other Loan Document.

(b) If an Event of Default shall occur and be continuing and Lender shall give concurrent notice of its election to exercise such rights to the relevant Grantor or Grantors, Lender shall have the right to (i) receive any and all cash dividends and distributions, payments or other Proceeds paid in respect of the Investment Property and make application thereof to the Secured Obligations in accordance with Section 6.5, (ii) transfer and register any or all of the Investment Property in the name of Lender or its nominee, it being acknowledged by each Grantor (in its capacity as Grantor and, if such Grantor is an Issuer of any Investment Property, as Issuer) that such transfer and registration may be effected by Lender by the delivery of a Registration Page to the applicable Issuer reflecting Lender or its designee as the holder of such Investment Property, or otherwise by Lender through its irrevocable appointment as attorney-in-fact pursuant to this Agreement and each Irrevocable Proxy, (iii) exercise, or permit its nominee to exercise, all voting and other rights pertaining to such Investment Property as a holder of such Investment Property, with full power of substitution to do so, and (iv) exercise, or permit its nominee to exercise, any and all rights of conversion, exchange and subscription and any other rights, privileges or options pertaining to such Investment Property as if it were the absolute owner thereof (including the right to exchange at its discretion any and all of the Investment Property upon the merger, consolidation, reorganization, recapitalization or other fundamental change in the corporate or other structure of any Issuer, or upon the exercise by any Grantor or Lender of any right, privilege or option pertaining to such Investment Property, and in connection therewith, the right to deposit and deliver any and all of the Investment Property with any committee, depositary, transfer agent, registrar or other designated agency upon such terms and conditions as Lender may determine), and including with respect to the Pledged Equity, giving or withholding written consents of stockholders, partners or members, calling special meetings of stockholders, partners or members and voting at such meetings) and otherwise act with respect to the Investment Property as if Lender were the outright owner thereof, (v) exercise any other rights or remedies Lender may have under the UCC or other applicable law, and (vi) take any action and execute any instrument which Lender

may deem necessary or advisable to accomplish the purposes of this Agreement, all without liability except to account for property actually received by it, but Lender shall have no duty to any Grantor to exercise any such right, privilege or option and shall not be responsible for any failure to do so or delay in so doing.

(c) Each Grantor hereby authorizes and instructs each Issuer of any Investment Property pledged by such Grantor hereunder to (i) comply with any instruction received by it from Lender in writing that (x) states that an Event of Default has occurred and is continuing and (y) is otherwise in accordance with the terms of this Agreement (including Section 6.3(b)), without any other or further instructions from such Grantor, and each Grantor agrees that each Issuer shall be fully protected in so complying, and (ii) so long as an Event of Default exists, unless otherwise expressly permitted hereby, pay any dividends, distributions or other payments with respect to the Investment Property directly to Lender.

(d) Any transfer to Lender or its nominee, or registration in the name of Lender or its nominee, of the whole or any part of the Investment Property, whether by the delivery of a Registration Page to an Issuer or otherwise, shall be made solely for purposes of effectuating voting or other consensual rights with respect to the Investment Property in accordance with the terms of this Agreement and is not intended to effectuate any transfer of ownership of the Investment Property. Notwithstanding any delivery or modification of a Registration Page or exercise of an Irrevocable Proxy, Lender shall not be deemed the owner of, or assume any obligations of the owner or holder of any Investment Property unless and until Lender accepts such obligations in writing or otherwise takes steps to foreclose its security interest in the Investment Property and become the owner thereof under applicable law (including via sale as described in this Agreement).

(e) Each Grantor further agrees that a breach of any of the covenants contained in this Section 6.3 will cause irreparable injury to Lender, that Lender shall have no adequate remedy at law in respect of such breach and, as a consequence, agrees that each and every covenant contained in this Section 6.3 shall be specifically enforceable against such Grantor, and each Grantor hereby waives and agrees not to assert any defenses against an action for specific performance of such covenants except for a defense that the Secured Obligations are not then due and payable in accordance with the agreements and instruments governing and evidencing such obligations.

6.4 Proceeds to be Turned Over To Agent. In addition to the rights of Lender specified in Section 6.1 with respect to payments of Receivables, if an Event of Default shall occur and be continuing, upon the request of Lender all Proceeds of Collateral received by any Grantor consisting of cash, checks and other cash equivalent items shall be held by such Grantor in trust for Lender, segregated from other funds of such Grantor, and shall, at the written request of Lender, forthwith (and, in any event, within two (2) Business Days) upon receipt by such Grantor, be turned over to Lender in the form received by such Grantor (duly indorsed by such Grantor to Lender, if required). All Proceeds received by Lender hereunder shall be applied to the Secured Obligations as provided in Section 6.5.

6.5 Application of Proceeds. At such intervals as may be agreed upon by Borrower and Lender, or, if an Event of Default shall have occurred and be continuing, at any time at Lender's election, Lender may apply all or any part of Proceeds held in any collateral account established

pursuant hereto or otherwise received by Lender to the payment of the Secured Obligations in accordance with Lender's sole discretion.

6.6 Code and Other Remedies. If an Event of Default shall occur and be continuing, Lender, may exercise, in addition to all other rights and remedies granted to it in this Agreement and in any other instrument or agreement securing, evidencing or relating to the Secured Obligations, all rights and remedies of a secured party under the UCC or any other applicable law. Without limiting the generality of the foregoing, Lender, without demand of performance or other demand, presentment, protest, advertisement or notice of any kind (except any notice required by law referred to below) to or upon any Grantor or any other Person (all and each of which demands, defenses, advertisements and notices are hereby waived to the extent permitted by law), may in such circumstances forthwith collect, receive, appropriate and realize upon the Collateral, or any part thereof, and/or may forthwith sell, lease, assign, give options to purchase, or otherwise dispose of and deliver the Collateral or any part thereof (or contract to do any of the foregoing), in one or more parcels at public or private sale or sales, at any exchange, broker's board or office of Lender or elsewhere upon such terms and conditions as it may deem advisable and at such prices as it may deem best, for cash or on credit or for future delivery with assumption of any credit risk. Lender may disclaim any warranties that might arise in connection with any such lease, assignment, grant of option or other disposition of Collateral and have no obligation to provide any warranties at such time. Lender shall have the right upon any such public sale or sales, and, to the extent permitted by law, upon any such private sale or sales, to purchase the whole or any part of the Collateral so sold, free of any right or equity of redemption in any Grantor, which right or equity is hereby waived and released. Such sales may be adjourned and continued from time to time with or without notice. Lender shall have the right to conduct such sales on any Grantor's premises or elsewhere and shall have the right to use any Grantor's premises without charge for such time or times as Lender deems necessary or advisable. Each Grantor further agrees, at Lender's request and during the existence of an Event of Default, to assemble the Collateral and make it available to Lender at places which Lender shall reasonably select, whether at such Grantor's premises or elsewhere. Lender shall apply the net proceeds of any action taken by it pursuant to this Section 6.6. after deducting all reasonable costs and expenses of every kind incurred in connection therewith or incidental to the care or safekeeping of any of the Collateral or in any way relating to the Collateral or the rights of Lender hereunder, including attorneys' fees and disbursements reimbursable pursuant to Section 9.4 of the Credit Agreement, to the payment of the Secured Obligations in accordance with Lender's sole discretion. To the extent permitted by applicable law, each Grantor waives all claims, damages and demands it may acquire against Lender arising out of the exercise by it of any rights hereunder. If any notice of a proposed sale or other disposition of Collateral shall be required by law, such notice shall be deemed reasonable and proper if given at least ten (10) days before such sale or other disposition.

6.7 Registration Rights. Each Grantor recognizes that Lender may be unable to effect a public sale of any or all the Pledged Equity, by reason of certain prohibitions contained in the Securities Act and applicable state securities laws or otherwise, and may be compelled to resort to one or more private sales thereof to a restricted group of purchasers which will be obliged to agree, among other things, to acquire such securities for their own account for investment and not with a view to the distribution or resale thereof. Each Grantor acknowledges and agrees that any such private sale may result in prices and other terms less favorable than if such sale were a public sale. Lender shall be under no obligation to delay a sale of any of the Pledged Equity for the period of

time necessary to permit the Issuer thereof to register such securities or other interests for public sale under the Securities Act, or under applicable state securities laws, even if such Issuer would agree to do so.

6.8 Waiver; Deficiency. Each Grantor waives, to the maximum extent permitted by applicable law, and agrees not to assert any rights or privileges which it may acquire under Section 9-626 of the UCC. Each Grantor shall remain liable for any deficiency if the proceeds of any sale or other disposition of the Collateral are insufficient for the Secured Obligations to be Paid in Full and the reasonable and documented fees and out-of-pocket disbursements of any attorneys employed by Lender to collect such deficiency (to the extent reimbursable under the Credit Agreement).

7. Lender as Attorney-in Fact, etc. and its Duties.

7.1 Lender's Appointment as Attorney-in-Fact, etc.

(a) WHILE AN EVENT OF DEFAULT EXISTS, EACH GRANTOR HEREBY IRREVOCABLY CONSTITUTES AND APPOINTS LENDER AND ANY OFFICER OR AGENT THEREOF, WITH FULL POWER OF SUBSTITUTION, AS ITS TRUE AND LAWFUL ATTORNEY-IN-FACT AND PROXY WITH FULL IRREVOCABLE POWER AND AUTHORITY IN THE PLACE AND STEAD OF SUCH GRANTOR AND IN THE NAME OF SUCH GRANTOR OR IN ITS OWN NAME, FOR THE PURPOSE OF CARRYING OUT THE TERMS OF THIS AGREEMENT, TO TAKE ANY AND ALL APPROPRIATE ACTION AND TO EXECUTE ANY AND ALL DOCUMENTS AND INSTRUMENTS WHICH MAY BE NECESSARY OR DESIRABLE TO ACCOMPLISH THE PURPOSES OF THIS AGREEMENT OR TAKE ANY OTHER REMEDIAL ACTION WITH RESPECT TO COLLATERAL OTHERWISE DESCRIBED IN THIS AGREEMENT, THE CREDIT AGREEMENT OR THE OTHER LOAN DOCUMENTS, and, without limiting the generality of the foregoing, each Grantor hereby gives Lender the power and right, on behalf of and at the expense of such Grantor, without notice to or assent by such Grantor, to do any or all of the following:

(i) in the name of such Grantor or its own name, or otherwise, take possession of and indorse and collect any checks, drafts, notes, acceptances or other instruments for the payment of moneys due under any Receivable or with respect to any other Collateral and file any claim or take any other action or proceeding in any court of law or equity or otherwise deemed appropriate by Lender for the purpose of collecting any and all such moneys due under any Receivable or with respect to any other Collateral whenever payable;

(ii) in the case of any Intellectual Property owned by such Grantor, execute and deliver, and have recorded, any and all agreements, instruments, documents and papers as Lender may request to evidence Lender's security interest in such Intellectual Property and the goodwill and general intangibles of such Grantor relating thereto or represented thereby;

(iii) discharge Liens levied or placed on or threatened against the Collateral, and effect any repairs or insurance called for by the terms of this Agreement and pay all or any part of the premiums therefor and the costs thereof;

(iv) execute, in connection with any sale provided for in Section 6.6 or 6.7, any indorsements, assignments or other instruments of conveyance or transfer with respect to the Collateral;

(v) (1) vote the Investment Property in any manner Lender deems advisable for or against all matters submitted or which may be submitted to a vote of shareholders, partners or members, as the case may be, (2) transfer and register in its name or in the name of its nominee the whole or any part of the Investment Property, (3) receive and collect any dividend or other payment or distribution in respect of or in exchange for the Investment Property and (4) take all such other actions with respect to Investment Properly authorized under Section 6.3 or 6.7 of this Agreement or otherwise authorized by this Agreement or the Other Loan Documents; and

(vi) (1) direct any party liable for any payment under any of the Collateral to make payment of any and all moneys due or to become due thereunder directly to Lender or as Lender shall direct; (2) ask or demand for, collect, and receive payment of and receipt for, any and all moneys, claims and other amounts due or to become due at any time in respect of or arising out of any Collateral; (3) sign and indorse any invoices, freight or express bills, bills of lading, storage or warehouse receipts, drafts against debtors, assignments, verifications, notices and other documents in connection with any of the Collateral; (4) commence and prosecute any suits, actions or proceedings at law or in equity in any court of competent jurisdiction to collect the Collateral or any portion thereof and to enforce any other right in respect of any Collateral; (5) defend any suit, action or proceeding brought against such Grantor with respect to any Collateral; (6) settle, compromise or adjust any such suit, action or proceeding and, in connection therewith, give such discharges or releases as Lender may deem appropriate; (7) assign any Copyright, Patent or Trademark or other Intellectual Property, throughout the world for such term or terms, on such conditions, and in such manner, as Lender shall in its sole discretion determine; (8) vote any right or interest with respect to any Investment Property; (9) order good standing certificates and conduct lien searches in respect of such jurisdictions or offices as Lender may deem appropriate; and (10) generally sell, transfer, pledge and make any agreement with respect to or otherwise deal with any of the Collateral as fully and completely as though Lender were the absolute owner thereof for all purposes, and do, at Lender's option and such Grantor's expense, at any time, or from time to time, all acts and things which Lender deems necessary to protect, preserve or realize upon the Collateral and Lender's security interests therein and to effect the intent of this Agreement, all as fully and effectively as such Grantor might do.

THE POWER-OF-ATTORNEY AND PROXY GRANTED HEREBY IS COUPLED WITH AN INTEREST AND SHALL BE VALID AND IRREVOCABLE UNTIL (X) THE SECURED OBLIGATIONS HAVE BEEN INDEFEASIBLY PAID IN FULL IN ACCORDANCE WITH THE PROVISIONS OF THE CREDIT AGREEMENT, THE OTHER LOAN DOCUMENTS OR ANY OTHER GOVERNING DOCUMENTATION, AS

APPLICABLE AND (Y) LENDER HAS NO FURTHER OBLIGATIONS UNDER THE CREDIT AGREEMENT, THE OTHER LOAN DOCUMENTS OR ANY OTHER DOCUMENTS (IT BEING UNDERSTOOD THAT ANY SUCH SECURED OBLIGATIONS WILL CONTINUE TO BE EFFECTIVE OR AUTOMATICALLY REINSTATED IF AT ANY TIME PAYMENT, IN WHOLE OR IN PART, OF ANY OF THE SECURED OBLIGATIONS IS RESCINDED OR MUST OTHERWISE BE RESTORED OR RETURNED BY LENDER FOR ANY REASON, INCLUDING AS A PREFERENCE, FRAUDULENT CONVEYANCE OR OTHERWISE UNDER ANY BANKRUPTCY, INSOLVENCY OR SIMILAR LAW, ALL AS THOUGH SUCH PAYMENT HAD NOT BEEN MADE; IT BEING FURTHER UNDERSTOOD THAT IN THE EVENT PAYMENT OF ALL OR ANY PART OF THE SECURED OBLIGATIONS IS RESCINDED OR MUST BE RESTORED OR RETURNED, ALL REASONABLE OUT-OF-POCKET COSTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, REASONABLE ATTORNEYS' FEES AND DISBURSEMENTS) INCURRED BY LENDER IN DEFENDING AND ENFORCING SUCH REINSTATEMENT SHALL BE DEEMED TO BE INCLUDED AS A PART OF THE SECURED OBLIGATIONS) (THE OCCURRENCE OF THE FOREGOING, "TERMINATION")). SUCH APPOINTMENT OF LENDER AS PROXY AND ATTORNEY-IN-FACT SHALL BE VALID AND IRREVOCABLE AS PROVIDED HEREIN NOTWITHSTANDING ANY LIMITATIONS TO THE CONTRARY SET FORTH IN THE CERTIFICATE OF INCORPORATION, CERTIFICATE OF FORMATION, ARTICLES OF ORGANIZATION, BY-LAWS, LIMITED LIABILITY COMPANY AGREEMENTS OR OTHER ORGANIZATIONAL DOCUMENTS OF ANY GRANTOR OR ISSUER OR CORPORATE OR LIMITED LIABILITY COMPANY LAW (OR SIMILAR LAW), AS APPLICABLE, OF THE STATE OF DELAWARE, OR ANY OTHER STATE OF ORGANIZATION OF ANY GRANTOR OR ISSUER. SUCH PROXY SHALL BE EFFECTIVE AUTOMATICALLY AND WITHOUT THE NECESSITY OF ANY ACTION (INCLUDING ANY TRANSFER OF ANY INVESTMENT PROPERTY ON THE RECORD BOOKS OF THE ISSUER THEREOF) BY ANY PERSON (INCLUDING THE ISSUER OF THE INVESTMENT PROPERTY OR ANY OFFICER OR AGENT THEREOF). IN ORDER TO FURTHER AFFECT THE TRANSFER OF RIGHTS WITH RESPECT TO PLEDGED EQUITY SET FORTH IN SECTION 6.3, SECTION 6.7 OR ANY OTHER PROVISION OF THIS AGREEMENT IN FAVOR OF LENDER, LENDER SHALL HAVE THE RIGHT, UPON THE OCCURRENCE AND DURING THE CONTINUANCE OF AN EVENT OF DEFAULT, TO PRESENT TO ANY ISSUER AN IRREVOCABLE PROXY AND/OR REGISTRATION PAGE.

Upon exercise of the proxy set forth herein, all prior proxies given by any Grantor with respect to any of the Investment Property (other than to Lender or otherwise pursuant to the Loan Documents) are hereby revoked, and no subsequent proxies (other than to Lender or otherwise under the Loan Documents) will be given with respect to any of the Investment Property. Lender, as proxy, will be empowered and may exercise the irrevocable proxy to vote the Investment Property at any and all times, including but not limited to, at any meeting of shareholders, partners or members, as the case may be, however called, and at any adjournment thereof, or in any action by written consent, and may waive any notice otherwise required in connection therewith. To the fullest extent permitted by applicable law, Lender shall have no agency, fiduciary or other implied duties to any Grantor or any other party when acting in its capacity as such attorney-in-fact or proxy. Each Grantor hereby waives and releases any claims that it may otherwise have against Lender with respect to any breach or alleged breach of any such agency, fiduciary or other duty. Notwithstanding the foregoing grant of a power of attorney and proxy, Lender shall have no duty

to exercise any such right or to preserve the same and shall not be liable for any failure to do so or for any delay in doing so.

Anything in this Section 7.1(a) at to the contrary notwithstanding, Lender agrees that it will not exercise any rights under the power of attorney provided for in this Section 7.1(a) unless an Event of Default shall have occurred and be continuing.

(b) If any Grantor fails to perform or comply with any of its agreements contained herein, Lender, at its option, but without any obligation so to do, may perform or comply, or otherwise cause performance or compliance, with such agreement.

(c) Each Grantor hereby ratifies all that such attorneys shall lawfully do or cause to be done by virtue hereof. All powers, authorizations and agencies contained in this Agreement are coupled with an interest and are irrevocable until this Agreement is terminated and the security interests created hereby are released.

7.2 Duty of Lender. Lender's sole duty with respect to the custody, safekeeping and physical preservation of the Collateral in its possession shall be to deal with it in the same manner as Lender deals with similar property for its own account. Lender nor any of its officers, directors, employees or agents shall be liable for any failure to demand, collect or realize upon any of the Collateral or for any delay in doing so or shall be under any obligation to sell or otherwise dispose of any Collateral upon the request of any Grantor or any other Person or to take any other action whatsoever with regard to the Collateral or any part thereof. The powers conferred on Lender hereunder are solely to protect Lender's interests in the Collateral and shall not impose any duty upon Lender to exercise any such powers. Lender shall be accountable only for amounts that it actually receives as a result of the exercise of such powers, and neither it nor any of its officers, directors, employees or agents shall be responsible to any Grantor for any act or failure to act hereunder.

7.3 Photocopy of this Agreement. A photographic or other reproduction of this Agreement shall be sufficient as a financing statement or other filing or recording document or instrument for filing or recording in any jurisdiction.

8. Miscellaneous.

8.1 Amendments in Writing. None of the terms or provisions of this Agreement may be waived, amended, supplemented or otherwise modified except in accordance with Section 9.1 of the Credit Agreement.

8.2 Notices. All notices, requests and demands to or upon Agent or any Grantor hereunder shall be effected in the manner provided for in Section 9.2 of the Credit Agreement and each such notice, request or demand to or upon any Guarantor shall be addressed to such Guarantor in care of Borrower at Borrower's notice address set forth on Schedule 1.

8.3 Indemnification by Grantors. Each Grantor hereby agrees, on a joint and several basis, to indemnify, exonerate and hold Lender and each of the officers, directors, employees, Affiliates and agents of Lender (each a "Lender Party"), except to the extent resulting from gross negligence or willful misconduct of such Lender Party as determined by a court of competent

jurisdiction, free and harmless from and against any and all actions, causes of action, suits, losses, liabilities, damages and expenses, including Legal Costs (collectively, the "Indemnified Liabilities"), incurred by Lender Parties or any of them as a result of, or arising out of, or relating to (a) any tender offer, merger, purchase of equity interests, purchase of assets or other similar transaction financed or proposed to be financed in whole or in part, directly or indirectly, with the proceeds of any of the Loans, (b) the use, handling, release, emission, discharge, transportation, storage, treatment or disposal of any hazardous substance at any properly owned or leased by any Grantor or any Subsidiary, (c) any violation of any Environmental Laws with respect to conditions at any property owned or leased by any Grantor or any Subsidiary or the operations conducted thereon, (d) the investigation, cleanup or remediation of offsite locations at which any Grantor or any Subsidiary or their respective predecessors are alleged to have directly or indirectly disposed of hazardous substances, or (e) the execution, delivery, performance or enforcement of this Agreement or any other Loan Document by any Lender Party, except to the extent any such Indemnified Liabilities result from the applicable Lender Party's or its officers, directors, employees, agents or Affiliates gross negligence, bad faith or willful misconduct as determined by a court of competent jurisdiction. If and to the extent that the foregoing undertaking may be unenforceable for any reason, each Grantor hereby agrees to make the maximum contribution to the payment and satisfaction of each of the Indemnified Liabilities which is permissible under applicable law. The agreements in this Section 8.3 shall survive repayment of the Secured Obligations (and termination of all commitments thereunder), any foreclosure under, or any modification, release or discharge of, any or all of the Collateral Documents and termination of this Agreement.

8.4 Enforcement Expenses.

(a) Each Grantor agrees, on a joint and several basis, to pay or reimburse on demand Lender for all reasonable out-of-pocket costs and expenses (including Legal Costs) incurred in collecting against any Guarantor under the guarantee contained in Section 2 or otherwise enforcing or preserving any rights under this Agreement and the other Loan Documents in accordance with the terms of Section 9.4 of the Credit Agreement.

(b) Each Grantor agrees to pay, and to hold Lender harmless from, any and all liabilities with respect to, or resulting from any delay in paying, any and all stamp, excise, sales or other taxes which may be payable or determined to be payable with respect to any of the Collateral or in connection with any of the transactions contemplated by this Agreement.

(c) The agreements in this Section 8.4 shall survive repayment of the Secured Obligations (and termination of all commitments thereunder), any foreclosure under, or any modification, release or discharge of, any or all of the Collateral Documents and termination of this Agreement.

8.5 Captions. Captions used in this Agreement are for convenience only and shall not affect the construction of this Agreement.

8.6 Nature of Remedies. All Secured Obligations of each Grantor and rights of Lender expressed herein or in any other Loan Document shall be in addition to and not in limitation of those provided by applicable law. No failure to exercise and no delay in exercising, on the part of

Lender, any right, remedy, power or privilege hereunder, shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

8.7 Counterparts. This Agreement may be executed in any number of counterparts and by the different parties hereto on separate counterparts and each such counterpart shall be deemed to be an original, but all such counterparts shall together constitute but one and the same Agreement. Receipt by facsimile, emailed .pdf file or other similar form of electronic transmission of any executed signature page to this Agreement or any other Loan Document shall constitute effective delivery of such signature page.

8.8 Severability. The illegality or unenforceability of any provision of this Agreement or any instrument or agreement required hereunder shall not in any way affect or impair the legality or enforceability of the remaining provisions of this Agreement or any instrument or agreement required hereunder.

8.9 Entire Agreement. This Agreement, together with the other Loan Documents, embodies the entire agreement and understanding among the parties hereto and supersedes all prior or contemporaneous agreements and understandings of such Persons, verbal or written, relating to the subject matter hereof and thereof and any prior arrangements made with respect to the payment by any Grantor of (or any indemnification for) any fees, costs or expenses payable to or incurred (or to be incurred) by or on behalf of Lender.

8.10 Successors; Assigns. This Agreement shall be binding upon Grantors and Lender and their respective successors and permitted assigns, and shall inure to the benefit of Grantors and Lender and the successors and permitted assigns of Lender. No other Person shall be a direct or indirect legal beneficiary of, or have any direct or indirect cause of action or claim in connection with, this Agreement or any of the other Loan Documents. No Grantor may assign or transfer any of its rights or Obligations under this Agreement without the prior written consent of Lender.

8.11 Governing Law. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO CONFLICT OF LAWS PRINCIPLES.

8.12 Forum Selection; Consent to Jurisdiction. ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH THIS AGREEMENT, SHALL BE BROUGHT AND MAINTAINED EXCLUSIVELY IN THE COURTS OF THE STATE OF NEW YORK SITTING IN NEW YORK COUNTY OR IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK; PROVIDED THAT ANY SUIT SEEKING ENFORCEMENT AGAINST ANY COLLATERAL OR OTHER PROPERTY MAY BE BROUGHT, AT LENDER'S OPTION, IN THE COURTS OF ANY JURISDICTION WHERE SUCH COLLATERAL OR OTHER PROPERTY MAY BE FOUND. EACH GRANTOR AND LENDER HEREBY EXPRESSLY AND IRREVOCABLY SUBMITS TO THE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK SITTING IN NEW YORK COUNTY AND THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK FOR THE PURPOSE OF ANY SUCH LITIGATION AS SET FORTH ABOVE. EACH GRANTOR AND LENDER FURTHER IRREVOCABLY

CONSENTS TO THE SERVICE OF PROCESS BY REGISTERED MAIL, POSTAGE PREPAID, OR BY PERSONAL SERVICE WITHIN OR WITHOUT THE STATE OF NEW YORK. EACH GRANTOR AND LENDER HEREBY EXPRESSLY AND IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY SUCH LITIGATION BROUGHT IN ANY SUCH COURT REFERRED TO ABOVE AND ANY CLAIM THAT ANY SUCH LITIGATION HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

8.13 Waiver of Jury Trial. EACH OF GRANTOR AND LENDER HEREBY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS UNDER THIS AGREEMENT AND ANY AMENDMENT, INSTRUMENT, DOCUMENT OR AGREEMENT DELIVERED OR WHICH MAY IN THE FUTURE BE DELIVERED IN CONNECTION HEREWITH AND AGREES THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY.

8.14 Set-off. Each Grantor agrees that Lender has all rights of set-off provided by applicable law, and in addition thereto, each Grantor agrees that at any time any Event of Default has occurred and is continuing, Lender may apply to the payment of any Secured Obligations, whether or not then due, any and all balances, credits, deposits, accounts or moneys of such Grantor then or thereafter with Lender (other than balances in Exempt Accounts that do not constitute Exempt Accounts pursuant to clause (a)(iv) of the definition thereof). Lender shall promptly provide subsequent notice of any such set-off to the applicable Grantor, provided that the failure to provide such notice shall not affect the validity of such set-off.

8.15 Acknowledgements. Each Grantor hereby acknowledges that:

(a) it has been advised by counsel in the negotiation, execution and delivery of this Agreement and the other Loan Documents to which it is a party;

(b) Lender has no fiduciary relationship with or duty to any Grantor arising out of or in connection with this Agreement or any of the other Loan Documents, and the relationship between the Grantors, on the one hand, and Lender, on the other hand, in connection herewith or therewith is solely that of debtor and creditor; and

(c) no joint venture is created hereby or by the other Loan Documents or otherwise exists by virtue of the transactions contemplated hereby by Grantors and Lender.

8.16 Additional Grantors. Each Loan Party that is required to become a party to this Agreement pursuant to Section 6.7 of the Credit Agreement shall become a Grantor for all purposes of this Agreement upon execution and delivery by such Loan Party of a joinder agreement in a form reasonably satisfactory to Lender in its sole discretion.

8.17 Releases.

(a) At such time as the Secured Obligations have been Paid in Full, the Collateral shall be automatically released from the Liens created hereby, and this Agreement and

all obligations (other than those expressly stated to survive such termination) of Lender and each Grantor hereunder shall terminate automatically, all without delivery of any instrument or performance of any act by any party, and all rights to the Collateral shall revert to the Grantors. At the request and sole expense of any Grantor following any such termination, Lender shall promptly deliver to the Grantors any Collateral held by Lender hereunder, and execute and deliver to the Grantors such filings and documents (including authorization to file applicable UCC termination statements) as the Grantors shall reasonably request to evidence such termination.

(b) If any of the Collateral shall be sold, transferred or otherwise disposed of by any Grantor in a transaction permitted by the Credit Agreement, then the Lender's Lien on such Collateral pursuant to this Agreement and the other Loan Documents shall automatically terminate and Lender, at the request and sole expense of such Grantor, shall execute and deliver to such Grantor all releases or other documents reasonably necessary or desirable to evidence the release of the Liens created hereby on such Collateral, so long as Borrower delivers to Lender a certificate of an officer of Borrower as to such sale or disposition being made in compliance with the Loan Documents. A Subsidiary Guarantor shall be automatically released from its obligations hereunder in the event that all the equity interests of such Subsidiary Guarantor shall be sold, transferred or otherwise disposed of in a transaction permitted by the Credit Agreement; provided that Borrower shall have delivered to Lender, with reasonable notice prior to the date of the proposed release, a written request for release identifying the relevant Subsidiary Guarantor and the terms of the sale or other disposition in reasonable detail, including the price thereof and any expenses in connection therewith, and, to the extent that Lender is requested to confirm such release or execute any documents in connection therewith, Borrower shall provide Lender with a certification by Borrower stating that such transaction is in compliance with the Credit Agreement and the other Loan Documents and any of the foregoing shall be at the sole expense of Borrower.

8.18 Obligations and Liens Absolute and Unconditional. Each Grantor understands and agrees that the obligations of each Grantor under this Agreement shall be construed as a continuing, absolute and unconditional without regard to (a) the validity or enforceability of any Loan Document, any of the Secured Obligations or any other collateral security therefor or guaranty or right of offset with respect thereto at any time or from time to time held by Lender, (b) any defense, set-off or counterclaim (other than a defense of payment or performance) which may at any time be available to or be asserted by any Grantor or any other Person against Lender, or (c) any other circumstance whatsoever (with or without notice to or knowledge of any Grantor) which constitutes, or might be construed to constitute, an equitable or legal discharge of any Grantor for the Secured Obligations, in bankruptcy or in any other instance (other than a defense of payment or performance). When making any demand hereunder or otherwise pursuing its rights and remedies hereunder against any Grantor, Lender may, but shall be under no obligation to, make a similar demand on or otherwise pursue such rights and remedies as it may have against any other Grantor or any other Person or against any collateral security or guaranty for the Secured Obligations or any right of offset with respect thereto, and any failure by Lender to make any such demand, to pursue such other rights or remedies or to collect any payments from any other Grantor or any other Person or to realize upon any such collateral security or guaranty or to exercise any such right of offset, or any release of any other Grantor or any other Person or any such collateral security, guaranty or right of offset, shall not relieve any Grantor of any obligation or liability hereunder, and shall not impair or affect the rights and remedies, whether express, implied or

available as a matter of law, of Lender against any Grantor. For the purposes hereof “demand” shall include the commencement and continuance of any legal proceedings.

8.19 Reinstatement. This Agreement shall remain in full force and effect and continue to be effective should any petition be filed by or against Grantor or any Issuer for liquidation or reorganization, should Grantor or any Issuer become insolvent or make an assignment for the benefit of creditors or should a receiver or trustee be appointed for all or any significant part of Grantor’s or any Issuer’s assets, and shall continue to be effective or be reinstated, as the case may be, if at any time payment and performance of the Secured 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 Secured Obligations, whether as a ”voidable preference”, ”fraudulent conveyance”, 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 Secured Obligations shall be reinstated and deemed reduced only by such amount paid and not so rescinded, reduced, restored or returned.

[signature page follows]

Each of the undersigned has caused this Guarantee and Collateral Agreement to be duly executed and delivered as of the date first above written.

RESHAPE LIFESCIENCES INC., a Delaware corporation, as Grantor

By: /s/ Barton P. Bandy
Name: Barton P. Bandy
Title: CEO

RESHAPE MEDICAL LLC, a Delaware limited liability company, as Grantor

By: /s/ Barton P. Bandy
Name: Barton P. Bandy
Title: CEO

ARMISTICE CAPITAL MASTER FUND LTD., as Lender

By: /s/ Steven Boyd
Name: Steven Boyd
Title: CIO of Armistice Capital, LLC, the Investment Manager

**SCHEDULE 1**

**TO**

**COLLATERAL AND SECURITY AGREEMENT**

**Pledged Equity and Pledged Notes**

100% of the membership interests of ReShape Medical LLC, a Delaware limited liability company

**SCHEDULE 2**
**TO**
**COLLATERAL AND SECURITY AGREEMENT**

**Perfected First Priority Liens**

None

**SCHEDULE 3**

**TO**

**GUARANTEE AND COLLATERAL AGREEMENT**

**Grantor Information**

| Name of Grantor | Jurisdiction of Organization | Office Locations | Federal EIN | Organization Number |
|---|---|---|---|---|
| ReShape Lifesciences Inc. | Delaware | 1001 Calle Amanecer<br>San Clemente, CA 92673 | 48-1293684 | 3832130 |
| ReShape Medical LLC | Delaware | 1001 Calle Amanecer<br>San Clemente, CA 92673 | 82-3076787 | 6561638 |

**SCHEDULE 4**
**TO**
**GUARANTEE AND COLLATERAL AGREEMENT**

**Locations of Equipment and Inventory**

| **Name of Grantor** | **Locations of Equipment and Inventory** |
|---|---|
| ReShape Lifesciences Inc. | 1001 Calle Amanecer<br>San Clemente, CA 92673<br>This is a leased facility. Landlord's notice address is: San Clemente Holdings, LLC<br>P.O. Box 74268, San Clemente, CA 92673 |
| ReShape Medical LLC | 1001 Calle Amanecer<br>San Clemente, CA 92673 |

**SCHEDULE 5**
**TO**
**GUARANTEE AND COLLATERAL AGREEMENT**

**Patents and Registered IP**

**See attached for the list of Borrower's patents and patent applications.**

Also, in the United States the Borrower has registered trademarks for LAP-BAND®, LAP-BAND AP®, LAP BAND SYSTEM®, RAPIDPORT®, RESHAPE® and RESHAPE MEDICAL® and trademark applications for RESHAPE VEST, and RESHAPE LIFESCIENCES.

| DOCKET NO. | ASSIGNEE | TITLE | INVENTOR | SERIAL NO.<br>FILING DATE | PATENT NO.<br>ISSUE DATE | STATUS |
|---|---|---|---|---|---|---|
| 74660-00100<br>US Utility | Reshape Lifesciences, Inc. | Method and Apparatus for Gastric Restriction of the Stomach to Treat Obesity | Raj Nihalani | 12/328,979<br>12/5/2008 | 8,357,081<br>1/22/2013 | Issued<br>MaintenanceFee Due 7/22/2020 |
| 74660-00117<br>US Utility | Reshape Lifesciences, Inc. | Gastric Restriction Devices with Fillable Chambers and Ablation Means for Treating Obesity | Raj Nihalani | 12/474,254<br>5/28/2009 | 8,911,346<br>12/16/2014 | Issued<br>MaintenanceFee Due 6/16/2022 |
| 74660-00138<br>US Utility | ReShape Lifesciences, Inc. | Gastric Restriction Devices for Treating Obesity | Raj Nihalani | 14/571,144<br>12/15/2014 | 10,010,441<br>7/3/20189 | Issued<br>MaintenanceFee Due 1/3/2022 |
| 74660-00139<br>US Utility | ReShape Lifesciences, Inc. | Gastric Restriction Devices for Treating Obesity | Raj Nihalani | 16/020,423<br>6/27/2018 | | Pending<br>AwaitingFirst Office Action |
| 74660-00193<br>Australia DIV | Onciomed, Inc. | Gastric Restriction Devices with Fillable Chambers and Ablation Means for Treating Obesity | Raj Nihalani | 2014201234<br>3/5/2014 | 2014201234<br>3/31/2016 | Pending<br>AnnuityDue 12/2/2020 |
| 74660-00103<br>Canada | Onciomed, Inc. | Gastric Restriction Devices with Fillable Chambers and Ablation Means for Treating Obesity | Raj Nihalani | 2745902<br>12/2/2009 | 2745902<br>4/19/2016 | Issued<br>AnnuityDue 12/02/2020 |

| DOCKET NO. | ASSIGNEE | TITLE | INVENTOR | SERIAL NO.<br>FILING DATE | PATENT NO.<br>ISSUE DATE | STATUS |
|---|---|---|---|---|---|---|
| 74660-00105<br>Europe | Onciomed, Inc. | Gastric Restriction Devices with Fillable Chambers and Ablation Means for Treating Obesity | Raj Nihalani | 09831063.4<br>12/2/2009 | 2370003<br>04/17/2019 | Pending<br>AnnuityDue 12/2/2020<br>(validated in DE, FR & UK) |
| 74660-00109<br>Israel | Onciomed, Inc. | Gastric Restriction Devices with Fillable Chambers and Ablation Means for Treating Obesity | Raj Nihalani | 213388<br>12/2/2009 | 213388<br>12/1/2014 | Issued<br>RenewalDue 12/2/2019 |
| 74660-00128<br>Brazil | Onciomed, Inc. | Gastric Restriction Devices with Fillable Chambers and Ablation Means for Treating Obesity | Raj Nihalani | PI0922794-6<br>12/2/2009 | | Pending<br>AnnuityDue 12/2/2020 |
| 74660-00134<br>China | Onciomed, Inc. | Gastric Restriction Devices with Fillable Chambers and Ablation Means for Treating Obesity | Raj Nihalani | 200980156234.2<br>12/2/2009 | 102307530<br>11/19/2014 | Issued<br>AnnuityDue 12/2/2020 |
| 74660-00137<br>China DIV | Onciomed, Inc. | Gastric Restriction Devices with Fillable Chambers and Ablation Means for Treating Obesity | Raj Nihalani | 201410538627.2<br>12/2/2009 | ZL201410538627.2<br>3/13/2018 | Issued<br>AnnuityDue 12/2/2020 |
| 74660-00156<br>India | Onciomed, Inc. | Gastric Restriction Devices with Fillable Chambers and Ablation Means for Treating Obesity | Raj Nihalani | 1381/MUMNP/2011<br>12/2/2009 | | Pending |

| DOCKET NO. | ASSIGNEE | TITLE | INVENTOR | SERIAL NO.<br>FILING DATE | PATENT NO.<br>ISSUE DATE | STATUS |
|---|---|---|---|---|---|---|
| 74660-00616<br>PCT | ReShape Lifesciences, Inc. | Gastric Vest for Restriction of the Stomach to Treat Obesity | Raj Nihalani<br>Reynz Delina | PCT/US2018/ 054434<br>10/4/2018 | | (Awaiting Client Final Inst on Country List) Pending 30 Month National Phase Applications Due **4/4/2020** |
| 74660-00600<br>US | ReShape Lifesciences, Inc. | Gastric Vest for Restriction of the Stomach to Treat Obesity | Raj Nihalani<br>Reynz Delina | 16/326,607<br>2/19/2019 | | Pending<br>AwaitingFirst Office Action |
| 74660-06500<br>US | ApolloEndosurgery US, Inc. | Fatigue-ResistantGastric Banding Device | Janel Birk | 10/492,784<br>04/18/2005 | 7,811,298<br>10/12/2010 | 3rd MFee Due<br>04/12/2022 |
| 74660-06517<br>US | ApolloEndosurgery US, Inc. | Fatigue-ResistantGastric Banding Device | Janel Birk | 12/851,437<br>08/05/2010 | 8,382,780<br>02/26/2013 | 2nd MFee Due<br>08/26/2020 |
| 74660-06505<br>EP | Apollo Endosurgery, Inc. | Fatigue-ResistantGastric Banding Device | Janel Birk | 10001759<br>08/26/2003 | 2181655<br>07/12/2016 | AnnuitiesDue 08/26/2020<br>(validated in ~~DE,~~ ES, FR, GB)<br>(dropped in DE in 2019) |
| 74660-06600<br>US | ApolloEndosurgery US, Inc. | Releasably-Securable One-Piece Adjustable Gastric Band | Janel A. Birk | 10/587,099<br>12/04/2008 | 8,900,117<br>12/02/2014 | 2nd MFee Due 06/02/2022 |

| DOCKET NO. | ASSIGNEE | TITLE | INVENTOR | SERIAL NO.<br>FILING DATE | PATENT NO.<br>ISSUE DATE | STATUS |
|---|---|---|---|---|---|---|
| 74660-06613<br>Mexico | Allergan, Inc. | Releasably-Securable One-Piece Adjustable Gastric Band | Janel A. Birk | 2010/003962 | 305609 | Annuity Due January, 2022 |
| 74660-06603<br>Canada DIV | Apollo Endosurgery, Inc. | Releasably-Securable One-Piece Adjustable Gastric Band | Janel A. Birk | 2567161<br>07/14/2006 | 2567161<br>03/13/2012 | AnnuityDue 7/21/2021 |
| 74660-06605<br>Europe | Apollo Endosurgery, Inc. | Releasably-Securable One-Piece Adjustable Gastric Band | Janel A. Birk | 2005705872<br>07/21/2006 | 1706044<br>10/05/2011 | Annuities Due 01/21/2021<br>For ES, FR, GB, & IT<br>(Validated in AT, BE, CH/LI, DE, ES, FR, GB, IE, IT, NL, PT, PL)<br>Abandoned in BE, CH/LI, DE, IE, NL, PT |
| 74660-06693<br>Europe DIV | Apollo Endosurgery, Inc. | Releasably-Securable One-Piece Adjustable Gastric Band | Janel A. Birk | 2011182494<br>01/21/2005 | 2399528<br>01/09/2013 | Annuities Due 01/21/2021<br>For ES, FR, GB, & IT<br>(Validated in AT, BE, CH/LI, DE, ES, FR, GB, IE, IT, NL, PT)<br>Abandoned in BE, CH/LI, DE, IE, |

| DOCKET NO. | ASSIGNEE | TITLE | INVENTOR | SERIAL NO.<br>FILING DATE | PATENT NO.<br>ISSUE DATE | STATUS |
|---|---|---|---|---|---|---|
| | | | | | | NL, PT |
| 74660-06601<br>Australia | Apollo Endosurgery, Inc. | Releasably-Securable One-Piece Adjustable Gastric Band | Janel A. Birk | 2005208721<br>08/22/2006 | 2005208721<br>01/06/2011 | Annuity Due<br>01/21/2021 |
| 74660-06622<br>Mexico | Allergan, Inc. | Releasably-Securable One-Piece Adjustable Gastric Band | Janel A. Birk | 2006/008256<br>07/20/2006 | 275168<br>04/14/2010 | Annuity Due<br>January, 2021 |
| 74660-06700<br>US | ApolloEndosurgery US, Inc. | ImplantableDevice FasteningSystem and Methods of Use | | 10/562,964<br>12/30/2005 | 7,762,998<br>07/27/2010 | 3rd MFee Due<br>01/27/2021 |
| 74660-06717<br>US CON | ApolloEndosurgery US, Inc. | ImplantableDevice FasteningSystem and Methods of Use | | 12/483,980<br>06/12/2009 | 7,947,011<br>05/24/2011 | 3rd MFee Due<br>11/24/2022 |
| 74660-06736<br>US CON2 | ApolloEndosurgery US, Inc. | ImplantableDevice FasteningSystem and Methods of Use | | 12/488,266<br>06/19/2009 | 7,972,315<br>07/05/2011 | 3rd MFee Due<br>01/05/2023 |
| 74660-06738<br>US CON3 | ApolloEndosurgery US, Inc. | Methods of Implanting an Injection Port | | 12/488,364<br>06/19/2009 | 7,811,275<br>10/12/2010 | 3rd MFee Due<br>04/12/2022 |
| 74660-06739<br>US CON4 | Reshape Lifesciences Inc. | Implantable Injection Port | Janel A. Birk; Frederick L. Coe; Robert E. Hoyt | 12/488/421<br>06/19/2009 | 8,007,479<br>08/30/2011 | 3rd MFeeDue<br>02/28/2023 |

| DOCKET NO. | ASSIGNEE | TITLE | INVENTOR | SERIAL NO. FILING DATE | PATENT NO. ISSUE DATE | STATUS |
|---|---|---|---|---|---|---|
| 74660-06793 US CON5 | Reshape Lifesciences Inc. | ImplantableDevice Fastening System and Methods of Use | Janel A. Birk; Frederick L. Coe; Robert E. Hoyt | 12/488,496 06/19/2009 | 8,007,465 08/30/2011 | 4rd MFee Fee Due 08/28/2023 |
| 74660-06794 US CON6 | ApolloEndosurgery US, Inc. | ImplantableDevice FasteningSystem and Methods of Use | | 12/548/703 08/27/2009 | 7,892,200 02/22/2011 | 3rd MFee Due 08/22/2022 |
| 74660-06795 US CIP | ApolloEndosurgery US, Inc. | Methods of Operating an Implantable Injection Port System | Janel A. Birk, FrederickL. Coe, Robert E. Hoyt | 12/607,283 10/28/2009 | 8,079,989 12/20/2011 | 3rd MFee Due 6/20/2023 |
| 74660-06796 US CIP2 | ApolloEndosurgery US, Inc. | ImplantableMedical Implants Having Fasteners and Methods of Fastening | | 12/607,323 10/28/2009 | 8,409,203 04/02/2013 | 2nd MFee Due 10/02/2020 |
| 74660-06797 US CON7 | ApolloEndosurgery US, Inc. | ImplantableDevice Fastening System | | 12/843,629 07/26/2010 | 8,496,614 07/30/2013 | 2nd MFee Due 01/30/2021 |
| 74660-06798 US CON8 | ApolloEndosurgery US, Inc. | ImplantableDevice FasteningSystem and Methods of Use | | 13/159,883 06/14/2011 | 8,317,761 11/27/2012 | 2nd MFee Due 05/27/2020 |
| 74660-06701 Australia | Apollo Endosurgery, Inc. | ImplantableDevice Fastening System and Methods of Use | | 2004281641 09/15/2004 | 2004281641 09/30/2010 | AnnuityDue 09/15/2020 |
| 74660-06799 Australia DIV | Apollo Endosurgery, Inc. | ImplantableDevice Fastening System and Methods of Use | | 2010201790 05/04/2010 | 2010201790 03/14/2013 | Annuity Due 09/15/2020 |

| DOCKET NO. | ASSIGNEE | TITLE | INVENTOR | SERIAL NO.<br>FILING DATE | PATENT NO.<br>ISSUE DATE | STATUS |
|---|---|---|---|---|---|---|
| 74660-06705<br>Europe | Apollo Endosurgery, Inc. | ImplantableDevice Fastening System | | 2004788749<br>06/22/2011 | 1662971 | AnnuitiesDue 09/30/2020<br>(Validated in ~~DE,~~ FR, GB, & IT)<br>Dropped in DE |
| 74660-06765<br>Europe DIV | Apollo Endosurgery, Inc. | ImplantableDevice Fastening System and Methods of Use | | 2011152489<br>12/03/2014 | 2311520 | Annuities Due 09/30/2020<br>(Validated in ~~BE,~~ ~~DE~~. FR, GB, IT<br>Dropped in BE & DE |
| 74660-06713<br>Mexico | Allergan, Inc. | ImplantableDevice FasteningSystem and Methods of Use | | PA06003005<br>03/15/2006 | 265727<br>04/06/2009 | Annuity Due<br>September, 2023 |
| 74660-06800<br>US | ApolloEndosurgery US, Inc. | ImplantableDevice FasteningSystem and Methods of Use | | 10/562,954<br>12/30/2005 | 7,901,381<br>03/08/2011 | 3rd MFee Due<br>09/08/2022 |
| 74660-06803<br>Canada | Apollo Endosurgery, Inc. | ImplantableDevice Fastening System and Methods of Use | | 2567158<br>07/07/2006 | 2567158<br>08/09/2011 | AnnuityDue 7/21/2021 |
| 74660-06801<br>Australia | Apollo Endosurgery, Inc. | ImplantableDevice Fastening System and Methods of Use | | 2005209251<br>07/20/2006 | 2005209251<br>05/20/2010 | AnnuityDue 01/21/2021 |
| 74660-06805<br>Europe | Apollo Endosurgery, Inc. | Implantable Device Fastening System and | | 200570596<br>12/22/2005 | 1670362<br>12/01/2010 | Annuities Due<br>01/21/2021 for |

| DOCKET NO. | ASSIGNEE | TITLE | INVENTOR | SERIAL NO.<br>FILING DATE | PATENT NO.<br>ISSUE DATE | STATUS |
|---|---|---|---|---|---|---|
| | | Methods of Use | | | | ES, FR, GB, & IT<br>(Validated in DE, ES, FR, GB, IT, & TR)<br>Abandoned in DE and TR |
| 74660-06893<br>Australia DIV | Apollo Endosurgery, Inc. | ImplantableDevice Fastening System and Methods of Use | | 2010201793<br>05/04/2010 | 2010201793<br>12/13/2012 | AnnuityDue 01/21/2021 |
| 74660-06895<br>Europe DIV | Apollo Endosurgery, Inc. | ImplantableDevice Fastening System | | 2010181580<br>01/21/2005 | 2260773<br>12/21/2011 | AnnuitiesDue 01/21/2021 for<br>ES, FR, GB, & IT<br>(Validated in DE, ES, FR, GB, & IT)<br>Abandoned in DE |
| 74660-06896<br>Europe DIV | Apollo Endosurgery, Inc. | ImplantableDevice Fastening System | | 2011194523 | 2433672 | Annuities Due<br>01/21/2021for ES, FR, GB, & IT<br>(Validated in DE, ES, FR, GB, & IT)<br>Abandoned in DE |
| 74660-06900<br>US | ApolloEndosurgery US, Inc. | Implantable Access Port Device and Attachment System | | 12/426,057<br>04/17/2009 | 9,023,062<br>05/05/2015 | 2nd MFee Due<br>11/05/2022 |

| DOCKET NO. | ASSIGNEE | TITLE | INVENTOR | SERIAL NO.<br>FILING DATE | PATENT NO.<br>ISSUE DATE | STATUS |
|---|---|---|---|---|---|---|
| 74660-06917<br>US CON | ApolloEndosurgery US, Inc. | ImplantableAccess Port Device Having a Safety Cap | | 12/750,565<br>03/30/2010 | 9,023,063<br>05/05/2015 | 2nd MFee Due<br>11/05/2022 |
| 74660-06936<br>US DIV | ApolloEndosurgery US, Inc. | ImplantableAccess Port Device Having a Safety Cap | | 13/546,204<br>07/11/2012 | 8,409,221<br>04/02/2013 | 2nd MFee Due<br>10/02/2020 |
| 74660-06937<br>US CON2 | ApolloEndosurgery US, Inc. | Implantable Access Port Device and Attachment System | | 13/088,966<br>04/18/2011 | 8,398,654<br>03/19/2013 | 2nd MFee Due<br>09/19/2020 |
| 74660-06913<br>Mexico | Allergan, Inc. | Implantable Access Port Device and Attachment System | | MX/a/2010/011367 | 317903 | AnnuityDue<br>April, 2024 |
| 74660-07000<br>US | ApolloEndosurgery US, Inc. | SystemIncluding Access Port and Applicator Tool | | 12/772,039<br>04/30/2010 | 8,506,532<br>08/13/2013 | 2nd MFee Due<br>02/13/2021 |
| 74660-07005<br>Europe | Apollo Endosurgery, Inc. | SystemIncluding Access Port and Applicator Tool | CraigOlroyd; Christopher Mudd; Ahmet Tezel; Kris Turner; | 2010745073<br>03/23/2012 | 2470128<br>07/20/2016 | AnnuitiesDue 08/10/2020 (Validated in ~~DE,~~ ES, FR, & GB)<br>(dropped in DE in 2019) |
| 74660-07100<br>US | ApolloEndosurgery US, Inc. | Self-Adjusting Gastric Band | | 13/216,132<br>08/23/2011 | 9,044,298<br>06/02/2015 | 2nd MFee Due<br>12/02/2022 |
| 74660-07200<br>US | ApolloEndosurgery US, Inc. | Self-Adjusting Gastric Band Having Various Complaint Components and/or a Satiety Booster | | 13/934,987<br>07/03/2013 | 9,295,573<br>03/29/2016 | Abandoned 2/21/2020 |

| DOCKET NO. | ASSIGNEE | TITLE | INVENTOR | SERIAL NO.<br>FILING DATE | PATENT NO.<br>ISSUE DATE | STATUS |
|---|---|---|---|---|---|---|
| 74660-07300<br>US | ApolloEndosurgery US, Inc. | Implantable Device to Protect Tubing From Puncture | | 12/771,609<br>04/30/2010 | 8,992,415<br>03/31/2015 | 2nd Mfee Due<br>09/30/2022 |
| 74660-07400<br>US | ApolloEndosurgery US, Inc. | Flow Control Method and Device | | 10/031,469<br>05/29/2002 | 7,128,750<br>10/31/2006 | All Mfees Paid |
| 74660-07417<br>US CON | ApolloEndosurgery US, Inc. | Flow Control Method and Device | Nikos Stergiopulos | 11/586,886<br>10/26/2006 | 8,079,974<br>12/20/2011 | Abandoned 11/22/19 |
| 74660-07436<br>US CON2 | ApolloEndosurgery US, Inc. | Flow Control Method and Device | | 13/018,270<br>01/31/2011 | 8,932,247<br>01/13/2015 | 2nd Mfee Due<br>07/13/2022 |
| 74660-07437<br>US CON3 | ApolloEndosurgery US, Inc. | Flow Control Method and Device | | 13/036,358<br>02/28/2011 | 8,506,517<br>08/13/2013 | 2nd Mfee Due<br>02/15/2021 |
| 74660-07438<br>US CON4 | ApolloEndosurgery US, Inc. | Flow Control Method and Device | | 13/184,340<br>07/15/2011 | 8,821,430<br>09/02/2014 | 2nd Mfee Due<br>03/02/2022 |
| 74660-07500<br>US | ApolloEndosurgery US, Inc. | Surgical Ring Featuring a Reversible Diameter Remote Control System (mechanically operable RAB with helical screw or spring within and fixed to one end of the band) | | 10/653,808<br>09/03/2003 | 7,238,191<br>07/03/2007 | All Mfees Paid |

| DOCKET NO. | ASSIGNEE | TITLE | INVENTOR | SERIAL NO.<br>FILING DATE | PATENT NO.<br>ISSUE DATE | STATUS |
|---|---|---|---|---|---|---|
| 74660-07517<br>US CIP | ApolloEndosurgery US, Inc. | Telemetrically Controlled Band for Regulating Functioning of a Body Organ or Duct, and Methods of Making, Implantation and Use | | 10/962,939<br>10/12/2004 | 7,972,346<br>07/05/2011 | 3rd Mfee<br>01/05/2023 |
| 74660-07513<br>Mexico | Endorat S.A. | Telemetrically Controlled Band for Regulating Functioning of a Body Organ or Duct, and Methods of Making, Implantation and Use | | MX/a/2007/004338 | 287691 | Annuity Due<br>October, 2021 |
| 74660-07700<br>US | ApolloEndosurgery US, Inc. | Closure System for Tubular Organs | | 12/874,147<br>09/01/2010 | 8,377,081<br>02/19/2013 | 2nd Mfee Due<br>08/19/2020 |
| 74660-07917<br>US CON | ApolloEndosurgery US, Inc. | HydraulicGastric Band With<br>Collapsible Reservoir | | 13/184,456<br>07/15/2011 | 8,323,180<br>12/04/2012 | 2nd Mfee Due<br>06/04/2020 |
| 74660-08100<br>US | ApolloEndosurgery US, Inc. | Implantable Pump System with Calibration | | 12/500,464<br>07/09/2009 | 8,376,929<br>02/19/2013 | 2nd Mfee Due<br>08/19/2020 |
| 74660-08200<br>US | ApolloEndosurgery US, Inc. | Electrically Activated Valve for Implantable Fluid Handling System | | 12/603,058<br>10/21/2009 | 8,366,602<br>02/05/2013 | 2nd Mfee Due<br>08/05/2020 |
| 74660-08300<br>US | ApolloEndosurgery US, Inc. | MechanicalGastric Band With Cushions<br>(Easy Band) | | 12/574,640<br>10/06/2009 | 8,317,677<br>11/27/2012 | 2nd Mfee Due<br>05/27/2020 |
| 74660-08400<br>US | ApolloEndosurgery US, Inc. | RemotelyAdjustable Gastric Banding System | | 12/813,355<br>06/10/2010 | 8,517,915<br>08/27/2013 | 2nd Mfee Due<br>02/27/2021 |

| DOCKET NO. | ASSIGNEE | TITLE | INVENTOR | SERIAL NO.<br>FILING DATE | PATENT NO.<br>ISSUE DATE | STATUS |
|---|---|---|---|---|---|---|
| 74660-09400<br>US | Reshape Lifesciences Inc. | Implantable Injection Port | Ethan Franklin<br>Justin Schwab<br>ZacharyP. Dominguez | 13/277,802<br>10/20/2011 | 9,199,069<br>12/01/2015 | 2nd Mfee Due<br>6/01/2023 |
| 74660-09500<br>US | ApolloEndosurgery US, Inc. | Pre-Loaded Septum for Use With an Access Port | | 13/298,247<br>11/16/2011 | 9,089,395<br>07/28/2015 | 2nd MFeeDue 01/28/2023 |
| 74660-11100<br>US | Reshape Lifesciences Inc. | Implantable Device | | 10/506,790<br>09/07/2004 | 7,314,443<br>01/01/2008 | No Fees Due |
| 74660-11117<br>US CON | ApolloEndosurgery US, Inc. | Implantable Device | | 11/968,012<br>12/31/2007 | 7,959,552<br>06/14/2011 | 3rd MFee Due<br>12/14/2022 |
| 74660-11105<br>Europe | Apollo Endosurgery, Inc. | Implantable Device | | 2003714786<br>03/06/2003 | 1483730<br>10/19/2005 | Annuities Due 03/20/2021<br>Validated in ~~DE~~, ES, FR, UK, & I T)<br>Dropped in DE |
| 74660-11205<br>Europe | Apollo Endosurgery, Inc. | ImplantableAccess Port System | | 20110758065 | 2616134<br>11/18/2015 | AnnuitiesDue 09/30/2020<br>Validated in FR & GB |
| 74660-11300<br>US | ReShape Lifesciences Inc. | Adaptive Reservoir System for a Gastric Device | | | | **Not Yet Filed** |

| DOCKET NO. | ASSIGNEE | TITLE | INVENTOR | SERIAL NO.<br>FILING DATE | PATENT NO.<br>ISSUE DATE | STATUS |
|---|---|---|---|---|---|---|
| US | | Obesity Treatment with Electrically Induced Vagal Downregulation | | | 7,167,750<br>01/23/2007 | |
| US | | IntraluminalElectrode Apparatus<br>and Method | | | 7,444,183<br>10/28/2008 | |
| US | | VagalDown-Regulation Obesity Treatment | | | 7,489,969<br>02/10/2009 | |
| US | | HighFrequency Vagal Blockage Therapy | | | 7,613,515<br>11/03/2009 | |
| US | | GIInflammatory Disease Treatment | | | 7,630,769<br>12/08/2009 | |
| US | | Neural Electrode Treatment | | | 7,672,727<br>03/02/2010 | |
| US | | Irritable Bowel Syndrome Treatment | | | 7,693,577<br>04/06/2010 | |
| US | | Pancreatitis Treatment | | | 7,720,540<br>05/18/2010 | |
| US | | Nerve Stimulation and Blocking for Treatment of Gastrointestinal Disorders | | | 7,729,771<br>06/01/2010 | |
| US | | CustomSized Neural Electrodes | | | 7,822,486<br>10/26/2010 | |

| DOCKET NO. | ASSIGNEE | TITLE | INVENTOR | SERIAL NO.<br>FILING DATE | PATENT NO.<br>ISSUE DATE | STATUS |
|---|---|---|---|---|---|---|
| US | | RemoteMonitoring and Control of Multiple Devices | | | 8,068,918<br>11/29/2011 | |
| US | | ImplantableTherapy System with External Component Having Multiple Operating Modes | | | 8,140,167<br>03/20/2012 | |
| US | | ImplantableDevice with Heat Storage | | | 8,326,426<br>12/04/2012 | |
| US | | Bulimia Treatment | | | 8,369,952<br>02/05/2013 | |
| US | | Methods and Systems for Glucose Regulation | | | 8,483,830<br>07/09/2013 | |
| US | | Antenna Arrangements for Implantable Therapy Device | | | 8,483,838<br>07/09/2013 | |
| US | | Remote Monitoring and Control of Implantable Devices | | | 8,521,299<br>08/27/2013 | |
| US | | Implantable Therapy system Having Multiple Operating Modes | | | 8,532,787<br>09/10/2013 | |
| US | | Controlled Vagal Blockage Therapy | | | 8,538,533<br>09/17/2013 | |

| DOCKET NO. | ASSIGNEE | TITLE | INVENTOR | SERIAL NO.<br>FILING DATE | PATENT NO.<br>ISSUE DATE | STATUS |
|---|---|---|---|---|---|---|
| US | | Nerve Stimulation and Blocking for Treatment of Gastrointestinal Disorders | | | 8,538,542<br>09/17/2013 | |
| US | | ObesityTreatment and Device | | | 8,372,158<br>02/12/2013 | |
| US | | Systems for Regulation of Blood Pressure and Heart Rate | | | 8,768,469<br>07/01/2014 | |
| US | | Neural Modulation Devices and Methods | | | 8,825,164<br>09/02/2014 | |
| US | | Electrode Band system and Methods of Using the System to Treat Obesithy | | | 8,862,233<br>10/14/2014 | |
| US | | Treatment of Excess Weight by Neural Downregulation in Combination with Compositions | | | 9,186,502<br>11/17/2015 | |
| US | | Methods and Systems for Glucose Regulation | | | 9,333,340<br>05/10/2016 | |
| US | | Neural Modulation Devices and Methods | | | 9,358,395<br>06/07/2016 | |
| US | | Safety Features for Use in Medical Devices | | | 9,393,420<br>07/19/2016 | |

| DOCKET NO. | ASSIGNEE | TITLE | INVENTOR | SERIAL NO.<br>FILING DATE | PATENT NO.<br>ISSUE DATE | STATUS |
|---|---|---|---|---|---|---|
| US | | Electrode Band System and Methods of Using the System to Treat Obesity | | | 9,586,046<br>03/07/2017 | |
| US | | Nerve Stimulation and Blocking for Treatment of Gastrointestinal Disorders | | | 9,682,233<br>06/20/2017 | |
| US | | Systems for Regulation of Blood Pressure and Heart Rate | | | 9,616,231<br>04/11/2017 | |
| US | | System and Method for Managing Mobile Drive Units | | | 8,068,978<br>11/29/2011 | |
| US | | ObesityTreatment and Device | | | 8,372,158<br>02/12/2013 | |
| US | | Systems for Regulation of Blood Pressure and Heart Rate | | | 9,616,231<br>04/11/2017 | |
| US | | Neural Modulation Devices and Methods | | | 9,968,778<br>05/15/2018 | |
| US | | Calibration Methods for Near-Field Acoustic Imaging Systems | | | 9,979,955<br>05/22/2018 | |

**SCHEDULE 6**

**TO**

**GUARANTEE AND COLLATERAL AGREEMENT**

**Deposit Accounts**

| Type of Account | Depository Bank or Securities Intermediary | Address of Depository Bank or Securities Intermediary | Account Number |
|---|---|---|---|
| Operating Account | Silicon Valley Bank | 3003 Tasman Drive<br>Santa Clara, CA 95054 | 3300626746 |

**SCHEDULE 7**
**TO**
**GUARANTEE AND COLLATERAL AGREEMENT**

**Commercial Tort Claims**

None.

**Exhibit 10.33**

**REGISTRATION RIGHTS AGREEMENT**

This Registration Rights Agreement (this "***Agreement***") is made and entered into as of March 25, 2020, between ReShape Life Sciences, Inc., a Delaware corporation (the "***Company***"), and the purchaser signatory hereto (the "***Purchaser***").

This Agreement is made pursuant to the Securities Purchase Agreement, dated as of the date hereof, between the Company and the Purchaser (the "***Purchase Agreement***").

The Company and the Purchaser hereby agrees as follows:

1. Definitions.

As used in this Agreement, the following terms shall have the following meanings:

"***Advice***" shall have the meaning set forth in Section 6(d).

"***Commission***" means the United States Securities and Exchange Commission.

"***Common Stock***" means the common stock of the Company, par value $0.01 per share, and any other class of securities into which such securities may hereafter be reclassified or changed.

"***Effectiveness Date***" means, with respect to the Initial Registration Statement required to be filed hereunder, the later of (i) the 90th calendar day following the date hereof (or, in the event of a "full review" by the Commission, the 120th calendar day following the date hereof); *provided*, *however*, that in the event the Company is notified by the Commission that one or more of the above Registration Statements will not be reviewed or is no longer subject to further review and comments, the Effectiveness Date as to such Registration Statement shall be the fifth Trading Day following the date on which the Company is so notified if such date precedes the dates otherwise required above, provided, further, if such Effectiveness Date falls on a day that is not a Trading Day, then the Effectiveness Date shall be the next succeeding Trading Day.

"***Effectiveness Period***" shall have the meaning set forth in Section 2(a).

"***Event***" shall have the meaning set forth in Section 2(d).

"***Event Date***" shall have the meaning set forth in Section 2(d).

"***Filing Date***" means, with respect to the Initial Registration Statement required hereunder, the 60th calendar day following the date hereof and, with respect to any additional Registration Statements which may be required pursuant to Section 2(c) or Section 3(c), the earliest practical date on which the Company is permitted by SEC Guidance to file such additional Registration Statement related to the Registrable Securities.

"***Holder***" means the holder of Registrable Securities.

"***Indemnified Party***" shall have the meaning set forth in Section 5(c).

"***Indemnifying Party***" shall have the meaning set forth in Section 5(c).

"***Initial Registration Statement***" means the initial Registration Statement filed pursuant to this Agreement.

"***Losses***" shall have the meaning set forth in Section 5(a).

"***Plan of Distribution***" shall have the meaning set forth in Section 2(a).

"***Prospectus***" means the prospectus included in a Registration Statement (including, without limitation, a prospectus that includes any information previously omitted from a prospectus filed as part of an effective registration statement in reliance upon Rule 430A promulgated by the Commission pursuant to the Securities Act), as amended or supplemented by any prospectus supplement, with respect to the terms of the offering of any portion of the Registrable Securities covered by a Registration Statement, and all other amendments and supplements to the Prospectus, including post-effective amendments, and all material incorporated by reference or deemed to be incorporated by reference in such Prospectus.

"***Registrable Securities***" means, as of any date of determination, (a) all Shares, (b) all Warrant Shares then issued and issuable upon exercise of the Warrants (assuming on such date the Warrants are exercised in full without regard to any exercise limitations therein), (c) any additional shares of Common Stock issued and issuable in connection with any anti-dilution provisions in the Purchase Agreement and the Warrants (in each case, without giving effect to any limitations on exercise set forth in the Warrants) and (d) any securities issued or then issuable upon any stock split, dividend or other distribution, recapitalization or similar event with respect to the foregoing; *provided*, *however*, that any such Registrable Securities shall cease to be Registrable Securities (and the Company shall not be required to maintain the effectiveness of any, or file another, Registration Statement hereunder with respect thereto) for so long as (a) a Registration Statement with respect to the sale of such Registrable Securities is declared effective by the Commission under the Securities Act and such Registrable Securities have been disposed of by the Holder in accordance with such effective Registration Statement, (b) such Registrable Securities have been previously sold in accordance with Rule 144, or (c) such securities become eligible for resale without volume or manner-of-sale restrictions and without current public information pursuant to Rule 144, as set forth in a written opinion letter to such effect, addressed, delivered and acceptable to the Transfer Agent and the Holder.

"***Registration Statement***" means any registration statement required to be filed hereunder pursuant to Section 2(a) and any additional registration statements

contemplated by Section 2(c) or Section 3(c), including (in each case) the Prospectus, amendments and supplements to any such registration statement or Prospectus, including pre- and post-effective amendments, all exhibits thereto, and all material incorporated by reference or deemed to be incorporated by reference in any such registration statement.

"***Rule 144***" means Rule 144 promulgated by the Commission pursuant to the Securities Act, as such Rule may be amended or interpreted from time to time, or any similar rule or regulation hereafter adopted by the Commission having substantially the same purpose and effect as such Rule.

"***Rule 415***" means Rule 415 promulgated by the Commission pursuant to the Securities Act, as such Rule may be amended or interpreted from time to time, or any similar rule or regulation hereafter adopted by the Commission having substantially the same purpose and effect as such Rule.

"***Rule 424***" means Rule 424 promulgated by the Commission pursuant to the Securities Act, as such Rule may be amended or interpreted from time to time, or any similar rule or regulation hereafter adopted by the Commission having substantially the same purpose and effect as such Rule.

"***Selling Stockholder Questionnaire***" shall have the meaning set forth in Section 3(a).

"***SEC Guidance***" means (i) any publicly-available written or oral guidance of the Commission staff, or any comments, requirements or requests of the Commission staff and (ii) the Securities Act.

"***Securities Act***" means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

"***Series G Warrants***" means, collectively, the Series G Common Stock purchase warrants, which Warrants shall be exercisable immediately, subject to the Issuable Maximum, have an exercise price equal to $[_] per share (subject to adjustment as provided therein) and have a term of exercise equal to [__].

"***Trading Day***" means a day on which the principal Trading Market is open for trading.

"***Trading Market***" means any of the following markets or exchanges on which the Common Stock is listed or quoted for trading on the date in question: the NYSE American, the Nasdaq Capital Market, the Nasdaq Global Market, the Nasdaq Global Select Market, the New York Stock Exchange, OTCQB or OTCQX (or any successors to any of the foregoing).

"***Transfer Agent***" means EQ Shareowner Services (f/k/a Wells Fargo Shareowner Services), the current transfer agent of the Company, with a mailing address of 1110 Centre Pointe Curve, Suite 101, Mendota Heights, Minnesota 55120 and a facsimile number of 651-450-4078, and any successor transfer agent of the Company.

"***Warrants***" means, collectively, the Series G Warrants.

"***Warrant Shares***" means the shares of Common Stock issuable upon exercise of the Warrants.

2. Shelf Registration.

(a) On or prior to each Filing Date, the Company shall prepare and file with the Commission a Registration Statement covering the resale of all of the Registrable Securities that are not then registered on an effective Registration Statement for an offering to be made on a continuous basis pursuant to Rule 415. Each Registration Statement filed hereunder shall be on Form S-3 (except if the Company is not then eligible to register for resale the Registrable Securities on Form S-3, in which case such registration shall be on another appropriate form in accordance herewith, subject to the provisions of Section 2(e)) and shall contain (unless otherwise directed by the Holder) substantially the "Plan of Distribution" attached hereto as Annex A; *provided*, *however*, that the Holder shall not be required to be named as an "underwriter" without the Holder's express prior written consent. Subject to the terms of this Agreement, the Company shall use its best efforts to cause a Registration Statement filed under this Agreement (including, without limitation, under Section 3(c)) to be declared effective under the Securities Act as promptly as possible after the filing thereof, but in any event no later than the applicable Effectiveness Date, and shall use its best efforts to keep such Registration Statement continuously effective under the Securities Act until the date that all Registrable Securities covered by such Registration Statement (i) have been sold, thereunder or pursuant to Rule 144, or (ii) may be sold without volume or manner-of-sale restrictions pursuant to Rule 144 and without the requirement for the Company to be in compliance with the current public information requirement under Rule 144, as determined by the counsel to the Company pursuant to a written opinion letter to such effect, addressed and acceptable to the Transfer Agent and the Holder (the "***Effectiveness Period***"). The Company shall request effectiveness of a Registration Statement as of 5:00 p.m. (New York City time) on a Trading Day. The Company shall immediately notify the Holder by e-mail of the effectiveness of a Registration Statement on the same Trading Day that the Company telephonically confirms effectiveness with the Commission, which shall be the date requested for effectiveness of such Registration Statement. The Company shall, by 9:30 a.m. (New York City time) on the Trading Day after the effective date of such Registration Statement, file a final Prospectus with the Commission as required by Rule 424. Failure to so notify the Holder within one (1) Trading Day of such notification of effectiveness or failure to file a final Prospectus as foresaid shall be deemed an Event under Section 2(d).

(b) Notwithstanding the registration obligations set forth in Section 2(a), if the Commission informs the Company that all of the Registrable Securities cannot, as a result of the application of Rule 415, be registered for resale as a secondary offering on a single registration statement, the Company agrees to promptly inform the Holder thereof and use its commercially reasonable efforts to file amendments to the Initial Registration Statement as required by the Commission, covering the maximum number of Registrable Securities permitted to be registered by the Commission, on Form S-3 or such other form available to register for resale the Registrable Securities as a secondary offering, subject to the provisions of Section 2(e); with respect to filing on Form S-3 or other appropriate form; *provided, however*, that prior to filing such amendment, the Company shall be obligated to use diligent efforts to advocate with the Commission for the registration of all of the Registrable Securities in accordance with the SEC Guidance, including without limitation, Compliance and Disclosure Interpretation 612.09.

(c) Notwithstanding any other provision of this Agreement, if the Commission or any SEC Guidance sets forth a limitation on the number of Registrable Securities permitted to be registered on a particular Registration Statement as a secondary offering (and notwithstanding that the Company used diligent efforts to advocate with the Commission for the registration of all or a greater portion of Registrable Securities), unless otherwise directed in writing by the Holder, the number of Registrable Securities to be registered on such Registration Statement will be reduced as follows:

a. First, the Company shall reduce or eliminate any securities to be included other than Registrable Securities; and

b. Second, the Company shall reduce Registrable Securities represented by Warrant Shares underlying the Series G Warrants.

In the event of a cutback hereunder, the Company shall give the Holder at least five (5) Trading Days prior written notice along with the calculations as to the Holder's allotment. In the event the Company amends the Initial Registration Statement in accordance with the foregoing, the Company will use its best efforts to file with the Commission, as promptly as allowed by Commission or SEC Guidance provided to the Company or to registrants of securities in general, one or more registration statements on Form S-3 or such other form available to register for resale those Registrable Securities that were not registered for resale on the Initial Registration Statement, as amended.

(d) If: (i) the Initial Registration Statement is not filed on or prior to its Filing Date (if the Company files the Initial Registration Statement without affording the Holder the opportunity to review and comment on the same as required by Section 3(a) herein, the Company shall be deemed to have not satisfied this clause (i)), or (ii) the Company fails to file with the Commission a request for acceleration of a Registration Statement in accordance with Rule 461 promulgated by the Commission pursuant to the Securities Act, within five Trading Days of the date that the Company is notified (orally or in writing, whichever is earlier) by the Commission that such Registration Statement will not be "reviewed" or will not be subject to further review, or (iii) prior to the effective

date of a Registration Statement, the Company fails to file a pre-effective amendment and otherwise respond in writing to comments made by the Commission in respect of such Registration Statement within ten (10) calendar days after the receipt of comments by or notice from the Commission that such amendment is required in order for such Registration Statement to be declared effective, or (iv) a Registration Statement registering for resale all of the Registrable Securities is not declared effective by the Commission by the Effectiveness Date of the Initial Registration Statement, or (v) after the effective date of a Registration Statement, such Registration Statement ceases for any reason to remain continuously effective as to all Registrable Securities included in such Registration Statement, or the Holder is otherwise not permitted to utilize the Prospectus therein to resell such Registrable Securities, for more than ten (10) consecutive calendar days or more than an aggregate of fifteen (15) calendar days (which need not be consecutive calendar days) during any 12-month period (any such failure or breach being referred to as an "***Event***", and for purposes of clauses (i) and (iv), the date on which such Event occurs, and for purpose of clause (ii) the date on which such five (5) Trading Day period is exceeded, and for purpose of clause (iii) the date which such ten (10) calendar day period is exceeded, and for purpose of clause (v) the date on which such ten (10) or fifteen (15) calendar day period, as applicable, is exceeded being referred to as "***Event Date***"), then, in addition to any other rights the Holder may have hereunder or under applicable law, on each such Event Date and on each monthly anniversary of each such Event Date (if the applicable Event shall not have been cured by such date) until the applicable Event is cured, the Company shall pay to the Holder an amount in cash, as partial liquidated damages and not as a penalty, equal to the product of 1.0% multiplied by the aggregate Subscription Amount paid by the Holder pursuant to the Purchase Agreement. If the Company fails to pay any partial liquidated damages pursuant to this Section in full within seven days after the date payable, the Company will pay interest thereon at a rate of 18% per annum (or such lesser maximum amount that is permitted to be paid by applicable law) to the Holder, accruing daily from the date such partial liquidated damages are due until such amounts, plus all such interest thereon, are paid in full. The partial liquidated damages pursuant to the terms hereof shall apply on a daily pro rata basis for any portion of a month prior to the cure of an Event. Notwithstanding anything to the contrary contained herein, no liquidated damages shall accrue as to any Registrable Securities that are subject to a cut- back pursuant to Section 2(c) ("***Cut Back Shares")*** until such date as the Company is able to effect the registration of such Cut Back Shares in accordance with any restrictions required by the Commission. From and after the date that such restrictions are terminated, all of the provisions of this Section 2(d) shall again be applicable to such Cut Back Shares; provided, however, that the Filing Date and Effectiveness Date for the Registration Statement including such Cut Back Shares shall be based on the termination date of such restriction.

(e) If Form S-3 is not available for the registration of the resale of Registrable Securities hereunder, the Company shall (i) register the resale of the Registrable Securities on another appropriate form and (ii) undertake to register the Registrable Securities on Form S-3 as soon as such form is available, provided that the Company shall maintain the effectiveness of the Registration Statement then in effect until such

time as a Registration Statement on Form S-3 covering the Registrable Securities has been declared effective by the Commission.

(f) Notwithstanding anything to the contrary contained herein, in no event shall the Company be permitted to name the Holder or affiliate of the Holder as an Underwriter without the prior written consent of the Holder.

3. Registration Procedures.

In connection with the Company's registration obligations hereunder, the Company shall:

(a) Not less than five (5) Trading Days prior to the filing of each Registration Statement and not less than one (1) Trading Day prior to the filing of any related Prospectus or any amendment or supplement thereto (including any document that would be incorporated or deemed to be incorporated therein by reference), the Company shall (i) furnish to the Holder copies of all such documents proposed to be filed, which documents (other than those incorporated or deemed to be incorporated by reference) will be subject to the review of the Holder, and (ii) cause its officers and directors, counsel and independent registered public accountants to respond to such inquiries as shall be necessary, in the reasonable opinion of counsel to the Holder, to conduct a reasonable investigation within the meaning of the Securities Act. The Company shall not file a Registration Statement or any such Prospectus or any amendments or supplements thereto to which the Holder shall reasonably object in good faith, provided that, the Company is notified of such objection in writing no later than five (5) Trading Days after the Holder have been so furnished copies of a Registration Statement or one (1) Trading Day after the Holder has been so furnished copies of any related Prospectus or amendments or supplements thereto. The Holder agrees to furnish to the Company a completed questionnaire in the form attached to this Agreement as Annex B (a "***Selling Stockholder Questionnaire***") on a date that is not less than two (2) Trading Days prior to the Filing Date or by the end of the fourth (4th) Trading Day following the date on which the Holder receives draft materials in accordance with this Section.

(b) (i) Prepare and file with the Commission such amendments, including post-effective amendments, to a Registration Statement and the Prospectus used in connection therewith as may be necessary to keep a Registration Statement continuously effective as to the applicable Registrable Securities for the Effectiveness Period and prepare and file with the Commission such additional Registration Statements in order to register for resale under the Securities Act all of the Registrable Securities, (ii) cause the related Prospectus to be amended or supplemented by any required Prospectus supplement (subject to the terms of this Agreement), and, as so supplemented or amended, to be filed pursuant to Rule 424, (iii) respond as promptly as reasonably possible to any comments received from the Commission with respect to a Registration Statement or any amendment thereto and provide as promptly as reasonably possible to the Holder true and complete copies of all correspondence from and to the Commission relating to a Registration Statement (provided that, the Company shall excise any information

contained therein which would constitute material non-public information regarding the Company or any of its Subsidiaries), and (iv) comply in all material respects with the applicable provisions of the Securities Act and the Exchange Act with respect to the disposition of all Registrable Securities covered by a Registration Statement during the applicable period in accordance (subject to the terms of this Agreement) with the intended methods of disposition by the Holder as set forth in such Registration Statement as so amended or in such Prospectus as so supplemented.

(c) If during the Effectiveness Period, the number of Registrable Securities at any time exceeds 100% of the number of shares of Common Stock then registered in a Registration Statement, then the Company shall file as soon as reasonably practicable, but in any case prior to the applicable Filing Date, an additional Registration Statement covering the resale by the Holder of not less than the number of such Registrable Securities.

(d) Notify the Holder of Registrable Securities to be sold (which notice shall, pursuant to clauses (iii) through (vi) hereof, be accompanied by an instruction to suspend the use of the Prospectus until the requisite changes have been made) as promptly as reasonably possible (and, in the case of (i)(A) below, not less than one (1) Trading Day prior to such filing) and (if requested by any such Person) confirm such notice in writing no later than one (1) Trading Day following the day (i)(A) when a Prospectus or any Prospectus supplement or post-effective amendment to a Registration Statement is proposed to be filed, (B) when the Commission notifies the Company whether there will be a "review" of such Registration Statement and whenever the Commission comments in writing on such Registration Statement, and (C) with respect to a Registration Statement or any post-effective amendment, when the same has become effective, (ii) of any request by the Commission or any other federal or state governmental authority for amendments or supplements to a Registration Statement or Prospectus or for additional information, (iii) of the issuance by the Commission or any other federal or state governmental authority of any stop order suspending the effectiveness of a Registration Statement covering any or all of the Registrable Securities or the initiation of any Proceedings for that purpose, (iv) of the receipt by the Company of any notification with respect to the suspension of the qualification or exemption from qualification of any of the Registrable Securities for sale in any jurisdiction, or the initiation or threatening of any Proceeding for such purpose, (v) of the occurrence of any event or passage of time that makes the financial statements included in a Registration Statement ineligible for inclusion therein or any statement made in a Registration Statement or Prospectus or any document incorporated or deemed to be incorporated therein by reference untrue in any material respect or that requires any revisions to a Registration Statement, Prospectus or other documents so that, in the case of a Registration Statement or the Prospectus, as the case may be, it will not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading, and (vi) of the occurrence or existence of any pending corporate development with respect to the Company that the Company believes may be material and that, in the determination of the Company, makes it not in the best interest of the Company to allow continued

availability of a Registration Statement or Prospectus; *provided*, *however*, that in no event shall any such notice contain any information which would constitute material, non-public information regarding the Company or any of its Subsidiaries.

(e) Use its best efforts to avoid the issuance of, or, if issued, obtain the withdrawal of (i) any order stopping or suspending the effectiveness of a Registration Statement, or (ii) any suspension of the qualification (or exemption from qualification) of any of the Registrable Securities for sale in any jurisdiction, at the earliest practicable moment.

(f) Furnish to the Holder, without charge, at least one conformed copy of each such Registration Statement and each amendment thereto, including financial statements and schedules, all documents incorporated or deemed to be incorporated therein by reference to the extent requested by such Person, and all exhibits to the extent requested by such Person (including those previously furnished or incorporated by reference) promptly after the filing of such documents with the Commission, provided that any such item which is available on the EDGAR system (or successor thereto) need not be furnished in physical form.

(g) Subject to the terms of this Agreement, the Company hereby consents to the use of such Prospectus and each amendment or supplement thereto by the Holder in connection with the offering and sale of the Registrable Securities covered by such Prospectus and any amendment or supplement thereto, except after the giving of any notice pursuant to Section 3(d).

(h) Prior to any resale of Registrable Securities by the Holder, use its commercially reasonable efforts to register or qualify or cooperate with the Holder in connection with the registration or qualification (or exemption from the Registration or qualification) of such Registrable Securities for the resale by the Holder under the securities or Blue Sky laws of such jurisdictions within the United States as the Holder reasonably requests in writing, to keep each registration or qualification (or exemption therefrom) effective during the Effectiveness Period and to do any and all other acts or things reasonably necessary to enable the disposition in such jurisdictions of the Registrable Securities covered by each Registration Statement, provided that the Company shall not be required to qualify generally to do business in any jurisdiction where it is not then so qualified, subject the Company to any material tax in any such jurisdiction where it is not then so subject or file a general consent to service of process in any such jurisdiction.

(i) If requested by the Holder, cooperate with the Holder to facilitate the timely preparation and delivery of certificates representing Registrable Securities to be delivered to a transferee pursuant to a Registration Statement, which certificates shall be free, to the extent permitted by the Purchase Agreement, of all restrictive legends, and to enable such Registrable Securities to be in such denominations and registered in such names as the Holder may request.

(j) Upon the occurrence of any event contemplated by Section 3(d), as promptly as reasonably possible under the circumstances taking into account the Company's good faith assessment of any adverse consequences to the Company and its stockholders of the premature disclosure of such event, prepare a supplement or amendment, including a post-effective amendment, to a Registration Statement or a supplement to the related Prospectus or any document incorporated or deemed to be incorporated therein by reference, and file any other required document so that, as thereafter delivered, neither a Registration Statement nor such Prospectus will contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading. If the Company notifies the Holder in accordance with clauses (iii) through (vi) of Section 3(d) above to suspend the use of any Prospectus until the requisite changes to such Prospectus have been made, then the Holder shall suspend use of such Prospectus. The Company will use its best efforts to ensure that the use of the Prospectus may be resumed as promptly as is practicable. The Company shall be entitled to exercise its right under this Section 3(j) to suspend the availability of a Registration Statement and Prospectus, subject to the payment of partial liquidated damages otherwise required pursuant to Section 2(d), for a period not to exceed 60 calendar days (which need not be consecutive days) in any 12-month period.

(k) Otherwise use commercially reasonable efforts to comply with all applicable rules and regulations of the Commission under the Securities Act and the Exchange Act, including, without limitation, Rule 172 under the Securities Act, file any final Prospectus, including any supplement or amendment thereof, with the Commission pursuant to Rule 424 under the Securities Act, promptly inform the Holder in writing if, at any time during the Effectiveness Period, the Company does not satisfy the conditions specified in Rule 172 and, as a result thereof, the Holder is required to deliver a Prospectus in connection with any disposition of Registrable Securities and take such other actions as may be reasonably necessary to facilitate the registration of the Registrable Securities hereunder.

(l) The Company shall use its best efforts to obtain and maintain eligibility for use of Form S-3 (or any successor form thereto) for the registration of the resale of Registrable Securities.

(m) The Company may require the Holder to furnish to the Company a certified statement as to the number of shares of Common Stock beneficially owned by the Holder and, if required by the Commission, the natural persons thereof that have voting and dispositive control over the shares. During any periods that the Company is unable to meet its obligations hereunder with respect to the registration of the Registrable Securities solely because the Holder fails to furnish such information within three Trading Days of the Company's request, any liquidated damages that are accruing at such time as to the Holder only shall be tolled and any Event that may otherwise occur solely because of such delay shall be suspended as to the Holder only, until such information is delivered to the Company.

4. Registration Expenses. All fees and expenses incident to the performance of or compliance with, this Agreement by the Company shall be borne by the Company whether or not any Registrable Securities are sold pursuant to a Registration Statement. The fees and expenses referred to in the foregoing sentence shall include, without limitation, (i) all registration and filing fees (including, without limitation, fees and expenses of the Company's counsel and independent registered public accountants) (A) with respect to filings made with the Commission, (B) with respect to filings required to be made with any Trading Market on which the Common Stock is then listed for trading, and (C) in compliance with applicable state securities or Blue Sky laws reasonably agreed to by the Company in writing (including, without limitation, fees and disbursements of counsel for the Company in connection with Blue Sky qualifications or exemptions of the Registrable Securities), (ii) printing expenses (including, without limitation, expenses of printing certificates for Registrable Securities), (iii) messenger, telephone and delivery expenses, (iv) fees and disbursements of counsel for the Company, (v) Securities Act liability insurance, if the Company so desires such insurance, and (vi) fees and expenses of all other Persons retained by the Company in connection with the consummation of the transactions contemplated by this Agreement. In addition, the Company shall be responsible for all of its internal expenses incurred in connection with the consummation of the transactions contemplated by this Agreement (including, without limitation, all salaries and expenses of its officers and employees performing legal or accounting duties), the expense of any annual audit and the fees and expenses incurred in connection with the listing of the Registrable Securities on any securities exchange as required hereunder. In no event shall the Company be responsible for any broker or similar commissions of the Holder or, except to the extent provided for in the Transaction Documents, any legal fees or other costs of the Holder.

5. Indemnification.

(a) Indemnification by the Company. The Company shall, notwithstanding any termination of this Agreement, indemnify and hold harmless the Holder, the officers, directors, members, partners, agents, brokers (including brokers who offer and sell Registrable Securities as principal as a result of a pledge or any failure to perform under a margin call of Common Stock), investment advisors and employees (and any other Persons with a functionally equivalent role of a Person holding such titles, notwithstanding a lack of such title or any other title) of each of them, each Person who controls any the Holder (within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act) and the officers, directors, members, stockholders, partners, agents and employees (and any other Persons with a functionally equivalent role of a Person holding such titles, notwithstanding a lack of such title or any other title) of each such controlling Person, to the fullest extent permitted by applicable law, from and against any and all losses, claims, damages, liabilities, costs (including, without limitation, reasonable attorneys' fees) and expenses (collectively, "***Losses***"), as incurred, arising out of or relating to (1) any untrue or alleged untrue statement of a material fact contained in a Registration Statement, any Prospectus or any form of prospectus or in any amendment or supplement thereto or in any preliminary prospectus, or arising out of or relating to any omission or alleged omission of a material fact required to be stated therein or necessary to make the statements therein (in the case of any Prospectus or supplement thereto, in light of the circumstances under which they were made) not

misleading or (2) any violation or alleged violation by the Company of the Securities Act, the Exchange Act or any state securities law, or any rule or regulation thereunder, in connection with the performance of its obligations under this Agreement, except to the extent, but only to the extent, that (i) such untrue statements or omissions are based solely upon information regarding the Holder furnished in writing to the Company by the Holder expressly for use therein, or to the extent that such information relates to the Holder or the Holder's proposed method of distribution of Registrable Securities and was reviewed and expressly approved in writing by the Holder expressly for use in a Registration Statement, such Prospectus or in any amendment or supplement thereto (it being understood that the Holder has approved Annex A hereto for this purpose) or (ii) in the case of an occurrence of an event of the type specified in Section 3(d)(iii)-(vi), the use by the Holder of an outdated, defective or otherwise unavailable Prospectus after the Company has notified the Holder in writing that the Prospectus is outdated, defective or otherwise unavailable for use by the Holder and prior to the receipt by the Holder of the Advice contemplated in Section 6(d). The Company shall notify the Holder promptly of the institution, threat or assertion of any Proceeding arising from or in connection with the transactions contemplated by this Agreement of which the Company is aware. Such indemnity shall remain in full force and effect regardless of any investigation made by or on behalf of such indemnified person and shall survive the transfer of any Registrable Securities by the Holder in accordance with Section 6(h).

(b) Indemnification by the Holder. The Holder shall indemnify and hold harmless the Company, its directors, officers, agents and employees, each Person who controls the Company (within the meaning of Section 15 of the Securities Act and Section 20 of the Exchange Act), and the directors, officers, agents or employees of such controlling Persons, to the fullest extent permitted by applicable law, from and against all Losses, as incurred, to the extent arising out of or based solely upon: any untrue or alleged untrue statement of a material fact contained in any Registration Statement, any Prospectus, or in any amendment or supplement thereto or in any preliminary prospectus, or arising out of or relating to any omission or alleged omission of a material fact required to be stated therein or necessary to make the statements therein (in the case of any Prospectus or supplement thereto, in light of the circumstances under which they were made) not misleading (i) to the extent, but only to the extent, that such untrue statement or omission is contained in any information so furnished in writing by the Holder to the Company expressly for inclusion in such Registration Statement or such Prospectus or (ii) to the extent, but only to the extent, that such information relates to the Holder's information provided in the Selling Stockholder Questionnaire or the proposed method of distribution of Registrable Securities and was reviewed and expressly approved in writing by the Holder expressly for use in a Registration Statement (it being understood that the Holder has approved Annex A hereto for this purpose), such Prospectus or in any amendment or supplement thereto. In no event shall the liability ofa Holder be greater in amount than the dollar amount of the proceeds (net of all expenses paid by the Holder in connection with any claim relating to this Section 5 and the amount of any damages the Holder has otherwise been required to pay by reason of such untrue statement or omission) received by the Holder upon the sale of the Registrable Securities included in the Registration Statement giving rise to such indemnification obligation.

(c) Conduct of Indemnification Proceedings. If any Proceeding shall be brought or asserted against any Person entitled to indemnity hereunder (an "***Indemnified Party***"), such Indemnified Party shall promptly notify the Person from whom indemnity is sought (the "***Indemnifying Party***") in writing, and the Indemnifying Party shall have the right to assume the defense thereof, including the employment of counsel reasonably satisfactory to the Indemnified Party and the payment of all fees and expenses incurred in connection with defense thereof, provided that the failure of any Indemnified Party to give such notice shall not relieve the Indemnifying Party of its obligations or liabilities pursuant to this Agreement, except (and only) to the extent that it shall be finally determined by a court of competent jurisdiction (which determination is not subject to appeal or further review) that such failure shall have materially and adversely prejudiced the Indemnifying Party.

An Indemnified Party shall have the right to employ separate counsel in any such Proceeding and to participate in the defense thereof, but the fees and expenses of such counsel shall be at the expense of such Indemnified Party or Parties unless: (1) the Indemnifying Party has agreed in writing to pay such fees and expenses, (2) the Indemnifying Party shall have failed promptly to assume the defense of such Proceeding and to employ counsel reasonably satisfactory to such Indemnified Party in any such Proceeding, or (3) the named parties to any such Proceeding (including any impleaded parties) include both such Indemnified Party and the Indemnifying Party, and counsel to the Indemnified Party shall reasonably believe that a material conflict of interest is likely to exist if the same counsel were to represent such Indemnified Party and the Indemnifying Party (in which case, if such Indemnified Party notifies the Indemnifying Party in writing that it elects to employ separate counsel at the expense of the Indemnifying Party, the Indemnifying Party shall not have the right to assume the defense thereof and the reasonable fees and expenses of no more than one separate counsel shall be at the expense of the Indemnifying Party). The Indemnifying Party shall not be liable for any settlement of any such Proceeding effected without its written consent, which consent shall not be unreasonably withheld or delayed. No Indemnifying Party shall, without the prior written consent of the Indemnified Party, effect any settlement of any pending Proceeding in respect of which any Indemnified Party is a party, unless such settlement includes an unconditional release of such Indemnified Party from all liability on claims that are the subject matter of such Proceeding.

Subject to the terms of this Agreement, all reasonable fees and expenses of the Indemnified Party (including reasonable fees and expenses to the extent incurred in connection with investigating or preparing to defend such Proceeding in a manner not inconsistent with this Section) shall be paid to the Indemnified Party, as incurred, within ten Trading Days of written notice thereof to the Indemnifying Party, provided that the Indemnified Party shall promptly reimburse the Indemnifying Party for that portion of such fees and expenses applicable to such actions for which such Indemnified Party is finally determined by a court of competent jurisdiction (which determination is not subject to appeal or further review) not to be entitled to indemnification hereunder.

(d) Contribution. If the indemnification under Section 5(a) or 5(b) is unavailable to an Indemnified Party or insufficient to hold an Indemnified Party harmless for any Losses, then each Indemnifying Party shall contribute to the amount paid or payable by such Indemnified Party, in such proportion as is appropriate to reflect the relative fault of the Indemnifying Party and Indemnified Party in connection with the actions, statements or omissions that resulted in such Losses as well as any other relevant equitable considerations. The relative fault of such Indemnifying Party and Indemnified Party shall be determined by reference to, among other things, whether any action in question, including any untrue or alleged untrue statement of a material fact or omission or alleged omission of a material fact, has been taken or made by, or relates to information supplied by, such Indemnifying Party or Indemnified Party, and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such action, statement or omission. The amount paid or payable by a party as a result of any Losses shall be deemed to include, subject to the limitations set forth in this Agreement, any reasonable attorneys' or other fees or expenses incurred by such party in connection with any Proceeding to the extent such party would have been indemnified for such fees or expenses if the indemnification provided for in this Section was available to such party in accordance with its terms.

The parties hereto agree that it would not be just and equitable if contribution pursuant to this Section 5(d) were determined by pro rata allocation or by any other method of allocation that does not take into account the equitable considerations referred to in the immediately preceding paragraph. In no event shall the contribution obligation of the Holder of Registrable Securities be greater in amount than the dollar amount of the proceeds (net of all expenses paid by the Holder in connection with any claim relating to this Section 5 and the amount of any damages the Holder has otherwise been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission) received by it upon the sale of the Registrable Securities giving rise to such contribution obligation.

The indemnity and contribution agreements contained in this Section are in addition to any liability that the Indemnifying Parties may have to the Indemnified Parties.

6. Miscellaneous.

(a) Remedies. In the event of a breach by the Company or by the Holder of its obligations under this Agreement, the Holder or the Company, as the case may be, in addition to being entitled to exercise all rights granted by law and under this Agreement, including recovery of damages, shall be entitled to specific performance of its rights under this Agreement. Each of the Company and the Holder agree that monetary damages would not provide adequate compensation for any losses incurred by reason of a breach by it of any of the provisions of this Agreement and hereby further agrees that, in the event of any action for specific performance in respect of such breach, it shall not assert or shall waive the defense that a remedy at law would be adequate.

(b) No Piggyback on Registrations; Prohibition on Filing Other Registration Statements. Neither the Company nor any of its security holders (other than the Holder in such capacity pursuant hereto) may include securities of the Company in any Registration Statements other than the Registrable Securities. The Company shall not file any other registration statements until all Registrable Securities are registered pursuant to a Registration Statement that is declared effective by the Commission, provided that this Section 6(b) shall not prohibit the Company from filing amendments to registration statements filed prior to the date of this Agreement.

(c) [RESERVED]

(d) Discontinued Disposition. By its acquisition of Registrable Securities, the Holder agrees that, upon receipt of a notice from the Company of the occurrence of any event of the kind described in Section 3(d)(iii) through (vi), the Holder will forthwith discontinue disposition of such Registrable Securities under a Registration Statement until it is advised in writing (the "***Advice***") by the Company that the use of the applicable Prospectus (as it may have been supplemented or amended) may be resumed. The Company will use its best efforts to ensure that the use of the Prospectus may be resumed as promptly as is practicable. The Company agrees and acknowledges that any periods during which the Holder is required to discontinue the disposition of the Registrable Securities hereunder shall be subject to the provisions of Section 2(d).

(e) Piggy-Back Registrations. If, at any time during the Effectiveness Period, there is not an effective Registration Statement covering all of the Registrable Securities and the Company shall determine to prepare and file with the Commission a registration statement relating to an offering for its own account or the account of others under the Securities Act of any of its equity securities, other than on Form S-4 or Form S-8 (each as promulgated under the Securities Act) or their then equivalents relating to equity securities to be issued solely in connection with any acquisition of any entity or business or equity securities issuable in connection with the Company's stock option or other employee benefit plans, then the Company shall deliver to the Holder a written notice of such determination and, if within fifteen days after the date of the delivery of such notice, the Holder shall so request in writing, the Company shall include in such registration statement all or any part of such Registrable Securities the Holder requests to be registered; *provided*, *however*, that the Company shall not be required to register any Registrable Securities pursuant to this Section 6(e) that are eligible for resale pursuant to Rule 144 (without volume restrictions or current public information requirements) promulgated by the Commission pursuant to the Securities Act or that are the subject of a then effective Registration Statement that is available for resales or other dispositions by the Holder.

(f) Amendments and Waivers. The provisions of this Agreement, including the provisions of this sentence, may not be amended, modified or supplemented, and waivers or consents to departures from the provisions hereof may not be given, unless the same shall be in writing and signed by the Company and the Holder. No consideration shall be offered or paid to any Person to amend or consent to a waiver or modification of any provision of this Agreement unless the same consideration also is offered to all of the parties to this Agreement.

(g) Notices. Any and all notices or other communications or deliveries required or permitted to be provided hereunder shall be delivered as set forth in the Purchase Agreement.

(h) Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the successors and permitted assigns of each of the parties and shall inure to the benefit of the Holder. The Company may not assign (except by merger) its rights or obligations hereunder without the prior written consent of the Holder. The Holder may assign its rights hereunder in the manner and to the Persons as permitted under Section 5.7 of the Purchase Agreement.

(i) No Inconsistent Agreements. Neither the Company nor any of its Subsidiaries has entered, as of the date hereof, nor shall the Company or any of its Subsidiaries, on or after the date of this Agreement, enter into any agreement with respect to its securities, that would have the effect of impairing the rights granted to the Holder in this Agreement or otherwise conflicts with the provisions hereof. Except as set forth on Schedule 6(i), neither the Company nor any of its Subsidiaries has previously entered into any agreement granting any registration rights with respect to any of its securities to any Person that have not been satisfied in full.

(j) Execution and Counterparts. This Agreement may be executed in two or more counterparts, all of which when taken together shall be considered one and the same agreement and shall become effective when counterparts have been signed by each party and delivered to the other party, it being understood that both parties need not sign the same counterpart. In the event that any signature is delivered by facsimile transmission or by e-mail delivery of a ".pdf" format data file, such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or ".pdf" signature page were an original thereof.

(k) Governing Law. All questions concerning the construction, validity, enforcement and interpretation of this Agreement shall be determined in accordance with the provisions of the Purchase Agreement.

(l) Cumulative Remedies. The remedies provided herein are cumulative and not exclusive of any other remedies provided by law.

(m) Severability. If any term, provision, covenant or restriction of this Agreement is held by a court of competent jurisdiction to be invalid, illegal, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions set forth herein shall remain in full force and effect and shall in no way be affected, impaired or invalidated, and the parties hereto shall use their commercially reasonable efforts to find and employ an alternative means to achieve the same or substantially the same result as that contemplated by such term, provision, covenant or restriction. It is hereby stipulated and declared to be the intention of the parties that they would have executed the remaining terms, provisions, covenants and restrictions without including any of such that may be hereafter declared invalid, illegal, void or unenforceable.

(n) Headings. The headings in this Agreement are for convenience only, do not constitute a part of the Agreement and shall not be deemed to limit or affect any of the provisions hereof.

**********

*(Signature Pages Follow)*

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

**RESHAPE LIFESCIENCES INC.**

By: /s/ Barton P. Bandy
Name: Barton P. Bandy
Title: Chief Executive Officer

Name of Holder: _____

*Signature of Authorized Signatory of Holder*: _____

Name of Authorized Signatory: _____

Title of Authorized Signatory: _____

**RESHAPE LIFESCIENCES INC.**

By:_____
Name:
Title:

Name of Holder: __Armistice Capital Master Fund Ltd._____

*Signature of Authorized Signatory of Holder*: _/s/ Steven Boyd_____

Name of Authorized Signatory: Steven Boyd

Title of Authorized Signatory: CIO of Armistice Capital, LLC, the Investment Manager

**Annex A**

Plan of Distribution

The Selling Stockholder (the "***Selling Stockholder***") of the securities and any of its pledgees, assignees and successors-in-interest may, from time to time, sell any or all of their securities covered hereby on the principal Trading Market or any other stock exchange, market or trading facility on which the securities are traded or in private transactions. These sales may be at fixed or negotiated prices. The Selling Stockholder may use any one or more of the following methods when selling securities:

- ordinary brokerage transactions and transactions in which the broker-dealer solicits purchasers;
- block trades in which the broker-dealer will attempt to sell the securities as agent but may position and resell a portion of the block as principal to facilitate the transaction;
- purchases by a broker-dealer as principal and resale by the broker-dealer for its account;
- an exchange distribution in accordance with the rules of the applicable exchange;
- privately negotiated transactions;
- settlement of short sales;
- in transactions through broker-dealers that agree with the Selling Stockholder to sell a specified number of such securities at a stipulated price per security;
- through the writing or settlement of options or other hedging transactions, whether through an options exchange or otherwise;
- a combination of any such methods of sale; or
- any other method permitted pursuant to applicable law.

The Selling Stockholder may also sell securities under Rule 144 or any other exemption from registration under the Securities Act of 1933, as amended (the "***Securities Act***"), if available, rather than under this prospectus.

Broker-dealers engaged by the Selling Stockholder may arrange for other brokers-dealers to participate in sales. Broker-dealers may receive commissions or discounts from the Selling Stockholder (or, if any broker-dealer acts as agent for the purchaser of securities, from the purchaser) in amounts to be negotiated, but, except as set forth in a supplement to this Prospectus, in the case of an agency transaction not in excess of a customary brokerage

commission in compliance with FINRA Rule 2440; and in the case of a principal transaction a markup or markdown in compliance with FINRA IM-2440.

In connection with the sale of the securities or interests therein, the Selling Stockholder may enter into hedging transactions with broker-dealers or other financial institutions, which may in turn engage in short sales of the securities in the course of hedging the positions they assume. The Selling Stockholder may also sell securities short and deliver these securities to close out their short positions, or loan or pledge the securities to broker-dealers that in turn may sell these securities. The Selling Stockholder may also enter into option or other transactions with broker-dealers or other financial institutions or create one or more derivative securities which require the delivery to such broker-dealer or other financial institution of securities offered by this prospectus, which securities such broker-dealer or other financial institution may resell pursuant to this prospectus (as supplemented or amended to reflect such transaction).

The Selling Stockholder and any broker-dealers or agents that are involved in selling the securities may be deemed to be "underwriters" within the meaning of the Securities Act in connection with such sales. In such event, any commissions received by such broker-dealers or agents and any profit on the resale of the securities purchased by them may be deemed to be underwriting commissions or discounts under the Securities Act. The Selling Stockholder has informed the Company that it does not have any written or oral agreement or understanding, directly or indirectly, with any person to distribute the securities.

The Company is required to pay certain fees and expenses incurred by the Company incident to the registration of the securities. The Company has agreed to indemnify the Selling Stockholder against certain losses, claims, damages and liabilities, including liabilities under the Securities Act.

We agreed to keep this prospectus effective until the earlier of (i) the date on which the securities may be resold by the Selling Stockholder without registration and without regard to any volume or manner-of-sale limitations by reason of Rule 144, without the requirement for the Company to be in compliance with the current public information under Rule 144 under the Securities Act or any other rule of similar effect or (ii) all of the securities have been sold pursuant to this prospectus or Rule 144 under the Securities Act or any other rule of similar effect. The resale securities will be sold only through registered or licensed brokers or dealers if required under applicable state securities laws. In addition, in certain states, the resale securities covered hereby may not be sold unless they have been registered or qualified for sale in the applicable state or an exemption from the registration or qualification requirement is available and is complied with.

Under applicable rules and regulations under the Exchange Act, any person engaged in the distribution of the resale securities may not simultaneously engage in market making activities with respect to the common stock for the applicable restricted period, as defined in Regulation M, prior to the commencement of the distribution. In addition, the Selling Stockholder will be subject to applicable provisions of the Exchange Act and the rules and regulations thereunder, including Regulation M, which may limit the timing of purchases and sales of the common stock by the Selling Stockholder or any other person. We will make copies

of this prospectus available to the Selling Stockholder and have informed them of the need to deliver a copy of this prospectus to each purchaser at or prior to the time of the sale (including by compliance with Rule 172 under the Securities Act).

RESHAPE LIFESCIENCES INC.

**Selling Stockholder Notice and Questionnaire**

The undersigned beneficial owner of common stock (the "***Registrable_Securities***") of ReShape Lifesciences Inc., a Delaware corporation (the "***Company***"), understands that the Company has filed or intends to file with the Securities and Exchange Commission (the "***Commission***") a registration statement (the "***Registration Statement***") for the registration and resale under Rule 415 of the Securities Act of 1933, as amended (the "***Securities Act***"), of the Registrable Securities, in accordance with the terms of the Registration Rights Agreement (the "***Registration Rights Agreement***") to which this document is annexed. A copy of the Registration Rights Agreement is available from the Company upon request at the address set forth below. All capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in the Registration Rights Agreement.

Certain legal consequences arise from being named as a selling stockholder in the Registration Statement and the related prospectus. Accordingly, holders and beneficial owners of Registrable Securities are advised to consult their own securities law counsel regarding the consequences of being named or not being named as a selling stockholder in the Registration Statement and the related prospectus.

**NOTICE**

The undersigned beneficial owner (the "***Selling Stockholder***") of Registrable Securities hereby elects to include the Registrable Securities owned by it in the Registration Statement.

The undersigned hereby provides the following information to the Company and represents and warrants that such information is accurate:

**QUESTIONNAIRE**

**1. Name.**

(a) Full Legal Name of Selling Stockholder

_____

(b) Full Legal Name of Registered Holder (if not the same as (a) above) through which Registrable Securities are held:

_____

(c) Full Legal Name of Natural Control Person (which means a natural person who directly or indirectly alone or with others has power to vote or dispose of the securities covered by this Questionnaire):

**2. Address for Notices to Selling Stockholder:**

Telephone:
Fax:
Contact Person:

**3. Broker-Dealer Status:**

(a) Are you a broker-dealer?

Yes ☐ No ☐

(b) If "yes" to Section 3(a), did you receive your Registrable Securities as compensation for investment banking services to the Company?

Yes ☐ No ☐

Note: If "no" to Section 3(b), the Commission's staff has indicated that you should be identified as an underwriter in the Registration Statement.

(c) Are you an affiliate of a broker-dealer?

Yes ☐ No ☐

(d) If you are an affiliate of a broker-dealer, do you certify that you purchased the Registrable Securities in the ordinary course of business, and at the time of the purchase of the Registrable Securities to be resold, you had no agreements or understandings, directly or indirectly, with any person to distribute the Registrable Securities?

Yes ☐ No ☐

Note: If "no" to Section 3(d), the Commission's staff has indicated that you should be identified as an underwriter in the Registration Statement.



**4. Beneficial Ownership of Securities of the Company Owned by the Selling Stockholder.**

*Except as set forth below in this Item 4, the undersigned is not the beneficial or registered owner of any securities of the Company other than the securities issuable pursuant to the Purchase Agreement.*

(a) Type and Amount of other securities beneficially owned by the Selling Stockholder:

**5. Relationships with the Company:**

*Except as set forth below, neither the undersigned nor any of its affiliates, officers, directors or principal equity holders (owners of 5% of more of the equity securities of the undersigned) has held any position or office or has had any other material relationship with the Company (or its predecessors or affiliates) during the past three years.*

State any exceptions here:

The undersigned agrees to promptly notify the Company of any material inaccuracies or changes in the information provided herein that may occur subsequent to the date hereof at any time while the Registration Statement remains effective; provided, that the undersigned shall not be required to notify the Company of any changes to the number of securities held or owned by the undersigned or its affiliates.

By signing below, the undersigned consents to the disclosure of the information contained herein in its answers to Items 1 through 5 and the inclusion of such information in the Registration Statement and the related prospectus and any amendments or supplements thereto. The undersigned understands that such information will be relied upon by the Company in connection with the preparation or amendment of the Registration Statement and the related prospectus and any amendments or supplements thereto.

IN WITNESS WHEREOF the undersigned, by authority duly given, has caused this Notice and Questionnaire to be executed and delivered either in person or by its duly authorized agent.

Date: _____

Beneficial Owner: _____

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By: _____
Name:
Title:

**PLEASE SEND A COPY (OR EMAIL A .PDF COPY) OF THE COMPLETED AND EXECUTED NOTICE AND QUESTIONNAIRE TO:**

NEITHER THIS SECURITY NOR THE SECURITIES FOR WHICH THIS SECURITY IS EXERCISABLE HAVE BEEN REGISTERED WITH THE U.S. SECURITIES AND EXCHANGE COMMISSION OR THE SECURITIES COMMISSION OF ANY STATE IN RELIANCE UPON AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND, ACCORDINGLY, MAY NOT BE OFFERED OR SOLD EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OR PURSUANT TO AN AVAILABLE EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND IN ACCORDANCE WITH APPLICABLE STATE SECURITIES LAWS. THIS SECURITY AND THE SECURITIES ISSUABLE UPON EXERCISE OF THIS SECURITY MAY BE PLEDGED IN CONNECTION WITH A BONA FIDE MARGIN ACCOUNT OR OTHER LOAN SECURED BY SUCH SECURITIES.

**SERIES G COMMON STOCK PURCHASE WARRANT**

**RESHAPE LIFESCIENCES INC.**

Warrant Shares: __1,200,000____ Initial Exercise Date: March 25, 2020

THIS SERIES G COMMON STOCK PURCHASE WARRANT (the "***Warrant***") certifies that, for value received, Armistice Capital Master Fund Ltd. or its assigns (the "***Holder***") is entitled, upon the terms and subject to the limitations on exercise and the conditions hereinafter set forth, at any time on or after the date hereof (the "***Initial Exercise Date***") and until the fifth anniversary of the Initial Exercise Date (the "***Termination Date***") but not thereafter, to subscribe for and purchase from ReShape Lifesciences Inc., a Delaware corporation (the "***Company***"), up to 1,200,000 shares (as subject to adjustment hereunder, the "***Warrant Shares***") of Common Stock. The purchase price of one share of Common Stock under this Warrant shall be equal to the Exercise Price, as defined in Section 2(b).

Section 1. [RESERVED]

Section 2. Exercise.

a) Exercise of Warrant. Exercise of the purchase rights represented by this Warrant may be made, in whole or in part, at any time or times on or after the Initial Exercise Date and on or before the Termination Date by delivery to the Company of a duly executed facsimile copy or PDF copy submitted by e-mail (or e-mail attachment) of the Notice of Exercise in the form attached hereto as Exhibit A (the "***Notice of Exercise***"). Within the earlier of (i) two (2) Trading Days and (ii) the number of Trading Days comprising the Standard Settlement Period (as defined in Section 2(d)(i) herein) following the date of exercise as aforesaid, the Holder shall deliver the aggregate Exercise Price for the Warrant Shares specified in the applicable Notice of Exercise by wire transfer or cashier's check drawn on a United States bank unless the cashless

exercise procedure specified in Section 2(c) below is specified in the applicable Notice of Exercise. No ink-original Notice of Exercise shall be required, nor shall any medallion guarantee (or other type of guarantee or notarization) of any Notice of Exercise be required. Notwithstanding anything herein to the contrary, the Holder shall not be required to physically surrender this Warrant to the Company until the Holder has purchased all of the Warrant Shares available hereunder and the Warrant has been exercised in full, in which case, the Holder shall surrender this Warrant to the Company for cancellation within three (3) Trading Days of the date on which the final Notice of Exercise is delivered to the Company. Partial exercises of this Warrant resulting in purchases of a portion of the total number of Warrant Shares available hereunder shall have the effect of lowering the outstanding number of Warrant Shares purchasable hereunder in an amount equal to the applicable number of Warrant Shares purchased. The Holder and the Company shall maintain records showing the number of Warrant Shares purchased and the date of such purchases. The Company shall deliver any objection to any Notice of Exercise within one (1) Trading Day of receipt of such notice. **The Holder and any assignee, by acceptance of this Warrant, acknowledge and agree that, by reason of the provisions of this paragraph, following the purchase of a portion of the Warrant Shares hereunder, the number of Warrant Shares available for purchase hereunder at any given time may be less than the amount stated on the face hereof.**

b) Exercise Price. The aggregate exercise price per share of Common stock under this Warrant shall be the lesser of $3.70 or the average of the two lowest VWAPs for the Common Stock during the ten (10) Trading Days immediately prior to the date of Exercise, subject to adjustment hereunder (the "***Exercise Price***").

c) Cashless Exercise. If at any time after the six-month anniversary of the Closing Date, there is no effective registration statement registering, or no current prospectus available for, the resale of the Warrant Shares by the Holder, then this Warrant may also be exercised, in whole or in part, at such time by means of a "cashless exercise" in which the Holder shall be entitled to receive a number of Warrant Shares equal to the quotient obtained by dividing [(A-B) (X)] by (A), where:

(A) = as applicable: (i) the VWAP on the Trading Day immediately preceding the date of the applicable Notice of Exercise if such Notice of Exercise is (1) both executed and delivered pursuant to Section 2(a) hereof on a day that is not a Trading Day or (2) both executed and delivered pursuant to Section 2(a) hereof on a Trading Day prior to the opening of "regular trading hours" (as defined in Rule 600(b)(64) of Regulation NMS promulgated under the federal securities laws) on such Trading Day, (ii) at the option of the Holder, either (y) the VWAP on the Trading Day immediately preceding the date of the applicable Notice of Exercise or (z) the Bid Price of the Common Stock on the principal Trading Market as reported by Bloomberg L.P. as of the time of the Holder's execution of the applicable Notice of Exercise if such Notice of Exercise is executed during "regular trading hours" on a Trading Day and is delivered within two (2) hours thereafter (including until two (2) hours after the close of "regular trading hours" on a Trading Day) pursuant to

Section 2(a) hereof or (iii) the VWAP on the date of the applicable Notice of Exercise if the date of such Notice of Exercise is a Trading Day and such Notice of Exercise is both executed and delivered pursuant to Section 2(a) hereof after the close of "regular trading hours" on such Trading Day;

(B) = the Exercise Price of this Warrant, as adjusted hereunder; and

(X) = the number of Warrant Shares that would be issuable upon exercise of this Warrant in accordance with the terms of this Warrant if such exercise were by means of a cash exercise rather than a cashless exercise.

If Warrant Shares are issued in such a cashless exercise, the parties acknowledge and agree that in accordance with Section 3(a)(9) of the Securities Act, the Warrant Shares shall take on the characteristics of the Warrants being exercised, and the holding period of the Warrant Shares being issued may be tacked on to the holding period of this Warrant. The Company agrees not to take any position contrary to this Section 2(c).

"***Bid Price***" means, for any date, the price determined by the first of the following clauses that applies: (a) if the Common Stock is then listed or quoted on a Trading Market, the bid price of the Common Stock for the time in question (or the nearest preceding date) on the Trading Market on which the Common Stock is then listed or quoted as reported by Bloomberg L.P. (based on a Trading Day from 9:30 a.m. (New York City time) to 4:02 p.m. (New York City time)), (b) if OTCQB or OTCQX is not a Trading Market, the volume weighted average price of the Common Stock for such date (or the nearest preceding date) on OTCQB or OTCQX as applicable, (c) if the Common Stock is not then listed or quoted for trading on OTCQB or OTCQX and if prices for the Common Stock are then reported in the "Pink Sheets" published by OTC Markets Group, Inc. (or a similar organization or agency succeeding to its functions of reporting prices), the most recent bid price per share of the Common Stock so reported, or (d) in all other cases, the fair market value of a share of Common Stock as mutually determined by the Company and the Holder, *provided* that, if the Company and the Holder are unable to agree upon the fair market value of such share of Common Stock, then the fair market value as determined by an independent appraiser selected in good faith by the Holders of a majority in interest of the Securities then outstanding and reasonably acceptable to the Company, the fees and expenses of which shall be paid by the Company.

"***VWAP***" means, for any date, the price determined by the first of the following clauses that applies: (a) if the Common Stock is then listed or quoted on a Trading Market, the daily volume weighted average price of the Common Stock for such date (or the nearest preceding date) on the Trading Market on which the Common Stock is then listed or quoted as reported by Bloomberg L.P. (based on a Trading Day from 9:30 a.m. (New York City time) to 4:02 p.m. (New York City time)), (b) if OTCQB or OTCQX is not a Trading Market, the volume weighted average price of the Common Stock for such date (or the nearest preceding date) on OTCQB or OTCQX as applicable, (c) if the Common Stock is not then listed or quoted for trading on OTCQB or OTCQX and if prices for the Common Stock are then reported in the "Pink Sheets" published by OTC

Markets Group, Inc. (or a similar organization or agency succeeding to its functions of reporting prices), the most recent bid price per share of the Common Stock so reported, or (d) in all other cases, the fair market value of a share of Common Stock as determined by an independent appraiser selected in good faith by the Holders of a majority in interest of the Securities then outstanding and reasonably acceptable to the Company, the fees and expenses of which shall be paid by the Company.

Notwithstanding anything herein to the contrary, on the Termination Date, this Warrant shall be automatically exercised via cashless exercise pursuant to this Section 2(c).

d) Mechanics of Exercise.

i. Delivery of Warrant Shares Upon Exercise. The Company shall cause the Warrant Shares purchased hereunder to be transmitted by the Transfer Agent to the Holder by crediting the account of the Holder's or its designee's balance account with The Depository Trust Company through its Deposit or Withdrawal at Custodian system ("***DWAC***") if the Company is then a participant in such system and either (A) there is an effective registration statement permitting the issuance of the Warrant Shares to or resale of the Warrant Shares by the Holder or (B) the Warrant Shares are eligible for resale by the Holder without volume or manner-of-sale limitations pursuant to Rule 144 (assuming cashless exercise of the Warrants), and otherwise by physical delivery of a certificate or book-entry notation, registered in the Company's share register in the name of the Holder or its designee, for the number of Warrant Shares to which the Holder is entitled pursuant to such exercise to the address specified by the Holder in the Notice of Exercise by the date that is the earliest of (i) two (2) Trading Days after the delivery to the Company of the Notice of Exercise, (ii) one (1) Trading Day after delivery of the aggregate Exercise Price to the Company and (iii) the number of Trading Days comprising the Standard Settlement Period after the delivery to the Company of the Notice of Exercise (such date, the "***Warrant Share Delivery Date***"). Upon delivery of the Notice of Exercise, the Holder shall be deemed for all corporate purposes to have become the holder of record of the Warrant Shares with respect to which this Warrant has been exercised, irrespective of the date of delivery of the Warrant Shares, *provided* that payment of the aggregate Exercise Price (other than in the case of a cashless exercise) is received by the Warrant Share Delivery Date. If the Company fails for any reason to deliver to the Holder the Warrant Shares subject to a Notice of Exercise by the Warrant Share Delivery Date, the Company shall pay to the Holder, in cash, as liquidated damages and not as a penalty, for each $1,000 of Warrant Shares subject to such exercise (based on the VWAP of the Common Stock on the date of the applicable Notice of Exercise), $10 per Trading Day (increasing to $20 per Trading Day on the fifth Trading Day after such liquidated damages begin to accrue) for each Trading Day after such Warrant Share Delivery Date until such

Warrant Shares are delivered or Holder rescinds such exercise. The Company agrees to maintain a transfer agent that is a participant in the FAST program so long as this Warrant remains outstanding and exercisable. As used herein, "***Standard Settlement Period***" means the standard settlement period, expressed in a number of Trading Days, on the Company's primary Trading Market with respect to the Common Stock as in effect on the date of delivery of the Notice of Exercise.

ii. Delivery of New Warrants Upon Exercise. If this Warrant shall have been exercised in part, the Company shall, at the request of a Holder and upon surrender of this Warrant certificate, at the time of delivery of the Warrant Shares, deliver to the Holder a new Warrant evidencing the rights of the Holder to purchase the unpurchased Warrant Shares called for by this Warrant, which new Warrant shall in all other respects be identical with this Warrant.

iii. Rescission Rights. If the Company fails to cause the Transfer Agent to transmit to the Holder the Warrant Shares pursuant to Section 2(d)(i) by the Warrant Share Delivery Date, then the Holder will have the right to rescind such exercise.

iv. Compensation for Buy-In on Failure to Timely Deliver Warrant Shares Upon Exercise. In addition to any other rights available to the Holder, if the Company fails to cause the Transfer Agent to transmit to the Holder the Warrant Shares in accordance with the provisions of Section 2(d)(i) above pursuant to an exercise on or before the Warrant Share Delivery Date, and if after such date the Holder is required by its broker to purchase (in an open market transaction or otherwise) or the Holder's brokerage firm otherwise purchases, shares of Common Stock to deliver in satisfaction of a sale by the Holder of the Warrant Shares which the Holder anticipated receiving upon such exercise (a "***Buy-In***"), then the Company shall (A) pay in cash to the Holder the amount, if any, by which (x) the Holder's total purchase price (including brokerage commissions, if any) for the shares of Common Stock so purchased exceeds (y) the amount obtained by multiplying (1) the number of Warrant Shares that the Company was required to deliver to the Holder in connection with the exercise at issue times (2) the price at which the sell order giving rise to such purchase obligation was executed, and (B) at the option of the Holder, either reinstate the portion of the Warrant and equivalent number of Warrant Shares for which such exercise was not honored (in which case such exercise shall be deemed rescinded) or deliver to the Holder the number of shares of Common Stock that would have been issued had the Company timely complied with its exercise and delivery obligations hereunder. For example, if the Holder purchases Common Stock having a total purchase price of $11,000 to cover a Buy-In with respect to an attempted exercise of shares of

Common Stock with an aggregate sale price giving rise to such purchase obligation of $10,000, under clause (A) of the immediately preceding sentence the Company shall be required to pay the Holder $1,000. The Holder shall provide the Company written notice indicating the amounts payable to the Holder in respect of the Buy-In and, upon request of the Company, evidence of the amount of such loss. Nothing herein shall limit a Holder's right to pursue any other remedies available to it hereunder, at law or in equity including, without limitation, a decree of specific performance and/or injunctive relief with respect to the Company's failure to timely deliver shares of Common Stock upon exercise of the Warrant as required pursuant to the terms hereof.

v. No Fractional Shares or Scrip. No fractional shares or scrip representing fractional shares shall be issued upon the exercise of this Warrant. As to any fraction of a share which the Holder would otherwise be entitled to purchase upon such exercise, the Company shall, at its election, either pay a cash adjustment in respect of such final fraction in an amount equal to such fraction multiplied by the Exercise Price or round up to the next whole share.

vi. Charges, Taxes and Expenses. Issuance of Warrant Shares shall be made without charge to the Holder for any issue or transfer tax or other incidental expense in respect of the issuance of such Warrant Shares, all of which taxes and expenses shall be paid by the Company, and such Warrant Shares shall be issued in the name of the Holder or in such name or names as may be directed by the Holder; *provided*, *however*, that in the event that Warrant Shares are to be issued in a name other than the name of the Holder, this Warrant when surrendered for exercise shall be accompanied by the Assignment Form attached hereto as Exhibit B duly executed by the Holder and the Company may require, as a condition thereto, the payment of a sum sufficient to reimburse it for any transfer tax incidental thereto. The Company shall pay all Transfer Agent fees required for same-day processing of any Notice of Exercise and all fees to the Depository Trust Company (or another established clearing corporation performing similar functions) required for same-day electronic delivery of the Warrant Shares.

vii. Closing of Books. The Company will not close its stockholder books or records in any manner which prevents the timely exercise of this Warrant, pursuant to the terms hereof.

e) [RESERVED]

f) [RESERVED]

Section 3. Certain Adjustments.

a) Stock Dividends and Splits. If the Company, at any time while this Warrant is outstanding: (i) pays a stock dividend or otherwise makes a distribution or distributions on shares of its Common Stock or any other equity or equity equivalent securities payable in shares of Common Stock (which, for avoidance of doubt, shall not include any shares of Common Stock issued by the Company upon exercise of this Warrant), (ii) subdivides outstanding shares of Common Stock into a larger number of shares, (iii) combines (including by way of reverse stock split) outstanding shares of Common Stock into a smaller number of shares or (iv) issues by reclassification of shares of the Common Stock any shares of capital stock of the Company, then in each case the Exercise Price shall be multiplied by a fraction of which the numerator shall be the number of shares of Common Stock (excluding treasury shares, if any) outstanding immediately before such event and of which the denominator shall be the number of shares of Common Stock outstanding immediately after such event, and the number of shares issuable upon exercise of this Warrant shall be proportionately adjusted such that the aggregate Exercise Price of this Warrant shall remain unchanged. Any adjustment made pursuant to this Section 3(a) shall become effective immediately after the record date for the determination of stockholders entitled to receive such dividend or distribution and shall become effective immediately after the effective date in the case of a subdivision, combination or re-classification.

b) [RESERVED]

c) Subsequent Rights Offerings. In addition to any adjustments pursuant to Section 3(a) above, if at any time the Company grants, issues or sells any Common Stock Equivalents or rights to purchase stock, warrants, securities or other property pro rata to the record holders of any class of shares of Common Stock (the "***Purchase Rights***"), then the Holder will be entitled to acquire, upon the terms applicable to such Purchase Rights, the aggregate Purchase Rights which the Holder could have acquired if the Holder had held the number of shares of Common Stock acquirable upon complete exercise of this Warrant immediately before the date on which a record is taken for the grant, issuance or sale of such Purchase Rights, or, if no such record is taken, the date as of which the record holders of shares of Common Stock are to be determined for the grant, issue or sale of such Purchase Rights.

d) Pro Rata Distributions. During such time as this Warrant is outstanding, if the Company shall declare or make any dividend or other distribution of its assets (or rights to acquire its assets) to holders of shares of Common Stock, by way of return of capital or otherwise (including, without limitation, any distribution of cash, stock or other securities, property or options by way of a dividend, spin off, reclassification, corporate rearrangement, scheme of arrangement or other similar transaction) (a "***Distribution***"), at any time after the issuance of this Warrant, then, in each such case, the Holder shall be entitled to participate in such Distribution to the same extent that the Holder would have participated therein if the Holder had held the number of shares of Common Stock acquirable upon complete exercise of this Warrant immediately before the date of which a record is taken for such Distribution, or, if no such record is taken, the date as of which the record holders of shares of Common Stock are to be determined for the participation

in such Distribution. To the extent that this Warrant has not been partially or completely exercised at the time of such Distribution, such portion of the Distribution shall be held in abeyance for the benefit of the Holder until the Holder has exercised this Warrant.

e) Fundamental Transaction. If, at any time while this Warrant is outstanding, (i) the Company, directly or indirectly, in one or more related transactions effects any merger or consolidation of the Company with or into another Person, (ii) the Company, directly or indirectly, effects any sale, lease, license, assignment, transfer, conveyance or other disposition of all or substantially all of its assets in one or a series of related transactions, (iii) any, direct or indirect, purchase offer, tender offer or exchange offer (whether by the Company or another Person) is completed pursuant to which holders of Common Stock are permitted to sell, tender or exchange their shares for other securities, cash or property and has been accepted by the holders of 50% or more of the outstanding Common Stock, (iv) the Company, directly or indirectly, in one or more related transactions effects any reclassification, reorganization or recapitalization of the Common Stock or any compulsory share exchange pursuant to which the Common Stock is effectively converted into or exchanged for other securities, cash or property, or (v) the Company, directly or indirectly, in one or more related transactions consummates a stock or share purchase agreement or other business combination (including, without limitation, a reorganization, recapitalization, spin-off or scheme of arrangement) with another Person or group of Persons whereby such other Person or group acquires more than 50% of the outstanding shares of Common Stock (not including any shares of Common Stock held by the other Person or other Persons making or party to, or associated or affiliated with the other Persons making or party to, such stock or share purchase agreement or other business combination) (each a "***Fundamental Transaction***"), then, upon any subsequent exercise of this Warrant, the Holder shall have the right to receive, for each Warrant Share that would have been issuable upon such exercise immediately prior to the occurrence of such Fundamental Transaction, at the option of the Holder (without regard to any limitation in Section 2(e) or Section 2(f) on the exercise of this Warrant), the number of shares of Common Stock of the successor or acquiring corporation or of the Company, if it is the surviving corporation, and any additional consideration (the "***Alternate Consideration***") receivable as a result of such Fundamental Transaction by a holder of the number of shares of Common Stock for which this Warrant is exercisable immediately prior to such Fundamental Transaction (without regard to any limitation in Section 2(e) or Section 2(f) on the exercise of this Warrant). For purposes of any such exercise, the determination of the Exercise Price shall be appropriately adjusted to apply to such Alternate Consideration based on the amount of Alternate Consideration issuable in respect of one share of Common Stock in such Fundamental Transaction, and the Company shall apportion the Exercise Price among the Alternate Consideration in a reasonable manner reflecting the relative value of any different components of the Alternate Consideration. If holders of Common Stock are given any choice as to the securities, cash or property to be received in a Fundamental Transaction, then the Holder shall be given the same choice as to the Alternate Consideration it receives upon any exercise of this Warrant following such Fundamental Transaction. Notwithstanding anything to the contrary, in the event of a Fundamental Transaction, the Company or any Successor Entity (as defined below) shall, at the Holder's option, exercisable at any time

concurrently with, or within 30 days after, the consummation of the Fundamental Transaction (or, if later, the date of the public announcement of the applicable Fundamental Transaction), purchase this Warrant from the Holder by paying to the Holder an amount of cash equal to the Black Scholes Value (as defined below) of the remaining unexercised portion of this Warrant on the date of the consummation of such Fundamental Transaction; *provided*, *however*, that, if the Fundamental Transaction is not within the Company's control, including not approved by the Company's Board of Directors, Holder shall only be entitled to receive from the Company or any Successor Entity, as of the date of consummation of such Fundamental Transaction, the same type or form of consideration (and in the same proportion), at the Black Scholes Value of the unexercised portion of this Warrant, that is being offered and paid to the holders of Common Stock of the Company in connection with the Fundamental Transaction, whether that consideration be in the form of cash, stock or any combination thereof, or whether the holders of Common Stock are given the choice to receive from among alternative forms of consideration in connection with the Fundamental Transaction. "Black Scholes Value" means the value of this Warrant based on the Black-Scholes Option Pricing Model obtained from the "OV" function on Bloomberg, L.P. ("***Bloomberg***") determined as of the day of consummation of the applicable Fundamental Transaction for pricing purposes and reflecting (A) a risk-free interest rate corresponding to the U.S. Treasury rate for a period equal to the time between the date of the public announcement of the applicable Fundamental Transaction and the Termination Date, (B) an expected volatility equal to the Remaining Day volatility, wherein "Remaining Day" shall be equal to the number of days remaining on the term of this Warrant on the date of the public announcement of the applicable Fundamental Transaction, obtained from the HVT function on Bloomberg as of the Trading Day immediately following the public announcement of the applicable Fundamental Transaction, (C) the underlying price per share used in such calculation shall be the greater of (i) the sum of the price per share being offered in cash, if any, plus the value of any non-cash consideration, if any, being offered in such Fundamental Transaction and (ii) the greater of (x) the last VWAP immediately prior to the public announcement of such Fundamental Transaction and (y) the last VWAP immediately prior to the consummation of such Fundamental Transaction and (D) a remaining option time equal to the time between the date of the public announcement of the applicable Fundamental Transaction and the Termination Date. The payment of the Black Scholes Value will be made by wire transfer of immediately available funds within five Business Days of the Holder's election (or, if later, on the effective date of the Fundamental Transaction). The Company shall cause any successor entity in a Fundamental Transaction in which the Company is not the survivor (the "***Successor Entity***") to assume in writing all of the obligations of the Company under this Warrant and the Transaction Documents in accordance with the provisions of this Section 3(e) pursuant to written agreements in form and substance reasonably satisfactory to the Holder and approved by the Holder (without unreasonable delay) prior to such Fundamental Transaction and shall, at the option of the Holder, deliver to the Holder in exchange for this Warrant a security of the Successor Entity evidenced by a written instrument substantially similar in form and substance to this Warrant which is exercisable for a corresponding number of shares of capital stock of such Successor Entity (or its parent entity) equivalent to the shares of Common Stock

acquirable and receivable upon exercise of this Warrant (without regard to any limitations on the exercise of this Warrant) prior to such Fundamental Transaction, and with an exercise price which applies the exercise price hereunder to such shares of capital stock (but taking into account the relative value of the shares of Common Stock pursuant to such Fundamental Transaction and the value of such shares of capital stock, such number of shares of capital stock and such exercise price being for the purpose of protecting the economic value of this Warrant immediately prior to the consummation of such Fundamental Transaction), and which is reasonably satisfactory in form and substance to the Holder. Upon the occurrence of any such Fundamental Transaction, the Successor Entity shall succeed to, and be substituted for (so that from and after the date of such Fundamental Transaction, the provisions of this Warrant and the Transaction Documents referring to the "Company" shall refer instead to the Successor Entity), and may exercise every right and power of the Company and shall assume all of the obligations of the Company under this Warrant and the Transaction Documents with the same effect as if such Successor Entity had been named as the Company herein.

f) Calculations. All calculations under this Section 3 shall be made to the nearest cent or the nearest 1/100th of a share, as the case may be. For purposes of this Section 3, the number of shares of Common Stock deemed to be issued and outstanding as of a given date shall be the sum of the number of shares of Common Stock (excluding treasury shares, if any) issued and outstanding.

g) Notice to Holder.

i. Adjustment to Exercise Price. Whenever the Exercise Price is adjusted pursuant to any provision of this Section 3, the Company shall promptly deliver to the Holder by facsimile or email a notice setting forth the Exercise Price after such adjustment and any resulting adjustment to the number of Warrant Shares and setting forth a brief statement of the facts requiring such adjustment.

ii. Notice to Allow Exercise by Holder. If (A) the Company shall declare a dividend (or any other distribution in whatever form) on the Common Stock, (B) the Company shall declare a special nonrecurring cash dividend on or a redemption of the Common Stock, (C) the Company shall authorize the granting to all holders of the Common Stock rights or warrants to subscribe for or purchase any shares of capital stock of any class or of any rights, (D) the approval of any stockholders of the Company shall be required in connection with any reclassification of the Common Stock, any consolidation or merger to which the Company is a party, any sale or transfer of all or substantially all of the assets of the Company, or any compulsory share exchange whereby the Common Stock is converted into other securities, cash or property, or (E) the Company shall authorize the voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Company, then, in each case, the Company shall cause to be delivered by facsimile or email to the Holder at its last facsimile number or email address

as it shall appear upon the Warrant Register of the Company, at least 20 calendar days prior to the applicable record or effective date hereinafter specified, a notice stating (x) the date on which a record is to be taken for the purpose of such dividend, distribution, redemption, rights or warrants, or if a record is not to be taken, the date as of which the holders of the Common Stock of record to be entitled to such dividend, distributions, redemption, rights or warrants are to be determined or (y) the date on which such reclassification, consolidation, merger, sale, transfer or share exchange is expected to become effective or close, and the date as of which it is expected that holders of the Common Stock of record shall be entitled to exchange their shares of the Common Stock for securities, cash or other property deliverable upon such reclassification, consolidation, merger, sale, transfer or share exchange; *provided* that the failure to deliver such notice or any defect therein or in the delivery thereof shall not affect the validity of the corporate action required to be specified in such notice. To the extent that any notice provided in this Warrant constitutes, or contains, material, non-public information regarding the Company or any of the Subsidiaries, the Company shall simultaneously file such notice with the Commission pursuant to a Current Report on Form 8-K. The Holder shall remain entitled to exercise this Warrant during the period commencing on the date of such notice to the effective date of the event triggering such notice except as may otherwise be expressly set forth herein.

Section 4. Transfer of Warrant.

a) Transferability. Subject to compliance with any applicable securities laws and the conditions set forth in Section 4(d) hereof, this Warrant and all rights hereunder (including, without limitation, any registration rights) are transferable, in whole or in part, upon surrender of this Warrant at the principal office of the Company or its designated agent, together with a written assignment of this Warrant substantially in the form attached hereto duly executed by the Holder or its agent or attorney and funds sufficient to pay any transfer taxes payable upon the making of such transfer. Upon such surrender and, if required, such payment, the Company shall execute and deliver a new Warrant or Warrants in the name of the assignee or assignees, as applicable, and in the denomination or denominations specified in such instrument of assignment, and shall issue to the assignor a new Warrant evidencing the portion of this Warrant not so assigned, and this Warrant shall promptly be cancelled. Notwithstanding anything herein to the contrary, the Holder shall not be required to physically surrender this Warrant to the Company unless the Holder has assigned this Warrant in full, in which case, the Holder shall surrender this Warrant to the Company within three (3) Trading Days of the date on which the Holder delivers an assignment form to the Company assigning this Warrant in full. The Warrant, if properly assigned in accordance herewith, may be exercised by a new holder for the purchase of Warrant Shares without having a new Warrant issued.

b) New Warrants. This Warrant may be divided or combined with other Warrants upon presentation hereof at the aforesaid office of the Company, together with a

written notice specifying the names and denominations in which new Warrants are to be issued, signed by the Holder or its agent or attorney. Subject to compliance with Section 4(a), as to any transfer that may be involved in such division or combination, the Company shall execute and deliver a new Warrant or Warrants in exchange for the Warrant or Warrants to be divided or combined in accordance with such notice. All Warrants issued on transfers or exchanges shall be dated the Initial Exercise Date and shall be identical with this Warrant except as to the number of Warrant Shares issuable pursuant thereto.

c) Warrant Register. The Company shall register this Warrant, upon records to be maintained by the Company for that purpose (the "***Warrant Register***"), in the name of the record Holder hereof from time to time. The Company may deem and treat the registered Holder of this Warrant as the absolute owner hereof for the purpose of any exercise hereof or any distribution to the Holder, and for all other purposes, absent actual notice to the contrary.

d) [RESERVED]

e) Representation by the Holder. The Holder, by the acceptance hereof, represents and warrants that it is acquiring this Warrant and, upon any exercise hereof, will acquire the Warrant Shares issuable upon such exercise, for its own account and not with a view to or for distributing or reselling such Warrant Shares or any part thereof in violation of the Securities Act or any applicable state securities law, except pursuant to sales registered or exempted under the Securities Act.

Section 5. Miscellaneous.

a) No Rights as Stockholder Until Exercise. This Warrant does not entitle the Holder to any voting rights, dividends or other rights as a stockholder of the Company prior to the exercise hereof as set forth in Section 2(d)(i), except as expressly set forth in Section 3.

b) Loss, Theft, Destruction or Mutilation of Warrant. The Company covenants that upon receipt by the Company of evidence reasonably satisfactory to it of the loss, theft, destruction or mutilation of this Warrant or any stock certificate relating to the Warrant Shares, and in case of loss, theft or destruction, of indemnity or security reasonably satisfactory to it (which, in the case of the Warrant, shall not include the posting of any bond), and upon surrender and cancellation of such Warrant or stock certificate, if mutilated, the Company will make and deliver a new Warrant or stock certificate of like tenor and dated as of such cancellation, in lieu of such Warrant or stock certificate.

c) Saturdays, Sundays, Holidays, etc. If the last or appointed day for the taking of any action or the expiration of any right required or granted herein shall not be a Business Day, then, such action may be taken or such right may be exercised on the next succeeding Business Day.

d) Authorized Shares.

The Company covenants that, during the period the Warrant is outstanding, it will reserve from its authorized and unissued Common Stock a sufficient number of shares to provide for the issuance of the Warrant Shares upon the exercise of any purchase rights under this Warrant. The Company further covenants that its issuance of this Warrant shall constitute full authority to its officers who are charged with the duty of issuing the necessary Warrant Shares upon the exercise of the purchase rights under this Warrant. The Company will take all such reasonable action as may be necessary to assure that such Warrant Shares may be issued as provided herein without violation of any applicable law or regulation, or of any requirements of the Trading Market upon which the Common Stock may be listed. The Company covenants that all Warrant Shares that may be issued upon the exercise of the purchase rights represented by this Warrant will, upon exercise of the purchase rights represented by this Warrant and payment for such Warrant Shares in accordance herewith, be duly authorized, validly issued, fully paid and nonassessable and free from all taxes, liens and charges created by the Company in respect of the issue thereof (other than taxes in respect of any transfer occurring contemporaneously with such issue).

Except and to the extent as waived or consented to by the Holder, the Company shall not by any action, including, without limitation, amending its certificate of incorporation or through any reorganization, transfer of assets, consolidation, merger, dissolution, issue 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, but will at all times in good faith assist in the carrying out of all such terms and in the taking of all such actions as may be necessary or appropriate to protect the rights of Holder as set forth in this Warrant against impairment. Without limiting the generality of the foregoing, the Company will (i) not increase the par value of any Warrant Shares above the amount payable therefor upon such exercise immediately prior to such increase in par value, (ii) take all such action as may be necessary or appropriate in order that the Company may validly and legally issue fully paid and nonassessable Warrant Shares upon the exercise of this Warrant and (iii) use commercially reasonable efforts to obtain all such authorizations, exemptions or consents from any public regulatory body having jurisdiction thereof, as may be, necessary to enable the Company to perform its obligations under this Warrant.

Before taking any action which would result in an adjustment in the number of Warrant Shares for which this Warrant is exercisable or in the Exercise Price, the Company shall obtain all such authorizations or exemptions thereof, or consents thereto, as may be necessary from any public regulatory body or bodies having jurisdiction thereof.

e) Governing Law. All questions concerning the construction, validity, enforcement and interpretation of the Transaction Documents shall be governed by and construed and enforced in accordance with the internal laws of the State of New York, without regard to the principles of conflicts of law thereof. Each party agrees that all legal Proceedings concerning the interpretations, enforcement and defense of the transactions contemplated by this Agreement and any other Transaction Documents (whether brought against a party hereto or its respective affiliates, directors, officers, shareholders, partners, members, employees or agents) shall be commenced exclusively in the state and federal courts sitting in the City of New York. Each party hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in the City of New York, Borough of Manhattan for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein (including with respect to the enforcement of any of the Transaction Documents), and hereby irrevocably waives, and agrees not to assert in any Action or Proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such Action or Proceeding is improper or is an inconvenient venue for such Proceeding. Each party hereby irrevocably waives personal service of process and consents to process being served in any such Action or Proceeding by mailing a copy thereof via registered or certified mail or overnight delivery (with evidence of delivery) to such party at the address in effect for notices to it under this Agreement and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any other manner permitted by law.

f) Restrictions. The Holder acknowledges that the Warrant Shares acquired upon the exercise of this Warrant, if not registered and the Holder does not utilize cashless exercise, will have restrictions upon resale imposed by state and federal securities laws.

g) Nonwaiver and Expenses. No course of dealing or any delay or failure to exercise any right hereunder on the part of Holder shall operate as a waiver of such right or otherwise prejudice the Holder's rights, powers or remedies. Without limiting any other provision of this Warrant [or the Exercise Agreement], if the Company willfully and knowingly fails to comply with any provision of this Warrant, which results in any material damages to the Holder, the Company shall pay to the Holder such amounts as shall be sufficient to cover any costs and expenses including, but not limited to, reasonable attorneys' fees, including those of appellate proceedings, incurred by the Holder in collecting any amounts due pursuant hereto or in otherwise enforcing any of its rights, powers or remedies hereunder.

h) Notices. Any and all notices or other communications or deliveries required or permitted to be provided hereunder shall be in writing and shall be deemed given and effective on the earliest of: (a) the date of transmission, if such notice or communication is delivered via facsimile at the facsimile number or email attachment at the email address as set forth on the signature pages attached hereto at or prior to 5:30 p.m. (New York City time) on a Trading Day, (b) the next Trading Day after the date of

transmission, if such notice or communication is delivered via facsimile at the facsimile number or email attachment at the email address as set forth on the signature pages attached hereto on a day that is not a Trading Day or later than 5:30 p.m. (New York City time) on any Trading Day, (c) the second (2) Trading Day following the date of mailing, if sent by U.S. nationally recognized overnight courier service or (d) upon actual receipt by the party to whom such notice is required to be given. The address for such notices and communications shall be as set forth on the signature pages attached hereto. To the extent that any notice constitutes, or contains material, non-public information regarding the Company or any of the Subsidiaries, the Company shall simultaneously file such notice with the Commission pursuant to a Current Report on Form 8-K.

i) Limitation of Liability. No provision hereof, in the absence of any affirmative action by the Holder to exercise this Warrant to purchase Warrant Shares, and no enumeration herein of the rights or privileges of the Holder, shall give rise to any liability of the Holder for the purchase price of any Common Stock or as a stockholder of the Company, whether such liability is asserted by the Company or by creditors of the Company.

j) Remedies. The Holder, in addition to being entitled to exercise all rights granted by law, including recovery of damages, will be entitled to specific performance of its rights under this Warrant. The Company agrees that monetary damages would not be adequate compensation for any loss incurred by reason of a breach by it of the provisions of this Warrant and hereby agrees to waive and not to assert the defense in any action for specific performance that a remedy at law would be adequate.

k) Successors and Assigns. Subject to applicable securities laws, this Warrant and the rights and obligations evidenced hereby shall inure to the benefit of and be binding upon the successors and permitted assigns of the Company and the successors and permitted assigns of Holder. The provisions of this Warrant are intended to be for the benefit of any Holder from time to time of this Warrant and shall be enforceable by the Holder or holder of Warrant Shares.

l) Amendment. This Warrant may be modified or amended or the provisions hereof waived with the written consent of the Company and the Holder.

m) Severability. Wherever possible, each provision of this Warrant shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Warrant shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provisions or the remaining provisions of this Warrant.

n) Headings. The headings used in this Warrant are for the convenience of reference only and shall not, for any purpose, be deemed a part of this Warrant.

**********

*(Signature Page Follows)*

IN WITNESS WHEREOF, the Company has caused this Warrant to be executed by its officer thereunto duly authorized as of the date first above indicated.

**RESHAPE LIFESCIENCES INC.**

By: /s/ Barton P. Bandy
Name: Barton P. Bandy
Title: CEO

**EXHIBIT A**

**NOTICE OF EXERCISE**

TO: **RESHAPE LIFESCIENCES INC.**

(1) The undersigned hereby elects to purchase _____ Warrant Shares of the Company pursuant to the terms of the attached Warrant (only if exercised in full), and tenders herewith payment of the exercise price in full, together with all applicable transfer taxes, if any.

(2) Payment shall take the form of (check applicable box):

[ ] in lawful money of the United States; or

[ ] if permitted, the cancellation of such number of Warrant Shares as is necessary, in accordance with the formula set forth in subsection 2(c), to exercise this Warrant with respect to the maximum number of Warrant Shares purchasable pursuant to the cashless exercise procedure set forth in subsection 2(c).

(3) Please issue said Warrant Shares in the name of the undersigned or in such other name as is specified below:

_____

The Warrant Shares shall be delivered to the following DWAC Account Number:

_____

_____

_____

(4) Accredited Investor. The undersigned is an "accredited investor" as defined in Regulation D promulgated under the Securities Act of 1933, as amended.

[SIGNATURE OF HOLDER]

Name of Investing Entity: _____

*Signature of Authorized Signatory of Investing Entity*: _____

Name of Authorized Signatory: _____

Title of Authorized Signatory: _____

Date: _____

**EXHIBIT B**

**ASSIGNMENT FORM**

*(To assign the foregoing Warrant, execute this form and supply required information. Do not use this form to purchase shares.)*

FOR VALUE RECEIVED, the foregoing Warrant and all rights evidenced thereby are hereby assigned to

Name: _____
(Please Print)

Address: _____
(Please Print)

Phone Number: _____

Email Address: _____

Dated: _____ ____, _____

Holder's Signature: _____

Holder's Address: _____

**Exhibit 21.1**

**Subsidiaries**

Reshape Lifesciences, Inc. (Delaware)
ReShape Lifesciences Netherlands B.V. (Netherlands)
ReShape Lifesciences Australia Pty Ltd (Australia)
ReShape Costa Rica Sociedad de Responsabilidad Limited (Costa Rica)

**Exhibit 23.1**

**CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

ReShape Lifesciences Inc.
San Clemente, California

We hereby consent to the incorporation by reference in Registration Statements on Form S-8 (File Nos. 333-211940, 333-196646, 333-184181, 333-176174, 333-171244, 333-159592, and 333-149662), Form S-3 (File Nos. 333-216600, 333-205353, 333-195855, 333-183313, 333-171944, 333-170503, 333-171052, 333-166011, 333-158516, 333-224066, and 333-225083) and Form S-1 (Nos. 333-215590 and 333-213704), of ReShape Lifesciences Inc. of our report dated April 30, 2020, relating to the consolidated financial statements which appears in this Form 10-K. Our report contains an explanatory paragraph regarding the Company's ability to continue as a going concern.

/s/ BDO USA, LLP
Costa Mesa, California

/s/ BDO USA, LLP
Costa Mesa, California
April 30, 2020

**Exhibit 23.2**

**CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

We consent to the incorporation by reference in Registration Statement Nos. 333-211940, 333-196646, 333-184181, 333-176174, 333-171244, 333-159592, and 333-149662 on Form S-8, Registration Statement Nos. 333-216600, 333-205353, 333-195855, 333-183313, 333-171944, 333-170503, 333-171052, 333-166011, 333-158516, 333-224066, and 333-225083 on Form S-3, and Registration Statement Nos. 333-215590 and 333-213704 on Form S-1 of our report dated May 16, 2019, relating to the financial statements of ReShape Lifesciences Inc. appearing in this Annual Report on Form 10-K for the year ended December 31, 2019.

/s/ Deloitte & Touche LLP

Minneapolis, Minnesota

April 30, 2020

**EXHIBIT 31.1**

**CERTIFICATIONS**

I, Barton P. Bandy, certify that:

1. I have reviewed this Annual Report on Form 10-K of ReShape Lifesciences Inc.;

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

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

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

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

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

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

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

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

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

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

/s/BARTON P. BANDY
**Barton P. Bandy**
**President and Chief Executive Officer**

Date: April 30, 2020

**EXHIBIT 31.2**

**CERTIFICATIONS**

I, Thomas Stankovich, certify that:

1. I have reviewed this Annual Report on Form 10-K of ReShape Lifesciences Inc.;

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

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

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

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

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

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

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

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

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

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

/S/ THOMAS STANKOVICH

**Thomas Stankovich**
**Chief Financial Officer**
**and Senior Vice President, Finance**

Date: April 30, 2020

**EXHIBIT 32.1**

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

In connection with the Annual Report of ReShape Lifesciences Inc. (the Company) on Form 10-K for the period ended December 31, 2019 as filed with the Securities and Exchange Commission on the date hereof (the Report), I, Barton P. Bandy, President and Chief Executive Officer of the Company, certify, pursuant to 18 U.S.C. §1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

1. The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

2. The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/S/BARTON P. BANDY
**Barton P. Bandy**
**President and Chief Executive Officer**

April 30, 2020

**EXHIBIT 32.2**

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

In connection with the Annual Report of ReShape Lifesciences (the Company) on Form 10-K for the period ended December 31, 2019 as filed with the Securities and Exchange Commission on the date hereof (the Report), I, Thomas Stankovich, Chief Financial Officer of the Company, certify, pursuant to 18 U.S.C. §1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

1. The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

2. The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/S/ THOMAS STANKOVICH
**Thomas Stankovich**
**Chief Financial Officer**
**and Senior Vice President, Finance**

April 30, 2020