UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 8-K

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

Date of Report (Date of earliest event reported): **December 17, 2018**

RESHAPE LIFESCIENCES INC.

(Exact name of registrant as specified in its charter)

Delaware	**1-33818**	**48-1293684**
(State or other jurisdiction of incorporation)	(Commission File Number)	(I.R.S. Employer Identification Number)

1001 Calle Amanecer **San Clemente, CA**	**92673**
(Address of principal executive offices)	(Zip Code)

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

Not applicable
(Former name or former address, if changed since last report)

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

o Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

o Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

o Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

o Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

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

Emerging growth company o

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. o

Item 1.01 Entry Into a Material Definitive Agreement.

On December 17, 2018, ReShape Lifesciences Inc. (the "Company") entered into an Asset Purchase Agreement (the "Purchase Agreement") with Apollo Endosurgery, Inc. ("Apollo") pursuant to which the Company acquired from 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. In addition, the Company agreed to pay Apollo $17 million in cash, of which $10 million was paid at the closing of the transaction, $2 million is payable on the first anniversary of the closing date, $2 million is payable on the second anniversary of the closing date, and $3 million is payable on the third anniversary of the closing date. The Lap-Band system 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 Company and Apollo have made customary representations, warranties, covenants and indemnities in the Purchase Agreement. Subject to certain limitations, each of the Company and Apollo have agreed to indemnify the other party for certain matters, including breaches of representations, warranties and covenants in the Purchase Agreement.

In connection with the Purchase Agreement, the Company and Apollo entered into a Security Agreement pursuant to which the Company granted to Apollo a security interest in substantially all of the assets of the Company as security for the Company's obligations under the Purchase Agreement, including its obligation to pay the cash purchase price. The security interest will be terminated upon the earlier of the date the Company pays the cash purchase price to Apollo in full or completes an equity financing raising gross proceeds of at least $15 million.

In addition, the Company and Apollo have entered into a transition services agreement, supply agreement and distribution agreement pursuant to which, among other things, Apollo will manufacture the Lap-Band product for the Company for up two years and Apollo will serve as the Company's distributor of the Lap-Band product outside of the United States for up to one year.

The foregoing description of the Purchase Agreement and Security Agreement does not purport to be complete and is subject to, and qualified in its entirety by reference to, the full text of the Purchase Agreement and Security Agreement, which are filed as Exhibit 2.1 and Exhibit 10.1, respectively, to this report and are incorporated herein by reference. The Purchase Agreement and related description are intended to provide you with information regarding the terms of the Purchase Agreement and are not intended to modify or supplement any factual disclosures about the Company in its reports filed with the Securities and Exchange Commission (the "SEC"). In particular, the Purchase Agreement and related description are not intended to be, and should not be relied upon as, disclosures regarding any facts and circumstances relating to the Company. The representations and warranties also may be subject to a contractual standard of materiality different from those generally applicable under the securities laws. Stockholders of the Company are not third-party beneficiaries under the Purchase Agreement and should not rely on the representations, warranties and covenants or any descriptions thereof as characterizations of the actual state of facts or condition of the Company, Apollo or any of their respective assets, subsidiaries or affiliates. Moreover, information concerning the subject matter of the representations and warranties may change after the date of the Purchase Agreement.

Item 2.01 Completion of Acquisition or Disposition of Assets.

The information contained in Item 1.01 is incorporated herein by reference. The transactions contemplated by the Purchase Agreement described in Item 1.01 above were completed on December 17, 2018.

Item 2.03 Creation of a Direct Financial Obligation or an Obligation Under an Off-Balance Sheet Arrangement of a Registrant.

The information contained in Item 1.01 is incorporated herein by reference.

Item 7.01 Regulation FD Disclosure.

On December 18, 2018, the Company announced the transaction described in Item 1.01 above. A copy of the press release is furnished as Exhibit 99.1 to this report and is incorporated herein by reference.

The information contained in this Item 7.01 and Exhibit 99.1 to this report shall not be deemed to be "filed" for purposes of Section 18 of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), or otherwise subject to the liability of that section, and shall not be incorporated by reference into any filings made by the Company under the Securities Act or the Exchange Act, except as may be expressly set forth by specific reference in such filing.

Item 9.01 Financial Statements and Exhibits.

(a) *Financial Statements of Businesses Acquired*.

Any financial statements required by Item 9.01(a) of Form 8-K will be filed by amendment within 71 calendar days after the date upon which this current report on Form 8-K must be filed.

(b) *Pro Forma Financial Information*.

Any pro forma financial information required by Item 9.01(b) of Form 8-K will be filed by amendment within 71 calendar days after the date upon which this current report on Form 8-K must be filed.

(c) *Shell Company Information*.

Not applicable.

(d) *Exhibits*.

Exhibit No.	Description
2.1	Asset Purchase Agreement, dated December 17, 2018, by and between ReShape Lifesciences Inc. and Apollo Endosurgery, Inc.* (filed herewith)
10.1	Security Agreement, dated December 17, 2018, by and between ReShape Lifesciences Inc. and Apollo Endosurgery, Inc. (filed herewith)
99.1	Press Release dated December 18, 2018 issued by ReShape Lifesciences Inc. (furnished herewith)

*Pursuant to Item 601(b)(2) of Regulation S-K, the schedules to the Purchase Agreement (identified therein) have been omitted from this report and will be furnished supplementally to the SEC upon request.

SIGNATURES

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

RESHAPE LIFESCIENCES INC.

By: /s/ Scott P. Youngstrom
Scott P. Youngstrom
Chief Financial Officer

Dated: December 19, 2018

Exhibit 2.1

ASSET PURCHASE AGREEMENT

among:

RESHAPE LIFESCIENCES INC.,
a Delaware corporation

and
APOLLO ENDOSURGERY, INC.,
a Delaware corporation

Dated as of December 17, 2018

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ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT is entered into as of December 17, 2018, by and among **RESHAPE LIFESCIENCES INC.**, a Delaware corporation (the "ReShape"), and Apollo Endosurgery, Inc., a Delaware corporation ("Apollo"). Certain capitalized terms used in this Agreement are defined in Exhibit A. ReShape and Apollo are referred to in this Agreement collectively as the "Parties," and individually as a "Party."

WHEREAS, ReShape wishes to provide for the sale of the ReShape IGB Assets (as defined below) to Apollo on the terms set forth in this Agreement;

WHEREAS, Apollo wishes to provide for the sale of the Apollo Lap-Band Assets (as defined below) to ReShape on the terms set forth in this Agreement; and

WHEREAS, this Agreement has been approved by the respective boards of directors of Apollo and ReShape.

NOW, THEREFORE, in consideration of the premises and mutual covenants, agreements and provisions herein contained, the Parties agree as follows:

1. PURCHASE AND SALE OF APOLLO LAP-BAND ASSETS.

1.1 Apollo Lap-Band Assets. Apollo shall (and shall cause each Apollo Affiliate to) sell, assign, transfer, convey and deliver to ReShape, at the Closing (as defined below), the Apollo Lap-Band Assets (as defined below), free of any Encumbrances, on the terms and subject to the conditions set forth in this Agreement. For purposes of this Agreement, "Apollo Lap-Band Assets" shall mean and include all of the properties, assets, goodwill, rights, title, interests, other assets of every kind, nature and description, real, personal or mixed, and tangible and intangible assets (wherever located and whether or not required to be reflected on a balance sheet prepared in accordance with GAAP) of Apollo and each of its Affiliates used exclusively in the Apollo Lap-Band Business including, without limitation:

(a) all Apollo Lap-Band Inventory;

(b) all tangible property, excluding raw materials or works-in-progress, but including equipment, prototypes, tools, supplies, fixtures, improvements and other tangible assets, used exclusively in the Apollo Lap-Band Business (collectively, the "Apollo Lap-Band Equipment");;

(c) the Apollo Lap-Band Intellectual Property;

(d) only those Contracts listed on Schedule 1.1(d) and all rights related thereto (the "Apollo Lap-Band Business Contracts"), pursuant to the Assignment and Assumption Agreement; *provided, however*, that notwithstanding anything in this Agreement to the contrary, the Parties acknowledge and agree that only the Contracts listed on Schedule 1.1(d) shall be included in the Apollo Lap-Band Assets, and any Contract relating to the Apollo Lap-Band Business not listed on Schedule 1.1(d) shall be an Excluded Asset hereunder;

(e) the Apollo Lap-Band Regulatory Information and, to the extent transferable, the Apollo Lap-Band Regulatory Materials;

(f) the Governmental Authorizations set forth on Schedule 1.1(f) (the "Apollo Lap-Band Governmental Authorizations"); and

(g) the following records and files exclusively relating to the Apollo Lap-Band Assets or the Assumed Lap-Band Liabilities and in the possession of Apollo or any of its Affiliates (but excluding records or files that cannot be reasonably separated from Excluded Apollo Assets or redacted to include only books and records exclusively relating to the Apollo Lap-Band Assets or the Assumed Lap-Band Liabilities): (i) vendor lists, (ii) customer lists, (iii) a list of the distributors for the Apollo Lap-Band Products, (iv) pricing lists for the Apollo Lap-Band Products, (v) market research reports, marketing plans and other marketing-related information and materials, (vi) advertising, marketing, sales and promotional materials, (vii) quality control information and materials, and (viii) other business records relating exclusively to the Apollo Lap-Band Assets or the Assumed Lap-Band Liabilities, to the extent that such other business records are able to be transferred under applicable Law (the foregoing records and documents, (i)—(viii), collectively the "Apollo Lap-Band Books and Records"); provided, however, that Apollo may retain copies of all Apollo Lap-Band Books and Records.

Notwithstanding anything to the contrary herein, any Apollo Lap-Band Assets used to manufacture Apollo Lap-Band Products or necessary for Apollo to provide any services or otherwise comply with its obligations under the Transition Services Agreement or any other Transactional Agreement shall be transferred to ReShape at such time(s) set forth in the Transition Services Agreement or other applicable Transactional Agreement, as the case may be; provided, that any such Apollo Lap-Band Assets that are held by a third party will be transferred in accordance with, and subject to the terms and conditions of, any Contract between such third party and Apollo relating to such Apollo Lap-Band Assets.

1.2 Excluded Assets. Notwithstanding anything to the contrary contained in Section 1.1 or elsewhere in this Agreement, the following (collectively, the "Excluded Apollo Assets") shall not be part of the sale and purchase contemplated hereunder, and are excluded from the Apollo Lap-Band Assets, and shall remain the property of Apollo after the Closing:

(a) any assets of Apollo or its Affiliates, not exclusively used in the Apollo Lap-Band Business;

(b) any Tax Returns and Tax records of Apollo, and all Tax assets of Apollo and its Affiliates, including all losses, loss carryforwards and rights to receive refunds, credits, advance payments, and loss carryforwards to the extent attributable to Taxes of Apollo that constitute Excluded Apollo Liabilities;

(c) insurance policies and Claims thereunder, in each case relating to the Apollo Lap-Band Business prior to Closing;

(d) all cash, cash equivalents and/or Accounts Receivable of Apollo or any of its Affiliates;

(e) all real property interests of Apollo or any of its Affiliates;

(f) any assets of Apollo or any of its Affiliates, tangible or intangible, wherever situated, not included in the Apollo Lap-Band Assets;

(g) all minute books and corporate seals, stock books, Tax Returns and similar records of Apollo or any of its Affiliates other than the Apollo Lap-Band Books and Records;

(h) all claims and counterclaims relating to any Excluded Apollo Liabilities or Excluded Apollo Assets; and

(i) all claims, remedies and/or rights of Apollo under the terms of this Agreement or any Transactional Agreement.

1.3 Assumed Liabilities. Upon and subject to the terms, conditions, representations and warranties of Apollo contained herein, and subject to Section 1.4, ReShape shall assume, effective as of the Closing, the obligations of Apollo and/or any of its Affiliates under the Apollo Lap-Band Business Contracts, but, in each case, only to the extent that such obligations or liabilities (i) arise out of obligations performed or required to be performed by Apollo under the Apollo Lap-Band Business Contracts after the Closing and not on or before the Closing Date, (ii) do not arise from or relate to any breach by Apollo or any of its Affiliates of any provision of any of such Apollo Lap-Band Business Contracts, (iii) do not arise from or relate to any event, circumstance or condition occurring or existing on or prior to the Closing that, with notice or lapse of time, would constitute or result in a breach of any of such Apollo Lap-Band Business Contracts, and (iv) are ascertainable (in nature and amount) solely by reference to the express terms of such Apollo Lap-Band Business Contracts (the "Assumed Lap-Band Liabilities").

1.4 Excluded Liabilities. Except for the Assumed Lap-Band Liabilities, ReShape shall not assume, and shall have no liability for, any Liabilities of Apollo or any Apollo Affiliate of any kind, character or description, it being understood that ReShape is expressly disclaiming any express or implied assumption of any Liabilities other than the Assumed Lap-Band Liabilities including, without limitation all Liabilities arising out of, resulting from or relating to (collectively, the "Excluded Apollo Liabilities"):

(a) any and all Claims, regardless of when such Claim was first commenced or made, that arose out of, relates to or results from the development, nonclinical and clinical testing, commercialization, manufacture, storage, packaging, import, marketing, labeling, pricing, distribution, sale or use of the Apollo Lap-Band Product or any of the Apollo Lap-Band Assets, in each case, prior to the Closing, including all such Claims relating to warranty obligations, marketing programs, patient incentive programs and alleged intellectual property infringement;

(b) any and all products liability Claims that arose out of, relates to or results from any Apollo Lap-Band Product sold prior to the Closing (including Claims alleging defects in such Apollo Lap-Band Product and Claims involving the death of or injury to any individual relating to such Apollo Lap-Band Product);

(c) any recalls (including after the Closing) mandated by any Governmental Body with respect to any Apollo Lap-Band Products manufactured or sold prior to the Closing;

(d) any and all Claims for Apollo Lap-Band Products manufactured prior to the Closing, including but not limited to product liability and infringement of Intellectual Property whether or not sold prior to the Closing;

(e) any of the Excluded Apollo Assets;

(f) Taxes (other than Transfer Taxes, which shall be governed solely by Section 2.8) (i) in respect of or imposed upon Apollo or any of its Affiliates for any taxable period, or (ii) imposed with respect to the Apollo Lap-Band Assets or the Apollo Lap-Band Business for any taxable period (or portion thereof) ending on or prior to the Closing Date;

(g) any Contract, other than an Apollo Lap-Band Business Contract and subject to the limitations set forth in Section 1.3, to which Apollo or any of its Affiliates is a party or by which any of its properties or assets are otherwise bound;

(h) any current or former employee or contractor of Apollo, or any of its Affiliates;

(i) all Apollo Accounts Payable, including any unpaid accounts payable related to any Apollo Lap-Band Inventory; and

(j) all Liabilities set forth on Schedule 1.4.

2. PURCHASE AND SALE OF RESHAPE IGB ASSETS.

2.1 ReShape IGB Assets. ReShape shall (and shall cause each ReShape Affiliate to) sell, assign, transfer, convey and deliver to Apollo, at the Closing (as defined below), the ReShape IGB Assets (as defined below), free of any Encumbrances, on the terms and subject to the conditions set forth in this Agreement. For purposes of this Agreement, "ReShape IGB Assets" shall mean and include all of the properties, assets, goodwill, rights, title, interests, other assets of every kind, nature and description, real, personal or mixed, and tangible and intangible assets (wherever located and whether or not required to be reflected on a balance sheet prepared in accordance with GAAP) of ReShape and each of its Affiliates used exclusively in the ReShape IGB Business including, without limitation:

(a) all ReShape IGB Inventory;

(b) all tangible property, including raw materials, works-in-progress, equipment, prototypes, tools, supplies, fixtures, improvements and other tangible assets, used exclusively in the ReShape IGB Business (collectively, the "ReShape IGB Equipment"); provided, however, that any such ReShape IGB Equipment used to manufacture ReShape IGB Products or necessary for ReShape to provide any services under the Transition Services Agreement shall be transferred to Apollo at such time(s) set forth in the applicable Transition Services Agreement;

(c) the ReShape IGB Intellectual Property;

(d) only those Contracts listed on Schedule 2.1(d) and all rights related thereto (the "ReShape IGB Business Contracts"), pursuant to the Assignment and Assumption Agreement; *provided*, *however*, that notwithstanding anything in this Agreement to the contrary, the Parties acknowledge and agree that only the Contracts listed on Schedule 2.1(d) shall be included in the ReShape IGB Assets, and any Contract relating to the ReShape IGB Business not listed on Schedule 2.1(d) shall be an Excluded Asset hereunder;

(e) the ReShape IGB Regulatory Information and, to the extent transferable, the ReShape IGB Regulatory Materials;

(f) the Governmental Authorizations set forth on Schedule 2.1(f) (the "ReShape IGB Governmental Authorizations"); and

(g) the following records and files exclusively relating to the ReShape IGB Assets or the Assumed ReShape IGB Liabilities and in the possession of Apollo or any of its Affiliates (but excluding records or files that cannot be reasonably separated from Excluded ReShape Assets or redacted to include only books and records exclusively relating to the ReShape IGB Assets or the Assumed ReShape IGB Liabilities): (i) vendor lists, (ii) customer lists, (iii) a list of the distributors for the ReShape IGB Products, (iv) pricing lists for the ReShape IGB Products, (v) market research reports, marketing plans and other marketing-related information and materials, (vi) advertising, marketing, sales and promotional materials, (vii) quality control information and materials, and (viii) other business records relating exclusively to the ReShape IGB Assets or the Assumed ReShape IGB Liabilities, to the extent that such other business records

are able to be transferred under applicable Law (the foregoing records and documents, (i)—(viii), collectively the "ReShape IGB Books and Records"); provided, however, that ReShape may retain copies of all ReShape IGB Books and Records.

2.2 Excluded Assets. Notwithstanding anything to the contrary contained in Section 2.1 or elsewhere in this Agreement, the following (collectively, the "Excluded ReShape Assets") shall not be part of the sale and purchase contemplated hereunder, and are excluded from the ReShape IGB Assets, and shall remain the property of Apollo after the Closing:

(a) any assets of ReShape or its Affiliates, not exclusively used in the ReShape IGB Business;

(b) any Tax Returns and Tax records of ReShape, and all Tax assets of ReShape and its Affiliates, including all losses, loss carryforwards and rights to receive refunds, credits, advance payments, and loss carryforwards to the extent attributable to Taxes of ReShape that constitute Excluded ReShape Liabilities;

(c) insurance policies and Claims thereunder, in each case relating to the ReShape IGB Business prior to Closing;

(d) all cash, cash equivalents and/or Accounts Receivable of ReShape or any of its Affiliates;

(e) all real property interests of ReShape or any of its Affiliates;

(f) any assets of ReShape or any of its Affiliates, tangible or intangible, wherever situated, not included in the ReShape IGB Assets;

(g) all minute books and corporate seals, stock books, Tax Returns and similar records of ReShape or any of its Affiliates other than the ReShape IGB Books and Records;

(h) all claims and counterclaims relating to any Excluded ReShape Liabilities or Excluded ReShape Assets; and

(i) all claims, remedies and/or rights of ReShape under the terms of this Agreement or any Transactional Agreement.

2.3 Assumed Liabilities. Upon and subject to the terms, conditions, representations and warranties of Apollo contained herein, and subject to Section 2.4, Apollo shall assume, effective as of the Closing, the obligations of ReShape or any of its Affiliates under the ReShape IGB Business Contracts, but, in each case, only to the extent such obligations or liabilities (i) arise out of obligations performed or required to be performed by ReShape under the ReShape IGB Business Contracts after the Closing and not on or before the Closing Date, (ii) do not arise from or relate to any breach by ReShape or any of its Affiliates of any provision of any of such ReShape IGB Business Contracts, (iii) do not arise from or relate to any event, circumstance or condition occurring or existing on or prior to the Closing that, with notice or lapse of time, would constitute or result in a breach of any of such ReShape IGB Business Contracts, and (iv) are ascertainable (in nature and amount) solely by reference to the express terms of such ReShape IGB Business Contracts (the "Assumed ReShape IGB Liabilities").

2.4 Excluded Liabilities. Except for the Assumed ReShape IGB Liabilities, Apollo shall not assume, and shall have no liability for, any Liabilities of ReShape or any ReShape Affiliate of any kind,

character or description, it being understood that Apollo is expressly disclaiming any express or implied assumption of any Liabilities other than the Assumed ReShape IGB Liabilities including, without limitation all Liabilities arising out of, resulting from or relating to (collectively, the "Excluded ReShape Liabilities"):

(a) any and all Claims, regardless of when such Claim was first commenced or made, that arose out of, relates to or results from the development, nonclinical and clinical testing, commercialization, manufacture, storage, packaging, import, marketing, labeling, pricing, distribution, sale or use of the ReShape IGB Product or any of the ReShape IGB Assets, in each case, prior to the Closing, including all such Claims relating to warranty obligations, marketing programs, patient incentive programs and alleged intellectual property infringement;

(b) any and all products liability Claims that arose out of, relates to or results from any ReShape IGB Product sold prior to the Closing (including Claims alleging defects in such ReShape IGB Product and Claims involving the death of or injury to any individual relating to such ReShape IGB Product);

(c) any recalls (including after the Closing) mandated by any Governmental Body with respect to any ReShape IGB Products manufactured or sold prior to the Closing;

(d) any and all Claims for ReShape IGB Products manufactured prior to the Closing, including but not limited to product liability and infringement of Intellectual Property whether or not sold prior to the Closing;

(e) any of the Excluded ReShape Assets;

(f) Taxes (other than Transfer Taxes, which shall be governed solely by Section 2.8) (i) in respect of or imposed upon ReShape or any of its Affiliates for any taxable period, or (ii) imposed with respect to the ReShape IGB Assets or the ReShape IGB Business for any taxable period (or portion thereof) ending on or prior to the Closing Date;

(g) any Contract, other than a ReShape IGB Business Contract and subject to the limitations set forth in Section 2.3, to which Apollo or any of its Affiliates is a party or by which any of its properties or assets are otherwise bound;

(h) any current or former employee or contractor of ReShape, or any of its Affiliates;

(i) all ReShape Accounts Payable, including any unpaid accounts payable related to any ReShape IGB Inventory; and

(j) all Liabilities set forth on Part 2.4 of the ReShape Disclosure Schedule.

2.5 Purchase Price; Payment of Purchase Price.

(a) As consideration for the sale, transfer, conveyance, assignment and delivery to ReShape of the Apollo Lap-Band Assets:

(i) ReShape shall pay to Apollo, by wire transfer of immediately available funds to the account designated by Apollo, an aggregate amount in cash equal to seventeen million dollars ($17,000,000) (the "Cash Purchase Price") in accordance with the following payment schedule:

(1) at the Closing, an aggregate amount equal to: $10,000,000 (the "Closing Cash Purchase Price");

(2) on the one (1) year anniversary of Closing (or the next Business Day if such day is not a Business Day), an aggregate amount equal to: $2,000,000;

(3) on the two (2) year anniversary of Closing (or the next Business Day if such day is not a Business Day), an aggregate amount equal to: $2,000,000; and

(4) on the three (3) year anniversary of Closing (or the next Business Day if such day is not a Business Day), an aggregate amount equal to: $3,000,000.

(ii) at the Closing, ReShape shall assume the Assumed Lap-Band Liabilities; and

(iii) at the Closing, ReShape shall sell, assign, transfer, convey and deliver to Apollo, the ReShape IGB Assets.

(b) As consideration for the sale, transfer, conveyance, assignment and delivery to Apollo of the ReShape IGB Assets:

(i) at the Closing, Apollo shall sell, assign, transfer, convey and deliver to ReShape, the Apollo Lap-Band Assets; and

(ii) at the Closing, Apollo shall assume the Assumed ReShape IGB Liabilities.

2.6 Allocation of Purchase Price. Within ninety (90) days after the Closing Date, (a) Apollo shall deliver to ReShape a draft allocation of the purchase price as determined for U.S. federal income Tax purposes (including the Assumed Lap-Band Liabilities and any other relevant items) among the Apollo Lap-Band Assets (the "Draft Lap-Band Allocation"), and (b) ReShape shall deliver to Apollo a draft allocation of the purchase price as determined for U.S. federal income Tax purposes (including the Assumed Reshape IGB Liabilities and any other relevant items) among the ReShape IGB Assets (the "Draft ReShape IGB Allocation," and together with the Draft Lap-Band Allocation, the "Draft Allocations"). The Draft Allocations will be prepared in accordance with Section 1060 of the Code and the Treasury Regulations thereunder. If (i) ReShape does not object to the Draft Lap-Band Allocation, or (ii) Apollo does not object to the Draft ReShape IGB Allocation, in either case, within thirty (30) days of receipt thereof, the applicable Draft Allocation shall become final and binding on the parties. If either Apollo or ReShape, as applicable, timely objects to the applicable Draft Allocation, then the parties shall negotiate in good faith to resolve promptly any such objection. If Apollo and ReShape are unable to reach a resolution with respect to any aspect of either Draft Allocation within fifteen (15) days of a timely objection to the applicable Draft Allocation, either Apollo or ReShape may demand that any disputed items be referred to an independent accounting firm of national reputation that is mutually acceptable to Apollo and ReShape (the "Accounting Firm") to finally resolve such disputed item(s). Promptly, but not later than thirty (30) days after such disputed items are submitted to it for resolution hereunder, the Accounting Firm will determine those matters in dispute and will render a written report as to the disputed matters and the resulting allocation of such amounts, which report shall be conclusive and binding upon the parties. The Draft Allocations, as amended to reflect any agreement among Apollo and ReShape, and the resolution of any disputed items by the Accounting Firm, shall be referred to herein as the "Final Allocation." Except as otherwise required pursuant to a "determination" under Section 1313 of the Code (or any comparable provision of state or local Law), neither Apollo nor ReShape shall take, nor permit their Affiliates to take, any Tax position which is inconsistent with the Final Allocation, and each party will file its Tax Returns (including IRS Form 8594)

consistently with the Final Allocation. Each party shall notify the other parties if it receives notice that any Governmental Body proposes any allocation different than the Final Allocation. Any post-Closing payments of the Cash Purchase Price payable under Section 2.5(a)(i) shall be allocated in a manner consistent with the Final Allocation, and except as may otherwise be required by applicable Law, any amounts paid to a ReShape Indemnitee or Apollo Indemnitee under Section 9 shall be treated as an adjustment to the purchase price of the relevant Acquired Assets (including by the Parties on their respective Tax Returns) for Tax purposes and allocated as provided by Treasury Regulation § 1.1060-1(c).

2.7 Closing.

(a) The closing of the transactions contemplated under this Agreement (the "Closing"), including the purchase and sale of each of the Apollo Lap-Band Assets and the ReShape IGB Assets, as applicable, shall take place remotely via the electronic exchange of documents immediately following the execution and delivery of this Agreement by the parties hereto. For purposes of this Agreement, the "Closing Date" shall mean the date as of which the Closing actually takes place.

(b) At the Closing:

(i) Each of Apollo and ReShape shall execute and deliver a Bill of Sale in the form agreed upon between the Parties (each, a "Bill of Sale");

(ii) Each of Apollo and ReShape shall each execute and deliver to the other Party the Transition Services Agreement (the "Transition Services Agreement"), the Supply Agreement (the "Apollo Supply Agreement") and the Distribution Agreement (the "Apollo Distribution Assignment"), in each case, in the form agreed upon between the Parties;

(iii) Each of Apollo and ReShape shall deliver to the other Party the Patent Application Assignment, in the form agreed upon between the Parties (the "Patent Assignment"), executed by the delivering Person;

(iv) Each of Apollo and ReShape shall deliver to the other Party the Trademark Assignment, in the form agreed upon between the Parties (the "Trademark Assignment"), executed by the delivering Person;

(v) Each of Apollo and ReShape shall deliver to the other Party the Assignment and Assumption Agreement for the Assigned Contracts, in the form agreed upon between the Parties (the "Assignment and Assumption Agreement"), executed by the delivering Person;

(vi) Apollo shall deliver to ReShape all Apollo Lap-Band Books and Records;

(vii) ReShape shall deliver to Apollo all ReShape IGB Books and Records;

(viii) each of Apollo and ReShape shall deliver to the other a properly executed certificate certifying that Apollo or ReShape, as applicable, is not a foreign person for purposes of Code Section 1445, in a form and manner reasonably satisfactory to the other (the "FIRPTA Certificate");

(ix) ReShape shall, at its own expense, deliver, or cause to be delivered, promptly (but in any event within three Business Days) following the Closing (A) seventy-five percent (75%) of the ReShape IGB Removal Tools and twenty-five percent (25%) of the ReShape IGB Inventory (other than the ReShape IGB Removal Tools) to the location(s) or premise(s) designated by Apollo prior to the Closing and (B) the remaining twenty-five percent (25%) of the ReShape IGB Removal Tools and

seventy-five percent (75%) of the ReShape IGB Inventory (other than the ReShape IGB Removal Tools) shall be retained at a facility owned or operated by ReShape in the United States and shall be used by ReShape to provide the services under the Transition Services Agreement;

(x) ReShape shall execute and deliver to Apollo the security agreement and the related subsidiary guarantee in the form agreed upon between the Parties dated as of the Closing Date (the "Security Agreement"); and

(xi) ReShape shall pay to Apollo, by wire transfer of immediately available funds, the Closing Cash Purchase Price.

2.8 Sales Taxes. ReShape will be responsible for and will pay when due all Transfer Taxes payable in connection with the purchase and sale of the Apollo Lap-Band Assets. Apollo will be responsible for and will pay when due all Transfer Taxes payable in connection with the purchase and sale of the ReShape IGB Assets. The parties will cooperate, to the extent reasonably requested and as permitted by applicable Law, in minimizing any such Transfer Taxes. The party required by applicable Law to file a Tax Return or other documentation with respect to any such Transfer Taxes will do so within the time period prescribed by applicable Law, and the other party agrees (a) to cooperate with the filing party in the filing of any such Tax Returns with respect to Transfer Taxes, including promptly supplying any information in its possession that is reasonably necessary to complete such Tax Returns, and (a) if the other party is responsible for the payment of Transfer Taxes under this Section 2.8, shall pay to the filing party such Transfer Taxes shown as due on such Tax Returns no later than five (5) business days prior to the due date of such Tax Returns, and shall reimburse the filing party for any reasonable out-of-pocket costs and expenses incurred by the filing party in preparing such Tax Returns.

2.9 Withholding. Apollo, ReShape, and their respective Affiliates and agents (each a "Withholding Agent"), shall be entitled to deduct and withhold from any consideration payable or otherwise deliverable pursuant to this Agreement such amounts as required to be deducted or withheld therefrom under the Code or any other applicable Tax Law. The applicable Withholding Agent shall use commercially reasonable efforts to reduce or eliminate any such withholding including by requesting any appropriate Tax forms, including IRS Form W-9, or any similar information, from the payee. To the extent such amounts are so deducted or withheld and timely paid over to the appropriate Governmental Body in accordance with applicable Law, such amounts shall be treated for all purposes under this Agreement as having been paid to the Person to whom such amounts would otherwise have been paid.

2.10 Certain Costs.

(a) All costs and fees associated with transferring to Acquirer or one of its Affiliates, the Intellectual Property and/or Governmental Authorizations for the Acquired Assets conveyed to Acquirer hereunder shall be borne and paid solely by Acquirer when due; provided, however, that if any such amount shall be incurred by Seller, Acquirer shall, subject to receipt of satisfactory evidence of Seller's payment thereof, promptly reimburse Seller for its reasonable out-of-pocket costs.

(b) All costs and expenses associated with removing and moving any Acquired Asset to a location designated by Acquirer shall be borne and paid solely by Acquirer when due; provided, however, that if any such amount shall be incurred by Seller, Acquirer shall, subject to receipt of satisfactory evidence of Seller's payment thereof, promptly reimburse Seller for its out-of-pocket costs.

3. REPRESENTATIONS AND WARRANTIES OF APOLLO.

Except as disclosed in the Apollo Disclosure Schedule, Apollo represents and warrants to and for the benefit of ReShape as follows, in each case, as of the date hereof and as of the Closing Date:

3.1 Due Organization; No Subsidiaries; Etc. Apollo is a corporation duly incorporated, validly existing and in good standing under the laws of the State of Delaware. Apollo is not required to be qualified, authorized, registered or licensed to do business as a foreign company in any jurisdiction other than the jurisdictions listed in Part 3.1 of the Apollo Disclosure Schedule. Apollo is in good standing as a foreign company in each of the jurisdictions listed in Part 3.1 of the Apollo Disclosure Schedule. Other than as disclosed in Part 3.1 of the Apollo Disclosure Schedule, Apollo does not have any subsidiaries, and does not own, beneficially or otherwise, any shares or other securities of, or any direct or indirect interest of any nature in, any other Entity.

3.2 Title To Acquired Assets. Apollo owns the entire rights in and to, and has good and valid title to, all of the Apollo Lap-Band Assets, free and clear of any Encumbrances. The Apollo Lap-Band Assets will collectively constitute, as of the Closing Date, all of the properties, rights, title, interests and other tangible and intangible assets necessary to enable ReShape to conduct the Apollo Lap-Band Business in the manner in which the Apollo Lap-Band Business is currently being conducted.

3.3 Intellectual Property.

(a) The Lap-Band Intellectual Property include all of the patents, patent applications, internet domain names, trade names, registered and unregistered trademarks and service marks that are owned by or licensed to Apollo and necessary for the Apollo Lap-Band Business.

(b) Except as set forth in Part 3.3(b) of the Apollo Disclosure Schedule, Apollo and its Affiliates are the sole owners of all right, title and interest in and to the Apollo Lap-Band Patents. All filing, issue, registration, renewal, maintenance, extension or other official registry fees for the Lap-Band Intellectual Property due as of the date hereof have been paid.

(c) To Apollo's Knowledge, the Apollo Lap-Band Patents are valid and enforceable and is not subject to any outstanding injunction, judgment, order, decree, or ruling.

(d) To Apollo's Knowledge, there is no, nor has there been any, material infringement by any Person of any of the rights of the Apollo Lap-Band Patents within the past three years.

(e) There are no material Proceedings or actions pending before any Governmental Authority challenging the scope, ownership, validity or enforceability of the Lap-Band Intellectual Property nor have such Proceedings been threatened.

(f) Apollo has made available to ReShape any written opinion or written evaluation of its intellectual property counsel delivered in the past three years regarding the potential or actual infringement or misappropriation of third party Intellectual Property with respect to the Apollo Lap-Band Business.

3.4 Contracts.

(a) The Apollo Lap-Band Business Contracts include all Contracts to which Apollo or any Apollo Affiliate is a party, or under which Apollo or any Apollo Affiliate has or may acquire any right or interest, exclusively relating to the Apollo Lap-Band Products and/or the Apollo Lap-Band Business.

Apollo has delivered to ReShape accurate and complete copies of all Apollo Lap-Band Business Contracts, including all amendments thereto. Each Apollo Lap-Band Business Contract is valid and in full force and effect.

(b) Except as set forth in Part 3.4(b) of the Apollo Disclosure Schedule: (i) no Person has violated or breached, or declared or committed any default under, any Apollo Lap-Band Business Contract; (ii) no event has occurred, and no circumstance or condition exists, that might (with or without notice or lapse of time) (A) result in a violation or breach of any of the provisions of any Apollo Lap-Band Business Contract, (B) give any Person the right to declare a default or exercise any remedy under any Apollo Lap-Band Business Contract, (C) give any Person the right to accelerate the maturity or performance of any Apollo Lap-Band Business Contract, or (D) give any Person the right to cancel, terminate or modify any Apollo Lap-Band Business Contract; (iii) neither Apollo, nor any Apollo Affiliate has received any notice or other communication (in writing or otherwise) regarding any actual, alleged, possible or potential violation or breach of, or default under, any Apollo Lap-Band Business Contract; and (iv) neither Apollo nor any Apollo Affiliate has waived any right under any Apollo Lap-Band Business Contract.

(c) To the Knowledge of Apollo, each Person against which Apollo or any Apollo Affiliate has or may acquire any rights under any Apollo Lap-Band Business Contract is solvent and is able to satisfy all of such Person's current and future monetary obligations and other obligations and Liabilities thereunder.

(d) The performance of the Apollo Lap-Band Business Contracts will not result in any violation of or failure to comply with any applicable Law.

(e) No Person is renegotiating, or has the right to renegotiate, any amount paid or payable to the Apollo or any Apollo Affiliate under any Apollo Lap-Band Business Contract or any other term or provision of any Apollo Lap-Band Business Contract.

(f) To the Knowledge of Apollo, there is no basis upon which any party to any Apollo Lap-Band Business Contract may object to (i) the assignment to ReShape of any right under such Apollo Lap-Band Business Contract, or (ii) the delegation to or performance by ReShape of any obligation under such Apollo Lap-Band Business Contract.

(g) The Apollo Lap-Band Business Contracts collectively constitute all of the Contracts necessary to enable ReShape to conduct the Apollo Lap-Band Business in the manner in which it is currently being conducted and in the manner in which it is proposed to be conducted.

3.5 Compliance with Law. Except as set forth in Part 3.5 of the Apollo Disclosure Schedule: (a) Apollo and each Apollo Affiliate is in full compliance with each Law that is applicable to it or to the conduct of the Apollo Lap-Band Business or the ownership or use of any of the Apollo Lap-Band Assets; (b) the Apollo and each Apollo Affiliate has at all times been in full compliance with each Law that is or was applicable to the conduct of the Apollo Lap-Band Business or the ownership or use of any of the Apollo Lap-Band Assets; (c) no event has occurred, and no condition or circumstance exists, that might (with or without notice or lapse of time) constitute or result directly or indirectly in a violation by Apollo and each Apollo Affiliate of, or a failure on the part of Apollo and each Apollo Affiliate to comply with, any Law with respect to the Apollo Lap-Band Business or the Apollo Lap-Band Assets; and (d) neither Apollo nor any Apollo Affiliate has received, at any time, any notice or other communication (in writing or otherwise) from any Governmental Body or any other Person regarding (i) any actual, alleged, possible or potential violation of, or failure to comply with, any Law that is or was applicable to the conduct of the Apollo Lap-Band Business or the ownership or use of any of the Apollo Lap-Band Assets, or (ii) any actual, alleged, possible or potential obligation on the part of the such Person to undertake, or to bear all or any portion of

the cost of, any cleanup or any remedial, corrective or response action of any nature, in each case with respect to the Apollo Lap-Band Business or the Apollo Lap-Band Assets. Apollo has delivered to ReShape an accurate and complete copy of each report, study, survey or other document to which Apollo has access that addresses or otherwise primarily relates to the compliance of Apollo with, or the applicability to Apollo of, any Law with respect to the Apollo Lap-Band Business or the Apollo Lap-Band Assets. To the Knowledge of Apollo, no Governmental Body has proposed or is considering any Law that, if adopted or otherwise put into effect, (A) may have an adverse effect on the Apollo Lap-Band Business or the Apollo Lap-Band Assets or on the ability of Apollo to comply with or perform any covenant or obligation under any of the Transactional Agreements, or (B) may have the effect of preventing, delaying, making illegal or otherwise interfering with any of the Transactions.

3.6 Governmental Authorizations; Regulatory Compliance.

(a) Part 3.6 of the Apollo Disclosure Schedule identifies: (i) each Governmental Authorization that is held by Apollo and/or any Apollo Affiliate that relates to or is used in the Apollo Lap-Band Business; and (ii) each other Governmental Authorization that is held by any Representative of Apollo or any Apollo Affiliate and relates to or is useful in connection with the Apollo Lap-Band Business. Apollo has delivered to ReShape accurate and complete copies of all of the Governmental Authorizations identified in Part 3.6 of the Apollo Disclosure Schedule, including all renewals thereof and all amendments thereto. Each Governmental Authorization identified or required to be identified in Part 3.6 of the Apollo Disclosure Schedule is valid and in full force and effect. Except as set forth in Part 3.6 of the Apollo Disclosure Schedule: (A) Apollo is and has at all times been in full compliance with all of the terms and requirements of each Governmental Authorization identified or required to be identified in Part 3.6 of the Apollo Disclosure Schedule; (B) no event has occurred, and no condition or circumstance exists, that might (with or without notice or lapse of time) (x) constitute or result directly or indirectly in a violation of or a failure to comply with any term or requirement of any Governmental Authorization identified or required to be identified in Part 3.6 of the Apollo Disclosure Schedule, or (y) result directly or indirectly in the revocation, withdrawal, suspension, cancellation, termination or modification of any Governmental Authorization identified or required to be identified in Part 3.6 of the Apollo Disclosure Schedule; (C) neither Apollo nor any Apollo Affiliate has ever received any notice or other communication (in writing or otherwise) from any Governmental Body or any other Person regarding (x) any actual, alleged, possible or potential violation of or failure to comply with any term or requirement of any Governmental Authorization identified or required to be identified in Part 3.6 of the Apollo Disclosure Schedule, or (y) any actual, proposed, possible or potential revocation, withdrawal, suspension, cancellation, termination or modification of any Governmental Authorization identified or required to be identified in Part 3.6 of the Apollo Disclosure Schedule; and (D) all applications required to have been filed for the renewal of the Governmental Authorizations identified or required to be identified in Part 3.6 of the Apollo Disclosure Schedule have been duly filed on a timely basis with the appropriate Governmental Bodies, and each other notice or filing required to have been given or made with respect to such Governmental Authorizations has been duly given or made on a timely basis with the appropriate Governmental Body. The Governmental Authorizations identified in Part 3.6 of the Apollo Disclosure Schedule constitute all of the Governmental Authorizations necessary (1) to enable Apollo to conduct the Business in the manner in which such business is currently being conducted, and (2) to permit Apollo to own and use the Apollo Lap-Band Assets in the manner in which they are currently owned and used.

(b) Each Apollo Lap-Band Product is being or has been developed, manufactured, labeled, stored, researched, distributed and/or tested in compliance in all material respects with all applicable requirements under the Federal Food, Drug and Cosmetic Act ("FFDCA"), applicable implementing regulations and similar foreign, state and local Laws and regulations, including those relating to investigational use, quality systems, good manufacturing practices, good clinical practices, good laboratory practices, labeling, record keeping and filing of required reports. Neither Apollo nor any Apollo

Affiliate has received any notice or other communication from the FDA or any other Governmental Body alleging any violation of any Laws or judgments applicable to any Apollo Lap-Band Product and/or Apollo Lap-Band Asset. Complete and accurate copies of all data of Apollo, and all correspondence with the FDA and foreign health authorities, with respect to each Apollo Lap-Band Product have been made available for ReShape's review.

(c) Apollo has filed, or an Apollo Affiliate or Third Party on behalf of Apollo has filed, with the FDA or other appropriate Governmental Body all required notices, any Apollo Lap-Band Product Medical Device Reports under 21 CFR Part 803 related to the use of any Apollo Lap Band Product in human clinical trials, and Apollo has made copies of such notices available for ReShape's review.

(d) Neither Apollo nor, to the Knowledge of Apollo, any of Apollo's Representatives acting for Apollo, has committed any act, made any statement or failed to make any statement that would reasonably be expected to provide a basis for the FDA to invoke its policy with respect to "Fraud, Untrue Statements of Material Facts, Bribery, and Illegal Gratuities" set forth in 56 Fed. Reg. 46191 (September 10, 1991) (the "Fraud Policy") and any amendments thereto. Additionally, neither Apollo, nor to the Knowledge of Apollo, any Representative of Apollo has been convicted of any crime or engaged in any conduct that would reasonably be expected to result, or has resulted, in (i) debarment under 21 U.S.C. Section 335a or any similar state Law, or (ii) exclusion under 42 U.S.C. Section 1320a-7 or any similar state Law. To the Knowledge of Apollo, Apollo is not the target of any pending or threatened investigation by the FDA pursuant to the Fraud Policy or by any Governmental Body pursuant to a comparable policy.

(e) There are no investigations, suits, arbitrations, charges, complaints, claims, actions or proceedings against or affecting Apollo relating to or arising under the FFDCA, the Public Health Services Act, the FDA regulations adopted thereunder, the Controlled Substance Act or any other legislation or regulation promulgated by any other Governmental Body.

3.7 Certain Payments, Etc. Apollo has not, and no officer, employee, agent or other Person acting for or on behalf of Apollo or any Apollo Affiliate has, at any time, directly or indirectly, in each case in connection with the conduct of the Apollo Lap-Band Business or the use of the Apollo Lap-Band Assets: (a) used any corporate funds (i) to make any unlawful political contribution or gift or for any other unlawful purpose relating to any political activity, (ii) to make any unlawful payment to any governmental official or employee, or (iii) to establish or maintain any unlawful or unrecorded fund or account of any nature; (b) made any false or fictitious entry, or failed to make any entry that should have been made, in any of the books of account or other records of Apollo; (c) made any payoff, influence payment, bribe, rebate, kickback or unlawful payment to any Person; (d) performed any favor or given any gift which was not deductible for federal income tax purposes; (e) made any payment (whether or not lawful) to any Person, or provided (whether lawfully or unlawfully) any favor or anything of value (whether in the form of property or services, or in any other form) to any Person, for the purpose of obtaining or paying for (i) favorable treatment in securing business, or (ii) any other special concession; or (f) agreed, committed or offered (in writing or otherwise) to take any of the actions described in clauses "(a)" through "(e)" above.

3.8 Proceedings; Orders. Except as set forth in Part 3.8 of the Apollo Disclosure Schedule, there is no pending Proceeding, and no Person has threatened to commence any Proceeding: (i) that relates to the Apollo Lap-Band Business or any of the Apollo Lap-Band Assets (whether or not Apollo is named as a party thereto); or (ii) that challenges, or that may have the effect of preventing, delaying, making illegal or otherwise interfering with, any of the Transactions. Except as set forth in Part 3.8 of the Apollo Disclosure Schedule, no event has occurred, and no claim, dispute or other condition or circumstance exists, that might directly or indirectly give rise to or serve as a basis for the commencement of any such Proceeding. Except as set forth in Part 3.8 of the Apollo Disclosure Schedule, no Proceeding has ever been commenced by or against Apollo. Apollo has delivered to ReShape accurate and complete copies of all

pleadings, correspondence and other written materials (to which Apollo has access) that relate to the Proceedings identified in Part 3.8 of the Apollo Disclosure Schedule. There is no Order to which the Apollo Lap-Band Business, or any of the Apollo Lap-Band Assets, is subject, and neither Apollo nor any Related Party is subject to any Order that relates to the Apollo Lap-Band Business or to any of the Apollo Lap-Band Assets. There is no proposed Order that, if issued or otherwise put into effect, (i) may have an adverse effect on the Apollo Lap-Band Business or the Apollo Lap-Band Assets or on the ability of Apollo to comply with or perform any covenant or obligation under any of the Transactional Agreements, or (ii) may have the effect of preventing, delaying, making illegal or otherwise interfering with any of the Transactions.

3.9 Authority; Binding Nature Of Agreements. Apollo has the absolute and unrestricted right, power and authority to enter into and to perform its obligations under each of the Transactional Agreements to which it is or may become a party; and the execution, delivery and performance by Apollo of the Transactional Agreements to which it is or may become a party have been duly authorized by all necessary action on the part of Apollo and its stockholders, board of directors and officers. This Agreement constitutes the legal, valid and binding obligation of Apollo, enforceable against Apollo in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium, liquidation, fraudulent conveyance, and other similar Laws and principles of equity affecting creditors' rights and remedies generally (the "General Enforceability Exceptions"). Upon the execution of each of the other Transactional Agreements at the Closing, each of such other Transactional Agreements to which Apollo is a party will constitute the legal, valid and binding obligation of Apollo and will be enforceable against Apollo in accordance with its terms, subject to the General Enforceability Exceptions.

3.10 Non-Contravention; Consents. Except as set forth in Part 3.10 of the Apollo Disclosure Schedule, neither the execution and delivery of any of the Transactional Agreements, nor the consummation or performance of any of the Transactions, will directly or indirectly (with or without notice or lapse of time):

(a) contravene, conflict with or result in a violation of (i) any of the provisions of the Apollo's certificate of incorporation or bylaws, or (ii) any resolution adopted by the Apollo's board of directors, including any committee thereof;

(b) contravene, conflict with or result in a violation of, or give any Governmental Body or other Person the right to challenge any of the Transactions or to exercise any remedy or obtain any relief under, any applicable Law or any Order to which Apollo, or any of the Apollo Lap-Band Assets, is subject;

(c) contravene, conflict with or result in a violation of any of the terms or requirements of, or give any Governmental Body the right to revoke, withdraw, suspend, cancel, terminate or modify, any Governmental Authorization that is to be included in the Apollo Lap-Band Assets or is held by Apollo or any employee of Apollo;

(d) contravene, conflict with or result in a violation or breach of, or result in a default under, any provision of any Apollo Lap-Band Business Contract;

(e) give any Person the right to (i) declare a default or exercise any remedy under any Apollo Lap-Band Business Contract, (ii) accelerate the maturity or performance of any Apollo Lap-Band Business Contract, or (iii) cancel, terminate or modify any Apollo Lap-Band Business Contract; or

(f) result in the imposition or creation of any Encumbrance upon or with respect to any of the Apollo Lap-Band Assets.

Except as set forth in Part 3.10 of the Apollo Disclosure Schedule, Apollo was not, is not and will not be required to make any filing with or give any notice to, or to obtain any Consent from, any Person in connection with the execution and delivery of any of the Transactional Agreements or the consummation or performance of any of the Transactions.

3.11 Solvency. As of the Closing Date, after giving effect to all of the transactions contemplated by this Agreement, Apollo shall be Solvent.

3.12 No Vote Required. No vote or other action of the stockholders of Apollo is required by applicable Law, the certificate of incorporation or bylaws (or similar charter or organizational documents) of Apollo or otherwise in order for Apollo to consummate the Transactions.

3.13 Brokers. Apollo has not agreed and will not become obligated to pay, and has not taken any action that might result in any Person claiming to be entitled to receive, any brokerage commission, finder's fee or similar commission or fee in connection with any of the Transactions.

3.14 Tax Matters. Except as set forth in Part 3.14 of the Apollo Disclosure Schedule:

(a) Apollo has filed or caused to be filed all Tax Returns related to the Apollo Lap-Band Assets or the Apollo Lap-Band Business that are required to be filed and such Tax Returns are complete and correct in all material respects and were prepared in substantial compliance with applicable Law.

(b) Apollo has (i) paid all Taxes (whether or not shown or required to be shown on any Tax Return) required to be paid with respect to the Apollo Lap-Band Assets or the Apollo Lap-Band Business, and (ii) recorded an adequate provision in its financial statements with respect to all Taxes with respect to the Apollo Lap-Band Assets or the Apollo Lap-Band Business that have accrued through the date of such financial statements that were not yet due and payable as of the date thereof. There are no liens for Taxes upon any of the Apollo Lap-Band Assets except liens for current Taxes not yet due and payable (and for which there are adequate accruals, in accordance with GAAP).

(c) Apollo has complied in all material respects with all applicable Laws relating to the payment, reporting, withholding and collection of all Taxes related to the Apollo Lap-Band Assets or the Apollo Lap-Band Business and has within the time and manner prescribed by applicable Law in all respects (i) withheld all material Taxes related to the Apollo Lap-Band Assets or the Apollo Lap-Band Business required to be withheld, (ii) collected all sales, use, value added, goods and services, and similar Taxes related to the Apollo Lap-Band Assets or the Apollo Lap-Band Business required to be collected, and (iii) remitted all Taxes related to the Apollo Lap-Band Assets or the Apollo Lap-Band Business withheld and collected to the appropriate Governmental Body in accordance with applicable Laws

(d) Apollo has not waived any statute of limitations in respect of Taxes or agreed to any extension of time with respect to a Tax assessment or deficiency, in each case (i) with respect to the Apollo Lap-Band Assets or the Apollo Lap-Band Business and (ii) which has not expired.

(e) No claim for assessment or collection of Taxes related to the Apollo Lap-Band Assets or the Apollo Lap-Band Business has been or is presently being asserted or is otherwise outstanding against Apollo; and there is no Proceeding by any Governmental Body pending or threatened against Apollo in respect of any Tax that is related to the Apollo Lap-Band Assets or the Apollo Lap-Band Business.

(f) None of the Apollo Lap-Band Assets is "tax exempt use property" within the meaning of Section 168(h) of the Code.

(g) Apollo is not a "foreign person" within the meaning of Treasury Regulations Section 1.1445-2.

(h) Apollo has not been a party to a transaction that, as of the date of this Agreement, constitutes a "listed transaction" for purposes of Section 6011 of the Code and applicable Treasury Regulations thereunder (or any similar provision of state, local or foreign Law).

3.15 Reliance. Apollo has conducted its own independent investigation, review and analysis of the business, results of operations, prospects, condition (financial or otherwise) of the ReShape IGB Assets, and acknowledges that it has been provided adequate access to the personnel, properties, premises, books and records, and other documents and data relating to the ReShape IGB Assets for such purpose. Apollo acknowledges and agrees that: (i) in making its decision to enter into this Agreement and the other Transactional Agreements and to consummate the transactions contemplated hereby and thereby, Apollo has relied solely upon its own investigation and the express representations and warranties of ReShape set forth in Article 4 of this Agreement (including, and subject to, the related portions of the ReShape Disclosure Schedules) and disclaims reliance on any other representations and warranties of any kind or nature express or implied (including, but not limited to, any relating to the future or historical financial condition, results of operations, assets or liabilities or prospects of the ReShape IGB Assets); and (ii) neither ReShape or any other Person has made any representation or warranty as to, the ReShape IGB Assets or the accuracy or completeness of any information regarding the ReShape IGB Assets furnished or made available to Apollo and its Representatives, except as expressly set forth in Article 4 of this Agreement (including, and subject to, the related portions of the ReShape Disclosure Schedules).

4. REPRESENTATIONS AND WARRANTIES OF RESHAPE.

Except as disclosed in the ReShape Disclosure Schedule, ReShape represents and warrants to and for the benefit of Apollo as follows, in each case, as of the date hereof and as of the Closing Date:

4.1 Due Organization; No Subsidiaries; Etc. ReShape is a corporation duly incorporated, validly existing and in good standing under the laws of the State of Delaware. ReShape is not required to be qualified, authorized, registered or licensed to do business as a foreign company in any jurisdiction other than the jurisdictions listed in Part 4.1 of the ReShape Disclosure Schedule. ReShape is in good standing as a foreign company in each of the jurisdictions listed in Part 4.1 of the ReShape Disclosure Schedule. Other than as disclosed in Part 4.1 of the ReShape Disclosure Schedule, ReShape does not have any subsidiaries, and does not own, beneficially or otherwise, any shares or other securities of, or any direct or indirect interest of any nature in, any other Entity.

4.2 Title To Acquired Assets. ReShape owns the entire rights in and to, and has good and valid title to, all of the ReShape IGB Assets, free and clear of any Encumbrances. The ReShape IGB Assets will collectively constitute, as of the Closing Date, all of the properties, rights, title, interests and other tangible and intangible assets necessary to enable Apollo to conduct the ReShape IGB Business in the manner in which the ReShape IGB Business is currently being conducted. Part 4.2 of the ReShape Disclosure Schedule sets forth the aggregate historical amount of gross revenue, calculated in accordance with GAAP, recognized by ReShape and/or its Affiliates in connection with the sale of the ReShape IGB Product prior to the date of this Agreement.

4.3 Intellectual Property.

(a) The ReShape IGB Intellectual Property includes all of the patents, patent applications, internet domain names, trade names, registered and unregistered trademarks and service marks that are owned by or licensed to ReShape and are necessary for the ReShape IGB Business.

(b) ReShape is the sole owner of all right, title and interest in and to the ReShape IGB Patents. All filing, issue, registration, renewal, maintenance, extension or other official registry fees for the ReShape IGB Patents due as of the date hereof have been paid.

(c) To ReShape's Knowledge, the ReShape IGB Patents are valid and enforceable and is not subject to any outstanding injunction, judgment, order, decree, or ruling.

(d) To ReShape's Knowledge, there is no, nor has there been any, material infringement by any Person of any of the rights of the ReShape IGB Patents within the past three years.

(e) There are no material Proceedings or actions pending before any Governmental Authority challenging the scope, ownership, validity or enforceability of the ReShape IGB Intellectual Property nor have such Proceedings been threatened.

(f) ReShape has made available to Apollo any written opinion or written evaluation of its intellectual property counsel delivered in the past three years regarding the potential or actual infringement or misappropriation of third party Intellectual Property with respect to the ReShape IGB Business.

4.4 Contracts.

(a) The ReShape IGB Business Contracts include all Contracts to which ReShape or any ReShape Affiliate is a party, or under which ReShape or any ReShape Affiliate has or may acquire any right or interest, exclusively relating to the ReShape IGB Products and/or the ReShape IGB Business. ReShape has delivered to Apollo accurate and complete copies of all ReShape IGB Business Contracts, including all amendments thereto. Each ReShape IGB Business Contract is valid and in full force and effect.

(b) Except as set forth in Part 4.4 of the ReShape Disclosure Schedule: (i) no Person has violated or breached, or declared or committed any default under, any ReShape IGB Business Contract; (ii) no event has occurred, and no circumstance or condition exists, that might (with or without notice or lapse of time) (A) result in a violation or breach of any of the provisions of any ReShape IGB Business Contract, (B) give any Person the right to declare a default or exercise any remedy under any ReShape IGB Business Contract, (C) give any Person the right to accelerate the maturity or performance of any ReShape IGB Business Contract, or (D) give any Person the right to cancel, terminate or modify any ReShape IGB Business Contract; (iii) neither ReShape, nor any ReShape Affiliate has received any notice or other communication (in writing or otherwise) regarding any actual, alleged, possible or potential violation or breach of, or default under, any ReShape IGB Business Contract; and (iv) neither ReShape nor any ReShape Affiliate has waived any right under any ReShape IGB Business Contract.

(c) To the Knowledge of ReShape, each Person against which ReShape or any ReShape Affiliate has or may acquire any rights under any ReShape IGB Business Contract is solvent and is able to satisfy all of such Person's current and future monetary obligations and other obligations and Liabilities thereunder.

(d) The performance of the ReShape IGB Business Contracts will not result in any violation of or failure to comply with any applicable Law.

(e) No Person is renegotiating, or has the right to renegotiate, any amount paid or payable to the ReShape or any ReShape Affiliate under any ReShape IGB Business Contract or any other term or provision of any ReShape IGB Business Contract.

(f) To the Knowledge of ReShape, there is no basis upon which any party to any ReShape IGB Business Contract may object to (i) the assignment to ReShape of any right under such ReShape IGB Business Contract, or (ii) the delegation to or performance by ReShape of any obligation under such ReShape IGB Business Contract.

(g) The ReShape IGB Business Contracts collectively constitute all of the Contracts necessary to enable ReShape to conduct the ReShape IGB Business in the manner in which it is currently being conducted and in the manner in which it is proposed to be conducted.

4.5 Compliance with Law. Except as set forth in Part 4.5 of the ReShape Disclosure Schedule: (a) ReShape and each ReShape Affiliate is in full compliance with each Law that is applicable to it or to the conduct of the ReShape IGB Business or the ownership or use of any of the ReShape IGB Assets; (b) the ReShape and each ReShape Affiliate has at all times been in full compliance with each Law that is or was applicable to the conduct of the ReShape IGB Business or the ownership or use of any of the ReShape IGB Assets; (c) no event has occurred, and no condition or circumstance exists, that might (with or without notice or lapse of time) constitute or result directly or indirectly in a violation by ReShape and each ReShape Affiliate of, or a failure on the part of ReShape and each ReShape Affiliate to comply with, any Law with respect to the ReShape IGB Business or the ReShape IGB Assets; and (d) neither ReShape nor any ReShape Affiliate has received, at any time, any notice or other communication (in writing or otherwise) from any Governmental Body or any other Person regarding (i) any actual, alleged, possible or potential violation of, or failure to comply with, any Law that is or was applicable to the conduct of the ReShape IGB Business or the ownership or use of any of the ReShape IGB Assets, or (ii) any actual, alleged, possible or potential obligation on the part of the such Person to undertake, or to bear all or any portion of the cost of, any cleanup or any remedial, corrective or response action of any nature, in each case with respect to the ReShape IGB Business or the ReShape IGB Assets. ReShape has delivered to Apollo an accurate and complete copy of each report, study, survey or other document to which ReShape has access that addresses or otherwise primarily relates to the compliance of ReShape with, or the applicability to ReShape of, any Law with respect to the ReShape IGB Business or the ReShape IGB Assets. To the Knowledge of ReShape, no Governmental Body has proposed or is considering any Law that, if adopted or otherwise put into effect, (A) may have an adverse effect on the ReShape IGB Business or the ReShape IGB Assets or on the ability of ReShape to comply with or perform any covenant or obligation under any of the Transactional Agreements, or (B) may have the effect of preventing, delaying, making illegal or otherwise interfering with any of the Transactions.

4.6 Governmental Authorizations; Regulatory Compliance.

(a) Part 4.6 of the ReShape Disclosure Schedule identifies: (i) each Governmental Authorization that is held by ReShape and/or any ReShape Affiliate that relates to or is used in the ReShape IGB Business; and (ii) each other Governmental Authorization that is held by any Representative of ReShape or any ReShape Affiliate and relates to or is useful in connection with the ReShape IGB Business. ReShape has delivered to Apollo accurate and complete copies of all of the Governmental Authorizations identified in Part 4.6 of the ReShape Disclosure Schedule, including all renewals thereof and all amendments thereto. Each Governmental Authorization identified or required to be identified in Part 4.6 of the ReShape Disclosure Schedule is valid and in full force and effect. Except as set forth in Part 4.6 of the ReShape Disclosure Schedule: (A) ReShape is and has at all times been in full compliance with all of the terms and requirements of each Governmental Authorization identified or required to be identified in Part 4.6 of the ReShape Disclosure Schedule; (B) no event has occurred, and no condition or circumstance exists, that might (with or without notice or lapse of time) (x) constitute or result directly or indirectly in a violation of or a failure to comply with any term or requirement of any Governmental Authorization identified or required to be identified in Part 4.6 of the ReShape Disclosure Schedule, or (y) result directly or indirectly in the revocation, withdrawal, suspension, cancellation, termination or modification of any

Governmental Authorization identified or required to be identified in Part 4.6 of the ReShape Disclosure Schedule; (C) neither ReShape nor any ReShape Affiliate has ever received any notice or other communication (in writing or otherwise) from any Governmental Body or any other Person regarding (x) any actual, alleged, possible or potential violation of or failure to comply with any term or requirement of any Governmental Authorization identified or required to be identified in Part 4.6 of the ReShape Disclosure Schedule, or (y) any actual, proposed, possible or potential revocation, withdrawal, suspension, cancellation, termination or modification of any Governmental Authorization identified or required to be identified in Part 4.6 of the ReShape Disclosure Schedule; and (D) all applications required to have been filed for the renewal of the Governmental Authorizations identified or required to be identified in Part 4.6 of the ReShape Disclosure Schedule have been duly filed on a timely basis with the appropriate Governmental Bodies, and each other notice or filing required to have been given or made with respect to such Governmental Authorizations has been duly given or made on a timely basis with the appropriate Governmental Body. The Governmental Authorizations identified in Part 4.6 of the ReShape Disclosure Schedule constitute all of the Governmental Authorizations necessary (1) to enable ReShape to conduct the Business in the manner in which such business is currently being conducted, and (2) to permit ReShape to own and use the ReShape IGB Assets in the manner in which they are currently owned and used.

(b) Each ReShape IGB Product is being or has been developed, manufactured, labeled, stored, researched, distributed and/or tested in compliance in all material respects with all applicable requirements under the FFDCA, applicable implementing regulations and similar foreign, state and local Laws and regulations, including those relating to investigational use, quality systems, good manufacturing practices, good clinical practices, good laboratory practices, labeling, record keeping and filing of required reports. Neither ReShape nor any ReShape Affiliate has received any notice or other communication from the FDA or any other Governmental Body alleging any violation of any Laws or judgments applicable to any ReShape IGB Product and/or ReShape IGB Asset. Complete and accurate copies of all data of ReShape, and all correspondence with the FDA and foreign health authorities, with respect to each ReShape IGB Product have been made available for Apollo's review.

(c) ReShape has filed, or a ReShape Affiliate or Third Party on behalf of ReShape has filed, with the FDA or other appropriate Governmental Body all required notices, any ReShape IGB Product Medical Device Reports under 21 CFR Part 803 related to the use of any ReShape IGB Product in human clinical trials, and ReShape has made copies of such notices available for Apollo's review.

(d) Neither ReShape nor, to the Knowledge of ReShape, any of ReShape's Representatives acting for ReShape, has committed any act, made any statement or failed to make any statement that would reasonably be expected to provide a basis for the FDA to invoke its Fraud Policy and any amendments thereto. Additionally, neither ReShape, nor to the Knowledge of ReShape, any Representative of ReShape has been convicted of any crime or engaged in any conduct that would reasonably be expected to result, or has resulted, in (i) debarment under 21 U.S.C. Section 335a or any similar state Law, or (ii) exclusion under 42 U.S.C. Section 1320a-7 or any similar state Law. To the Knowledge of ReShape, ReShape is not the target of any pending or threatened investigation by the FDA pursuant to the Fraud Policy or by any Governmental Body pursuant to a comparable policy.

(e) There are no investigations, suits, arbitrations, charges, complaints, claims, actions or proceedings against or affecting ReShape relating to or arising under the FFDCA, the Public Health Service Act, the FDA regulations adopted thereunder, the Controlled Substance Act or any other legislation or regulation promulgated by any other Governmental Body.

4.7 Certain Payments, Etc. ReShape has not, and no officer, employee, agent or other Person associated with or acting for or on behalf of ReShape or any ReShape Affiliate has, at any time, directly or indirectly, in each case in connection with the conduct of the ReShape IGB Business or the use of the

ReShape IGB Assets: (a) used any corporate funds (i) to make any unlawful political contribution or gift or for any other unlawful purpose relating to any political activity, (ii) to make any unlawful payment to any governmental official or employee, or (iii) to establish or maintain any unlawful or unrecorded fund or account of any nature; (b) made any false or fictitious entry, or failed to make any entry that should have been made, in any of the books of account or other records of ReShape; (c) made any payoff, influence payment, bribe, rebate, kickback or unlawful payment to any Person; (d) performed any favor or given any gift which was not deductible for federal income tax purposes; (e) made any payment (whether or not lawful) to any Person, or provided (whether lawfully or unlawfully) any favor or anything of value (whether in the form of property or services, or in any other form) to any Person, for the purpose of obtaining or paying for (i) favorable treatment in securing business, or (ii) any other special concession; or (f) agreed, committed or offered (in writing or otherwise) to take any of the actions described in clauses "(a)" through "(e)" above.

4.8 Proceedings; Orders. Except as set forth in Part 4.8 of the ReShape Disclosure Schedule, there is no pending Proceeding, and no Person has threatened to commence any Proceeding: (i) that relates to the ReShape IGB Business or any of the ReShape IGB Assets (whether or not ReShape is named as a party thereto); or (ii) that challenges, or that may have the effect of preventing, delaying, making illegal or otherwise interfering with, any of the Transactions. Except as set forth in Part 4.8 of the ReShape Disclosure Schedule, no event has occurred, and no claim, dispute or other condition or circumstance exists, that might directly or indirectly give rise to or serve as a basis for the commencement of any such Proceeding. Except as set forth in Part 4.8 of the ReShape Disclosure Schedule, no Proceeding has ever been commenced by or against ReShape. ReShape has delivered to Apollo accurate and complete copies of all pleadings, correspondence and other written materials (to which ReShape has access) that relate to the Proceedings identified in Part 4.8 of the ReShape Disclosure Schedule. There is no Order to which the ReShape IGB Business, or any of the ReShape IGB Assets, is subject, and neither ReShape nor any Related Party is subject to any Order that relates to the ReShape IGB Business or to any of the ReShape IGB Assets. There is no proposed Order that, if issued or otherwise put into effect, (i) may have an adverse effect on the ReShape IGB Business or the ReShape IGB Assets or on the ability of ReShape to comply with or perform any covenant or obligation under any of the Transactional Agreements, or (ii) may have the effect of preventing, delaying, making illegal or otherwise interfering with any of the Transactions.

4.9 Authority; Binding Nature Of Agreements. ReShape has the absolute and unrestricted right, power and authority to enter into and to perform its obligations under each of the Transactional Agreements to which it is or may become a party; and the execution, delivery and performance by ReShape of the Transactional Agreements to which it is or may become a party have been duly authorized by all necessary action on the part of ReShape and its stockholders, board of directors and officers. This Agreement constitutes the legal, valid and binding obligation of ReShape, enforceable against ReShape in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium, liquidation, fraudulent conveyance, and other similar Laws and principles of equity affecting creditors' rights and remedies generally (the "General Enforceability Exceptions"). Upon the execution of each of the other Transactional Agreements at the Closing, each of such other Transactional Agreements to which ReShape is a party will constitute the legal, valid and binding obligation of ReShape and will be enforceable against ReShape in accordance with its terms, subject to the General Enforceability Exceptions.

4.10 Non-Contravention; Consents. Except as set forth in Part 4.10 of the ReShape Disclosure Schedule, neither the execution and delivery of any of the Transactional Agreements, nor the consummation or performance of any of the Transactions, will directly or indirectly (with or without notice or lapse of time):

(a) contravene, conflict with or result in a violation of (i) any of the provisions of the ReShape's certificate of incorporation or bylaws, or (ii) any resolution adopted by the ReShape's board of directors, including any committee thereof;

(b) contravene, conflict with or result in a violation of, or give any Governmental Body or other Person the right to challenge any of the Transactions or to exercise any remedy or obtain any relief under, any applicable Law or any Order to which ReShape, or any of the ReShape IGB Assets, is subject;

(c) contravene, conflict with or result in a violation of any of the terms or requirements of, or give any Governmental Body the right to revoke, withdraw, suspend, cancel, terminate or modify, any Governmental Authorization that is to be included in the ReShape IGB Assets or is held by ReShape or any employee of ReShape;

(d) contravene, conflict with or result in a violation or breach of, or result in a default under, any provision of any ReShape IGB Business Contract;

(e) give any Person the right to (i) declare a default or exercise any remedy under any ReShape IGB Business Contract, (ii) accelerate the maturity or performance of any ReShape IGB Business Contract, or (iii) cancel, terminate or modify any ReShape IGB Business Contract; or

(f) result in the imposition or creation of any Encumbrance upon or with respect to any of the ReShape IGB Assets.

Except as set forth in Part 4.10 of the ReShape Disclosure Schedule, ReShape was not, is not and will not be required to make any filing with or give any notice to, or to obtain any Consent from, any Person in connection with the execution and delivery of any of the Transactional Agreements or the consummation or performance of any of the Transactions.

4.11 Solvency. As of the Closing Date, after giving effect to all of the transactions contemplated by this Agreement, and as of the time of each payment of the Cash Purchase Price in accordance with Section 2.5(a), ReShape shall be Solvent.

4.12 No Vote Required. No vote or other action of the stockholders of ReShape is required by applicable Law, the certificate of incorporation or bylaws (or similar charter or organizational documents) of ReShape or otherwise in order for ReShape to consummate the Transactions.

4.13 Brokers. ReShape has not agreed and will not become obligated to pay, and has not taken any action that might result in any Person claiming to be entitled to receive, any brokerage commission, finder's fee or similar commission or fee in connection with any of the Transactions.

4.14 Tax Matters. Except as set forth in Part 4.14 of the ReShape Disclosure Schedule:

(a) ReShape has filed or caused to be filed all Tax Returns related to the ReShape IGB Assets or the ReShape IGB Business that are required to be filed and such Tax Returns are complete and correct in all material respects and were prepared in substantial compliance with applicable Law.

(b) ReShape has (i) paid all Taxes (whether or not shown or required to be shown on any Tax Return) required to be paid with respect to the ReShape IGB Assets or the ReShape IGB Business, and (ii) recorded an adequate provision in its financial statements with respect to all Taxes with respect to the ReShape IGB Assets or the ReShape IGB Business that have accrued through the date of such financial statements that were not yet due and payable as of the date thereof. There are no liens for Taxes upon any

of the ReShape IGB Assets except liens for current Taxes not yet due and payable (and for which there are adequate accruals, in accordance with GAAP).

(c) ReShape has complied in all material respects with all applicable Laws relating to the payment, reporting, withholding and collection of all Taxes related to the ReShape IGB Assets or the ReShape IGB Business and has within the time and manner prescribed by applicable Law in all respects (i) withheld all material Taxes related to the ReShape IGB Assets or the ReShape IGB Business required to be withheld, (ii) collected all sales, use, value added, goods and services, and similar Taxes related to the ReShape IGB Assets or the ReShape IGB Business required to be collected, and (iii) remitted all Taxes related to the ReShape IGB Assets or the ReShape IGB Business withheld and collected to the appropriate Governmental Body in accordance with applicable Laws

(d) ReShape has not waived any statute of limitations in respect of Taxes or agreed to any extension of time with respect to a Tax assessment or deficiency, in each case (i) with respect to the ReShape IGB Assets or the ReShape IGB Business and (ii) which has not expired.

(e) No claim for assessment or collection of Taxes related to the ReShape IGB Assets or the ReShape IGB Business has been or is presently being asserted or is otherwise outstanding against ReShape; and there is no Proceeding by any Governmental Body pending or threatened against ReShape in respect of any Tax that is related to the ReShape IGB Assets or the ReShape IGB Business.

(f) None of the ReShape IGB Assets is "tax exempt use property" within the meaning of Section 168(h) of the Code.

(g) ReShape is not a "foreign person" within the meaning of Treasury Regulations Section 1.1445-2.

(h) ReShape has not been a party to a transaction that, as of the date of this Agreement, constitutes a "listed transaction" for purposes of Section 6011 of the Code and applicable Treasury Regulations thereunder (or any similar provision of state, local or foreign Law).

4.15 Reliance. ReShape has conducted its own independent investigation, review and analysis of the business, results of operations, prospects, condition (financial or otherwise) of the Apollo Lap-Band Assets, and acknowledges that it has been provided adequate access to the personnel, properties, premises, books and records, and other documents and data relating to the Apollo Lap-Band Assets for such purpose. ReShape acknowledges and agrees that: (i) in making its decision to enter into this Agreement and the other Transactional Agreements and to consummate the transactions contemplated hereby and thereby, ReShape has relied solely upon its own investigation and the express representations and warranties of Apollo set forth in Article 3 of this Agreement (including, and subject to, the related portions of the Apollo Disclosure Schedules) and disclaims reliance on any other representations and warranties of any kind or nature express or implied (including, but not limited to, any relating to the future or historical financial condition, results of operations, assets or liabilities or prospects of the Apollo Lap-Band Assets); and (ii) neither Apollo nor any other Person has made any representation or warranty as to, the Apollo Lap-Band Assets or the accuracy or completeness of any information regarding the Apollo Lap-Band Assets furnished or made available to ReShape and its Representatives, except as expressly set forth in Article 3 of this Agreement (including, and subject to, the related portions of the Apollo Disclosure Schedules).

5. [RESERVED]

6. [RESERVED]

7. [RESERVED]

8. [RESERVED]

9. INDEMNIFICATION, ETC.

9.1 Survival Of Representations And Covenants.

(a) The representations and warranties of the Parties shall expire twelve (12) months after the Closing Date (the "Expiration Date"); *provided, however,* that (i) each of the Apollo Fundamental Representations and the ReShape Fundamental Representations shall survive the Closing and continue until the date that is four (4) years following the Closing Date, and (ii) that if a Claim Notice relating to any such representation or warranty is given to an indemnifying party on or prior to the Expiration Date, then, notwithstanding anything to the contrary contained in this Section 9.1, such representation or warranty shall not so expire, but rather shall remain in full force and effect until such time as each claim made prior to the Expiration Date that is based directly upon, or that relates directly to, any breach or alleged breach of such representation or warranty has been fully and finally resolved. The agreements, covenants and other obligations of the Parties shall survive the Closing in accordance with their respective terms.

(b) It is the express intent of the Parties that, if the applicable survival period for an item as contemplated by this Section 9.1 is shorter than the statute of limitations that would otherwise have been applicable to such item, then, by contract, the applicable statute of limitations with respect to such item shall be reduced to the shortened survival period contemplated hereby. The Parties further acknowledge that the time periods set forth in this Section 9.1 for the assertion of claims under this Agreement are the result of arms'-length negotiation among the Parties and that they intend for the time periods to be enforced as agreed by the Parties.

9.2 Indemnification by Apollo.

(a) Apollo shall hold harmless and indemnify each of the ReShape Indemnitees from and against, and shall compensate and reimburse each of the ReShape Indemnitees for, any Damages that are suffered or incurred by any of the ReShape Indemnitees that arise out of or result from:

(i) any breach of any representation or warranty made by Apollo in any of the Transactional Agreements;

(ii) any breach of any covenant or obligation of Apollo contained in any of the Transactional Agreements; and

(iii) any Excluded Apollo Liability.

(b) Limitations on Indemnification.

(i) Other than for Damages that arise out of or result from any breach of an Apollo Fundamental Representation, the maximum aggregate liability of Apollo for all claims for indemnification made by the ReShape Indemnitees pursuant to Section 9.2(a)(i) shall be limited to an aggregate amount equal to $1,300,000; and

(ii) No ReShape Indemnitee shall be entitled to make a claim for indemnification pursuant to Section 9.2(a)(i) unless and until the ReShape Indemnitees have suffered or

incurred Damages in excess of $130,000 in the aggregate, after which the ReShape Indemnitees may make claims for indemnification exceeding such amount.

9.3 Indemnification by ReShape.

(a) ReShape shall hold harmless and indemnify each of the Apollo Indemnitees from and against, and shall compensate and reimburse each of the Apollo Indemnitees for, any Damages that are suffered or incurred by any of the Apollo Indemnitees that arise or result from:

(i) any breach of any representation or warranty made by ReShape in any of the Transactional Agreements;

(ii) any breach of any covenant or obligation of ReShape contained in any of the Transactional Agreements; and

(iii) any Excluded ReShape Liability.

(b) Limitations on Indemnification.

(i) Other than for Damages that arise out of or result from any breach of a ReShape Fundamental Representation, the maximum aggregate liability of ReShape for all claims for indemnification made by the Apollo Indemnitees pursuant to Section 9.3(a)(i) shall be limited to an aggregate amount equal to $1,300,000; and

(ii) no Apollo Indemnitee shall be entitled to make a claim for indemnification pursuant to Section 9.3(a)(i) unless and until the Apollo Indemnitees have suffered or incurred Damages in excess of $130,000 in the aggregate, after which the Apollo Indemnitees may make claims for indemnification exceeding such amount.

9.4 Exclusivity Of Indemnification Remedies. Except for claims for common law fraud, each Party agrees that the indemnification provisions in this Section 9 shall be the sole and exclusive means for any Indemnified Party to collect any Damages for any claims relating to, resulting from or arising under this Agreement or any Transactional Agreement and under any theory of liability.

9.5 Indemnification Procedures.

(a) Notice of Claims. Any indemnified party making a claim for indemnification pursuant to Section 9.2 or Section 9.3 (as applicable, an "Indemnified Party") must give Apollo, in the case of a claim for Damages by a ReShape Indemnitee, or ReShape, in the case of a claim for Damages by an Apollo Indemnitee (as applicable, the "Indemnifying Party"), written notice of such claim (a "Claim Notice") which contains (i) a description and the amount of any Damages incurred or reasonably expected to be incurred by the Indemnified Party, (ii) a statement that the Indemnified Party is entitled to indemnification under Section 9.2 or Section 9.3 for such Damages and a reasonable explanation of the basis therefor and (iii) a demand for payment in the amount of such Damages.

(b) If the Indemnifying Party, in good faith objects to any claim made by the Indemnified Party in the Claim Notice, then the Indemnifying Party, as applicable, shall deliver a written notice (an "Indemnification Objections Statement") to the Indemnified Party within 30 calendar days following receipt by the Indemnifying Party, of a Claim Notice from such Indemnified Party. The Indemnification Objections Statement shall set forth in reasonable detail the principal basis for the dispute of any claim made by the Indemnified Party in the Claim Notice. If the Indemnifying Party fails to deliver

an Indemnification Objections Statement prior to the expiration of such 30-calendar day period, then the indemnity claim set forth in the Claim Notice shall be conclusively determined in the Indemnified Party's favor for purposes of this Section 9, and the Indemnified Party shall be indemnified for the amount of the Damages stated in such Claim Notice (or, in the case of any notice in which the Damages (or any portion thereof) are estimated, the amount of such Damages (or such portion thereof) as finally determined) on demand or, in the case of any notice in which the Damages (or any portion thereof) are estimated, on such later date when the amount of such Damages (or such portion thereof) becomes finally determined, in either case, subject to the limitations of this Section 9.

(c) If the Indemnifying Party delivers an Indemnification Objections Statement, then the Indemnified Party and the Indemnifying Party, as applicable, shall attempt in good faith to resolve any such objections raised by the Indemnifying Party in such Indemnification Objections Statement. If the Indemnified Party and the Indemnifying Party, agree to a resolution of such objection, then a memorandum setting forth the matters conclusively determined by the Indemnified Party and the Indemnifying Party shall be prepared and signed by both parties, and shall be binding and conclusive upon the parties hereto.

(d) If no such resolution can be reached during the 30-day period following the Indemnified Party's receipt of a given Indemnification Objections Statement, then upon the expiration of such 30-day period (or such longer period as may be mutually agreed), subject to the exhaustion of the mediation procedure set forth in Section 11.9(a), the matter shall be settled by arbitration in accordance with the rules of the American Arbitration Association. Either Party may initiate arbitration with respect to any unresolved matter set forth in the applicable Claim Notice. The arbitration shall be conducted by one arbitrator mutually agreeable to Parties. In the event that, within thirty (30) days after submission of any dispute to arbitration, the Parties cannot mutually agree on one arbitrator, then the parties shall arrange for the American Arbitration Association to designate a single arbitrator in accordance with the rules of the American Arbitration Association.

(e) Any such arbitration shall be held in Wilmington, Delaware, under the rules and procedures then in effect of the American Arbitration Association. The arbitrator shall determine how all expenses relating to the arbitration shall be paid, including the respective expenses of each party, the fees of each arbitrator and the administrative fee of the American Arbitration Association. The arbitrator shall set a limited time period and establish procedures designed to reduce the cost and time for discovery while the Parties an opportunity, adequate in the sole judgment of the arbitrator to discover relevant information from the opposing parties about the subject matter of the dispute. The arbitrator shall rule upon motions to compel or limit discovery and shall have the authority to impose sanctions, including attorneys' fees and costs, to the same extent as a competent court of law or equity, should the arbitrator determine that discovery was sought without substantial justification or that discovery was refused or objected to without substantial justification. The decision of the arbitrator as to the validity and amount of any indemnification claim in such Claim Notice shall be final, binding and conclusive upon the parties hereto. Such decision shall be written and shall be supported by written findings of fact and conclusions which shall set forth the award, judgment, decree or order awarded by the arbitrator.

9.6 Tax Treatment of Indemnification Payments. The parties hereto agree to treat any indemnity payment made pursuant to this Section 9 as an adjustment to the Purchase Price for U.S. federal, state, local and non-U.S. income Tax purposes, unless otherwise required by applicable Law.

9.7 Third Party Proceedings.

(a) Control of Defense. With respect to the defense of any Third Party Proceeding subject to indemnification pursuant to this Section 9 and subject to the limitations on settlement set forth in Section 9.7(b), the Indemnified Party shall assume and control the settlement and defense of such

Proceeding and appoint and select lead counsel. The Indemnified Party shall keep the Indemnifying Party reasonably informed of the defense of such Proceeding by providing copies of any pleadings or other material communications. The Indemnifying Party shall provide reasonable cooperation to the Indemnified Party in connection with the defense or settlement of such Proceeding, including by making available, at the Indemnified Party's expense, such witnesses, records, materials and other information in such Person's possession or under such Person's control as may be reasonably requested by the Indemnified Party.

(b) Settlement of Claims. The Indemnified Party may not settle or compromise any Proceeding for which a Claim Notice has been provided in accordance with Section 9.5(a) without the prior written consent of the Indemnifying Party (which consent may not be unreasonably withheld, conditioned or delayed); provided, however, that the consent of Indemnifying Party shall not be required with respect to any such settlement or judgment if (i) such settlement or judgment (A) involves no admission of wrongdoing by the Indemnifying Party or its Affiliates and (B) excludes any injunctive or non-monetary relief applicable to the Indemnifying Party or its Affiliates and (ii) such settlement or judgment includes a complete release of the Indemnifying Party and its Affiliates, directors, officers, employees and representatives from further liability and has no other adverse effect on the Indemnifying Party.

10. ADDITIONAL AGREEMENTS.

10.1 Further Actions.

(a) From and after the Closing Date, Apollo shall cooperate with ReShape and its Affiliates and Representatives, and shall execute and deliver such documents and take such other actions as ReShape may reasonably request, for the purpose of evidencing the Transactions and putting ReShape in possession and control of all of the Apollo Lap-Band Assets.

(b) From and after the Closing Date, ReShape shall cooperate with Apollo and its Affiliates and Representatives, and shall execute and deliver such documents and take such other actions as Apollo may reasonably request, for the purpose of evidencing the Transactions and putting Apollo in possession and control of all of the ReShape IGB Assets.

10.2 Post-Closing Publicity/Confidentiality. Without limiting the generality of anything contained in Section 10.11, each Party shall ensure that, on and at all times after the Closing Date: (a) no press release or other publicity concerning any of the Transactions (other than the press releases referenced in Section 10.11) is issued or otherwise disseminated by or on behalf of such Party without the other Party's prior written consent, except to the extent that ReShape or Apollo, as the case may be, is advised by outside counsel that such public statement is required by Law; (b) such Party shall (and shall cause its Representatives to) treat and hold as confidential, and shall not disclose to any third party, any information concerning the Acquired Business, the Acquired Assets and/or the assumed liabilities that are not already generally available to the public, including any notes, analyses, compilations, studies, forecasts, interpretations or other documents that are derived from, contain, reflect or are based upon any such information (the "Confidential Information"). Notwithstanding the foregoing, Confidential Information shall not include information that is (a) generally available to the public other than as a result of a breach of this Section 10.2 or (b) rightfully received after the Closing Date from a third party not under any obligation of confidentiality with respect to such information. In the event that a Representative of any Party is requested or required (by oral question or request for information or documents in any legal proceeding, interrogatory, subpoena, civil investigative demand, or similar process) to disclose any Confidential Information, such Representative shall notify the other Party promptly of the request or requirement so that the other Party may seek an appropriate protective order or waive compliance with the provisions of this Section 10.2. If, in the absence of a protective order or the receipt of a waiver hereunder, a Representative of a Party hereto or any Affiliate of such Party is, on the advice of counsel, compelled to

disclose any Confidential Information to any tribunal or else stand liable for contempt, such Representative may disclose the Confidential Information to the tribunal; provided, that, prior to making such disclosure, such disclosing Representative shall provide the other Party and its counsel with a copy of any information which it intends to disclose and (1) give due consideration to any comments provided by the other Party or its counsel and (2) use its reasonable best efforts to obtain, at the request of the other Party hereto, an order or other assurance that confidential treatment shall be accorded to such portion of the Confidential Information required to be disclosed as the other Party shall designate. The Parties agree that in the event of a breach of the provisions of this Section 10.2, the damage to the other Party may be substantial and money damages will not afford the other Party an adequate remedy, and the other Party shall be entitled, in addition to all other rights and remedies as may be provided by applicable Law and notwithstanding anything in this Agreement to the contrary, to seek specific performance and injunctive and other equitable relief to prevent or restrain a breach of any provision of this Section 10.2.

10.3 Bulk Sales Requirements. Each of the Parties waives compliance with any applicable bulk sales laws, including without limitation the Uniform Commercial Code Bulk Transfer provisions.

10.4 Non-Transferable Contracts.

(a) If there are any Consents that have not been obtained (or otherwise are not in full force and effect) as of the Closing, in the case of each Apollo Lap-Band Business Contract as to which such consents were not obtained (or otherwise are not in full force and effect) (the "Apollo Lap-Band Restricted Material Contracts"), ReShape may elect to have Apollo continue its efforts to obtain any such Consents and neither this Agreement nor the Assumption Agreement nor any other document related to the consummation of the Transactions shall constitute a sale, assignment, assumption, transfer, conveyance or delivery or an attempted sale, assignment, assumption, transfer, conveyance or delivery of the Lap-Band Restricted Material Contracts, and following the Closing, the Parties shall use commercially reasonable efforts, and cooperate with each other, to obtain the consent relating to each Lap-Band Restricted Material Contract as quickly as practicable. Pending the obtaining of such Consents relating to any Lap-Band Restricted Material Contract, the Parties shall cooperate with each other in any reasonable and lawful arrangements designed to provide to ReShape the benefits of use of the Apollo Lap-Band Restricted Material Contract for its term (or any right or benefit arising thereunder, including the enforcement for the benefit of ReShape of any and all rights of Apollo against a Third Party thereunder). Once a Consent for the sale, assignment, assumption, transfer, conveyance and delivery of a Apollo Lap-Band Restricted Material Contract is obtained, Apollo shall promptly assign, transfer, convey and deliver such Apollo Lap-Band Restricted Material Contract to ReShape, and ReShape shall assume the obligations under such Apollo Lap-Band Restricted Material Contract assigned to ReShape from and after the date of assignment to ReShape pursuant to a special-purpose assignment and assumption agreement substantially similar in terms to those of the Assumption Agreement (which special-purpose agreement the Parties shall prepare, execute and deliver in good faith at the time of such transfer, all at no additional cost to ReShape).

(b) If there are any Consents that have not been obtained (or otherwise are not in full force and effect) as of the Closing, in the case of each ReShape IGB Business Contract as to which such consents were not obtained (or otherwise are not in full force and effect) (the "ReShape IGB Restricted Material Contracts"), Apollo may elect to have ReShape continue its efforts to obtain any such Consents and neither this Agreement nor the Assumption Agreement nor any other document related to the consummation of the Transactions shall constitute a sale, assignment, assumption, transfer, conveyance or delivery or an attempted sale, assignment, assumption, transfer, conveyance or delivery of the ReShape IGB Restricted Material Contracts, and following the Closing, the Parties shall use commercially reasonable efforts, and cooperate with each other, to obtain the consent relating to each ReShape IGB Restricted Material Contract as quickly as practicable. Pending the obtaining of such Consents relating to any ReShape IGB Restricted Material Contract, the Parties shall cooperate with each other in any reasonable and lawful

arrangements designed to provide to Apollo the benefits of use of the ReShape IGB Restricted Material Contract for its term (or any right or benefit arising thereunder, including the enforcement for the benefit of Apollo of any and all rights of ReShape against a Third Party thereunder). Once a Consent for the sale, assignment, assumption, transfer, conveyance and delivery of a ReShape IGB Restricted Material Contract is obtained, ReShape shall promptly assign, transfer, convey and deliver such ReShape IGB Restricted Material Contract to Apollo, and Apollo shall assume the obligations under such ReShape IGB Restricted Material Contract assigned to Apollo from and after the date of assignment to Apollo pursuant to a special-purpose assignment and assumption agreement substantially similar in terms to those of the Assumption Agreement (which special-purpose agreement the Parties shall prepare, execute and deliver in good faith at the time of such transfer, all at no additional cost to Apollo).

10.5 Non-Transferable Assets.

(a) Except as set forth above with respect to Apollo Lap-Band Restricted Material Contracts, from and after the Closing, with respect to each Apollo Lap-Band Asset identified on Part 10.5 of the Apollo Disclosure Schedule, as the case may be, which is not assignable or transferable to ReShape at the Closing (each a "Non-Transferable Lap-Band Asset"), until the earlier to occur of (i) such time as such Non-Transferable Lap-Band Asset shall be properly and lawfully transferred or assigned to ReShape and (ii) such time as the material benefits intended to be transferred or assigned to ReShape have been procured by alternative means, (A) the Non-Transferable Lap-Band Assets shall be held by Apollo in trust exclusively for the benefit of ReShape, and (ii) Apollo and ReShape shall cooperate in any good faith, reasonable arrangement designed to provide or cause to be provided for ReShape the material benefits intended to be transferred or assigned to ReShape under each of the Non-Transferable Lap-Band Assets and, in furtherance thereof, to the extent permitted under the terms of each such Non-Transferable Lap-Band Asset and under applicable Law. Apollo shall use commercially reasonable efforts to provide or cause to be provided ReShape all of the benefits of Apollo under such Non-Transferable Lap-Band Assets in effect as of the Closing. Apollo and ReShape agree that any Apollo Lap-Band Equipment that is located in Costa Rica as of the Closing will be deemed to be Non-Transferable Lap-Band Assets until such time that ReShape has formed a subsidiary organized under the laws of Costa Rica that becomes qualified under Costa Rica's Free Trade Zone Regime, as reasonably determined by ReShape, which ReShape will use commercially reasonable efforts to complete within 90 days after the Closing.

(b) Except as set forth above with respect to ReShape IGB Restricted Material Contracts, from and after the Closing, with respect to each ReShape IGB Asset identified on Part 10.5 of the ReShape Disclosure Schedule, as the case may be, which is not assignable or transferable to Apollo at the Closing (each a "Non-Transferable ReShape IGB Asset"), until the earlier to occur of (i) such time as such Non-Transferable ReShape IGB Asset shall be properly and lawfully transferred or assigned to Apollo and (ii) such time as the material benefits intended to be transferred or assigned to Apollo have been procured by alternative means, (A) the Non-Transferable ReShape IGB Assets shall be held by ReShape in trust exclusively for the benefit of Apollo, and (ii) ReShape and Apollo shall cooperate in any good faith, reasonable arrangement designed to provide or cause to be provided for Apollo the material benefits intended to be transferred or assigned to Apollo under each of the Non-Transferable ReShape IGB Assets and, in furtherance thereof, to the extent permitted under the terms of each such Non-Transferable ReShape IGB Asset and under applicable Law. ReShape shall use commercially reasonable efforts to provide or cause to be provided Apollo all of the benefits of ReShape under such Non-Transferable ReShape IGB Assets in effect as of the Closing.

10.6 Non Solicitation. During the period beginning on the Closing Date and ending on the first anniversary of the Closing Date, each Party shall not, and shall not permit any of their Affiliates to directly or indirectly, personally or through others, contact, approach or solicit for the purpose of offering

employment to or hiring (whether as an employee, consultant, agent, independent contractor or otherwise) any employee of the other Party.

10.7 Retention of and Access to Records. For a period of twelve (12) months following the Closing Date, subject to Section 10.2, each Party shall provide (and shall cause their Affiliates to provide) the other Party and its Representatives reasonable access to records that are Excluded Apollo Assets (to the extent relating to Apollo Lap-Band Assets) or Excluded ReShape Assets (to the extent relating to ReShape IGB Assets), as the case may be, during normal business hours and on at least thirty (30) days prior written notice, for any reasonable business purpose specified by the other Party; *provided, however*, that nothing in this Agreement shall require either party to provide access to any Consolidated Return.

10.8 Trademarks; Trade Names; Service Marks. As soon as practicable after the Closing Date, each Party shall (and shall cause each Affiliate to) eliminate the use of all of the trademarks, trade names and service marks included in the Apollo Lap-Band Assets (in the case of Apollo) and the ReShape IGB Assets (in the case of ReShape), in any of their forms or spellings, on all advertising, stationery, business cards, checks, purchase orders and acknowledgments, customer agreements and other contracts, business documents and marketing materials. Notwithstanding the foregoing, (a) ReShape may distribute Apollo Lap-Band Products bearing Apollo trademarks, trade names and service marks until the earlier of (i) such time that the FDA approves the Acquirer Labeling, and (ii) six (6) months after the Closing Date, unless extended by the mutual written consent of the ReShape and Apollo, and (b) Apollo may distribute ReShape IGB Products bearing ReShape trademarks, trade names and service marks until the earlier of (i) such time that the FDA approves the Acquirer Labeling, and (ii) six (6) months after the Closing Date, unless extended by the mutual written consent of the ReShape and Apollo.

10.9 Transition Services Agreement. At the Closing, Apollo and ReShape shall have executed the Transition Services Agreement providing for, among other things, (a) the sale of the Apollo Lap-Band Products by Apollo as ReShape's consignment distributor; (b) the sale of the ReShape IGB Products manufactured by ReShape prior to the Closing by Apollo and (c) other cooperation between Apollo and ReShape in connection with the foregoing.

10.10 Post-Closing Proceedings.

(a) From and after the Closing Date, Apollo and ReShape shall use commercially reasonable efforts to cooperate with each other in the defense, prosecution or execution of any product recall, litigation, examination or audit instituted prior to the Closing or that may be instituted thereafter against or by either Party relating to or arising out of the conduct of the Acquired Assets prior to or after the Closing (other than any Proceeding between Apollo and ReShape or their respective Affiliates arising out of the Transactions or by the Transactional Agreements). In connection therewith, from and after the Closing Date, each of Apollo and ReShape shall make available to the other during normal business hours and upon reasonable prior written notice, but without unreasonably disrupting its business, all records to the extent relating to the Acquired Assets, the Assumed ReShape IGB Liabilities, the Assumed Lap-Band Liabilities, Excluded Apollo Liabilities or the Excluded ReShape Liabilities, as the case may be, held by such Party and reasonably necessary to permit the defense or investigation of any such Proceeding, examination or audit (other than any Proceeding between Apollo and ReShape or their respective Affiliates arising out of the Transactions or by the Transactional Agreements, with respect to which applicable rules of discovery shall apply), and shall preserve and retain all such records for the length of time contemplated by its standard record retention policies and schedules. The Party requesting such cooperation shall pay the reasonable out-of-pocket costs and expenses of providing such cooperation (including legal fees and disbursements) incurred by the Party providing such cooperation and by its officers, directors, employees and agents, and any applicable Taxes in connection therewith. Nothing in this Section 10.10(a) shall require either Party to disclose any information to the other Party if such disclosure would, in such Party's sole and

absolute discretion (i) jeopardize any attorney-client or other legal privilege or (ii) contravene any applicable Law, fiduciary duty or binding agreement entered into prior to the date of this Agreement (including any confidentiality agreement to which such Party is bound).

(b) ReShape hereby agrees (i) that from and after the Closing, subject to this Section 10.10(b), ReShape shall (at its sole cost and expense), control, direct and maintain control over the Proceeding set forth on Part 10.10(b) of the ReShape Disclosure Schedule (the "Pending Litigation"), (ii) that Apollo and its Representatives shall (i) have the right to review in advance and, to the extent practicable, consult ReShape and its Representatives on, any filing made with, or written materials to be submitted to, any Governmental Body in connection with Pending Litigation; (ii) promptly inform Apollo and its Representatives of any communication (or other correspondence or memoranda) received from, or to be given to, the counterparty to the Pending Litigation, or any Governmental Body in connection with the Pending Litigation and (ii) that ReShape shall not, and shall cause its Affiliates not to, enter into or agree to any settlement or compromise of, or the entry of any judgement arising from, the Pending Litigation without the prior written consent of Apollo.

(c) Subject to and conditioned upon ReShape's compliance with the terms of Section 10.10(b) above, Apollo hereby agrees to reimburse ReShape upon the full and final settlement of, or the entry of a non-appealable judgment of a court of competent jurisdiction in respect of, the claims set forth on Part 10.10(c) of the ReShape Disclosure Schedule (such claims, the "Applicable Claims") for Apollo's Applicable Percentage of: (i) the amount actually paid to the counterparty to the Pending Litigation solely in connection with such settlement or judgement of the Applicable Claims (and only the Applicable Claims), and (ii) the reasonable out-of-pocket and documented legal fees actually incurred by ReShape after the Closing in connection with defending the Applicable Claims; provided, in each case, that any such settlement or judgement includes an unqualified release for the benefit of Apollo and its Affiliates from any and all Liability in respect of the Applicable Claims.

(d) If ReShape determines that historical financial statements of the Apollo Lap-Band Business are required under applicable Law to be filed by ReShape with the Securities and Exchange Commission following the Closing in connection with the Transactions, Apollo agrees to use commercially reasonable efforts to cooperate as reasonably requested by ReShape in connection with ReShape's preparation of such historical financial statements. Such cooperation shall include providing, as promptly as reasonably practicable, such financial and operating data regarding the Apollo Lap-Band Business relating to periods prior to Closing as is reasonably requested by ReShape to the extent that the same is reasonably ascertainable by Apollo from its books and records and to use commercially reasonable efforts to assist ReShape in preparing such financial and operating data regarding the Apollo Lap-Band Business relating to periods prior to Closing as may be required to prepare such historical financial statements, and to provide reasonable and customary management representation letters and to use commercially reasonable efforts to assist ReShape in ReShape's efforts to obtain auditor consents, and providing reasonable access during normal business hours to personnel of Apollo, in each case as reasonably requested by ReShape. ReShape shall bear and shall pay to Apollo (or its designee) promptly, but in any event within ten Business Days following the end of each calendar month following the Closing, all out-of-pocket costs and expenses incurred by Apollo during such calendar month in connection with this Section 10.10(d) or otherwise in connection with the preparation and audit of historical financial statements for the Apollo Lap-Band Business after the Closing.

10.11 Publicity/Disclosure. No Party to this Agreement shall originate any publicity, news release or other public announcement, written or oral, whether relating to this Agreement or any of the other Transactional Agreements or the existence of any arrangement between the Parties, without the prior written consent of the other Party (whether such other Party is named in such publicity, news release or other public announcement or not), except (a) for the issuance by Apollo and ReShape at the Closing of their respective

press releases in the forms agreed upon between the Parties or (b) where such publicity, news release or other public announcement is required by Law or any listing or trading agreement concerning its publicly traded securities, provided that, in such event, the Party issuing the same shall, to the extent permitted under applicable Law, still be required to consult with the other Party (whether such other Party is named in such publicity, news release or public announcement or not) at a reasonable time prior to its release to allow the other Party to comment thereon and, after its release, shall provide the other Party with a copy thereof. If either Party, based on the advice of its counsel, determines that this Agreement, or any of the other Transactional Agreement, must be filed with the United States Securities and Exchange Commission ("SEC"), then such Party, prior to making any such filing, shall provide the other Party and its counsel with a redacted version of this Agreement (and any other Transactional Agreements) which it intends to file and any draft correspondence with the SEC requesting the confidential treatment by the SEC of those redacted sections of the Agreement, and will give due consideration to any comments provided by the other Party or its counsel and use reasonable efforts to ensure the confidential treatment by the SEC of those sections specified by the other Party or its counsel.

10.12 Tax Matters.

(a) Periodic Taxes. All real property taxes, personal property taxes and similar ad valorem obligations and other Taxes imposed on a periodic basis (and not based on revenue, income or sales) levied with respect to the Apollo Lap-Band Assets and the ReShape IGB Assets, as applicable (other than Taxes allocated pursuant to Section 2.8) ("Periodic Taxes") for a taxable period that includes (but does not end on) the Closing Date ("Straddle Period") will be apportioned between Apollo and ReShape as of the Closing Date, respectively, based on the number of days of the Straddle Period included in the Pre-Closing Tax Period and the number of days of the Straddle Period included in the Post-Closing Tax Period. Following the Closing, Apollo (in the case of the Apollo Lap-Band Assets) and ReShape (in the case of the ReShape IGB Assets) will be liable for the proportionate amount of such Periodic Taxes that is attributable to the Pre-Closing Tax Period, and ReShape (in the case of the Apollo Lap-Band Assets) and Apollo (in the case of the ReShape IGB Assets) will be liable for the proportionate amount of such Periodic Taxes that is attributable to the Post-Closing Tax Period. The party required by applicable Law to pay any such Periodic Tax (the "Paying Party") shall file the Tax Return related to such Periodic Tax within the time period prescribed by applicable Law and shall timely pay such Periodic Tax. To the extent any such payment exceeds the obligation of the Paying Party hereunder, the Paying Party shall provide the other party (the "Non-Paying Party") with notice of payment and reasonable details of the calculation thereof, and within ten (10) days of receipt of such notice of payment, the Non-Paying Party shall reimburse the Paying Party for the Non-Paying Party's share of such Straddle Period Taxes.

(b) Cooperation in Tax Matters. The parties hereto agree to furnish or cause to be furnished to one another, upon request, as promptly as practicable, such information and assistance relating to the Acquired Assets as is reasonably necessary for the filing of all Tax Returns, the preparation for any audit by any Governmental Body, and the prosecution or defense of any claim or proceeding relating to any Tax Return. In the event that any Governmental Body informs Apollo or ReShape of any notice of a proposed audit, claim, assessment or other dispute concerning an amount of Taxes related to the Acquired Assets with respect to which the other party may incur Liability hereunder, the party so informed will promptly notify the other party of such matter; *provided* that, failure to promptly notify will not reduce the other party's indemnity obligation hereunder, except to the extent such party's ability to defend against such matter is actually and materially prejudiced thereby; *provided, further*, that nothing in this Agreement shall require either party to provide or otherwise make available to the other a copy of its Consolidated Return.

11. MISCELLANEOUS PROVISIONS.

11.1 Further Assurances. Each Party shall execute and/or cause to be delivered to each other Party such instruments and other documents, and shall take such other actions, as such other Party may reasonably request (prior to, at or after the Closing) for the purpose of carrying out or evidencing any of the Transactions.

11.2 Fees and Expenses. Whether or not the Transactions contemplated by this Agreement are consummated each Party shall bear its own costs and expenses in connection with this Agreement and the Transactional Agreements.

11.3 Attorneys' Fees. If any legal action or other legal proceeding relating to any of the Transactional Agreements or the enforcement of any provision of any of the Transactional Agreements is brought against any Party, each Party shall bear its own expenses in connection with such action or proceeding, including attorneys' fees, costs and disbursements.

11.4 Notices. Any notice or other communication required or permitted to be delivered to any Party under this Agreement shall be in writing and shall be deemed properly delivered, given and received when delivered (by hand, by registered mail, by courier or express delivery service or by facsimile or e-mail) to the address, facsimile telephone number or e-mail address set forth beneath the name of such Party below (or to such other address, facsimile telephone number or e-mail address as such Party shall have specified in a written notice given to the other Parties):

if to ReShape:

ReShape Lifesciences Inc.
1001 Calle Amanecer
San Clemente, CA 92673
Attention: President and CEO
E-mail: dwgladney@reshapelifesci.com

with a copy to:

Fox Rothschild LLP
222 South Ninth Street, Suite 2000
Minneapolis, MN 55402
Attention: Bruce Machmeier and Brett Hanson
Email: bmachmeier@foxrothschild.com
bhanson@foxrothschild.com

if to Apollo:

Apollo Endosurgery, Inc.
1120 S. Capital of Texas Hwy
Bldg 1, Suite 300
Austin, TX 78746
Attention: Legal Department
Email: brian.szymczak@apolloendo.com

with a copy to:

Cooley LLP
3175 Hanover Street
Palo Alto, CA 94304
Attention: Mark Weeks
Email: mweeks@cooley.com

11.5 Time Of The Essence. Time is of the essence of this Agreement.

11.6 Headings. The underlined headings contained in this Agreement are for convenience of reference only, shall not be deemed to be a part of this Agreement and shall not be referred to in connection with the construction or interpretation of this Agreement.

11.7 Counterparts. This Agreement may be executed in several counterparts, each of which shall constitute an original and all of which, when taken together, shall constitute one agreement. Any signature page hereto delivered by facsimile machine or by e-mail (including in portable document format (pdf), as a joint photographic experts group (jpg) file, or otherwise) shall be binding to the same extent as an original signature page, with regard to any agreement subject to the terms hereof or any amendment thereto and may be used in lieu of the original signatures for all purposes. Any Party that delivers such a signature page agrees to later deliver an original counterpart to any Party that requests it.

11.8 Governing Law. This Agreement shall be construed in accordance with, and governed in all respects by, the internal laws of the State of Delaware (without giving effect to principles of conflicts of laws).

11.9 Dispute Resolution. The Parties recognize that a dispute ("Dispute") may arise relating to this Agreement or the Transactional Agreements. Any Dispute, including Disputes that may involve any Affiliates of a Party, shall be resolved in accordance with this Section 11.9.

(a) Mediation.

(i) Prior to submission of any Dispute to arbitration pursuant to Section 9.5 or to the Court of Chancery of the State of Delaware (or the applicable Federal Court) in accordance with Section 11.9(b), the Parties shall first attempt in good faith to resolve such Dispute by confidential mediation in accordance with the then current Commercial Mediation Procedures of the American Arbitration Association before initiating arbitration. The mediator shall be an individual mutually agreeable to the Parties. Except as otherwise agreed between the parties, the mediation shall be held in Wilmington, Delaware.

(ii) Either Party may initiate mediation by written notice to the other Party of the existence of a Dispute. The Parties agree to appoint a mediator within ten (10) days of the notice and the mediation will begin promptly after the selection. The mediation will continue until the earlier of (i) the mediator declaring in writing, no sooner than after the conclusion of one full day of a substantive mediation conference attended on behalf of each Party by a senior business person with authority to resolve the Dispute, that the Dispute cannot be resolved by mediation, and (ii) thirty (30) days from the initial notice by a Party to initiate meditation unless the Parties agree in writing to extend that period, if such Dispute is unresolved.

(b) Courts. Except as set forth in Section 9.5, and subject to exhaustion of the mediation procedure set forth in Section 11.9(a) above, in any action or proceeding between any of the

Parties arising out of or relating to this Agreement or any of the transactions contemplated by this Agreement, each of the parties hereto: (i) irrevocably and unconditionally consents and submits, for itself and its property, to the exclusive jurisdiction and venue of the Court of Chancery of the State of Delaware (or, in the case of any claim as to which the federal courts have exclusive subject matter jurisdiction, the Federal Court); (ii) agrees that all claims in respect of such action or proceeding must be commenced, and may be heard and determined, exclusively in the Court of Chancery of the State of Delaware (or, if applicable, the Federal Court); (iii) waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any such action or proceeding in the Court of Chancery of the State of Delaware (and, if applicable, the Federal Court); and (iv) waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in the Court of Chancery of the State of Delaware (or, if applicable, the Federal Court). Each of the parties hereto agrees that a final judgment in any such action or proceeding may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Each party to this Agreement irrevocably consents to service of process in the manner provided for notices in Section 11.4. Nothing in this Agreement shall affect the right of any party to this Agreement to serve process in any other manner permitted by law.

(c) Waiver of Jury Trial. EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT OR ANY OTHER TRANSACTIONAL AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND THEREFORE IT HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT, ANY OTHER TRANSACTIONAL AGREEMENT, OR THE TRANSACTIONS. EACH PARTY CERTIFIES AND ACKNOWLEDGES THAT (I) IT UNDERSTANDS AND HAS CONSIDERED THE IMPLICATIONS OF SUCH WAIVER, (II) IT MAKES SUCH WAIVERS VOLUNTARILY, AND (III) IT HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVER AND CERTIFICATION IN THIS SECTION 11.9(c).

11.10 Assignment. No Party may assign either this Agreement or any of its rights, interests, or obligations hereunder without the prior written approval of the other Parties; provided, however, that any Party may assign its rights, but not its obligations, under this Agreement without such consent in connection with the acquisition (whether by merger, consolidation, sale or otherwise) of such Party or of that part of such Party's business to which this Agreement relates, as long as such Party provides written notice to the other Party of such assignment and the assignee thereof agrees in writing to assume and be bound as the assigning Party hereunder. Any purported assignment in violation of this Section 11.10 shall be void. Subject to the preceding sentence, this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns.

11.11 Remedies Cumulative; Specific Performance. The rights and remedies of the Parties shall be cumulative (and not alternative). Each agrees that: (a) in the event of any breach or threatened breach by the other Party of any covenant, obligation or other provision set forth in this Agreement, such Party shall be entitled (in addition to any other remedy that may be available to it) to (i) a decree or order of specific performance or mandamus to enforce the observance and performance of such covenant, obligation or other provision, and (ii) an injunction restraining such breach or threatened breach; and (b) such shall not be required to provide any bond or other security in connection with any such decree, order or injunction or in connection with any related action or Proceeding.

11.12 Waiver.

(a) No failure on the part of any Person to exercise any power, right, privilege or remedy under this Agreement, and no delay on the part of any Person in exercising any power, right, privilege or remedy under this Agreement, shall operate as a waiver of such power, right, privilege or remedy; and no single or partial exercise of any such power, right, privilege or remedy shall preclude any other or further exercise thereof or of any other power, right, privilege or remedy.

(b) No Person shall be deemed to have waived any claim arising out of this Agreement, or any power, right, privilege or remedy under this Agreement, unless the waiver of such claim, power, right, privilege or remedy is expressly set forth in a written instrument duly executed and delivered on behalf of such Person; and any such waiver shall not be applicable or have any effect except in the specific instance in which it is given.

11.13 Amendments. This Agreement may not be amended, modified, altered or supplemented other than by means of a written instrument duly executed and delivered on behalf of each of the Parties hereto.

11.14 Severability. Any term or provision of this Agreement that is invalid or unenforceable in any situation in any jurisdiction shall not affect the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction. If the final judgment of a court of competent jurisdiction declares that any term or provision hereof is invalid or unenforceable, the Parties agree that the court making such determination shall have the power to limit the term or provision, to delete specific words or phrases, or to replace any invalid or unenforceable term or provision with a term or provision that is valid and enforceable and that comes closest to expressing the intention of the invalid or unenforceable term or provision, and this Agreement shall be enforceable as so modified. In the event such court does not exercise the power granted to it in the prior sentence, the Parties agree to replace such invalid or unenforceable term or provision with a valid and enforceable term or provision that will achieve, to the extent possible, the economic, business and other purposes of such invalid or unenforceable term.

11.15 Entire Agreement. The Transactional Agreements set forth the entire understanding of the Parties relating to the subject matter thereof and supersede all prior agreements and understandings among or between any of the Parties relating to the subject matter thereof.

11.16 Knowledge. For purposes of this Agreement, a Person shall be deemed to have "Knowledge" of a particular fact or other matter if any named executive officer of such Person (as set forth in such Person's definitive proxy statement for its most recent annual meeting of stockholders) has actual knowledge of such fact or other matter.

11.17 Construction.

(a) For purposes of this Agreement, whenever the context requires: the singular number shall include the plural, and vice versa; the masculine gender shall include the feminine and neuter genders; the feminine gender shall include the masculine and neuter genders; and the neuter gender shall include the masculine and feminine genders.

(b) The Parties agree that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be applied in the construction or interpretation of this Agreement.

(c) As used in this Agreement, the words “include” and “including,” and variations thereof, shall not be deemed to be terms of limitation, but rather shall be deemed to be followed by the words “without limitation.”

(d) Except as otherwise indicated, all references in this Agreement to “Sections” and “Exhibits” are intended to refer to Sections of this Agreement and Exhibits to this Agreement.

[Remainder of page intentionally left blank]

The Parties have caused this Agreement to be executed and delivered as of the date first written above.

APOLLO ENDOSURGERY, INC.

By: /s/ Todd Newton

Name: Todd Newton

Title: Chief Executive Officer

RESHAPE LIFESCIENCES INC.

By: /s/ Dan W. Gladney

Name: /s/ Dan W. Gladney

Title: President and Chief Executive Officer

EXHIBIT A
CERTAIN DEFINITIONS

For purposes of the Agreement (including this Exhibit A):

Accounts Payable. "Accounts Payable" shall mean all invoices, bills, accounts payable or other trade payables due and owed to any third party arising prior to the Closing out of or in connection with developing, commercializing, manufacturing (or having manufactured), packaging, importing, marketing, distributing and/or selling the Acquired Assets by Apollo or ReShape, as the case may be, and any of their respective Affiliates prior to the Closing Date.

Accounts Receivable. "Accounts Receivable" shall mean all accounts receivable, notes receivable and other indebtedness due and owed by any third party to Apollo or ReShape, as the case may be or any of their Affiliates, in each case, arising or held in connection with the sale of the Acquired Assets prior to the Closing Date.

Acquired Assets. "Acquired Assets" shall mean the ReShape IGB Assets and the Apollo Lap-Band Assets, as the case may be.

Acquired Business. "Acquired Business" shall mean the ReShape IGB Business and the Apollo Lap-Band Business, as the case may be.

Acquirer. "Acquirer" shall mean, (i) with respect to the Apollo Lap-Band Assets, ReShape; and (ii) with respect to the ReShape IGB Assets, Apollo.

Acquirer Affiliate. "Acquirer Affiliate" shall mean any Affiliate of the Acquirer.

Acquirer Labeling. "Acquirer Labeling" shall mean the printed labels, labeling and packaging materials, including printed carton, container label and package inserts, used by Acquirer and bearing Acquirer's name for (i) with respect to Apollo, the ReShape IGB Products; and (ii) with respect to the ReShape , the Apollo Lap-Band Product.

Affiliate. "Affiliate" shall mean, with respect to any specified Person, any other Person which, directly or indirectly, controls, is under common control with, or is controlled by, such specified Person, through one or more intermediaries or otherwise. For purposes of this definition, the term "control" means the possession, direct or indirect, of the power to direct or cause the direction of the management or policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

Agreement. "Agreement" shall mean the Asset Purchase Agreement to which this Exhibit A is attached (including the Apollo Disclosure Schedule and the ReShape Disclosure Schedule), as it may be amended from time to time.

Apollo's Applicable Percentage. "Apollo's Applicable Percentage" shall mean the percentage, as determined from time to time (and rounded to the nearest two decimal places), determined by dividing (a) the aggregate gross revenue (calculated in accordance with GAAP) recognized by Apollo in connection with the sale of the ReShape IGB Product after the Closing and through such date of determination by (b) the sum of (i) the aggregate gross revenue (calculated in accordance with GAAP) recognized by ReShape in connection with the sale of the ReShape IGB Product prior to the Closing plus (ii) the aggregate gross revenue (calculated in accordance with GAAP) recognized by Apollo in connection with the sale of the ReShape IGB Product following the Closing and through such date of determination.

Apollo Disclosure Schedule. "Apollo Disclosure Schedule" shall mean the schedule (dated as of the date of the Agreement) delivered to ReShape on behalf of Apollo and its Affiliates, a copy of which is attached to the Agreement and incorporated in the Agreement by reference.

Apollo Fundamental Representations. "Apollo Fundamental Representations" shall mean the representations and warranties of Apollo set forth in Sections 3.1, 3.2, 3.9, 3.11, 3.12 and 3.13.

Apollo Lap-Band Business. "Apollo Lap-Band Business" shall mean the business operations and activities related to the development, manufacturing, marketing and selling of the Apollo Lap-Band Product.

Apollo Lap-Band Domain Names. "Apollo Lap-Band Domain Names" shall mean the internet domain names set forth on Schedule 1.1(c)(iii).

Apollo Lap-Band Intellectual Property. "Apollo Lap-Band Intellectual Property" shall mean the Apollo Lap-Band Patents, Apollo Lap-Band Marks, the Apollo Lap-Band Domain Names and the Apollo Lap-Band Know-How.

Apollo Lap-Band Inventory. "Apollo Lap-Band Inventory" shall mean the finished goods inventory of the Apollo Lap-Band Product owned by Apollo or any of its Affiliates and held in the United States on the Closing Date.

Apollo Lap-Band Know-How. "Apollo Lap-Band Know-How" shall mean the Know-How set forth on Schedule 1.1(c)(iv).

Apollo Lap-Band Marks. "Apollo Lap-Band Marks" shall mean the Marks set forth on Schedule 1.1(c)(ii).

Apollo Lap-Band Patents. "Apollo Lap-Band Patents" shall mean the Patents set forth on Schedule 1.1(c)(i).

Apollo Lap-Band Product. "Apollo Lap-Band Product" shall mean that certain surgical product marketed by Apollo as of the date of this Agreement as the Lap-Band® System and the related accessories exclusively used in laparoscopic gastric banding surgeries set forth on Schedule 1.1.

Apollo Lap-Band Regulatory Information. "Apollo Lap-Band Regulatory Information" shall mean (a) all correspondence and submissions by and between Apollo or any Apollo Affiliate and FDA exclusively related to the Apollo Lap-Band Assets or Apollo Lap-Band Governmental Authorizations, including any reports, filings, or notices submitted to FDA to support, maintain or obtain such Apollo Lap-Band Governmental Authorizations; and (b) any clinical or non-clinical data concerning the Apollo Lap-Band Assets, including records and data concerning the clinical studies set forth on Schedule 1.1(e) and all data contained in any correspondence or submission described in clause (a).

Apollo Lap-Band Regulatory Materials. "Apollo Lap-Band Regulatory Materials" shall mean all Regulatory Materials exclusively related to the Apollo Lap-Band Business.

Apollo Indemnitees. "Apollo Indemnitees" shall mean the following Persons: (a) Apollo; (b) the current and future Affiliates of Apollo; (c) the respective Representatives of the Persons referred to in clauses "(a)" and "(b)" above; and (d) the respective successors and assigns of the Persons referred to in clauses "(a)", "(b)" and "(c)" above.

Books and Records. "Books and Records" shall mean all books, ledgers, files, reports, plans, records, manuals and other materials, including books of account, records, files, invoices, correspondence and memoranda, scientific records and files (including laboratory notebooks and invention disclosures), customer and supplier lists, data, specifications, operating history information and inventory records (in any form or medium) of, or maintained for, or relating to, the Acquired Assets and/or the Acquired Business but excluding all copies of all human resources files.

Business Day. Business Day means a day other than Saturday, Sunday or any other day on which commercial banks located in the State of California, U.S. are authorized or obligated by applicable Law to close.

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

Consent. "Consent" shall mean any approval, consent, ratification, permission, waiver or authorization (including any Governmental Authorization).

Consolidated Return. "Consolidated Return" shall mean any affiliated consolidated, combined, or unitary Tax Return filed with respect to a group that includes Apollo (or any Affiliate of Apollo), on the one hand, or ReShape (or any Affiliate of ReShape) on the other hand.

Contract. "Contract" shall mean any written, oral, implied or other agreement, contract, understanding, arrangement, instrument, note, guaranty, indemnity, representation, warranty, deed, assignment, power of attorney, certificate, purchase order, work order, insurance policy, benefit plan, commitment, covenant, assurance or undertaking of any nature.

Control. "Control" or "Controlled" shall mean with respect to any Know-How or any Intellectual Property, possession by a Person of the ability (whether by ownership, license, covenant not to sue or otherwise) to grant access to, to grant use of, or to grant a license or a sublicense or other right of or under such Know-How or Intellectual Property.

Copyrights. "Copyrights" shall mean copyrights and registrations and applications therefor, works of authorship, content (including website content) and mask work rights.

Damages. "Damages" shall include any loss, damage, injury, liability, fine, penalty, Tax, reasonable out-of-pocket fees and expenses (including any legal fees or expenses, expert fees or expenses, or accounting or advisory fees or expenses), charge, or cost (including any cost of investigation) of any nature.

Encumbrance. "Encumbrance" shall mean any lien, pledge, hypothecation, charge, mortgage, security interest, encumbrance, equity, trust, equitable interest, claim, preference, right of possession, lease, tenancy, license, encroachment, covenant, infringement, interference, Order, proxy, option, right of first refusal, preemptive right, community property interest, legend, defect, impediment, exception, reservation, limitation, impairment, imperfection of title, condition or restriction of any nature (including any restriction on the transfer of any asset, any restriction on the receipt of any income derived from any asset, any restriction on the use of any asset and any restriction on the possession, exercise or transfer of any other attribute of ownership of any asset).

Entity. "Entity" shall mean any corporation (including any non-profit corporation), general partnership, limited partnership, limited liability partnership, joint venture, estate, trust, cooperative, foundation, society, political party, union, company (including any limited liability company or joint stock company), firm or other enterprise, association, organization or entity.

FDA. "FDA" shall mean the United States Food and Drug Administration, or any successor agency thereto having the administrative authority to regulate the marketing of human medical devices in the United States.

GAAP. "GAAP" shall mean United States generally accepted accounting principles applied on a consistent basis.

Governmental Authorization. "Governmental Authorization" shall mean any: (a) permit, license, certificate, franchise, concession, approval, consent, ratification, permission, clearance, confirmation, endorsement, waiver, certification, designation, rating, registration, qualification or authorization issued, granted, given or otherwise made available by or under the authority of any Governmental Body or pursuant to any applicable Law; or (b) right under any Contract with any Governmental Body.

Governmental Body. "Governmental Body" shall mean any: (a) nation, principality, state, commonwealth, province, territory, county, municipality, district or other jurisdiction of any nature; (b) federal, state, local, municipal, foreign or other government; (c) governmental or quasi-governmental authority of any nature (including any governmental division, subdivision, department, agency, bureau, branch, office, commission, council, board, instrumentality, officer, official, representative, organization, unit, body or Entity and any court or other tribunal); (d) multi-national organization or body; or (e) individual, Entity or body exercising, or entitled to exercise, any executive, legislative, judicial, administrative, regulatory, police, military or taxing authority or power of any nature.

Intellectual Property. "Intellectual Property" shall mean and include all worldwide intellectual property rights including, without limitation, rights in and to the following: (a) Patents; (b) Marks; (c) Copyrights; (d) Know-How; (e) data exclusivity, databases and data collections; and (f) any similar, corresponding or equivalent rights to any of the foregoing.

IRS. "IRS" shall mean the United States Internal Revenue Service.

Know-How. "Know-How" shall mean any information related to the research, manufacture, preparation, development or commercialization of a product or technology, including, without limitation, inventions (whether or not patentable), invention disclosures, procedures, processes, methods, algorithms and formulae, know-how, trade secrets, technology, information, knowledge, practices, formulas, instructions, skills, techniques, technical data, designs, drawings, computer programs, apparatus, results of experiments, test data, including pharmacological, toxicological and clinical data, analytical and quality control data, manufacturing data and descriptions, market data, devices, assays, chemical formulations, notes of experiments, specifications, compositions of matter, physical, chemical and biological materials and compounds, whether in intangible, tangible, written, electronic or other form.

Law. "Law" shall mean any federal, state, local, municipal, foreign or other law, statute, legislation, constitution, principle of common law, resolution, ordinance, code, edict, decree, proclamation, treaty, convention, rule, regulation, ruling, directive, pronouncement, requirement, specification, determination, decision, opinion or interpretation issued, enacted, adopted, passed, approved, promulgated, made, implemented or otherwise put into effect by or under the authority of any Governmental Body.

Liability. "Liability" shall mean any debt, obligation, duty or liability of any nature (including any unknown, undisclosed, unmatured, unaccrued, unasserted, contingent, indirect, conditional, implied, vicarious, derivative, joint, several or secondary liability), regardless of whether such debt, obligation, duty or liability would be required to be disclosed on a balance sheet prepared in accordance with generally accepted accounting principles and regardless of whether such debt, obligation, duty or liability is immediately due and payable.

Marks. "Marks" shall mean all United States and foreign trademarks, service marks, trade names, service names, brand names, trade dress rights, logos, Internet domain names and corporate names, together with the goodwill associated with any of the foregoing, and all applications, registrations and renewals thereof.

Order. "Order" shall mean any: (a) order, judgment, injunction, edict, decree, ruling, pronouncement, determination, decision, opinion, verdict, sentence, subpoena, writ or award issued, made, entered, rendered or otherwise put into effect by or under the authority of any court, administrative agency or other Governmental Body or any arbitrator or arbitration panel; or (b) Contract with any Governmental Body entered into in connection with any Proceeding.

Patents. "Patents" shall mean all United States and foreign patents and applications, including any and all divisionals, continuations and continuations-in-part of the patents and patent applications therefor and reissues, reexaminations, restorations (including supplemental protection certificates) and extensions thereof.

Person. "Person" shall mean any individual, Entity or Governmental Body.

Proceeding. "Proceeding" shall mean any action, suit, litigation, arbitration, proceeding (including any civil, criminal, administrative, investigative or appellate proceeding and any informal proceeding), prosecution, contest, hearing, inquiry, inquest, audit, examination or investigation commenced, brought, conducted or heard by or before, or otherwise involving, any Governmental Body or any arbitrator or arbitration panel.

Regulatory Approval. "Regulatory Approval" shall means all licenses, consents, permits, certificates, filings, registrations, notifications, franchises, concessions, authorizations, approvals, ratifications, permission, clearance, confirmation, endorsement, waiver, designation, rating or qualification issued, granted, given or otherwise made available by or under the authority of any Governmental Body or under the applicable Laws of any Governmental Body, including the approval by the FDA or any equivalent agency or Governmental Body outside the United States of America.

Regulatory Materials. "Regulatory Materials" shall mean all Regulatory Approvals that are in the possession of or Controlled by, or held by or for a Party or any of its Affiliates as of the Closing Date and which relate to or are used in connection with the Acquired Assets, the Acquired Business and/or the assumed liabilities, including all U.S. and foreign regulatory applications, filings, submissions and approvals (including all PMAs and foreign counterparts thereof, and all Governmental Bodies) for the Acquired Assets, and all correspondence with the FDA and other Governmental Authorities relating to the Acquired Products and/or the Acquired Business, in each case, whether generated, filed or held by or for such Party or its Affiliates.

Related Party. Each of the following shall be deemed to be a "Related Party": (a) each individual who is, or who has at any time been, an officer of a Party hereto; (b) each member of the family of each of the individuals referred to in clause "(a)" above; and (c) any Entity (other than such Party) in which any one of the individuals referred to in clauses "(a)" and "(b)" above holds or held (or in which more than one of such individuals collectively hold or held), beneficially or otherwise, a controlling interest or a material voting, proprietary or equity interest.

Representatives. "Representatives" shall mean, with respect to any Entity, the officers, directors, managers, employees, agents, attorneys, accountants, advisors, clinical investigators and representatives of such Entity, as applicable.

ReShape Disclosure Schedule. "ReShape Disclosure Schedule" shall mean the schedule (dated as of the date of the Agreement) delivered to Apollo on behalf of ReShape, a copy of which is attached to the Agreement and incorporated in the Agreement by reference.

ReShape Fundamental Representations. "ReShape Fundamental Representations" shall mean the representations and warranties of ReShape set forth in Sections 4.1, 4.2 (other than the final sentence thereof), 4.9, 4.11, 4.12, 4.13 and, solely with respect to Section 10.10(c), the final sentence of Section 4.2.

ReShape IGB Business. "ReShape IGB Business" shall mean the business operations and activities related to the development, manufacturing, marketing and selling of the ReShape IGB Product.

ReShape IGB Domain Names. "ReShape IGB Domain Names" shall mean the internet domain names set forth on Schedule 2.1(c)(ii).

ReShape IGB Inventory. "ReShape IGB Inventory" shall mean the finished goods inventory of the ReShape IGB Product owned by ReShape or any of its Affiliates on the Closing Date.

ReShape IGB Intellectual Property. "ReShape IGB Intellectual Property" shall mean the ReShape IGB Patents, the ReShape IGB Domain Names and the ReShape IGB Know-How.

ReShape IGB Know-How. "ReShape IGB Know-How" shall mean the Know-How set forth on Schedule 2.1(c)(iii).

ReShape IGB Patents. "ReShape IGB Patents" shall mean the Patents set forth on Schedule 2.1(c)(i).

ReShape IGB Product. "ReShape IGB Product" shall mean that certain intragastric balloon marketed by ReShape as of the date of this Agreement as the ReShape® Dual Weight Loss Balloon and the related accessories (including, for the avoidance of doubt, the ReShape IGB Removal Tool) included as of the date of this Agreement in the ReShape Balloon™ System.

ReShape IGB Regulatory Information. "ReShape IGB Regulatory Information" shall mean (a) all correspondence and submissions by and between ReShape or any ReShape Affiliate and FDA exclusively related to the ReShape IGB Assets or ReShape IGB Governmental Authorizations, including any reports, filings, or notices submitted to FDA to support, maintain or obtain such ReShape IGB Governmental Authorizations; and (b) any clinical or non-clinical data concerning the ReShape IGB Assets, including records and data concerning the clinical studies set forth on Schedule 2.1(e) and all data contained in any correspondence or submission described in clause (a).

ReShape IGB Regulatory Materials. "ReShape IGB Regulatory Materials" shall mean all Regulatory Materials exclusively related to the ReShape IGB Business.

ReShape IGB Removal Tool. "ReShape IGB Removal Tool" shall mean that certain removal tool owned by ReShape or any of its Affiliates (including, for the avoidance of doubt, the SKUs set forth on Part 2.7(b)(xi) of the ReShape Disclosure Schedule) and used in connection with the procedure to remove the ReShape IGB Product from a patient.

ReShape Indemnitees. "ReShape Indemnitees" shall mean the following Persons: (a) ReShape; (b) the current and future Affiliates of ReShape; (c) the respective Representatives of the Persons referred to in clauses "(a)" and "(b)" above; and (d) the respective successors and assigns of the Persons referred to in clauses "(a)", "(b)" and "(c)" above.

Seller. "Seller" shall mean, (i) with respect to the Apollo Lap-Band Assets, Apollo; and (ii) with respect to the ReShape IGB Assets, ReShape.

Seller Affiliate. "Seller Affiliate" shall mean any Affiliate of the Seller.

Solvent. "Solvent" when used with respect to any Person, shall mean that, as of any date of determination, the "fair saleable value" of the assets of such Person will, as of such date, exceed (a) the value of all "liabilities of such Person, including contingent and other liabilities," as of such date, as such quoted terms are generally determined in accordance with applicable federal laws governing determinations of the insolvency of debtors, and (b) the amount that will be required to pay the probable liabilities of such Person on its existing debts (including contingent liabilities) as such debts become absolute and matured.

Tax. "Tax" shall mean any federal, state, local, or non-U.S. tax (including any income, franchise, capital gains, estimated, gross receipts, value-added, surtax, excise, ad valorem, transfer, stamp, sales, use, property, business, occupation, inventory, occupancy, license, lease, withholding or payroll tax), and other taxes, levies, duties, fees, imposts, assessments and charges in the nature of a tax , whether disputed or not, together with any interest and any penalties, additions to tax or additional amounts with respect thereto.

Tax Return. "Tax Return" shall mean any written or electronic return, declaration, notice, report, statement, election, information statement and document filed or required to be filed with respect to Taxes, including any amendments thereof, and any schedules and attachments thereto.

Third Party. "Third Party" shall mean any Person other than the Parties hereto or any of their respective Affiliates.

Transactional Agreements. "Transactional Agreements" shall mean: (a) the Agreement; (b) the Bill of Sale; (c) the Assignment Documents; (d) the Closing Certificate, (e) the FIRPTA Certificate; (f) the Transition Services Agreement, (g) the Apollo Supply Agreement, (h) the Apollo Distribution Agreement and (g) the Security Agreement.

Transactions. "Transactions" shall mean (a) the execution and delivery of the respective Transactional Agreements, and (b) all of the transactions contemplated by the respective Transactional Agreements, including: (i) the sale of the Acquired Assets in accordance with the Agreement; (ii) the assumption of the assumed liabilities pursuant to the Assumption Agreement; and (iii) the performance by the Parties hereto of their respective obligations under the Transactional Agreements, and the exercise by the Parties hereto of their respective rights under the Transactional Agreements.

Transfer Taxes. "Transfer Taxes" means any statutory, governmental, federal, state, national, local, municipal, and foreign, documentary, real estate transfer, mortgage recording, sales, use, stamp, duty, registration, value-added, gross receipts, excise, and other similar Taxes, and all conveyance fees, recording charges and other similar fees and charges (including any penalties and interest) incurred or that may be payable in connection with the sale or purchase of the ReShape IGB Assets or the Apollo Lap-Band Assets, as the case may be.

Exhibit 10.1

SECURITY AGREEMENT

This **SECURITY AGREEMENT** (this "Agreement") is dated as of December 17, 2018 and entered into by and among ReShape Lifesciences Inc., a Delaware corporation ("ReShape"), each of the undersigned direct and indirect Subsidiaries of ReShape (each of such undersigned Subsidiaries being a "Subsidiary Grantor" and, collectively, the "Subsidiary Grantors") and each Additional Grantor that may become a party hereto after the date hereof in accordance with Section 21 hereof (each of ReShape, each Subsidiary Grantor, and each Additional Grantor being a "Grantor" and collectively the "Grantors") and Apollo Endosurgery, Inc., a Delaware corporation (the "Secured Party").

PRELIMINARY STATEMENTS

A. Pursuant to the Asset Purchase Agreement, dated as of December 17, 2018 (as it may hereafter be amended, restated, extended, supplemented or otherwise modified from time to time, the "Asset Purchase Agreement"; the terms defined therein and not otherwise defined in Section 31 or elsewhere herein being used herein as therein defined), among ReShape and the Secured Party, the Secured Party shall provide for the sale of the Apollo Lap-Band Assets (as defined therein) to ReShape for certain consideration.

B. Subsidiary Grantors have executed and delivered the Subsidiary Guaranty Agreement, in each case in favor of the Secured Party, pursuant to which each Subsidiary Grantor has guaranteed the prompt payment and performance when due of all obligations of ReShape under the Asset Purchase Agreement and the other Transactional Agreements (as defined in the Asset Purchase Agreement) and the other obligations described therein.

C. It is a condition precedent to the Closing (as defined in the Asset Purchase Agreement) that Grantors listed on the signature pages hereof shall have granted the security interests and undertaken the obligations contemplated by this Agreement.

NOW, THEREFORE, in consideration of the agreements set forth herein and in the other Transactional Agreements and in order to induce the Secured Party to enter into the Asset Purchase Agreement and the other Transactional Agreements and to provide for the sale of the Apollo Lap-Band Assets, each Grantor hereby agrees with the Secured Party as follows:

SECTION 1. Grant of Security.

Each Grantor hereby assigns to the Secured Party, and hereby grants to the Secured Party a security interest in, all of such Grantor's right, title and interest in and to all of the personal property of such Grantor, in each case whether now or hereafter existing, whether tangible or intangible, whether now owned or hereafter acquired, wherever the same may be located and whether or not subject to the Uniform Commercial Code as it exists on the date of this Agreement, or as it may hereafter be amended in the State of New York (the "UCC"), including the following (the "Collateral"):

(a) all Accounts;

(b) all Chattel Paper;

(c) all Money and all Deposit Accounts, together with all amounts on deposit from time to time in such Deposit Accounts;

(d) all Documents;

(e) all General Intangibles, including all intellectual property, Payment Intangibles and Software;

(f) all Goods, including Inventory, Equipment and Fixtures;

(g) all Instruments;

(h) all Investment Property;

(i) all Letter-of-Credit Rights and other Supporting Obligations;

(j) all Records;

(k) all Commercial Tort Claims, including those set forth on Schedule 1 annexed hereto; and

(l) all Proceeds and Accessions with respect to any of the foregoing Collateral.

Each category of Collateral set forth above shall have the meaning set forth in the UCC (to the extent such term is defined in the UCC), it being the intention of each Grantor that the description of the Collateral set forth above be construed to include the broadest possible range of assets.

Notwithstanding the foregoing or anything herein to the contrary, the Collateral shall not include, and no Grantor shall be deemed to have granted a security interest in (collectively, the "Excluded Collateral"): (A) any lease, license, contract, property rights or agreement to which any Grantor is a party or any of its rights or interests thereunder (including any goods (other than inventory) subject thereto), if and for so long as the grant of such security interest shall constitute or result in (i) the abandonment, invalidation or unenforceability of any right, title or interest of any Grantor therein or (ii) a breach or termination pursuant to the terms of, or a default under, any such lease, license, contract property rights or agreement (other than to the extent that any such term would be rendered ineffective pursuant to Sections 9-406, 9-407, 9-408 or 9-409 of the UCC (or any successor provision or provisions) of any relevant jurisdiction or any other applicable Legal Requirement or principles of equity), *provided*, *however*, that such security interest shall attach immediately and automatically at such time as the condition causing such abandonment, invalidation or unenforceability shall be remedied and, to the extent severable, shall attach immediately to any portion of such lease, license, contract, property rights or agreement that does not result in any of the consequences specified in (i) or (ii) including any Proceeds of such lease, license, contract, property rights or agreement; (B) any Intent-to-Use Application to the extent that, and solely during the period in which, the grant of a security interest therein would impair the registrability, validity or enforcement of such application under applicable federal law; *provided* that at the time any such Intent-to-Use Application matures into

an Actual Use Application by the applicable Grantor's receipt of written notification from the IP Filing Office of its acceptance of either an "Amendment to Allege Use" pursuant to Section 1(c) of the Lanham Act, 15 U.S.C. § 1051, or "Statement Of Use" pursuant to Section 1(d) of the Lanham Act, 15 U.S.C. § 1051, the Collateral shall include, and such Grantor shall be deemed to have granted a security interest in, such Actual Use Application; (C) Excluded Accounts; and (D) any motor vehicles, airplanes, vessels or other assets subject to certificates of title.

SECTION 2. Security for Obligations.

This Agreement secures, and the Collateral is collateral security for, the prompt payment or performance in full when due, whether at stated maturity, by required prepayment, declaration, acceleration, demand or otherwise, of all Secured Obligations of each Grantor.

SECTION 3. Grantors Remain Liable.

Anything contained herein to the contrary notwithstanding, (a) each Grantor shall remain liable under any contracts and agreements included in the Collateral, to the extent set forth therein, to perform all of its duties and obligations thereunder to the same extent as if this Agreement had not been executed, (b) the exercise by the Secured Party of any of its rights hereunder shall not release any Grantor from any of its duties or obligations under the contracts and agreements included in the Collateral, and (c) the Secured Party shall not have any obligation or liability under any contracts, licenses, and agreements included in the Collateral by reason of this Agreement, nor shall the Secured Party be obligated to perform any of the obligations or duties of any Grantor thereunder or to take any action to collect or enforce any claim for payment assigned hereunder.

SECTION 4. Representations and Warranties.

Each Grantor represents and warrants as follows:

(a) **Ownership of Collateral**. Except as expressly permitted by the Asset Purchase Agreement and except for Permitted Encumbrances, such Grantor owns its interests in the Collateral free and clear of any Encumbrance (as defined in the Asset Purchase Agreement) and no effective financing statement or other instrument similar in effect covering all or any part of the Collateral is on file in any filing or recording office, including any IP Filing Office.

(b) **Perfection**. The security interests in the Collateral granted to the Secured Party constitute valid security interests in the Collateral, securing the payment and performance of each Grantor's Secured Obligations. Upon (i) in the case of security interests that may be perfected under the UCC by the filing of a financing statement, the filing of UCC financing statements naming each Grantor as "debtor", naming the Secured Party as "secured party" and describing the Collateral in the filing offices with respect to such Grantor set forth on Schedule 2 annexed hereto (or as specified by ReShape to the Secured Party after the date hereof as required by Section 21), (ii) in the case of the Securities Collateral consisting of certificated Securities or evidenced by Instruments, in addition to the filing of such UCC financing statements, delivery of the certificates representing such certificated Securities and delivery of such Instruments to the Secured Party (and in the case of Securities Collateral issued by a foreign issuer, any actions

required under foreign law to perfect a security interest in such Securities Collateral), in each case duly endorsed or accompanied by duly executed instruments of assignment or transfer in blank, (iii) in the case of any Intellectual Property Collateral, in addition to the filing of such UCC financing statements, the recordation of a Grant with the applicable IP Filing Office and (iv) in the case of any Deposit Account and any Investment Property constituting a Security Entitlement, Securities Account, Commodity Contract or Commodity Account, the execution and delivery to the Secured Party of an agreement providing for Control by the Secured Party thereof, the security interests in the Collateral granted to the Secured Party will constitute perfected security interests therein prior to all other Encumbrances (other than Permitted Encumbrances), and all filings and other actions necessary or desirable to perfect such security interests have been duly made or taken. The Perfection Certificate has been duly prepared, completed and executed and the information set forth therein, including the exact legal name of each Grantor, is correct and complete as of the date hereof.

(c) **Office Locations; Type and Jurisdiction of Organization; Locations of Equipment and Inventory.** Such Grantor's exact legal name as it appears in official filings in the jurisdiction of its organization, its type of organization (i.e. corporation, limited partnership, etc.), jurisdiction of organization, its principal place of business, its chief executive office, and the office where such Grantor keeps its Records regarding the Accounts, Intellectual Property Collateral and originals of Chattel Paper, and its organization number provided by the applicable Governmental Authority of the jurisdiction of organization are set forth on Schedule 3 annexed hereto. All of the Equipment and Inventory of such Grantor is located at the places set forth on Schedule 4 annexed hereto, except for (i) Inventory which, in the ordinary course of business, is in transit either (x) from a supplier to a Grantor, or (y) between the locations set forth on Schedule 4 annexed hereto, or (ii) Equipment consisting of mobile phones, laptops and other mobile electronic equipment within the possession of directors, officers, employees, consultants and other agents of such Grantor.

(d) **Names**. No Grantor (or any predecessor by merger or otherwise of such Grantor) has, within the five year period preceding the date hereof, or, in the case of an Additional Grantor, the date of the applicable Counterpart, had a different name from the name of such Grantor listed on the signature pages hereof, except the names set forth on Schedule 5 annexed hereto (or as specified by ReShape to the Secured Party after the date hereof as required by Section 21).

(e) **Delivery of Certain Collateral**. All certificates representing Securities Collateral or Instruments (excluding checks) evidencing, comprising or representing the Collateral have been delivered to the Secured Party duly endorsed or accompanied by duly executed instruments of transfer or assignment in blank.

(f) **Securities Collateral**. All of the Pledged Equity of such Grantor set forth on Schedule 6 annexed hereto has been duly authorized and validly issued and is fully paid and non-assessable; all of the Pledged Debt set forth on Schedule 7 annexed hereto has been (or, in the case of Pledged Debt issued by Persons that are not Affiliates of such Grantor, to the knowledge of such Grantor has been) duly authorized, authenticated, issued and delivered and are the legal, valid and binding obligation of the issuers thereof and is not in default; there are no outstanding warrants, options or other rights to purchase, or other agreements outstanding with

respect to, or property that is now or hereafter convertible into, or that requires the issuance or sale of, any Pledged Subsidiary Equity; Schedule 6 annexed hereto sets forth all of the Equity Interests and the Pledged Equity owned by each Grantor, and, in the case of Pledged Subsidiary Equity, the percentage ownership in each issuer thereof; and Schedule 7 annexed hereto sets forth all of the Pledged Debt owned by such Grantor.

(g) **Intellectual Property Collateral**. A true and complete list of all Trademark Registrations, applications for any Trademark and Trademark Licenses owned, held (whether pursuant to a license or otherwise) or used by such Grantor, in whole or in part, is set forth on Schedule 8 annexed hereto; a true and complete list of all Patents and Patent Licenses owned, held (whether pursuant to a license or otherwise) or used by such Grantor, in whole or in part, is set forth on Schedule 9 annexed hereto; a true and complete list of all Copyright Registrations, applications for Copyright Registrations and Copyright Licenses held (whether pursuant to a license or otherwise) by such Grantor, in whole or in part, is set forth on Schedule 10 annexed hereto.

(h) **Deposit Accounts, Securities Accounts, Commodity Accounts**. Schedule 11 annexed hereto lists all Deposit Accounts, Securities Accounts and Commodity Accounts owned by each Grantor, and indicates the institution or intermediary at which the account is held and the account number for each such account. Such Grantor is the sole entitlement holder or customer of each such account, and such Grantor has not consented to, and is not otherwise aware of, any Person (other than the Secured Party pursuant hereto) having Control over, or any other interest in, any such Deposit Account, Securities Account, or Commodity Account, or any securities, commodities or other property credited thereto.

(i) **Chattel Paper**. Such Grantor has no interest in any Chattel Paper, except as set forth in Schedule 12 annexed hereto. All tangible Chattel Paper evidencing, comprising or representing the Collateral has been delivered to the Secured Party, and the Secured Party has Control of all electronic Chattel Paper evidencing, comprising or representing the Collateral.

(j) **Letter-of-Credit Rights**. Such Grantor has no interest in any Letter-of-Credit Rights, except as set forth on Schedule 13 annexed hereto.

(k) **Documents**. No negotiable Documents are outstanding with respect to any of the Inventory, except as set forth on Schedule 14 annexed hereto.

(l) **Subsidiaries**. As of the date hereof, the undersigned includes all of ReShape's direct and indirect Subsidiaries.

The representations and warranties as to the information set forth in Schedules referred to herein are made as to each Grantor (other than Additional Grantors) as of the date hereof and as to each Additional Grantor as of the date of the applicable Counterpart, except that, in the case of a Pledge Supplement, IP Supplement or notice delivered pursuant to Section 5(d) hereof, such representations and warranties are made as of the date of such supplement or notice.

SECTION 5. Further Assurances.

(a) **Generally**. Each Grantor agrees that from time to time, at the expense of Grantors, such Grantor will promptly execute and deliver all further instruments and documents, and take all further action, that may be necessary or desirable, or that the Secured Party may request, in order to perfect and protect any security interest granted or purported to be granted hereby or to enable the Secured Party to exercise and enforce its rights and remedies hereunder with respect to any Collateral. Without limiting the generality of the foregoing, each Grantor will: (i) notify the Secured Party on each Collateral Reporting Date (as defined below) in writing of receipt by such Grantor of any interest in Collateral constituting on an item of Chattel Paper on which more than $50,000 is owing received since the last such notice and at the request of the Secured Party, mark conspicuously each such item of Chattel Paper and each of its records pertaining to such Collateral, with a legend, in form and substance satisfactory to the Secured Party, indicating that such Collateral is subject to the security interest granted hereby, (ii) within five (5) Business Days of receipt thereof, deliver to the Secured Party all separate promissory notes and other Instruments on which more than $50,000 is owing on and, at the request of the Secured Party, all original counterparts of such Chattel Paper, duly endorsed and accompanied by duly executed instruments of transfer or assignment, all in form and substance satisfactory to the Secured Party, (iii) (A) authorize, execute (if necessary) and file such financing or continuation statements, or amendments thereto, (B) execute and deliver, and cause to be executed and delivered, agreements establishing that the Secured Party has Control of Deposit Accounts and Investment Property of such Grantor; *provided*, *however* that in the case of any Deposit Accounts, Securities Accounts or Commodity Accounts (other than Excluded Accounts) owned by the Grantors on the date hereof, the Grantors shall deliver to the Secured Party, not later than thirty (30) days after the date hereof (or such later period as determined by the Secured Party in its sole discretion), duly executed control agreements for such Deposit Accounts, Securities Accounts and Commodity Accounts, (C) deliver such documents, instruments, notices, records and consents, and take such other actions, necessary to establish that Secured Party has Control over electronic Chattel Paper and Letter-of-Credit Rights of such Grantor, (D) at the request of the Secured Party, take all actions necessary to establish the Secured Party's Control over Electronic Chattel Paper and (E) deliver such other instruments or notices, in each case, as may be necessary or desirable, or as the Secured Party may request, in order to perfect and preserve the security interests granted or purported to be granted hereby, (iv) furnish to the Secured Party from time to time statements and schedules further identifying and describing the Collateral and such other reports in connection with the Collateral as the Secured Party may reasonably request, all in reasonable detail, (v) at any reasonable time, upon request by the Secured Party, exhibit the Collateral to and allow inspection of the Collateral by the Secured Party, or persons designated by the Secured Party, (vi) at the Secured Party's request, appear in and defend any action or proceeding that may affect such Grantor's title to or the Secured Party's security interest in all or any part of the Collateral, and (vii) use commercially reasonable efforts to obtain any necessary consents of third parties to the creation and perfection of a security interest in favor of the Secured Party with respect to any Collateral. Each Grantor hereby authorizes the Secured Party to file one or more financing or continuation statements, and amendments thereto, relative to all or any part of the Collateral (including any financing statement indicating that it covers "all assets" or "all personal property" of such Grantor or words of similar import) without the signature of any Grantor.

(b) **Securities Collateral**. Without limiting the generality of the foregoing Section 5(a), each Grantor agrees that (i) all certificates or Instruments representing or evidencing the Securities Collateral shall be delivered to and held by or on behalf of the Secured Party pursuant hereto, within five (5) Business Days of the acquisition, incurrence or creation thereof, and shall be in suitable form for transfer by delivery or, as applicable, shall be accompanied by such Grantor's endorsement, where necessary, or duly executed instruments of transfer or assignments in blank, all in form and substance satisfactory to the Secured Party and (ii) it will, upon obtaining any additional Equity Interests or Instruments, promptly (and in any event within five (5) Business Days) deliver to the Secured Party a Pledge Supplement, duly executed by such Grantor, in respect of such additional Pledged Equity or Pledged Debt; *provided* that the failure of any Grantor to execute a Pledge Supplement with respect to any additional Pledged Equity or Pledged Debt shall not impair the security interest of the Secured Party therein or otherwise adversely affect the rights and remedies of the Secured Party hereunder with respect thereto. If any of the Collateral is or shall become evidenced or represented by an uncertificated security, such Grantor shall cause the issuer thereof either: (x) to register the Secured Party as the registered owner of such uncertificated security, upon original issue or registration of transfer; or (y) to agree in writing with such Grantor and the Secured Party that such issuer will comply with instructions with respect to such uncertificated security originated by the Secured Party without further consent of such Grantor, such agreement to be in form and substance reasonably satisfactory to the Secured Party. Upon each such acquisition, the representations and warranties contained in Section 4(f) hereof shall be deemed to have been made by such Grantor as to such Pledged Equity or Pledged Debt, whether or not such Pledge Supplement is delivered.

(c) **Intellectual Property Collateral**. At least quarterly, within 15 days after the end of each calendar quarter commencing with the calendar quarter ending March 31, 2019 (a "Collateral Reporting Date"), each Grantor shall notify the Secured Party in writing of any rights to Intellectual Property Collateral acquired by such Grantor after the date hereof since the last such notice. At least quarterly, within 15 days after the end of each calendar quarter, each Grantor shall execute and deliver to the Secured Party an IP Supplement, and submit a Grant for recordation with respect thereto in the applicable IP Filing Office; *provided* that the failure of any Grantor to execute an IP Supplement or submit a Grant for recordation with respect to any additional Intellectual Property Collateral shall not impair the security interest of the Secured Party therein or otherwise adversely affect the rights and remedies of the Secured Party hereunder with respect thereto. Upon delivery to the Secured Party of an IP Supplement, Schedules 8, 9 and 10 annexed hereto and Schedule A to each Grant, as applicable, shall be deemed modified to include a reference to any right, title or interest in any existing Intellectual Property Collateral or any Intellectual Property Collateral set forth on Schedule A to such IP Supplement. Upon each such acquisition, the representations and warranties contained in Section 4(g) hereof shall be deemed to have been made by such Grantor as to such Intellectual Property Collateral, whether or not such IP Supplement is delivered. With respect to any Intent-to-Use Application, each Grantor shall diligently pursue filing with the IP Filing Office of: (i) an "Amendment To Allege Use," or (ii) a "Statement Of Use," to the extent the subject mark is used in interstate commerce for all the goods and services in the applicable Intent-to-Use Application, consistent with such Grantor's commercially reasonable judgment.

(d) **Commercial Tort Claims**. Grantors have no Commercial Tort Claims as of the date hereof, except as set forth on Schedule 1 annexed hereto. In the event that a Grantor shall at any time after the date hereof have any Commercial Tort Claim in excess of $100,000, such Grantor shall, on each Collateral Reporting Date, notify the Secured Party thereof in writing, which notice shall (i) set forth in reasonable detail the basis for and nature of such Commercial Tort Claim and (ii) constitute an amendment to this Agreement by which such Commercial Tort Claim shall constitute part of the Collateral.

SECTION 6. Certain Covenants of Grantors.

Each Grantor shall:

(a) not use or permit any Collateral to be used unlawfully or in violation of any provision of this Agreement or any applicable statute, regulation or ordinance or any policy of insurance covering the Collateral;

(b) give the Secured Party at least thirty (30) days' prior written notice of (i) any change in such Grantor's legal name, identity or corporate structure and (ii) any reincorporation, reorganization or other action that results in a change of the jurisdiction of organization of such Grantor; and each Grantor shall not effect or permit any change referred to in this paragraph (b) unless all filings have been, or concurrently therewith will be, made under the Uniform Commercial Code or otherwise that are required in order for the Secured Party to continue at all times following such change to have a valid, legal and perfected security interest, having the priority required by this Agreement, in all the Collateral;

(c) keep correct and accurate Records of Collateral at the locations described in Schedule 3 annexed hereto; and

(d) permit representatives of the Secured Party at any time during normal business hours to inspect and make abstracts from such Records, and each Grantor agrees to render to the Secured Party, at such Grantor's cost and expense, such clerical and other assistance as may be reasonably requested with regard thereto; *provided* that the Secured Party will not exercise such right more than twice in any consecutive twelve (12) month period to the extent no Event of Default has then occurred and is then continuing.

SECTION 7. Special Covenants With Respect to Equipment and Inventory.

Each Grantor shall:

(a) if any Inventory is in possession or control of any of such Grantor's agents or processors, if the aggregate book value of all such Inventory exceeds $25,000, and in any event upon the occurrence and during the continuance of an Event of Default, instruct such agent or processor to hold all such Inventory for the account of the Secured Party and subject to the instructions of the Secured Party;

(b) if any Inventory is located on premises leased by such Grantor, use commercially reasonable efforts to deliver to the Secured Party a fully executed collateral access agreement in form and substance reasonably satisfactory to the Secured Party; and

(c) promptly upon the issuance and delivery to such Grantor of any negotiable Document covering property valued in excess of $50,000, deliver such Document to the Secured Party.

SECTION 8. Special Covenants with respect to Accounts.

(a) Each Grantor shall, for not less than three years from the date on which each Account of such Grantor arose, maintain (i) complete Records of such Account, including records of all payments received, credits granted and merchandise returned, and (ii) all documentation relating thereto.

(b) Except as otherwise provided in this subsection (b), each Grantor shall continue to collect, at its own expense, all amounts due or to become due to such Grantor under the Accounts. In connection with such collections, each Grantor may take (and, upon the occurrence and during the continuance of an Event of Default, at the Secured Party's direction, shall take) such action as such Grantor or the Secured Party may deem necessary or advisable to enforce collection of amounts due or to become due under the Accounts; *provided*, *however*, that the Secured Party shall have the right at any time, upon the occurrence and during the continuation of an Event of Default and upon written notice to such Grantor of its intention to do so, to (i) notify the account debtors or obligors under any Accounts of the assignment of such Accounts to the Secured Party and to direct such account debtors or obligors to make payment of all amounts due or to become due to such Grantor thereunder directly to the Secured Party, (ii) notify each Person maintaining a lockbox or similar arrangement to which account debtors or obligors under any Accounts have been directed to make payment to remit all amounts representing collections on checks and other payment items from time to time sent to or deposited in such lockbox or other arrangement directly to the Secured Party, (iii) enforce collection of any such Accounts at the expense of Grantors, and (iv) adjust, settle or compromise the amount or payment thereof, in the same manner and to the same extent as such Grantor might have done. After receipt by such Grantor of the notice from the Secured Party referred to in the proviso to the preceding sentence, (A) all amounts and proceeds (including checks and other Instruments) received by such Grantor in respect of the Accounts shall be received in trust for the benefit of the Secured Party hereunder, shall be segregated from other funds of such Grantor and shall be forthwith paid over or delivered to the Secured Party in the same form as so received (with any necessary endorsement) to be held as cash Collateral and applied as provided by Section 17 hereof, and (B) such Grantor shall not, without the written consent of the Secured Party, adjust, settle or compromise the amount or payment of any Account, or release wholly or partly any account debtor or obligor thereof, or allow any credit or discount thereon, except to the extent such Grantor determines in good faith so doing is reasonably likely to maximize collection thereon.

(c) If any Grantor shall at any time after the date of this Agreement acquire or become the beneficiary of Accounts in excess of $100,000 in the aggregate in respect of which the account debtor is a Governmental Authority, such Grantor shall promptly notify the Secured Party and, upon the request of the Secured Party, shall take commercially reasonable efforts to perfect the security interest of the Secured Party, and make such security interest enforceable against the account debtor.

SECTION 9. Special Covenants With Respect to the Securities Collateral.

(a) **Form of Securities Collateral**. The Secured Party shall have the right at any time to require the appropriate Grantor to request the issuer thereof to exchange certificates or instruments representing or evidencing Securities Collateral for certificates or instruments of smaller or larger denominations. If any Securities Collateral is not a security pursuant to Section 8-103 of the UCC, no Grantor shall take any action that, under such Section, converts such Securities Collateral into a security without causing the issuer thereof to issue to it certificates or instruments evidencing such Securities Collateral, which it shall promptly deliver to the Secured Party as provided in this Section 9(a).

(b) **Covenants**. Each Grantor shall (i) promptly upon its acquisition (directly or indirectly) of any Equity Interests, including additional Equity Interests in each issuer of Pledged Equity, comply with Section 5(b), subject to the provisions of the last paragraph of Section 1; (ii) promptly upon issuance of any and all Instruments or other evidences of additional Indebtedness from time to time owed to such Grantor by any obligor on the Pledged Debt, comply with Section 5; (iii) promptly deliver to the Secured Party all written notices received by it with respect to the Securities Collateral; (iv) at its expense (A) perform and comply in all material respects with all terms and provisions of any agreement related to the Securities Collateral required to be performed or complied with by it, (B) maintain all such agreements in full force and effect and (C) enforce all such agreements in accordance with their terms, except to such Grantor determines in good faith that doing so will not result in a net benefit; and (vii), at the request of the Secured Party, promptly execute and deliver to the Secured Party an agreement providing for control by the Secured Party of all Security Entitlements, Securities Accounts, Commodity Contracts and Commodity Accounts of such Grantor.

(c) **Voting and Distributions**. So long as no Event of Default shall have occurred and be continuing, (i) each Grantor shall be entitled to exercise any and all voting and other consensual rights pertaining to the Securities Collateral or any part thereof for any purpose not prohibited by the terms of this Agreement or the Asset Purchase Agreement; *provided* that no Grantor shall exercise or refrain from exercising any such right if such action would have a material adverse effect on the value of the Securities Collateral or any part thereof; and (ii) each Grantor shall be entitled to receive and retain any and all dividends, other distributions, principal and interest paid in respect of the Securities Collateral.

Upon the occurrence and during the continuation of an Event of Default, (x) upon written notice from the Secured Party to any Grantor, all rights of such Grantor to exercise the voting and other consensual rights which it would otherwise be entitled to exercise pursuant hereto shall cease, and all such rights shall thereupon become vested in the Secured Party who shall thereupon have the sole right to exercise such voting and other consensual rights; (y) all rights of such Grantor to receive the dividends, other distributions, principal and interest payments which it would otherwise be authorized to receive and retain pursuant hereto shall cease, and all such rights shall thereupon become vested in the Secured Party who shall thereupon have the sole right to receive and hold as Collateral such dividends, other distributions, principal and interest payments; and (z) all dividends, principal, interest payments and other distributions which are received by such Grantor contrary to the provisions of clause (y) above shall be received in trust for the benefit of the Secured Party, shall be segregated from

other funds of such Grantor and shall forthwith be paid over to the Secured Party as Collateral in the same form as so received (with any necessary endorsements).

In order to permit the Secured Party to exercise the voting and other consensual rights which it may be entitled to exercise pursuant hereto and to receive all dividends and other distributions which it may be entitled to receive hereunder, (I) each Grantor shall promptly execute and deliver (or cause to be executed and delivered) to the Secured Party all such proxies, dividend payment orders and other instruments as the Secured Party may from time to time reasonably request, and (II) without limiting the effect of clause (I) above, each Grantor hereby grants to the Secured Party an irrevocable proxy to vote the Pledged Equity and to exercise all other rights, powers, privileges and remedies to which a holder of the Pledged Equity would be entitled (including giving or withholding written consents of holders of Equity Interests, calling special meetings of holders of Equity Interests and voting at such meetings), which proxy shall be effective, automatically and without the necessity of any action (including any transfer of any Pledged Equity on the record books of the issuer thereof) by any other Person (including the issuer of the Pledged Equity or any officer or agent thereof), upon the occurrence of an Event of Default and which proxy shall only terminate upon the Discharge of the Secured Obligations (other than contingent indemnification obligations not then due), the cure of such Event of Default or waiver thereof as evidenced by a writing executed by the Secured Party.

Each Grantor hereby authorizes and instructs each issuer of any Securities Collateral pledged by such Grantor hereunder to: (A) comply with any instruction received by it from the Secured Party in writing that: (i) states that an Event of Default has occurred and is continuing; and (ii) is otherwise in accordance with the terms of this Agreement, without any other or further instructions from such Grantor, and each Grantor agrees that each such issuer shall be fully protected in so complying; and (B) upon the occurrence and during the continuation of an Event of Default, unless otherwise expressly permitted or required hereby, pay any dividends or other payments with respect to the Securities Collateral directly to the Secured Party.

(d) **Grantor as Issuer**. Each Grantor which is an issuer of Pledged Equity agrees that: (i) it will be bound by the terms of this Agreement relating to the Pledged Equity issued by it and will comply with such terms insofar as such terms are applicable to it; (ii) it will notify the Secured Party promptly in writing of the occurrence of any of the events described in this Section 9 with respect to the Pledged Equity issued by it; and (iii) the terms of Section 9(c) shall apply to it, mutatis mutandis, with respect to all actions that may be required of it pursuant to Section 9(c) with respect to the Pledged Equity issued by it. In addition, each Grantor which is either an issuer or an owner of any Pledged Equity hereby consents to the grant by each other Grantor of the security interest hereunder in favor of the Secured Party and to the transfer of any Pledged Equity to the Secured Party or its nominee following an Event of Default and to the substitution of the Secured Party or its nominee as a partner, member or shareholder or other equity holder of the issuer of the related Pledged Equity.

SECTION 10. Special Covenants With Respect to the Intellectual Property Collateral.

(a) Each Grantor shall:

(i) use reasonable efforts so as not to permit the inclusion in any contract to which it hereafter becomes a party of any provision that could or might in any way impair or prevent the creation of a security interest in, or the assignment of, such Grantor's rights and interests in any property included within the definitions of any Intellectual Property Collateral acquired under such contracts, *provided* that the foregoing shall not prohibit such Grantor from licensing or selling any such Intellectual Property Collateral to the extent such Grantor in good faith determines that so doing is in the best interests of such Grantor, and in each such case the Secured Party will cooperate as necessary to release its security interest in such Intellectual Property Collateral in accordance with Section 19;

(ii) take any and all reasonable steps to protect the secrecy of all trade secrets relating to the products and services sold or delivered under or in connection with the Intellectual Property Collateral, including, without limitation, where appropriate entering into confidentiality agreements with employees and labeling and restricting access to secret information and documents;

(iii) use proper statutory notice in connection with its use of any of the Intellectual Property Collateral material to its business or operation to prevent loss of legal protection for such Intellectual Property Collateral; and

(iv) use a commercially appropriate standard of quality (which may be consistent with such Grantor's past practices) in the manufacture, sale and delivery of products and services sold or delivered under or in connection with the Trademarks.

(b) Except as otherwise provided in this Section 10, each Grantor shall continue to collect, at its own expense, all amounts due or to become due to such Grantor in respect of the Intellectual Property Collateral or any portion thereof. In connection with such collections, each Grantor may take (and, upon the occurrence and during the continuance of an Event of Default, at the Secured Party's reasonable direction, shall take) such action as such Grantor or the Secured Party may deem reasonably necessary or advisable to enforce collection of such amounts; *provided* that the Secured Party shall have the right at any time, upon the occurrence and during the continuation of an Event of Default and upon written notice to such Grantor of its intention to do so, to notify the obligors with respect to any such amounts of the existence of the security interest created hereby and to direct such obligors to make payment of all such amounts directly to the Secured Party, and, upon such notification and at the expense of such Grantor, to enforce collection of any such amounts and to adjust, settle or compromise the amount or payment thereof, in the same manner and to the same extent as such Grantor might have done. After receipt by any Grantor of the notice from the Secured Party referred to in the proviso to the preceding sentence and upon the occurrence and during the continuance of any Event of Default, (i) all amounts and proceeds (including checks and Instruments) received by each Grantor in respect of amounts due to such Grantor in respect of the Intellectual Property Collateral or any portion thereof shall be received in trust for the benefit of the Secured Party

hereunder, shall be segregated from other funds of such Grantor and shall be forthwith paid over or delivered to the Secured Party in the same form as so received (with any necessary endorsement) to be held as cash Collateral and applied as provided by Section 17 hereof, and (ii) such Grantor shall not adjust, settle or compromise the amount or payment of any such amount or release wholly or partly any obligor with respect thereto or allow any credit or discount thereon, except to the extent such Grantor determines in good faith so doing is reasonably likely to maximize collection thereon.

(c) Each Grantor shall have the duty to diligently prosecute, file and/or make, unless and until such Grantor, in its commercially reasonable judgment, decides otherwise, (i) any application for registration relating to any of the Intellectual Property Collateral owned, held or used by such Grantor and set forth on Schedules 8, 9 or 10 annexed hereto, as applicable, that is pending as of the date of this Agreement, (ii) any Copyright Registration on any existing or future unregistered but copyrightable works (except for works of nominal commercial value or with respect to which such Grantor has determined in the exercise of its commercially reasonable judgment that it shall not seek registration), (iii) any application on any future patentable but unpatented innovation or invention comprising Intellectual Property Collateral, and (iv) any Trademark opposition and cancellation proceedings, renew Trademark Registrations and Copyright Registrations and do any and all acts which are necessary or desirable to preserve and maintain all rights in all Intellectual Property Collateral. Any expenses incurred in connection therewith shall be borne solely by Grantors. Subject to the foregoing, each Grantor shall give the Secured Party prior written notice of any abandonment of any Intellectual Property Collateral.

(d) Except as provided herein, each Grantor shall have the right to commence and prosecute in its own name, as real party in interest, for its own benefit and at its own expense, such suits, proceedings or other actions for infringement, unfair competition, dilution, misappropriation or other damage, or reexamination or reissue proceedings as are necessary to protect the Intellectual Property Collateral. Each Grantor shall promptly, following its becoming aware thereof, notify the Secured Party of the institution of, or of any adverse determination in, any proceeding (whether in an IP Filing Office or any federal, state, local or foreign court) or regarding such Grantor's ownership, right to use, or interest in any Intellectual Property Collateral. Each Grantor shall provide to the Secured Party any information with respect thereto requested by the Secured Party.

(e) In addition to, and not by way of limitation of, the granting of a security interest in the Collateral pursuant hereto, each Grantor, effective upon the occurrence and during the continuance of an Event of Default, hereby assigns, transfers and conveys to the Secured Party the nonexclusive right and license to use all Trademarks, tradenames, Copyrights, Patents or technical processes (including, without limitation, the Intellectual Property Collateral) owned or used by such Grantor that relate to the Collateral, together with any goodwill associated therewith, all to the extent necessary to enable the Secured Party to realize on the Collateral in accordance with this Agreement and to enable any transferee or assignee of the Collateral to enjoy the benefits of the Collateral. This right shall inure to the benefit of all successors, assigns and transferees of the Secured Party and its successors, assigns and transferees, whether by voluntary conveyance, operation of law, assignment, transfer, foreclosure, deed in lieu of

foreclosure or otherwise. Such right and license shall be granted free of charge, without requirement that any monetary payment whatsoever be made to such Grantor.

SECTION 11. [Reserved].

SECTION 12. The Secured Party Appointed Attorney-in-Fact.

Each Grantor hereby irrevocably appoints the Secured Party as such Grantor's attorney-in-fact, with full authority in the place and stead of such Grantor and in the name of such Grantor, the Secured Party or otherwise, from time to time in the Secured Party's discretion to take any action and to execute any instrument that the Secured Party may deem necessary or advisable to accomplish the purposes of this Agreement, including, without limitation:

(a) upon the occurrence and during the continuance of an Event of Default, to obtain insurance with respect to any of the Collateral;

(b) upon the occurrence and during the continuance of an Event of Default, to ask for, demand, collect, sue for, recover, compound, receive and give acquittance and receipts for moneys due and to become due under or in respect of any of the Collateral;

(c) upon the occurrence and during the continuance of an Event of Default, to receive, endorse and collect any drafts or other Instruments, Documents, Chattel Paper and other documents in connection with clauses (a) and (b) above;

(d) upon the occurrence and during the continuance of an Event of Default, to file any claims or take any action or institute any proceedings that the Secured Party may deem necessary or desirable for the collection of any of the Collateral or otherwise to enforce or protect the rights of the Secured Party with respect to any of the Collateral;

(e) to pay or discharge taxes or Encumbrances (other than taxes not required to be discharged pursuant to the Asset Purchase Agreement) levied or placed upon or threatened against the Collateral, the legality or validity thereof and the amounts necessary to discharge the same to be determined by the Secured Party in its sole discretion, any such payments made by the Secured Party to become obligations of such Grantor to the Secured Party, due and payable immediately without demand;

(f) upon the occurrence and during the continuance of an Event of Default, to sign and endorse any invoices, freight or express bills, bills of lading, storage or warehouse receipts, drafts against debtors, assignments, verifications and notices in connection with Accounts and other documents relating to the Collateral; and

(g) upon the occurrence and during the continuance of an Event of Default, generally to sell, transfer, pledge, make any agreement with respect to or otherwise deal with any of the Collateral as fully and completely as though the Secured Party were the absolute owner thereof for all purposes, and to do, at the Secured Party's option and Grantors' expense, at any time or from time to time, all acts and things that the Secured Party deems necessary to protect, preserve or realize upon the Collateral and the Secured Party's security interest therein in order to effect the intent of this Agreement, all as fully and effectively as such Grantor might do.

SECTION 13. The Secured Party May Perform.

If any Grantor fails to perform any agreement contained herein, the Secured Party may itself perform, or cause the performance of, such agreement, and the expenses of the Secured Party incurred in connection therewith shall be payable by Grantors under Section 18(b).

SECTION 14. Standard of Care.

The powers conferred on the Secured Party hereunder are solely to protect its interest in the Collateral and shall not impose any duty upon it to exercise any such powers. Except for the exercise of reasonable care in the custody of any Collateral in its possession and the accounting for moneys actually received by it hereunder, the Secured Party shall have no duty as to any Collateral or as to the taking of any necessary steps to preserve rights against prior parties or any other rights pertaining to any Collateral. The Secured Party shall be deemed to have exercised reasonable care in the custody and preservation of Collateral in its possession if such Collateral is accorded treatment substantially equal to that which the Secured Party accords its own property.

SECTION 15. Remedies.

(a) **Generally**. Upon the occurrence and during the continuance of any Event of Default, the Secured Party may (i) declare all Secured Obligations at the time outstanding, and all other amounts owed to the Secured Party under this Agreement and the other Security Documents to be forthwith due and payable, whereupon the same shall immediately become due and payable without presentment, demand, protest or other notice of any kind, all of which are expressly waived by each Grantor, anything in this Agreement or the other Security Documents to the contrary notwithstanding; *provided* that upon the occurrence of an Event of Default specified in Clause (c) or (d) of the definition thereof, the Secured Obligations shall automatically become due and payable without presentment, demand, protest or other notice of any kind, all of which are expressly waived by each Grantor, anything in this Agreement or in any other Loan Document to the contrary notwithstanding, and (ii) exercise all of its other rights and remedies under this Agreement, the other Security Documents and applicable Legal Requirements, in order to satisfy all of the Secured Obligations. If any Event of Default shall have occurred and be continuing, the Secured Party may exercise in respect of the Collateral, in addition to all other rights and remedies provided for herein or otherwise available to it, all the rights and remedies of a secured party on default under the UCC (whether or not the UCC applies to the affected Collateral), and also may (i) require each Grantor to, and each Grantor hereby agrees that it will at its expense and upon request of the Secured Party forthwith, assemble all or part of the Collateral as directed by the Secured Party and make it available to the Secured Party at a place to be designated by the Secured Party that is reasonably convenient to both parties, (ii) enter onto the property where any Collateral is located and take possession thereof with or without judicial process, (iii) prior to the disposition of the Collateral, store, process, repair or recondition the Collateral or otherwise prepare the Collateral for disposition in any manner to the extent the Secured Party deems appropriate, (iv) take possession of any Grantor's premises or place custodians in exclusive control thereof, remain on such premises and use the same and any of such Grantor's equipment for the purpose of completing any work in process, taking any actions described in the preceding clause (iii) and collecting any Secured

Obligation, (v) without notice except as specified below, sell the Collateral or any part thereof in one or more parcels at public or private sale, at any of the Secured Party's offices or elsewhere, for cash, on credit or for future delivery, at such time or times and at such price or prices and upon such other terms as the Secured Party may deem commercially reasonable, (vi) exercise dominion and control over and refuse to permit further withdrawals from any Deposit Account maintained with the Secured Party and provide instructions directing the disposition of funds in Deposit Accounts and (vii) provide entitlement orders with respect to Security Entitlements and other Investment Property constituting a part of the Collateral and, without notice to any Grantor, transfer to or register in the name of the Secured Party or any of its nominees any or all of the Securities Collateral. The Secured Party may be the purchaser of any or all of the Collateral at any such sale (to the fullest extent permitted by applicable Legal Requirements) and the Secured Party shall be entitled, for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Collateral sold at any such public sale, to use and apply any of the Secured Obligations as a credit on account of the purchase price for any Collateral payable by the Secured Party at such sale. Each purchaser at any such sale shall hold the property sold absolutely free from any claim or right on the part of any Grantor, and each Grantor hereby waives (to the fullest extent permitted by applicable Legal Requirements) all rights of redemption, stay and/or appraisal which it now has or may at any time in the future have under any rule of law or statute now existing or hereafter enacted. Each Grantor agrees that, to the extent notice of sale shall be required by law, at least ten days' notice to such Grantor of the time and place of any public sale or the time after which any private sale is to be made shall constitute reasonable notification. The Secured Party shall not be obligated to make any sale of Collateral regardless of notice of sale having been given. The Secured Party may adjourn any public or private sale from time to time by announcement at the time and place fixed therefor, and such sale may, without further notice, be made at the time and place to which it was so adjourned. Each Grantor hereby waives any claims against the Secured Party arising by reason of the fact that the price at which any Collateral may have been sold at such a private sale was less than the price which might have been obtained at a public sale, even if the Secured Party accepts the first offer received and does not offer such Collateral to more than one offeree. If the proceeds of any sale or other disposition of the Collateral are insufficient to pay all the Secured Obligations, Grantors shall be jointly and severally liable for the deficiency and the fees of any attorneys employed by the Secured Party to collect such deficiency. Each Grantor further agrees that a breach of any of the covenants contained in this Section 15 will cause irreparable injury to the Secured Party, that the Secured Party has no adequate remedy at law in respect of such breach and, as a consequence, that each and every covenant contained in this Section 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 no default has occurred giving rise to the Secured Obligations becoming due and payable prior to their stated maturities.

(b) **Securities Collateral**. Each Grantor recognizes that, by reason of certain prohibitions contained in the Securities Act and applicable state securities laws, the Secured Party may be compelled, with respect to any sale of all or any part of the Securities Collateral conducted without prior registration or qualification of such Securities Collateral under the Securities Act and/or such state securities laws, to limit purchasers to those who will agree, among other things, to acquire the Securities Collateral for their own account, for investment and

not with a view to the distribution or resale thereof. Each Grantor acknowledges that any such private placement may be at prices and on terms less favorable than those obtainable through a sale without such restrictions (including an offering made pursuant to a registration statement under the Securities Act) and, notwithstanding such circumstances, each Grantor agrees that any such private placement shall not be deemed, in and of itself, to be commercially unreasonable and that the Secured Party shall have no obligation to delay the sale of any Securities Collateral for the period of time necessary to permit the issuer thereof to register it for a form of sale requiring registration under the Securities Act or under applicable state securities laws, even if such issuer would, or should, agree to so register it. If the Secured Party determines to exercise its right to sell any or all of the Securities Collateral, upon written request, each Grantor shall and shall cause each issuer of any Securities Collateral to be sold hereunder from time to time to furnish to the Secured Party all such information as the Secured Party may request in order to determine the amount of Securities Collateral which may be sold by the Secured Party in exempt transactions under the Securities Act and the rules and regulations of the Securities and Exchange Commission thereunder, as the same are from time to time in effect.

(c) **Rights and Remedies Cumulative; Non-Waiver; etc.** The enumeration of the rights and remedies of the Secured Party set forth in this Agreement is not intended to be exhaustive and the exercise by the Secured Party of any right or remedy shall not preclude the exercise of any other rights or remedies, all of which shall be cumulative, and shall be in addition to any other right or remedy given hereunder or under the other Security Documents or that may now or hereafter exist at law or in equity or by suit or otherwise. No delay or failure to take action on the part of the Secured Party in exercising any right, power or privilege shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege or shall be construed to be a waiver of any Event of Default. No course of dealing between ReShape and the Secured Party or their respective agents or employees shall be effective to change, modify or discharge any provision of this Agreement or any of the other Security Documents or to constitute a waiver of any Event of Default.

(d) **Credit Bidding**. The Secured Party shall have the right to credit bid and purchase for the benefit of the Secured Party all or any portion of Collateral at any sale thereof conducted by the Secured Party under the provisions of the UCC, including pursuant to Sections 9-610 or 9-620 of the UCC, at any sale thereof conducted under the provisions of the United States Bankruptcy Code, including Section 363 thereof, or a sale under a plan of reorganization, or at any other sale or foreclosure conducted by the Administrative Agent (whether by judicial action or otherwise) in accordance with applicable Legal Requirements. Such credit bid or purchase may be completed through one or more acquisition vehicles formed by the Secured Party to make such credit bid or purchase and, in connection therewith, the Secured Party is authorized to adopt documents providing for the governance of the acquisition vehicle or vehicles, and assign the applicable Secured Obligations to any such acquisition vehicle in exchange for Equity Interests and/or debt issued by the applicable acquisition vehicle.

SECTION 16. Additional Remedies for Intellectual Property Collateral.

(a) Anything contained herein to the contrary notwithstanding, upon the occurrence and during the continuation of an Event of Default, (i) the Secured Party shall have

the right (but not the obligation) to bring suit, in the name of any Grantor, the Secured Party or otherwise, to enforce any Intellectual Property Collateral, in which event each Grantor shall, at the request of the Secured Party, do any and all lawful acts and execute any and all documents required by the Secured Party in aid of such enforcement and each Grantor shall promptly, upon demand, reimburse and indemnify the Secured Party as provided in Section 9 of the Asset Purchase Agreement and Section 18 hereof, as applicable, in connection with the exercise of its rights under this Section 16, and, to the extent that the Secured Party shall elect not to then bring suit to enforce any Intellectual Property Collateral as provided in this Section, each Grantor agrees to use all reasonable measures, whether by action, suit, proceeding or otherwise, to prevent the infringement by others of any of the Intellectual Property Collateral material to its business or operation and for that purpose agrees to use its commercially reasonable judgment in maintaining any action, suit or proceeding against any Person so infringing reasonably necessary to prevent such infringement; (ii) upon written demand from the Secured Party, each Grantor shall execute and deliver to the Secured Party an assignment or assignments of the Intellectual Property Collateral and such other documents as are necessary or appropriate to carry out the intent and purposes of this Agreement; (iii) each Grantor agrees that such an assignment and/or recording shall be applied to reduce the Secured Obligations outstanding only to the extent that the Secured Party (or any other Secured Party) receives cash proceeds in respect of the sale of, or other realization upon, the Intellectual Property Collateral; and (iv) each Grantor agrees to cooperate with the Secured Party in making available to the Secured Party, to the extent within such Grantor's power and authority, such personnel in such Grantor's employ as the Secured Party may reasonably designate, by name, title or job responsibility, to permit such Grantor to continue, directly or indirectly, to produce, advertise and sell the products and services sold or delivered by such Grantor under or in connection with the Trademarks, Trademark Registrations and Trademark Rights, such persons to be available to perform their prior functions on the Secured Party's behalf and to be compensated by the Secured Party at such Grantor's expense on a per diem, pro-rata basis consistent with the salary and benefit structure applicable to each as of the date of such Event of Default.

(b) If (i) an Event of Default shall have occurred and, by reason of cure, waiver, modification, amendment or otherwise, no longer be continuing, (ii) no other Event of Default shall have occurred and be continuing, (iii) an assignment to the Secured Party of any rights, title and interests in and to the Intellectual Property Collateral shall have been previously made, and (iv) the Secured Obligations shall not have become immediately due and payable, upon the written request of any Grantor, the Secured Party shall promptly execute and deliver to such Grantor such assignments as may be necessary to reassign to such Grantor any such rights, title and interests as may have been assigned to the Secured Party as aforesaid, subject to any disposition thereof that may have been made by the Secured Party; *provided* that after giving effect to such reassignment, the Secured Party's security interest granted pursuant hereto, as well as all other rights and remedies of the Secured Party granted hereunder, shall continue to be in full force and effect; and *provided*, *further*, that the rights, title and interests so reassigned shall be free and clear of all Encumbrances other than Encumbrances (if any) encumbering such rights, title and interest immediately prior to their assignment to the Secured Party.

SECTION 17. Application of Proceeds.

Except as expressly provided elsewhere in this Agreement, all proceeds received by the Secured Party in respect of any sale of, collection from, or other realization upon all or any part of the Collateral shall be applied as follows:

First, to payment of that portion of the Secured Obligations constituting fees, indemnities, expenses and other amounts, including attorney fees, payable to the Secured Party;

Second, to payment of the remaining Secured Obligations then owing under the Asset Purchase Agreement and the other Transactional Agreements; and

Last, the balance, if any, after all of the Secured Obligations have been indefeasibly paid in full, to the Grantors or as otherwise required by applicable Legal Requirements.

SECTION 18. Indemnity and Expenses.

(a) Grantors jointly and severally agree to indemnify the Secured Party from and against any and all claims, losses and liabilities in any way relating to, growing out of or resulting from this Agreement and the transactions contemplated hereby (including, without limitation, enforcement of this Agreement); *provided* that such indemnity shall not, as to the Secured Party, be available to the extent that such claims, losses and liabilities are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence, bad faith or willful misconduct of the Secured Party.

(b) The obligations of Grantors in this Section 18 shall survive the termination of this Agreement and the discharge of Grantors' other obligations under this Agreement, the Asset Purchase Agreement and the other Transactional Agreements.

SECTION 19. Continuing Security Interest; Termination and Release; Reinstatement.

(a) This Agreement shall create a continuing security interest in the Collateral and shall (i) remain in full force and effect until the payment in full of the Secured Obligations (other than contingent indemnification obligations not then due), (ii) be binding upon Grantors and their respective successors and assigns, and (iii) inure, together with the rights and remedies of the Secured Party hereunder, to the benefit of the Secured Party and its successors, transferees and assigns.

(b) Upon the earlier of (a) the date on which the Cash Purchase Price (as defined in the Asset Purchase Agreement) is paid in full in cash, and (b) the date on which the Secured Party receives evidence satisfactory to the Secured Party that ReShape has completed a Qualified Financing, the security interest granted hereby shall terminate and all rights to the Collateral shall revert to the applicable Grantors (such event, the "Discharge of the Secured Obligations"). Upon any such termination, the Secured Party will, at Grantors' expense, execute and deliver to Grantors such documents as Grantors shall reasonably request to evidence such termination.

(c) Notwithstanding Sections 19(a) and (b) herein, this Agreement shall continue in full force and effect or be revived, as the case may be, if any payment by or on behalf of any Grantor is made, or the Secured Party exercises its right of setoff, in respect of the Secured Obligations and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by the Secured Party in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Laws or otherwise, all as if such payment had not been made or such setoff had not occurred and whether or not the Secured Party or such Secured Party is in possession of or has released this Agreement and regardless of any prior revocation, rescission, termination or reduction. The obligations of each Grantor under this Section 19(c) shall survive termination of this Agreement.

(d) Notwithstanding anything to the contrary in this Agreement, any Permitted Disposition of Collateral to a party other than a Grantor or an Affiliate shall be free and clear of the security interest granted hereby, which shall thereupon be released and terminated, and upon request by Grantors the Secured Party will, at Grantors' expense, execute and deliver to Grantors such documents as Grantors reasonably request to evidence such release and termination; *provided* that the security interest granted hereunder shall attach to and continue on any and all proceeds received by any Grantor in connection with such Permitted Disposition.

SECTION 20. [Reserved].

SECTION 21. Additional Grantors.

(a) The initial Grantors hereunder shall be ReShape and such of the Subsidiaries of ReShape as are signatories hereto on the date hereof. From time to time subsequent to the date hereof, additional Subsidiaries of ReShape may become Additional Grantors, by executing a Counterpart. Upon delivery of any such Counterpart to the Secured Party, notice of which is hereby waived by Grantors, each such Additional Grantor shall be a Grantor and shall be as fully a party hereto as if such Additional Grantor were an original signatory hereto. Each Grantor expressly agrees that its obligations arising hereunder shall not be affected or diminished by the addition or release of any other Grantor hereunder, nor by any election of the Secured Party not to cause any Subsidiary of ReShape to become an Additional Grantor hereunder. This Agreement shall be fully effective as to any Grantor that is or becomes a party hereto regardless of whether any other Person becomes or fails to become or ceases to be a Grantor hereunder.

(b) Promptly after the creation or acquisition of any Subsidiary (and, in any event, within forty-five (45) days after such creation, acquisition, or cessation, as such time period may be extended by the Secured Party in its sole discretion), cause: (i) such Subsidiary to become a Subsidiary Guarantor (as defined in the Subsidiary Guaranty Agreement) by delivering to the Secured Party a duly executed supplement to the Subsidiary Guaranty Agreement or such other document as the Secured Party shall deem appropriate for such purpose; (ii) such person to grant a security interest in all Collateral (subject to the exceptions specified in this Agreement) owned by such Subsidiary by delivering to the Secured Party a duly executed supplement to each applicable Security Document or such other document as the Secured Party shall deem

appropriate for such purpose and comply with the terms of each applicable Security Document; (iii) to be delivered to the Secured Party such opinions, documents, and certificates consistent with those delivered in connection with the original execution and delivery of this Agreement, as may be reasonably requested by the Secured Party; (iv) to be delivered to the Secured Party original certificated Equity Interests constituting Collateral or other certificates and stock or other transfer powers evidencing the Equity Interests constituting Collateral of such Person (to the extent such Equity Interests are certificated); (v) to be delivered to the Secured Party such updated Schedules to the Transactional Agreements as requested by the Secured Party with respect to such Person; and (vi) to be delivered to the Secured Party such other documents as may be reasonably requested by the Secured Party in furtherance of the purposes of this Agreement, all in form, content and scope reasonably satisfactory to the Secured Party.

SECTION 22. Amendments; Etc.

No amendment, modification, termination or waiver of any provision of this Agreement, and no consent to any departure by any Grantor therefrom, shall in any event be effective unless the same shall be in writing and signed by the Secured Party and, in the case of any such amendment or modification, by Grantors; *provided* that this Agreement may be modified by the execution of a Counterpart by an Additional Grantor in accordance with Section 21 hereof and Grantors hereby waive any requirement of notice of or consent to any such amendment. Any such waiver or consent shall be effective only in the specific instance and for the specific purpose for which it was given.

SECTION 23. Notices.

Any notice or other communication herein required or permitted to be given shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail, sent by facsimile or e-mail. Notices sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices sent by facsimile or e-mail shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next business day for the recipient). For the purposes hereof, the address of each party hereto shall be as provided in Section 11.4 of the Asset Purchase Agreement or as set forth under such party's name on the signature pages hereof or such other address as shall be designated by such party in a written notice delivered to the other parties hereto.

SECTION 24. Failure or Indulgence Not Waiver; Remedies Cumulative.

No failure or delay on the part of the Secured Party in the exercise of any power, right or privilege hereunder shall impair such power, right or privilege or be construed to be a waiver of any default or acquiescence therein, nor shall any single or partial exercise of any such power, right or privilege preclude any other or further exercise thereof or of any other power, right or privilege. All rights and remedies existing under this Agreement are cumulative to, and not exclusive of, any rights or remedies otherwise available.

SECTION 25. Severability.

In case any provision in or obligation under this Agreement shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

SECTION 26. Headings.

Section and subsection headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose or be given any substantive effect.

SECTION 27. Governing Law; Rules of Construction.

THIS AGREEMENT AND ANY CLAIM, CONTROVERSY, DISPUTE OR CAUSE OF ACTION (WHETHER IN CONTRACT OR TORT OR OTHERWISE) BASED UPON, ARISING OUT OF OR RELATING TO THIS AGREEMENT AND THE TRANSACTIONS CONTEMPLATED HEREBY SHALL BE GOVERNED BY, AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK (INCLUDING WITHOUT LIMITATION SECTION 5-1401 OF THE GENERAL OBLIGATIONS LAW OF THE STATE OF NEW YORK), EXCEPT TO THE EXTENT THAT THE UCC PROVIDES THAT THE PERFECTION OF THE SECURITY INTEREST HEREUNDER, OR REMEDIES HEREUNDER, IN RESPECT OF ANY PARTICULAR COLLATERAL ARE GOVERNED BY THE LAW OF A JURISDICTION OTHER THAN THE STATE OF NEW YORK, IN WHICH CASE THE LAWS OF SUCH JURISDICTION SHALL GOVERN WITH RESPECT TO THE PERFECTION OF THE SECURITY INTEREST IN, OR THE REMEDIES WITH RESPECT TO, SUCH PARTICULAR COLLATERAL.

With reference to this Agreement, unless otherwise specified herein: (a) the definitions of terms herein shall apply equally to the singular and plural forms of the terms defined, (b) whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms, (c) the words “include”, “includes” and “including” shall be deemed to be followed by the phrase “without limitation”, (d) the word “will” shall be construed to have the same meaning and effect as the word “shall”, (e) any reference herein to any Person shall be construed to include such Person’s successors and assigns, (f) the words “herein”, “hereof” and “hereunder”, and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (g) all references herein to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, this Agreement, (h) the words “asset” and “property” shall be construed to have 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, (i) the term “documents” includes any and all instruments, documents, agreements, certificates, notices, reports, financial statements and other writings, however evidenced, whether in physical or electronic form and (j) 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”.

SECTION 28. Submission to Jurisdiction; Waiver of Venue; Service of Process.

(a) **SUBMISSION TO JURISDICTION.** EACH GRANTOR IRREVOCABLY AND UNCONDITIONALLY AGREES THAT IT WILL NOT COMMENCE ANY ACTION, LITIGATION OR PROCEEDING OF ANY KIND OR DESCRIPTION, WHETHER IN LAW OR EQUITY, WHETHER IN CONTRACT OR IN TORT OR OTHERWISE, AGAINST THE SECURED PARTY OR ANY RELATED PARTY OF THE FOREGOING IN ANY WAY RELATING TO THIS AGREEMENT, THE SUBSIDIARY GUARANTY AGREEMENT OR ANY OTHER SECURITY DOCUMENT OR THE TRANSACTIONS RELATING HERETO OR THERETO, IN ANY FORUM OTHER THAN THE COURTS OF THE STATE OF NEW YORK SITTING IN NEW YORK COUNTY, AND OF THE UNITED STATES DISTRICT COURT OF THE SOUTHERN DISTRICT OF NEW YORK, AND ANY APPELLATE COURT FROM ANY THEREOF, AND EACH GRANTOR IRREVOCABLY AND UNCONDITIONALLY SUBMITS TO THE JURISDICTION OF SUCH COURTS AND AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION, LITIGATION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH NEW YORK STATE COURT OR, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LEGAL REQUIREMENTS, IN SUCH FEDERAL COURT. EACH GRANTOR AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION, LITIGATION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS AGREEMENT, THE SUBSIDIARY GUARANTY AGREEMENT OR IN ANY OTHER SECURITY DOCUMENT SHALL AFFECT ANY RIGHT THAT THE SECURED PARTY MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT, THE SUBSIDIARY GUARANTY AGREEMENT OR ANY OTHER SECURITY DOCUMENT AGAINST ANY GRANTOR OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.

(b) **Waiver of Venue.** Each Grantor irrevocably and unconditionally waives, to the fullest extent permitted by applicable Legal Requirements, any objection that it may now or hereafter have to the laying of venue of any action or proceeding arising out of or relating to this Agreement, the Subsidiary Guaranty Agreement or any other Security in any court referred to in clause (a) of this Section 28. Each Grantor hereto hereby irrevocably waives, to the fullest extent permitted by applicable Legal Requirements, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(c) **Service of Process.** Each Grantor irrevocably consents to service of process in the manner provided for notices in Section 11.4 of the Asset Purchase Agreement. Nothing in this Agreement will affect the right of any party hereto to serve process in any other manner permitted by applicable Legal Requirements.

SECTION 29. Waiver of Jury Trial.

EACH GRANTOR AND THE SECURED PARTY HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LEGAL REQUIREMENTS, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE SUBSIDIARY GUARANTY AGREEMENT OR ANY OTHER SECURITY DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). IF AND TO THE EXTENT THAT THE FOREGOING WAIVER OF THE RIGHT TO A JURY TRIAL IS UNENFORCEABLE FOR ANY REASON IN SUCH FORUM, EACH OF THE PARTIES HERETO HEREBY CONSENTS TO THE ADJUDICATION OF ALL CLAIMS PURSUANT TO JUDICIAL REFERENCE AS PROVIDED IN CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 638, AND THE JUDICIAL REFEREE SHALL BE EMPOWERED TO HEAR AND DETERMINE ALL ISSUES IN SUCH REFERENCE, WHETHER FACT OR LAW. EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND CONSENT AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT, THE SUBSIDIARY GUARANTY AGREEMENT AND ANY OTHER SECURITY DOCUMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

SECTION 30. Counterparts.

This Agreement may be executed in one or more counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute but one and the same instrument; signature pages may be detached from multiple separate counterparts and attached to a single counterpart so that all signature pages are physically attached to the same document.

SECTION 31. Definitions.

(a) Each capitalized term utilized in this Agreement that is not defined in the Asset Purchase Agreement or in this Agreement, but that is defined in the UCC, including the categories of Collateral listed in Section 1 hereof, shall have the meaning set forth in Articles 1, 8 or 9 of the UCC.

(b) All accounting terms not specifically or completely defined herein shall be construed in conformity with, and all financial data (including financial ratios and other financial calculations) required to be submitted pursuant to this Agreement shall be prepared in conformity with GAAP, applied on a consistent basis, as in effect from time to time and in a manner consistent with that used in preparing the audited financial statements of ReShape.

(c) In addition, the following terms used in this Agreement shall have the following meanings:

"Actual Use Application" means a federal application to register any Trademark in the United States on an actual use basis under Section 1(a) of the federal Lanham Act (Section 15 U.S.C. §1051).

"Additional Grantor" means a Subsidiary of ReShape that becomes a party hereto after the date hereof as an additional Grantor by executing a Counterpart.

"Asset Purchase Agreement" has the meaning assigned to such term in the Preliminary Statements of this Agreement.

"Business Day" means any day other than a Saturday, Sunday or legal holiday on which banks in New York, New York, are open for the conduct of their commercial banking business.

"Code" means the United States Internal Revenue Code of 1986, as amended, and the rules and regulations promulgated thereunder.

"Collateral" has the meaning set forth in Section 1 hereof.

"Control" means: (a) with respect to Investment Property constituting Certificated Securities, Uncertificated Securities, Securities Accounts, Securities Entitlements or Commodity Accounts, "control" within the meanings of Sections 8-106 and 9-106 of the UCC; (b) with respect to Deposit Accounts, "control" within the meaning of Section 9-104 of the UCC; (c) with respect to Letter of Credit Rights, "control" within the meaning of Section 9-107 of the UCC; and (d) with respect to Electronic Chattel Paper, "control" within the meaning of Section 9-105 of the UCC).

"Copyright Registrations" means all copyright registrations issued to any Grantor and applications for copyright registration that have been or may hereafter be issued or applied for thereon in the United States and any state thereof and in foreign countries (including, without limitation, the registrations set forth on Schedule 10 annexed hereto, as the same may be amended pursuant hereto from time to time).

"Copyright Rights" means all common law and other rights in and to the Copyrights in the United States and any state thereof and in foreign countries including all copyright licenses (but with respect to such copyright licenses, only to the extent permitted by such licensing arrangements), the right (but not the obligation) to renew and extend Copyright Registrations and any such rights and to register works protectable by copyright and the right (but not the obligation) to sue in the name of any Grantor or in the name of the Secured Party or any other Secured Party for past, present and future infringements of the Copyrights and any such rights.

"Copyrights" means all items under copyright in various published and unpublished works of authorship including, without limitation, computer programs, computer data bases, other computer software layouts, trade dress, drawings, designs, writings, and formulas (including, without limitation, the works set forth on Schedule 10 annexed hereto, as the same may be amended pursuant hereto from time to time).

"Copyright License" means any written agreement, now or hereafter in effect, granting any right to any third party under any Copyright now owned or hereafter acquired by any Grantor or that such Grantor otherwise has the right to license, or granting any right to any Grantor under any Copyright now owned or hereafter acquired by any third party, and all rights of such Grantor under any such agreement, and including those exclusive copyright licenses under which any Grantor is a licensee listed on Schedule 10 annexed hereto.

"Counterpart" means a counterpart to this Agreement entered into by a Subsidiary of ReShape pursuant to Section 21 hereof.

"Debtor Relief Laws" means the Bankruptcy Code of the United States of America, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief Laws of the United States or other applicable jurisdictions from time to time in effect.

"Disposition" means any sale, transfer, lease, license or other disposition of any property or asset, including any Equity Interest owned by it and any sale, assignment, transfer or other disposal, with or without recourse, of any notes or accounts receivable or any rights and claims associated therewith.

"Equity Interests" means (a) in the case of a corporation, capital stock, (b) in the case of an association or business entity, any and all shares, interests, participations, rights or other equivalents (however designated) of capital stock, (c) in the case of a partnership, partnership interests (whether general or limited), (d) in the case of a limited liability company, membership interests, (e) any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of assets of, the issuing Person and (f) any and all warrants, rights or options to purchase any of the foregoing, whether any of the foregoing is classified as Investment Property or General Intangibles under the UCC.

"Event of Default" means each of the following:

(a) ReShape or any other Grantor shall default in any payment when and as due (whether at maturity, by reason of acceleration or otherwise) of any Secured Obligation and shall fail to make such payment within three (3) days.

(b) Any Grantor or any Subsidiary thereof shall default in the performance or observance of any term, covenant, condition, or agreement contained in this Agreement (other than as specifically provided for in this Section) or any other Security Document, and such default shall continue for a period of thirty (30) days after the earlier of: (i) the Secured Party's delivery of written notice thereof to ReShape; and (ii) any Grantor having obtained actual knowledge thereof.

(c) Any Grantor or any Subsidiary thereof shall: (i) commence a voluntary case under any Debtor Relief Laws; (ii) file a petition seeking to take advantage of any Debtor Relief Laws; (iii) consent to or fail to contest in a timely and appropriate manner any petition filed against it in an involuntary case under any Debtor Relief Laws; (iv) apply for or consent to, or fail to contest in a timely and appropriate manner, the appointment of, or the taking of possession

by, a receiver, custodian, trustee, or liquidator of itself or of a substantial part of its property, domestic or foreign; (v) admit in writing its inability to pay its debts as they become due; (vi) make a general assignment for the benefit of creditors; or (vii) take any corporate action for the purpose of authorizing any of the foregoing.

(d) A case or other proceeding shall be commenced against any Grantor or any Subsidiary thereof in any court of competent jurisdiction seeking: (i) relief under any Debtor Relief Laws; or (ii) the appointment of a trustee, receiver, custodian, liquidator or the like for any Credit Party or any Subsidiary thereof or for all or any substantial part of their respective assets, domestic or foreign, and such case or proceeding shall continue without dismissal or stay for a period of sixty (60) consecutive days, or an order granting the relief requested in such case or proceeding (including, but not limited to, an order for relief under such federal bankruptcy laws) shall be entered.

"Excluded Accounts" means (a) escrow accounts and trust accounts; (b) payroll accounts; (c) accounts used for payroll taxes and/or withheld income taxes; (d) accounts used for employee wage and benefit payments; (e) accounts pledged to secure letters of credit and bank guarantees; (f) custodial accounts; and (g) accounts that are swept to a zero balance on a daily basis to a Deposit Account that is subject to a Control Agreement.

"Fair Market Value" means with respect to any asset or group of assets on any date of determination, the value of the consideration obtainable in a sale of such asset at such date of determination assuming a sale by a willing seller to a willing purchaser dealing at arm's length and arranged in an orderly manner over a reasonable period of time having regard to the nature and characteristics of such asset. Except as otherwise expressly set forth herein, such value shall be determined in good faith by the Grantors.

"GAAP" means generally accepted accounting principles in the United States set forth 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 such other principles as may be approved by a significant segment of the accounting profession in the United States, that are applicable to the circumstances as of the date of determination, consistently applied.

"Governmental Authority" means the government of the United States of America, any other nation or any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank).

"Grant" means a Grant of Trademark Security Interest, substantially in the form of Exhibit I annexed hereto, and a Grant of Patent Security Interest, substantially in the form of Exhibit II annexed hereto, and a Grant of Copyright Security Interest, substantially in the form of Exhibit III annexed hereto.

"Intellectual Property Collateral" means, with respect to any Grantor all right, title and interest (including rights acquired pursuant to a license or otherwise but only to the extent permitted by agreements governing such license or other use) in and to all

(a) Copyrights, Copyright Registrations and Copyright Rights, including, without limitation, each of the Copyrights, rights, titles and interests in and to the Copyrights, all derivative works and other works protectable by copyright, which are presently, or in the future may be, owned, created (as a work for hire for the benefit of such Grantor), authored (as a work for hire for the benefit of such Grantor), or acquired by such Grantor, in whole or in part, and all Copyright Rights with respect thereto and all Copyright Registrations therefor, heretofore or hereafter granted or applied for, and all renewals and extensions thereof, throughout the world;

(b) Patents;

(c) Trademarks, Trademark Registrations, the Trademark Rights and goodwill of such Grantor's business symbolized by the Trademarks and associated therewith;

(d) all trade secrets, trade secret rights, know-how, customer lists, processes of production, ideas, confidential business information, techniques, processes, formulas, and all other proprietary information; and

(e) all proceeds thereof (such as, by way of example and not by limitation, license royalties and proceeds of infringement suits).

"Indebtedness" " means, without duplication, all obligations of any Grantor: (a) in respect of borrowed money; (b) any obligations for borrowed money secured by a mortgage, pledge, security interest, lien or charge on the assets of a Grantor, whether the obligation secured is the obligation of the owner of the asset or another Person (*provided* that non-recourse obligations will only be taken into account up to the fair market value of the related property); (c) any obligation for the deferred purchase price of any property or services evidenced by a note, payment contract (other than an account payable arising in the ordinary course of business) or other instrument, (d) any obligation as lessee under any capitalized lease; (e) all guaranties and contingent or other legal obligations in respect to Indebtedness of other Persons, excluding ordinary course endorsements; the amount of any guaranty, contingent or other legal obligation in respect of Indebtedness of other Persons included in Indebtedness shall be deemed to be an amount equal to the maximum reasonably anticipated liability in respect thereof as determined by Grantors in good faith; (f) undertakings or agreements to reimburse or indemnify issuers of letters of credit, other than commercial letters of credit, and instruments serving a similar function other than (i) letters of credit to the extent covered by cash collateral, and (ii) liabilities under surety and performance bonds for such Person's obligations incurred in the ordinary course of business; and (g) redemption obligations in respect of mandatorily redeemable preferred stock.

"Intent-To-Use Application" means a federal application to register any Trademark in the United States on an intent-to-use basis under Section 1(b) of the federal Lanham Act, 15 U.S.C. § 1051).

"Investment" means the acquisition, purchase, making or holding of any stock or other security, any loan, advance, contribution to capital, extension of credit (except for trade and customer accounts receivable for inventory sold or services rendered in the ordinary course of business and payable in accordance with customary trade terms), any acquisitions of real or personal property (other than real and personal property acquired in the ordinary course of business) and any purchase or commitment or option to purchase stock or other debt or equity securities of or any interest in another Person or any integral part of any business or the assets comprising such business or part thereof.

"IP Filing Office" means the United States Patent and Trademark Office, the United States Copyright Office or any successor or substitute office in which filings are necessary or, in the opinion of the Secured Party, desirable in order to create or perfect Encumbrances on, or evidence the interest of the Secured Party in, any Intellectual Property Collateral.

"IP Supplement" means an IP Supplement, substantially in the form of Exhibit V annexed hereto.

"Legal Requirements" shall mean, as to any Person, the organizational documents of such Person, and any treaty, law (including the common law), statute, ordinance, code, rule, regulation, guidelines, license, permit requirement, order or determination of an arbitrator or a court or other Governmental Authority, and the interpretation or administration thereof, in each case applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

"Net Proceeds" means, with respect to any event, (a) the aggregate amount of proceeds received in respect of such event, including (i) any cash or cash equivalents received in respect of any non-cash proceeds, including any cash payments received by way of deferred payment of principal pursuant to a note or installment receivable or purchase price adjustment or earn-out (but excluding any interest payments), but only as and when received, (ii) in the case of a casualty, insurance proceeds that are actually received, and (iii) in the case of a condemnation or similar event, condemnation awards and similar payments that are actually received, minus (b) the sum of (i) all fees and out-of-pocket expenses paid by the Grantors in connection with such event (including attorney's fees, investment banking fees, brokerage, consultant, accountant and other customary fees), (ii) in the case of a Disposition of an asset (including pursuant to a sale leaseback or casualty event or similar proceeding), (x) the amount of all payments that are made by the Grantors as a result of such event to repay Indebtedness secured by such asset or otherwise subject to mandatory prepayment as a result of such event, (y) the pro rata portion of net cash proceeds thereof (calculated without regard to this clause (y)) attributable to minority interests and not available for distribution to or for the account of the Grantors as a result thereof and (z) the amount of any liabilities directly associated with such asset and retained by the Grantors and (iii) the amount of all taxes paid (or reasonably estimated to be payable), and the amount of any reserves established by the Grantors to fund contingent liabilities reasonably estimated to be payable, that are directly attributable to such event; *provided* that any reduction at any time in the amount of any such reserves (other than as a result of payments made in respect thereof) shall be deemed to constitute the receipt by the Grantors at such time of Net Proceeds in the amount of such reduction.

"Patents" means all patents and patent applications and rights and interests in patents and patent applications under any domestic or foreign law that are presently, or in the future may be, owned or held by a Grantor and all patents and patent applications and rights, title and interests in patents and patent applications under any domestic or foreign law that are presently, or in the future may be, owned by such Grantor in whole or in part (including, without limitation, the patents and patent applications set forth on Schedule 9 annexed hereto), all rights (but not obligations) corresponding thereto to sue for past, present and future infringements and all re-issues, divisions, continuations, renewals, extensions and continuations-in-part thereof.

"Patent License" means any written agreement, now or hereafter in effect, granting to any third party any right to make, use or sell any invention on which a Patent, now owned or hereafter acquired by any Grantor or that any Grantor otherwise has the right to license, is in existence, or granting to any Grantor any right to make, use or sell any invention on which a Patent, now owned or hereafter acquired by any third party, is in existence, and all rights of any Grantor under any such agreement, and including those exclusive patent licenses under which any Grantor is a licensee listed on Schedule 9 annexed hereto.

"Perfection Certificate" means the Perfection Certificate, dated as of December 17, 2018, delivered by the Grantors to the Secured Party.

"Permitted Disposition" means:

(i) Dispositions of obsolete or worn out property, whether now owned or hereafter acquired, in the ordinary course of business and Dispositions of property no longer used or useful, or economically practicable to maintain, in the conduct of the business of the applicable Grantor (including allowing any registration or application for registration of any Intellectual Property that is no longer used or useful, or economically practicable to maintain, to lapse or go abandoned);

(ii) Dispositions of inventory and other assets, including payments for goods and services, in the ordinary course of business;

(iii) Dispositions of property to the extent that (a) such property is exchanged for credit against the purchase price of similar replacement property or (b) an amount equal to the Net Proceeds of such Disposition are promptly applied to the purchase price of such replacement property;

(iv) [Reserved];

(v) [Reserved];

(vi) Dispositions of cash and cash equivalents;

(vii) Dispositions of accounts receivable in connection with the collection or compromise thereof (including sales to factors or other third parties);

(viii) [Reserved];

(ix) Transfers of property subject to casualty events upon receipt of the Net Proceeds of such casualty event;

(x) [Reserved];

(xi) Dispositions of any assets (including Equity Interests) (i) acquired in connection with any acquisition or other Investment, which assets are not used or useful to the core or principal business of the Grantors and (ii) made to obtain the approval of any applicable antitrust authority in connection with any acquisition or other Investment;

(xii) transfers of condemned property as a result of the exercise of "eminent domain" or other similar powers to the respective Governmental Authority or agency that has condemned the same (whether by deed in lieu of condemnation or otherwise), and transfers of property arising from foreclosure or similar action or that have been subject to a casualty to the respective insurer of such real property as part of an insurance settlement;

(xiii) Dispositions of property for Fair Market Value so long as the Net Proceeds of such Dispositions are applied to repay the Secured Obligations to the extent not otherwise applied to the operations of or invested in the business of any Grantors; and

(xiv) Dispositions of property for Fair Market Value not otherwise permitted above, so long as the aggregate amount of Net Proceeds for all property subject to such Dispositions does not exceed $100,000.

"Permitted Encumbrance" means any Encumbrances permitted under the Asset Purchase Agreement and:

(i) any Encumbrances created under this Agreement;

(ii) [Reserved];

(iii) [Reserved];

(iv) [Reserved];

(vi) Encumbrances granted by a Grantor in favor of any other Grantor;

(vii) [Reserved];

(viii) any interest or title of a lessor under leases (other than leases constituting capitalized lease) entered into by any of the Grantors in the ordinary course of business;

(ix) [Reserved];

(x) Encumbrances encumbering reasonable customary initial deposits and margin deposits and similar Encumbrances attaching to commodity trading accounts or

other brokerage accounts incurred in the ordinary course of business and not for speculative purposes;

(xi) Encumbrances that are contractual rights of setoff relating to the establishment of depository relations with banks not given in connection with the incurrence of Indebtedness;

(xii) [Reserved].

(xiii) [Reserved];

(xiv) [Reserved];

(xv) receipt of progress payments and advances from customers in the ordinary course of business to the extent the same creates an Encumbrance on the related inventory and proceeds thereof;

(xvi) Encumbrances for taxes or other governmental charges that are not overdue for a period of more than thirty (30) days or that are being contested in good faith and by appropriate proceedings diligently conducted, if adequate reserves with respect thereto are maintained on the books of the applicable Person in accordance with GAAP;

(xvii) Encumbrances imposed by law, such as carriers', warehousemen's, mechanics', materialmen's, repairmen's or construction contractors' Encumbrances and other similar Encumbrances arising in the ordinary course of business that secure amounts not overdue for a period of more than thirty (30) days or, if more than thirty (30) days overdue, are unfiled and no other action has been taken to enforce such Encumbrances or that are being contested in good faith and by appropriate proceedings diligently conducted, if adequate reserves with respect thereto are maintained on the books of the applicable Person in accordance with GAAP, in each case so long as such Encumbrances do not individually or in the aggregate have a material adverse effect on the Grantors;

(xviii) Encumbrances incurred or deposits made in the ordinary course of business (a) in connection with workers' compensation, unemployment insurance and other social security legislation and (b) securing liability for reimbursement or indemnification obligations of (including obligations in respect of letters of credit or bank guarantees or similar instruments for the benefit of) insurance carriers providing property, casualty or liability insurance to the Grantors or otherwise supporting the payment of items set forth in the foregoing clause (a);

(xix) Encumbrances incurred or deposits made to secure the performance of bids, trade contracts, governmental contracts and leases, statutory obligations, surety, stay, customs and appeal bonds, performance bonds, bankers acceptance facilities and other obligations of a like nature (including those to secure health, safety and environmental obligations) and obligations in respect of letters of credit, bank guarantees

or similar instruments that have been posted to support the same, incurred in the ordinary course of business or consistent with past practices;

(xx) Easements, rights-of-way, restrictions, encroachments, protrusions, zoning restrictions and other similar encumbrances and minor title defects affecting real property that, in the aggregate, do not in any case materially interfere with the ordinary conduct of the business of Grantors, taken as a whole; and

(xxi) Encumbrances on goods the purchase price of which is financed by a documentary letter of credit issued for the account of any Grantor or Encumbrances on bills of lading, drafts or other documents of title arising by operation of law or pursuant to the standard terms of agreements relating to letters of credit, bank guarantees and other similar instruments; *provided* that such Encumbrance secures only the obligations of the such Grantor in respect of such letter of credit to the extent such obligations are otherwise allowed to be secured by a Permitted Encumbrance.

"Person" shall mean any natural person, corporation, business trust, joint venture, trust, association, company (whether limited in liability or otherwise), partnership (whether limited in liability or otherwise) or Governmental Authority, or any other entity, in any case, whether acting in a personal, fiduciary or other capacity.

"Pledged Debt" means the Indebtedness from time to time owed to a Grantor, including the Indebtedness set forth on Schedule 7 annexed hereto and issued by the obligors named therein, the Instruments and certificates evidencing such Indebtedness and all interest, cash or other property received, receivable or otherwise distributed in respect of or exchanged therefor.

"Pledged Equity" means all Equity Interests now or hereafter owned by a Grantor, including all securities convertible into, and rights, warrants, options and other rights to purchase or otherwise acquire, any of the foregoing, including those owned on the date hereof and set forth on Schedule 6 annexed hereto, the certificates or other instruments representing any of the foregoing and any interest of such Grantor in the entries on the books of any securities intermediary pertaining thereto and all distributions, dividends and other property received, receivable or otherwise distributed in respect of or exchanged therefor; *provided*, *however* that Pledged Equity shall not include the Excluded Collateral.

"Pledged Subsidiary Debt" means Pledged Debt owed to a Grantor by any obligor that is, or becomes, a direct or indirect Subsidiary of such Grantor, of which such Grantor is a direct or indirect Subsidiary or that controls, is controlled by or under common control with such Grantor.

"Pledged Subsidiary Equity" means Pledged Equity in a Person that is, or becomes a direct Subsidiary of a Grantor.

"Pledge Supplement" means a Pledge Supplement, in substantially the form of Exhibit IV annexed hereto, in respect of the additional Pledged Equity or Pledged Debt pledged pursuant to this Agreement.

"Qualified Financing" shall mean, at any time after the date hereof, any arm's length bona fide equity financing involving the issuance or sale of capital stock of ReShape in which

ReShape receives aggregate gross cash proceeds of at least $15,000,000 from one or more third-party investors.

"Secured Obligations" means obligations under the Asset Purchase Agreement and any other Transactional Agreement, including, but not limited to any purchase price payment obligations, obligations to pay any indemnity obligations and any amounts owed, in each case, under the Asset Purchase Agreement or any other Transactional Agreement.

"Securities Act" means the Securities Act of 1933, as amended from time to time, and any successor statute.

"Securities Collateral" means, with respect to any Grantor, the Pledged Equity, the Pledged Debt and any other Investment Property in which such Grantor has an interest.

"Security Document" means this Agreement, the Subsidiary Guaranty Agreement, any Grant of Trademark Security Agreement, any Grant of Copyright Security Agreement, any Grant of Patent Security Agreement, each other agreement or writing pursuant to which any Grantor pledges, grants or perfects or purports to pledge, grant or perfect, a security interest in any Property or assets securing the Secured Obligations and each other document, instrument, certificates and agreement executed and delivered by any Grantor in connection with this Agreement.

"Subsidiary" means as to any Person, any corporation, partnership, limited liability company or other entity of which more than fifty percent (50%) of the outstanding Equity Interests having ordinary voting power to elect a majority of the board of directors (or equivalent governing body) or other managers of such corporation, partnership, limited liability company or other entity is at the time owned by (directly or indirectly) or the management is otherwise controlled by (directly or indirectly) such Person (irrespective of whether, at the time, Equity Interests of any other class or classes of such corporation, partnership, limited liability company or other entity shall have or might have voting power by reason of the happening of any contingency). Unless otherwise qualified, references to "Subsidiary" or "Subsidiaries" herein shall refer to those of ReShape.

"Subsidiary Guaranty Agreement" means that certain Subsidiary Guaranty Agreement, dated as of the date hereof, as amended, amended and restated, supplemented or otherwise modified from time to time.

"Trademark License" means any written agreement, now or hereafter in effect, granting to any third party any right to use any trademark now or hereafter owned by any Grantor or that any Grantor otherwise has the right to license, or granting to any Grantor any right to use any trademark now or hereafter owned by any third party, and all rights of any Grantor under any such agreement, and including those exclusive trademark licenses under which any Grantor is a licensee listed on Schedule 8 annexed hereto.

"Trademark Registrations" means all registrations that have been or may hereafter be issued or applied for thereon in the United States and any state thereof and in foreign countries

(including, without limitation, the registrations and applications set forth on Schedule 8 annexed hereto).

"Trademark Rights" means all common law and other rights (but in no event any of the obligations) in and to the Trademarks in the United States and any state thereof and in foreign countries.

"Trademarks" means all trademarks, service marks, designs, logos, indicia, tradenames, trade dress, corporate names, company names, business names, fictitious business names, trade styles and/or other source and/or business identifiers and applications pertaining thereto, owned by a Grantor, or hereafter adopted and used, in its business (including, without limitation, the trademarks specifically set forth on Schedule 8 annexed hereto).

"Transactional Agreements" means the Transactional Agreements (as defined in the Purchase Agreement) and the Security Documents.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, Grantors and the Secured Party have caused this Agreement to be duly executed and delivered by their respective officers thereunto duly authorized as of the date first written above.

GRANTORS:

ReShape Lifesciences Inc., a Delaware corporation

By: /s/ Dan W. Gladney
Name: Dan W. Gladney
Title: President and Chief Executive Officer

ReShape Medical LLC, a Delaware corporation

By: /s/ Dan W. Gladney
Name: Dan W. Gladney
Title: President and Chief Executive Officer

EnteroMedics Europe Sarl, a company organized under the laws of Switzerland

By: /s/ Dan W. Gladney
Name: Dan W. Gladney
Title: Authorized Person

SECURED PARTY:

Apollo Endosurgery, Inc., a Delaware corporation

By: /s/ Todd Newton
Name: Todd Newton
Title: Chief Executive Officer

[FORM OF GRANT OF TRADEMARK SECURITY INTEREST]

GRANT OF TRADEMARK SECURITY INTEREST

WHEREAS, [NAME OF GRANTOR], a corporation ("Grantor"), owns and uses in its business, and will in the future adopt and so use, various intangible assets, including the Trademark Collateral (as defined below); and

WHEREAS, ReShape Lifesciences Inc., a Delaware corporation (the "ReShape"), has entered into an Asset Purchase Agreement (as it may hereafter be amended, restated, extended, supplemented or otherwise modified from time to time, being the "Asset Purchase Agreement"; the terms defined therein and not otherwise defined in herein being used herein as therein defined), pursuant to which Secured Party shall provide for the sale of the Apollo Lap-Band Assets (as defined therein) for certain consideration; and

[Insert if Grantor is a Subsidiary] [**WHEREAS**, Grantor has executed and delivered that certain Subsidiary Guaranty Agreement dated as of December 17, 2018 (said Subsidiary Guaranty Agreement, as it may heretofore have been and as it may hereafter be further amended, restated, supplemented or otherwise modified from time to time, being the "Guaranty") in favor of the Secured Party, pursuant to which Grantor has guaranteed the prompt payment and performance when due of all obligations of ReShape under the Asset Purchase Agreement and the other Transactional Agreement; and]

WHEREAS, pursuant to the terms of a Security Agreement dated as of December 17, 2018 (said Security Agreement, as it may heretofore have been and as it may hereafter be further amended, restated, supplemented or otherwise modified from time to time, being the "Security Agreement"), among Grantor, the Secured Party and the other grantors named therein, Grantor has created in favor of the Secured Party a security interest in, and the Secured Party has become a secured creditor with respect to, the Trademark Collateral;

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, subject to the terms and conditions of the Security Agreement, to evidence further the security interest granted by Grantor to the Secured Party pursuant to the Security Agreement, Grantor hereby grants to the Secured Party a security interest in all of Grantor's right, title and interest in and to the following, in each case whether now or hereafter existing or in which Grantor now has or hereafter acquires an interest and wherever the same may be located (the "Trademark Collateral"):

(i) all rights, title and interest (including rights acquired pursuant to a license or otherwise) in and to all trademarks, service marks, designs, logos, indicia, tradenames, trade dress, corporate names, company names, business names, fictitious business names, trade styles and/or other source and/or business identifiers and

applications pertaining thereto, owned by such Grantor, or hereafter adopted and used, in its business (including, without limitation, the trademarks set forth on Schedule A annexed hereto) (collectively, the "Trademarks"), all registrations that have been or may hereafter be issued or applied for thereon in the United States and any state thereof and in foreign countries (including, without limitation, the registrations and applications set forth on Schedule A annexed hereto), all common law and other rights (but in no event any of the obligations) in and to the Trademarks in the United States and any state thereof and in foreign countries, and all goodwill of such Grantor's business symbolized by the Trademarks and associated therewith; and

(ii) all proceeds, products, rents and profits of or from any and all of the foregoing Trademark Collateral and, to the extent not otherwise included, all payments under insurance (whether or not the Secured Party is the loss payee thereof), or any indemnity, warranty or guaranty, payable by reason of loss or damage to or otherwise with respect to any of the foregoing Trademark Collateral. For purposes of this Grant of Trademark Security Interest, the term "proceeds" includes whatever is receivable or received when Trademark Collateral or proceeds are sold, licensed, exchanged, collected or otherwise disposed of, whether such disposition is voluntary or involuntary.

Notwithstanding the foregoing, Trademark Collateral shall not include any Intent-to-Use Application to the extent that, and solely during the period in which, the grant of a security interest therein would impair the registrability, validity or enforcement of such application under applicable federal law (the "Excluded Trademark Collateral"); *provided* that at the time any such Intent-to-Use Application matures into an Actual Use Application by the applicable Grantor's receipt of written notification from the IP Filing Office of its acceptance of either an "Amendment to Allege Use" or "Statement Of Use," the Collateral shall include, and such Grantor shall be deemed to have granted a security interest in, such Actual Use Application; *provided*, *however*, that "Excluded Trademark Collateral" shall not include any Proceeds, products, substitutions or replacements of any Excluded Trademark Collateral (unless such Proceeds, products, substitutions or replacements would themselves constitute Excluded Trademark Collateral under this paragraph).

Grantor does hereby further acknowledge and affirm that the rights and remedies of the Secured Party with respect to the security interest in the Trademark Collateral granted hereby are more fully set forth in the Security Agreement, the terms and provisions of which are incorporated by reference herein as if fully set forth herein.

[The remainder of this page is intentionally left blank.]

IN WITNESS WHEREOF, Grantor has caused this Grant of Trademark Security Interest to be duly executed and delivered by its officer thereunto duly authorized as of the day of , .

[NAME OF GRANTOR]

By: _____
Name: _____
Title: _____

SCHEDULE A
TO
GRANT OF TRADEMARK SECURITY INTEREST

Owner	Trademark Description	Registration/ Appl. Number	Registration/ Appl. Date

[FORM OF GRANT OF PATENT SECURITY INTEREST]

GRANT OF PATENT SECURITY INTEREST

WHEREAS, **[NAME OF GRANTOR]**, a corporation (**"Grantor"**), owns and uses in its business, and will in the future adopt and so use, various intangible assets, including the Patent Collateral (as defined below); and

WHEREAS, ReShape Lifesciences Inc., a Delaware corporation (the "ReShape"), has entered into an Asset Purchase Agreement (as it may hereafter be amended, restated, extended, supplemented or otherwise modified from time to time, being the "Asset Purchase Agreement"; the terms defined therein and not otherwise defined in herein being used herein as therein defined), pursuant to which Secured Party shall provide for the sale of the Apollo Lap-Band Assets (as defined therein) for certain consideration; and

[Insert if Grantor is a Subsidiary] [**WHEREAS**, Grantor has executed and delivered that certain Subsidiary Guaranty Agreement dated as of December 17, 2018 (said Subsidiary Guaranty Agreement, as it may heretofore have been and as it may hereafter be further amended, restated, supplemented or otherwise modified from time to time, being the "Guaranty") in favor of the Secured Party, pursuant to which Grantor has guaranteed the prompt payment and performance when due of all obligations of ReShape under the Asset Purchase Agreement and the other Transactional Agreements; and]

WHEREAS, pursuant to the terms of a Security Agreement dated as of December 17, 2018 (said Security Agreement, as it may heretofore have been and as it may hereafter be further amended, restated, supplemented or otherwise modified from time to time, being the "Security Agreement"), among Grantor, the Secured Party and the other grantors named therein, Grantor created in favor of the Secured Party a security interest in, and the Secured Party has become a secured creditor with respect to, the Patent Collateral;

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, subject to the terms and conditions of the Security Agreement, to evidence further the security interest granted by Grantor to the Secured Party pursuant to the Security Agreement, Grantor hereby grants to the Secured Party a security interest in all of Grantor's right, title and interest in and to the following, in each case whether now or hereafter existing or in which Grantor now has or hereafter acquires an interest and wherever the same may be located (the "Patent Collateral"):

(i) all rights, title and interest (including rights acquired pursuant to a license or otherwise) in and to all patents and patent applications and rights and interests in patents and patent applications under any domestic or foreign law that are presently, or in the future may be, owned or held by such Grantor and all patents and patent applications and rights, title and interests in patents and patent applications under any domestic or foreign law that are presently, or in the future may be, owned by such Grantor in whole

or in part (including, without limitation, the patents and patent applications set forth on Schedule A annexed hereto), all rights (but not obligations) corresponding thereto to sue for past, present and future infringements and all re-issues, divisions, continuations, renewals, extensions and continuations-in-part thereof; and

(ii) all proceeds, products, rents and profits of or from any and all of the foregoing Patent Collateral and, to the extent not otherwise included, all payments under insurance (whether or not the Secured Party is the loss payee thereof), or any indemnity, warranty or guaranty, payable by reason of loss or damage to or otherwise with respect to any of the foregoing Patent Collateral. For purposes of this Grant of Patent Security Interest, the term "proceeds" includes whatever is receivable or received when Patent Collateral or proceeds are sold, licensed, exchanged, collected or otherwise disposed of, whether such disposition is voluntary or involuntary.

Grantor does hereby further acknowledge and affirm that the rights and remedies of the Secured Party with respect to the security interest in the Patent Collateral granted hereby are more fully set forth in the Security Agreement, the terms and provisions of which are incorporated by reference herein as if fully set forth herein.

[The remainder of this page intentionally left blank.]

IN WITNESS WHEREOF, Grantor has caused this Grant of Patent Security Interest to be duly executed and delivered by its officer thereunto duly authorized as of the day of , .

[NAME OF GRANTOR]

By: _____
Name: _____
Title: _____

SCHEDULE A
TO
GRANT OF PATENT SECURITY INTEREST

Patents Issued:

Patent No.	Issue Date	Invention	Inventor(s)

Patents Pending:

Applicant's Name	Date Filed	Application Number	Invention	Inventor(s)

[FORM OF GRANT OF COPYRIGHT SECURITY INTEREST]

GRANT OF COPYRIGHT SECURITY INTEREST

WHEREAS, [NAME OF GRANTOR], a corporation (**"Grantor"**), owns and uses in its business, and will in the future adopt and so use, various intangible assets, including the Copyright Collateral (as defined below); and

WHEREAS, ReShape Lifesciences Inc., a Delaware corporation (the "ReShape"), has entered into an Asset Purchase Agreement (as it may hereafter be amended, restated, extended, supplemented or otherwise modified from time to time, being the "Asset Purchase Agreement"; the terms defined therein and not otherwise defined in herein being used herein as therein defined), pursuant to which Secured Party shall provide for the sale of the Apollo Lap-Band Assets (as defined therein) for certain consideration; and

[Insert if Grantor is a Subsidiary] [**WHEREAS**, Grantor has executed and delivered that certain Subsidiary Guaranty Agreement dated as of December 17, 2018 (said Subsidiary Guaranty Agreement, as it may heretofore have been and as it may hereafter be further amended, restated, supplemented or otherwise modified from time to time, being the "Guaranty") in favor of the Secured Party, pursuant to which Grantor has guaranteed the prompt payment and performance when due of all obligations of ReShape under the Asset Purchase Agreement and the other Transactional Agreements; and]

WHEREAS, pursuant to the terms of a Security Agreement dated as of December 17, 2018 (said Security Agreement, as it may heretofore have been and as it may hereafter be further amended, restated, supplemented or otherwise modified from time to time, being the "Security Agreement"), among Grantor, the Secured Party and the other grantors named therein, Grantor created in favor of the Secured Party a security interest in, and the Secured Party has become a secured creditor with respect to, the Copyright Collateral;

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, subject to the terms and conditions of the Security Agreement, to evidence further the security interest granted by Grantor to the Secured Party pursuant to the Security Agreement, Grantor hereby grants to the Secured Party a security interest in all of Grantor's right, title and interest in and to the following, in each case whether now or hereafter existing or in which Grantor now has or hereafter acquires an interest and wherever the same may be located (the "Copyright Collateral"):

(i) all rights, title and interest (including rights acquired pursuant to a license or otherwise) under copyright in various published and unpublished works of authorship including, without limitation, computer programs, computer data bases, other computer software layouts, trade dress, drawings, designs, writings, and formulas (including, without limitation, the works set forth on Schedule A annexed hereto, as the same may be amended pursuant hereto from time to time) (collectively, the "Copyrights"), all

copyright registrations issued to Grantor and applications for copyright registration that have been or may hereafter be issued or applied for thereon in the United States and any state thereof and in foreign countries (including, without limitation, the registrations set forth on Schedule A annexed hereto, as the same may be amended pursuant hereto from time to time) (collectively, the "Copyright Registrations"), all common law and other rights in and to the Copyrights in the United States and any state thereof and in foreign countries including all copyright licenses (but with respect to such copyright licenses, only to the extent permitted by such licensing arrangements) (the "Copyright Rights"), including, without limitation, each of the Copyrights, rights, titles and interests in and to the Copyrights, all derivative works and other works protectable by copyright, which are presently, or in the future may be, owned, created (as a work for hire for the benefit of Grantor), authored (as a work for hire for the benefit of Grantor), or acquired by Grantor, in whole or in part, and all Copyright Rights with respect thereto and all Copyright Registrations therefor, heretofore or hereafter granted or applied for, and all renewals and extensions thereof, throughout the world, including all proceeds thereof (such as, by way of example and not by limitation, license royalties and proceeds of infringement suits), the right (but not the obligation) to renew and extend such Copyright Registrations and Copyright Rights and to register works protectable by copyright and the right (but not the obligation) to sue in the name of such Grantor or in the name of the Secured Party or any other Secured Party for past, present and future infringements of the Copyrights and Copyright Rights; and

(ii) all proceeds, products, rents and profits of or from any and all of the foregoing Copyright Collateral and, to the extent not otherwise included, all payments under insurance (whether or not the Secured Party is the loss payee thereof), or any indemnity, warranty or guaranty, payable by reason of loss or damage to or otherwise with respect to any of the foregoing Copyright Collateral. For purposes of this Grant of Copyright Security Interest, the term "proceeds" includes whatever is receivable or received when Copyright Collateral or proceeds are sold, licensed, exchanged, collected or otherwise disposed of, whether such disposition is voluntary or involuntary.

Grantor does hereby further acknowledge and affirm that the rights and remedies of the Secured Party with respect to the security interest in the Copyright Collateral granted hereby are more fully set forth in the Security Agreement, the terms and provisions of which are incorporated by reference herein as if fully set forth herein.

IN WITNESS WHEREOF, Grantor has caused this Grant of Copyright Security Interest to be duly executed and delivered by its officer thereunto duly authorized as of the day of , .

[NAME OF GRANTOR]

By: _____
Name: _____
Title: _____

SCHEDULE A
TO
GRANT OF COPYRIGHT SECURITY INTEREST

U.S. Copyright Registrations:

Title	Registration No.	Date of Issue	Registered Owner

Foreign Copyright Registrations:

Country	Title	Registration No.	Date of Issue

Pending U.S. Copyright Registration Applications:

Title	Appl. No.	Date of Application	Copyright Claimant

Pending Foreign Copyright Registration Applications:

Country	Title	Appl. No.	Date of Application

PLEDGE SUPPLEMENT

This Pledge Supplement, dated as of , is delivered pursuant to the Security Agreement, dated as of December 17, 2018 among , a ("Grantor"), the other Grantors named therein, and [_], as Secured Party (said Security Agreement, as it may heretofore have been and as it may hereafter be further amended, restated, supplemented or otherwise modified from time to time, being the "Security Agreement"). Capitalized terms used herein not otherwise defined herein shall have the meanings ascribed thereto in the Security Agreement.

Grantor hereby agrees that the [Pledged Equity] [Pledged Debt] set forth on Schedule A annexed hereto shall be deemed to be part of the [Pledged Equity] [Pledged Debt] and shall become part of the Securities Collateral and shall secure all Secured Obligations.

IN WITNESS WHEREOF, Grantor has caused this Pledge Supplement to be duly executed and delivered by its duly authorized officer as of .

[NAME OF GRANTOR]

By: _____
Name: _____
Title: _____

SCHEDULE A
TO
PLEDGE SUPPLEMENT

Exhibit IV-A-1

IP SUPPLEMENT

This IP SUPPLEMENT, dated as of , is delivered pursuant to and supplements (i) the Security Agreement, dated as of December 17, 2018 (said Security Agreement, as it may heretofore have been and as it may hereafter be further amended, restated, supplemented or otherwise modified from time to time, being the "Security Agreement"), among , a ("Grantor"), the other Grantors named therein, and [ ], as Secured Party, and (ii) the [Grant of Trademark Security Interest] [Grant of Patent Security Interest] [Grant of Copyright Security Interest] dated as of (the "Grant") executed by Grantor. Capitalized terms used herein not otherwise defined herein shall have the meanings ascribed thereto in the Grant.

Grantor grants to the Secured Party a security interest in all of Grantor's right, title and interest in and to the [Trademark Collateral] [Patent Collateral] [Copyright Collateral] set forth on Schedule A annexed hereto. All such [Trademark Collateral] [Patent Collateral] [Copyright Collateral] shall be deemed to be part of the [Trademark Collateral] [Patent Collateral] [Copyright Collateral] and shall be hereafter subject to each of the terms and conditions of the Security Agreement and the Grant.

IN WITNESS WHEREOF, Grantor has caused this IP Supplement to be duly executed and delivered by its duly authorized officer as of .

[NAME OF GRANTOR]

By: _____
Name: _____
Title: _____

[FORM OF COUNTERPART]

COUNTERPART (this "Counterpart"), dated as of , is delivered pursuant to Section 21 of the Security Agreement referred to below. The undersigned hereby agrees that this Counterpart may be attached to the Security Agreement, dated as of December 17, 2018 (said Security Agreement, as it may heretofore have been and as it may hereafter be further amended, restated, supplemented or otherwise modified from time to time being the "Security Agreement"; capitalized terms used herein not otherwise defined herein shall have the meanings ascribed therein), among [ ], the other Grantors named therein, and Apollo Endosurgery, Inc., a Delaware corporation, as Secured Party. The undersigned by executing and delivering this Counterpart hereby becomes a Grantor under the Security Agreement in accordance with Section 21 thereof and agrees to be bound by all of the terms thereof. Without limiting the generality of the foregoing, the undersigned hereby:

(i) authorizes the Secured Party to add the information set forth on the Schedules to this Agreement to the correlative Schedules attached to the Security Agreement;(1)

(ii) agrees that all Collateral of the undersigned, including the items of property described on the Schedules hereto, shall become part of the Collateral and shall secure all Secured Obligations; and

(iii) makes the representations and warranties set forth in the Security Agreement, as amended hereby, to the extent relating to the undersigned.

[NAME OF ADDITIONAL GRANTOR]

By: _____
Name: _____
Title: _____

(1) The Schedules to the Counterpart should include copies of all Schedules that identify collateral to be granted by the Additional Grantor.

Exhibit 99.1

ReShape Lifesciences Acquires Lap-Band System in Exchange for ReShape Balloon

Transaction Brings Broadly Reimbursed Product with Meaningful Revenue to ReShape

SAN CLEMENTE, CA, December 18, 2018 — ReShape Lifesciences Inc. (NASDAQ: RSLS), a developer of minimally invasive medical devices to treat obesity and metabolic diseases, announced today that it has acquired the Lap-Band® adjustable gastric band system from Apollo Endosurgery, Inc. and that Apollo Endosurgery has acquired the ReShape Balloon™ product line from ReShape Lifesciences. ReShape Lifesciences will pay Apollo Endosurgery a total cash purchase price of $17 million, with $10.0 million dollars paid at closing and the additional $7.0 million dollars to be paid in three annual installments beginning on the first anniversary of the closing of the transaction.

“The acquisition of the Lap-Band product line adds a clinically proven, FDA-approved, minimally invasive technology with broad insurance coverage and meaningful established revenue and margins to ReShape Lifesciences,” said Dan Gladney, President, Chief Executive Officer and Chairman of the Board of ReShape Lifesciences. “We believe that shifting our product focus from the ReShape Balloon to the Lap-Band will significantly enhance our financial profile, bringing to our business a product that generated almost $15 million in revenue in the last nine months, with high associated gross margins and very low investment needs, allowing us more financial flexibility to fund our exciting technologies in development. We believe the Lap-Band System, which can leverage our historically strong relationships with the bariatric surgeon, is a more optimal market opportunity that is better aligned with our core strengths as an organization.”

Conference Call and Webcast

ReShape Lifesciences management team will host a conference call beginning today at 10:00am ET to discuss this transaction. Individuals interested in listening to the conference call may do so by dialing 877-407-9210 for domestic callers or 201-689-8049 for international callers. To listen to a live webcast or a replay, please visit the investor relations section of the ReShape Lifesciences website at www.reshapelifesciences.com.

About ReShape Lifesciences Inc.

ReShape Lifesciences™ is a medical device company focused on technologies to treat obesity and metabolic diseases. The ReShape Vest™ System is an investigational, minimally invasive, laparoscopically implanted medical device that wraps around the stomach, emulating the gastric volume reduction effect of conventional weight-loss surgery, and is intended to enable rapid weight loss in obese and morbidly obese patients without permanently changing patient anatomy.

About the Lap-Band System

The Lap-Band System 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 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.

Forward-Looking Safe Harbor Statement:

This press release contains forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995. These forward-looking statements generally can be identified by the use of words such as “expect,” “plan,” “anticipate,” “could,” “may,” “intend,” “will,” “continue,” “future,” other words of similar meaning and the use of future dates. Forward-looking statements in this release include statements about the benefits of the transaction and the company’s plans, objectives, expectations and intentions with respect to the Lap-Band System. These forward-looking statements are based on the current expectations of our management and involve known and unknown risks and uncertainties that may cause our actual results, performance or achievements to be materially different from any future results, performance or achievements expressed or implied by the forward-looking statements. Applicable risks and uncertainties related to the acquisition include, but are not limited to, the following: the acquisition may involve unexpected costs or liabilities; the ability to recognize benefits of the acquisition; and risks that the acquisition disrupts current plans and operations. Additional risks and uncertainties include, among others: risks and uncertainties related to our acquisitions of ReShape Medical, Inc. and BarioSurg, Inc.; risks related to the U.S. Food and Drug Administration’s announcement, including updates thereto, to alert health care providers of unanticipated deaths involving the ReShape Balloon; our proposed ReShape Vest product may not be successfully developed and commercialized; our ability to continue as a going concern if we are unsuccessful in our pursuit of various funding options; our limited history of operations; our losses since inception and for the foreseeable future; our limited commercial sales experience; the competitive industry in which we operate; our ability to maintain compliance with the Nasdaq continued listing requirements and remain listed on Nasdaq; our dependence on third parties to initiate and perform our clinical trials; the need to obtain regulatory approval for our ReShape Vest and any modifications to our vBloc system; physician adoption of our products; our ability to obtain third party coding, coverage or payment levels; ongoing regulatory compliance; our dependence on third party manufacturers and suppliers; the successful development of our sales and marketing capabilities; our ability to raise additional capital when needed; international commercialization and operation; our ability to attract and retain management and other personnel and to manage our growth effectively; potential product liability claims; the cost and management time of operating a public company; potential healthcare fraud and abuse claims; healthcare legislative reform; and our ability to obtain and maintain intellectual property protection for our technology and products. These and additional risks and uncertainties are described more fully in the Company’s filings with the Securities and Exchange Commission, particularly those factors identified as “risk factors” in our annual report on Form 10-K filed April 2, 2018 and subsequent quarterly reports on Form 10-Q. We are providing this information as of the date of this press release and do not undertake any obligation to update any forward-looking statements contained in this document as a result of new information, future events or otherwise, except as required by law.