As filed with the Securities and Exchange Commission on September 30, 2020.

Registration No. 333-248788

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 20549

AMENDMENT NO. 1
TO
FORM S-1
REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

Aziyo Biologics, Inc.

(Exact name of registrant as specified in its charter)

Delaware	2836	47-4790334
(State or other jurisdiction of incorporation or organization)	*(Primary Standard Industrial Classification Code Number)*	*(I.R.S. Employer Identification Number)*

12510 Prosperity Drive, Suite 370
Silver Spring, MD 20904
(240) 247-1170
(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

Ronald Lloyd
President and Chief Executive Officer
Aziyo Biologics, Inc.
12510 Prosperity Drive, Suite 370
Silver Spring, MD 20904
(240) 247-1170
(Name, address, including zip code, and telephone number, including area code, of agent for service)

With copies to:

Charles Ruck
Wesley C. Holmes
Latham & Watkins LLP
200 Clarendon Street
Boston, MA 02116
(617) 948-6000

Alan F. Denenberg
Stephen Salmon
Davis Polk & Wardwell LLP
1600 El Camino Real
Menlo Park, CA 94025
(650) 752-2000

Approximate date of commencement of proposed sale to the public: As soon as practicable after this registration statement is declared effective.
If any of the securities being registered on this form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, check the following box. ☐
If this form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ☐
If this form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ☐
If this form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ☐
Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company" and "emerging growth company" in Rule 12b-2 of the Exchange Act. (Check one):

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

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 7(a)(2)(B) of the Securities Act. ☐

CALCULATION OF REGISTRATION FEE

Title of Each Class of Securities to be Registered	Proposed Maximum Aggregate Offering Price[1][2]	Amount of Registration Fee[3][4]
Class A Common Stock, par value $0.001 per share[5]	$60,882,336	$7,903

(1) Estimated solely for purposes of calculating the registration fee in accordance with Rule 457(o) under the Securities Act of 1933, as amended.
(2) Includes the additional shares that the underwriters have the option to purchase from the registrant.
(3) Calculated in accordance with Rule 457(o) based on an estimate of the proposed maximum aggregate offering price.
(4) $7,464 of this registration fee was previously paid by the Registrant in connection with the filing of its Registration Statement on Form S-1 on September 14, 2020.
(5) To the extent shares of common stock are purchased by entities affiliated with Deerfield Private Design Fund III, L.P., the common stock will be issued in the form of Class B common stock, $0.001 par value per share. The Proposed Maximum Aggregate Offering Price includes such shares of Class B common stock, and this registration statement registers the offer and sale of such Class B common stock and an equivalent number of shares of Class A common stock, $0.001 par value per share, into which such Class B common stock is convertible at the option of the holder thereof.

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

SUBJECT TO COMPLETION
PRELIMINARY PROSPECTUS DATED SEPTEMBER 30, 2020

2,941,176 Shares

AZIYO BIOLOGICS, INC.

Class A Common Stock

$ per share

- Aziyo Biologics, Inc. is offering 2,941,176 shares.
- We anticipate that the initial public offering price will be between $16.00 and $18.00 per share.
- This is our initial public offering and no public market currently exists for our shares.
- Proposed Nasdaq Global Market trading symbol: “AZYO.”

This investment involves risk. See “Risk Factors” beginning on page 20.

Following this offering, we will have two classes of common stock: Class A common stock and Class B common stock. The rights of the holders of Class A common stock and Class B common stock are identical, except with respect to voting and conversion. Each share of Class A common stock will be entitled to one vote and shares of Class B common stock will be non-voting, except as may be required by law. Each share of Class B common stock may be converted at any time into one share of Class A common stock at the option of its holder, subject to the ownership limitations provided for in our restated certificate of incorporation to become effective upon the closing of this offering.

We are an “emerging growth company” and a “smaller reporting company” as defined under the federal securities laws and, as such, may elect to comply with certain reduced public company reporting requirements in future reports after the completion of this offering. See “Prospectus Summary — Implications of Being an Emerging Growth Company and a Smaller Reporting Company.”

	Per Share	Total
Initial public offering price	$	$
Underwriting discount[(1)]	$	$
Proceeds, before expenses, to Aziyo Biologics, Inc.	$	$

(1) See “Underwriting” beginning on page 177 for additional information regarding underwriting compensation.

The underwriters have a 30-day option to purchase up to 441,176 additional shares from us at the initial public offering price less the underwriting discount.

Certain of our existing stockholders, including entities affiliated with certain of our directors, have indicated an interest in purchasing an aggregate of approximately $20 million in shares of our common stock in this offering at the initial public offering price. However, because indications of interest are not binding agreements or commitments to purchase, the underwriters may determine to sell more, fewer or no shares in this offering to any or all of these stockholders, or any or all of these stockholders may determine to purchase more, fewer or no shares in this offering. The underwriters will receive the same underwriting discount on any shares purchased by these stockholders as they will on any other shares sold to the public in this offering. To the extent shares of common stock offered hereby are purchased by entities affiliated with Deerfield Private Design Fund III, L.P., such shares will be issued in the form of Class B common stock that will be convertible into an equivalent number of shares of our Class A common stock. The public offering price of and underwriting discount on such shares of Class B common stock will be identical to the shares of Class A common stock otherwise offered hereby. Unless otherwise indicated or as the context otherwise requires, references to Class A common stock being offered hereby include the shares of Class A common stock into which shares of our Class B common stock purchased in this offering are convertible.

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

The underwriters expect to deliver the shares to investors on or about , 2020.

Piper Sandler **Cowen**

Cantor **Truist Securities**

The date of this prospectus is , 2020

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

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

TRADEMARKS, TRADE NAMES AND SERVICE MARKS

This prospectus includes our trademarks, trade names and service marks, including, without limitation, "Aziyo®," "CanGaroo®," "ProxiCor®," "Tyke®," "VasCure®," "FiberCel®," "ViBone®," "OsteGro®," "SimpliDerm®" and our logo, which are our property and are protected under applicable intellectual property laws. This prospectus also contains trademarks, trade names and service marks of other companies, which are the property of their respective owners. Solely for convenience, trademarks, trade names and service marks may appear in this prospectus without the ®, TM and SM symbols, but such references are not intended to indicate, in any way, that we or the applicable owner forgo or will not assert, to the fullest extent permitted under applicable law, our rights or the rights of any applicable licensors to these trademarks, trade names and service marks. We do not intend our use or display of other parties' trademarks, trade names or service marks to imply, and such use or display should not be construed to imply, a relationship with, or endorsement or sponsorship of us by, these other parties.

PROSPECTUS SUMMARY

This summary highlights, and is qualified in its entirety by, the more detailed information included elsewhere in this prospectus. This summary does not contain all of the information that you should consider before deciding to invest in our common stock. You should read the entire prospectus carefully, including "Risk Factors," "Management's Discussion and Analysis of Financial Condition and Results of Operations," and our financial statements and notes to those financial statements included elsewhere in this prospectus, before making an investment decision. Some of the statements in this summary constitute forward-looking statements, see "Special Note Regarding Forward-Looking Statements." In this prospectus, unless the context otherwise requires, references to "we," "us," "our," the "Company" and "Aziyo" refer to the consolidated operations of Aziyo Biologics, Inc. and its consolidated subsidiaries.

Overview

We are a commercial-stage regenerative medicine company focused on creating the next generation of differentiated products and improving outcomes in patients undergoing surgery, concentrating on patients receiving implantable medical devices. From our proprietary tissue processing platforms, we have developed a portfolio of advanced regenerative medical products that are designed to be very similar to natural biological material. Our proprietary products, which we refer to as our Core Products, are designed to address the implantable electronic device/cardiovascular, orthopedic/spinal repair and soft tissue reconstruction markets, which represented a combined $3 billion market opportunity in the United States in 2019. To expand our commercial reach, we have commercial relationships with major medical device companies, such as Boston Scientific and Medtronic, to promote and sell some of our Core Products. We believe our focus on our unique regenerative medicine platforms and our Core Products will ultimately maximize our probability of continued clinical and commercial success and will create a long-term competitive advantage for us.

We estimate that more than two million patients were either implanted with medical devices, such as pacemakers, defibrillators, neuro-stimulators, spinal fusion and trauma fracture hardware or tissue expanders for breast reconstruction, in the United States in 2019. This number is driven by advances in medical device technologies and an aging population with a growing incidence of comorbidities, including diabetes, obesity and cardiovascular and peripheral vascular diseases. These comorbidities can exacerbate various immune responses and other complications that can be triggered by a device implant.

Our Core Products are targeted to address unmet clinical needs with the goal of promoting healthy tissue formation and avoiding complications associated with medical device implants, such as scar-tissue formation, capsular contraction, erosion, migration, non-union of implants and implant rejection. We believe that we have developed the only biological envelope, which is covered by a number of patents, that forms a natural, systemically vascularized pocket for holding implanted electronic devices. We have a proprietary processing technology for manufacturing bone regenerative products for use in orthopedic/spinal repair that preserves a cell's ability to regenerate bone and decelerates cell apoptosis, or programmed cell death. We have a patented cell removal technology that produces undamaged extracellular matrices for use in soft tissue reconstruction. In pre-clinical and clinical studies, our products have supported and, in some cases, accelerated tissue healing, and thereby improved patient outcomes. Our Core and Non-Core product portfolio is highlighted in the table below.

Market		Product Brands	Description	Go-To-Market Strategy
CORE PRODUCTS	Implantable Electronic Devices and Cardiovascular	CanGaroo	Biological envelope that remodels into systemically connected, vascularized tissue for the long-term pocket protection of certain cardiac and neurostimulator implantable electronic devices	Direct and supported by commercial partners
		ProxiCor Tyke VasCure	Portfolio of extracellular matrices that retain the natural composition of collagen, growth factors and proteins for use in vascular and cardiac repair and pericardial closure	Direct and independent sales agents
	Orthopedic and Spinal Repair	FiberCel ViBone OsteGro V	Variety of viable matrices, produced with a proprietary process that is designed to protect and preserve native bone cells and reduce programmable cell death, for use in bone repair and fusion procedures	Commercial partners
	Soft Tissue Reconstruction	SimpliDerm	Pre-hydrated, human acellular dermal matrix, or HADM, that is designed to enable rapid integration, cellular repopulation and rapid revascularization at the surgical site	Direct and independent sales agents
NON-CORE PRODUCTS	Contract Manufacturing	Various Products	Contract manufacturing of particulate bone, precision milled bone, cellular bone matrix, acellular dermis, amnion and other soft tissue products to utilize fully our starting human biological materials, leverage our existing overhead and improve our cash flow	Corporate customers

Our growth strategy is focused on increasing penetration in our target markets. We believe we can expand our commercial penetration in these markets and thereby grow our business by increasing our direct sales force and developing and launching more clinically relevant products from our pipeline and, when possible and appropriate, from acquisitions.

Our go-to-market strategy includes a hybrid of a direct sales force, commercial partners and independent sales agents. As of June 30, 2020, we had 27 direct sales representatives who focus on gaining additional market access and driving market penetration, not only by selling our products, but also, where appropriate, by managing our commercial partners and providing technical assistance for selling our products. By growing our direct sales force and leveraging our existing commercial partners, we believe we can expand our customer base and further strengthen our existing customer relationships and increase penetration in our target markets.

We have a well-established and scalable manufacturing platform, consisting of two facilities that are supported by our corporate headquarters. Our Silver Spring, Maryland location is our headquarters and functions as a research and development and corporate support center. Our Roswell, Georgia location is our processing, production and distribution facility for all our implantable electronic device/cardiovascular products. Our Richmond, California location is our human tissue products facility. We believe we have sufficient operating capacity at both our Roswell and Richmond facilities to support future growth.

We have a proven track record of growing our business. Net sales from our Core Products grew from $22.7 million for the year ended December 31, 2018 to $30.9 million for the year ended December 31,

2019, representing an annual growth rate of 36%. Our total net sales increased from $39.0 million for the year ended December 31, 2018 to $42.9 million for the year ended December 31, 2019, representing an annual growth rate of 10%. Our gross margins improved from 41% in the year ended December 31, 2018 to 46% in the year ended December 31, 2019. Our gross margins, excluding intangible asset amortization, improved from 50% in the year ended December 31, 2018 to 54% in the year ended December 31, 2019. We incurred a net loss of $11.6 million for the year ended December 31, 2018, and a net loss of $11.9 million for the year ended December 31, 2019.

Net sales from our Core Products grew from $13.7 million for the six months ended June 30, 2019 to $15.6 million for the six months ended June 30, 2020. Our total net sales decreased from $19.7 million for the six months ended June 30, 2019 to $18.4 million for the six months ended June 30, 2020. Our gross margins improved from 47% in the six months ended June 30, 2019 to 49% in the six months ended June 30, 2020. Our gross margins, excluding intangible asset amortization, improved from 56% in the six months ended June 30, 2019 to 58% in the six months ended June 30, 2020. We incurred a net loss of $6.1 million for the six months ended June 30, 2019, and a net loss of $9.7 million for the six months ended June 30, 2020.

Gross margin, excluding intangible asset amortization, is a non-GAAP financial measure. See "— Summary Consolidated Financial Data — Non-GAAP Financial Measures" for a discussion regarding our use of gross margin, excluding intangible asset amortization, including its limitations and a reconciliation to the most directly comparable GAAP financial measure.

Our Competitive Strengths

Our mission is to provide advanced regenerative care products that improve the outcomes in patients primarily undergoing implantable device-related surgery. To accomplish this mission, we intend to establish our Core Products as the standard of care for treating patients undergoing such procedures. We believe our key competitive strengths position us well to execute on our growth strategy. Our key competitive strengths are:

- **Well-Positioned in Large, Attractive and Growing Markets**. We believe that the implantable electronic devices/cardiovascular, orthopedic/spinal repair and soft tissue reconstruction markets, which represented a combined $3 billion market opportunity in the United States in 2019, will continue to experience accelerated growth. We further believe there is growing adoption of regenerative medicine products by the medical community as physicians become aware of the benefits of using natural products during surgery.
- **Regenerative Medicine Technology Focus**. Our scientific expertise and know-how in regenerative medicine technology has allowed us to develop our proprietary platforms to create differentiated biomaterials, including our Core Products: CanGaroo, ProxiCor, Tyke, VasCure, FiberCel, ViBone, OsteGro V and SimpliDerm. These types of products, which are designed to more closely resemble natural products than similar traditionally processed products, have enabled us to advance the science of regenerative medicine as well as to process tissue and produce products at commercial scale.
- **Broad Portfolio of Core Products to Address the Needs of Physicians, Patients and Providers.** Physicians use our broad portfolio of regenerative medicine products to meet the needs of individual patients. The breadth of our current portfolio, which includes products used in implantable electronic devices, orthopedic/spinal repair and soft tissue reconstructive procedures, gives us the flexibility to target a broad set of procedures, each with a full suite of products to accommodate both the clinical and economic factors that may affect purchasing decisions.
- **Large and Growing Body of Clinical Data and FDA Cleared Products.** We have significant regulatory experience in obtaining U.S. Food and Drug Administration, or FDA, clearance for regenerative medicine products requiring 510(k) clearance and in navigating the comprehensive regulatory framework that applies to human cells, tissues and cellular and tissue-based products, or HCT/Ps. We have and continue to develop a body of pre-clinical, clinical and patient outcomes data, including third-party publications that reviewed the technical and clinical attributes of our products.

- **Relationships with Care Providers.** Our medical and commercial teams have established extensive customer relationships in the healthcare industry. We have developed excellent relationships with physicians, nurses and hospital administrators. We believe we are well-positioned to leverage these relationships to increase our penetration in our target markets.
- **Commercial Relationships with Major Medical Device Companies.** We have commercial agreements with major medical device companies, including Boston Scientific, Biotronik, Medtronic, Surgalign Holdings and others, which we collectively refer to as our commercial partners, to promote or commercialize some of our products. Our commercial partners use their own network of more than 2,000 sales representatives, clinical specialists and independent sales agents.
- **Established and Scalable Manufacturing and Commercial Infrastructure.** We have well-established relationships to obtain the human and animal tissues, which we need to manufacture our products, in the quantity needed and in a manner that preserves their integrity. We have sufficient capacity to increase the scale of our manufacturing, and the required quality control and regulatory capabilities to ensure that our products meet established specifications. Our established regulatory, operational and commercial infrastructure provides a firm foundation for growth as we continue to scale our business.
- **Executive Management Team with Extensive Experience in Regenerative Medicine.** Our executive management team has extensive experience in the regenerative medicine and medical device industries. This experience allows us to operate with a deep understanding of the underlying trends in regenerative medicine and the intertwined scientific, clinical, regulatory, commercial and manufacturing functions that drive success in this industry.

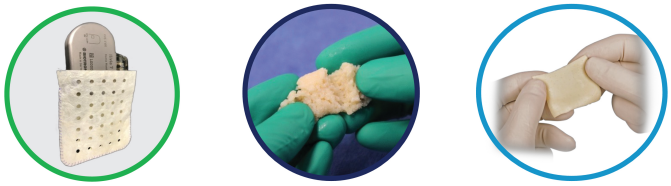
Our Growth Strategy

The key elements of our growth strategy are:

- **Increase Penetration in Our Target Markets.** We believe that the potential for growth in regenerative medicine in our target markets presents a long-term opportunity to increase the use of our products. We plan to continue our growth and accelerate our penetration into these target markets by increasing the size of our direct sales force and by leveraging our relationships with our commercial partners that have well-established sales infrastructure and significant experience in our target markets.
- **Additional Growth through Selective Acquisitions.** We have demonstrated our ability to identify acquisition opportunities and integrate assets that complement our strategy and generate revenue and incremental gross profits. We will continue to evaluate possible acquisitions that complement our existing portfolio and leverage our established commercial and manufacturing infrastructure.
- **Robust Pipeline of Innovative Core Products from Our Proven Research and Development Capabilities.** We have brought to market four commercial Core Products in the past three years. In addition to our current core commercial products, we have a pipeline of products being developed for the implantable electronic devices/cardiovascular market, the orthopedic/spinal repair market and the soft tissue reconstruction market that we expect to launch in the future. We will continue to conduct pre-clinical studies and clinical trials, gather patient data and perform other research to support the further adoption of our products in the marketplace.
- **Continuing to Expand the Reach of Our Direct Sales Force**. As of June 30, 2020, we had 27 sales representatives who focus on gaining additional market access and driving market penetration, not only by selling our products, but also, where appropriate, by managing our commercial partners and providing technical assistance for selling our products. We plan to grow our sales organization in order to expand our network of hospital and physician customers, drive deeper penetration in current accounts and provide additional technical assistance to our commercial partners.

Our Core Products/Solutions

Our portfolio of regenerative medicine Core Products has been developed to address the following specific markets:



Implantable Electronic Devices/Cardiovascular Market

Market Opportunity

In 2019, we estimate, based on industry sources and other third-party estimates, that there were more than 600,000 procedures in the United States to install or replace implantable electronic devices, such as pacemakers, pulse generators and defibrillators, as well as spinal cord neuromodulators and vagus nerve, deep brain and sacral nerve stimulators, which represents an estimated $600 million opportunity.

Limitations of Existing Solutions

Implantable electronic devices are now the standard of care for patients suffering from cardiac arrhythmias and heart failure. Such devices are implanted in soft tissue, which is not heavily vascularized, and its implantation may trigger a biologic response that results in inflammation and fibrosis, leading to the device and its wire leads being encased in dense or calcified fibrous material. In 2015, a group of third-party researchers published a systematic review and meta-analysis of 60 published reports, consisting of 21 prospective, nine case-control and 30 retrospective cohort studies published between 1981 and 2013, each of which examined the rate of infection associated with the implantation of electronic devices. The average rate of infection was between 1.0 and 1.3% and the reported rates of infection ranged from 0.3 to 16.4%. In 2019, a different group of third-party researchers published the results of a global, prospective randomized clinical trial focused on infection complications of implantable electronic cardiovascular devices which identified a 1.2% mean infection rate during 12-month follow-up in the control arm (3,488 patients), and this was later reported by other third-party researchers in 2020 to rise to 1.9% at the 36 months follow-up. However, infection is not the only significant complication associated with implantation. Data from third party studies published in 2011 and 2016 indicated that migration occurred in 0.5 to 10.9% of such procedures, and data from third party studies published in 2001 and 2007 indicated that erosion of the device through the skin occurred in 0.2 to 5.0% of such procedures. Thus, migration and erosion have been shown to be similarly frequent and can result in infection or require replacement of the device. Other complications include those associated with Twiddler's syndrome, which is a malfunction of a pacemaker due to manipulation of the device by the patient, and discomfort at the implant site.

Our Solution

CanGaroo was designed to mitigate complications deriving from implantable electronic devices and the shortcomings of synthetic envelopes. We believe that CanGaroo is the only biological product that forms a natural, systemically vascularized pocket that conforms to and securely holds implantable electronic devices. CanGaroo is cleared for use with pacemaker pulse generators, defibrillators and other cardiac implantable electronic devices as well as vagus nerve stimulators, spinal cord neuromodulators, deep brain stimulators and sacral nerve stimulators.

The CanGaroo envelope is constructed from perforated, multi-laminate sheets of decellularized, non-crosslinked, lyophilized small intestine submucosa (SIS) extracellular matrix (ECM), derived from porcine small intestinal submucosa, a natural biomaterial, which is rich in natural growth factors, structural proteins and collagens. The ECM is sewn into the shape of a pouch, into which the device is placed. We sell the biological envelope in a variety of sizes, which allows it to accommodate various sized electronic devices, and it has a shelf life of 30 months.

CanGaroo is soft and pliable and is designed to conform to the implantable device for easy handling and implantation. The SIS ECM is designed to mitigate the biologic foreign body response that normally

occurs around the electronic device. CanGaroo is remodeled into a surrounding layer of vital, vascularized tissue, potentially reducing the risk of capsular formation, migration and erosion of the implantable device through the skin, and complications associated with Twiddler's syndrome. CanGaroo may also facilitate the process of implantation and of device removal during replacement, as well as enhance patient comfort.

Additional Cardiovascular Products

Through our direct sales force and independent sales agents, we also sell additional cardiovascular products derived from our specialized SIS ECM, all of which received 510(k) regulatory clearance as medical devices. Proxicor is cleared for use as an intracardiac patch or pledget, for tissue repair, i.e., atrial septal defect, ventricular septal defect and suture-line buttressing, as well as for the reconstruction and repair of the pericardium. ProxiCor enables cardiac and congenital heart surgeons to reestablish the essential native anatomical structures of the heart and pericardium by providing a natural bio-scaffold that allows the patient's own cells to form a new pericardial layer. Tyke was developed based on a request by pediatric cardiovascular surgeons to deliver an ECM material that maintained the biomechanical properties found in our existing products, but was thinner, more pliable and better suited for intracardiac and branch pulmonary artery use in neonates and infants. Tyke is cleared for use in neonates and infants for the repair of pericardial structures; as an epicardial covering for damaged or repaired cardiac structures; and as a patch material for intracardiac defects, septal defect and annulus repair, suture-line buttressing and cardiac repair. VasCure is cleared for use, and is used by cardiovascular, vascular and general surgeons as, a patch material to repair or reconstruct the peripheral vasculature, including the carotid, renal, iliac, femoral and tibial blood vessels and as a pledget or for suture line buttressing when repairing peripheral vessels. VasCure can be modeled into site-specific tissue and conforms to repair defects easily.

Orthopedic/Spinal Repair Market

Market Opportunity

According to industry sources, in the United States in 2019, there were an estimated 1.5 million surgical procedures for orthopedic and spinal repair, which, excluding the cost for spinal and orthopedic hardware, used bone repair products valued at more than $2 billion. The number of such surgeries has increased over the last several years, driven, in part, by a higher incidence of comorbidities and chronic inflammatory and degenerative conditions, including osteoarthritis.

Spinal fusion, the leading application for bone fusion surgeries in the United States, involves the use of grafting material to cause two vertebrae to grow together into one. In the United States in 2019, medical facilities performed 695,000 spinal fusion surgeries, of which approximately 400,000 were lumbar operations. Lower extremity applications, including ankle arthrodesis, or surgical immobilization of a joint by fusion of the adjacent bones, now represent a bone fusion market of approximately 165,000 fusions. With improving fixation methods, success rates have improved across these applications.

Limitations of Existing Solutions

Although success rates for orthopedic and spinal fusion have improved, inadequate bone healing remains one of the leading causes of failure for any fusion procedure. Fusion is especially challenging in patients who have underlying healing deficiencies because of such comorbidities as diabetes and obesity. Currently, autologous bone, which is harvested from the patient, is considered the gold standard for bone fusions, as compared to bone harvested from another individual, or an allograft. However, obtaining sufficient autologous material may not always be possible, may not yield good quality material, may cause donor site morbidity and pain and has an additional cost associated with its harvest. Other options, such as bone morphogenetic protein-2, or BMP-2, and human graft products, both suffer from adverse effects that include, but are not limited to, bone resorption and premature cellular death.

Our Solution

Our bone regenerative products are processed by a proprietary method designed to protect and preserve the native bone cells (osteogenic) needed for bone formation and to decelerate cell apoptosis. Our products, besides being osteogenic, are also osteoinductive (ability to recruit cells and to signal the need for bone formation) and osteoconductive (three-dimensional scaffold appropriate for bone formation). These products, which have handling properties that support their placement by the surgeon and their integration

with the patient's bone, are intended for use in patients mainly receiving orthopedic and spinal implants to enhance the bone repair process and include FiberCel, ViBone and OsteGro V, all of which are viable, cellular bone matrices.

FiberCel is a fiber-based bone repair product made from human tissue and engineered to be like natural tissue. It is marketed for use in orthopedic or reconstructive bone grafting procedures in combination with autologous bone or other forms of allograft bone or alone as a bone graft. FiberCel provides handling properties that are critical for use as a bone void filler in various orthopedic and spinal procedures. FiberCel contains cancellous bone particles with preserved living cells and demineralized cortical bone fibers to facilitate bone repair and healing.

ViBone is a particle-based bone repair product designed to perform and handle in a manner similar to an autograft and is marketed for use as allograft bone. ViBone contains cancellous and demineralized cortical bone particles.

OsteGro V is our newest product leveraging our proprietary process designed to protect and preserve native bone cells. OsteGro V is marketed for use for the repair, replacement or reconstruction of bone defects and contains cancellous bone particles as well as demineralized cortical bone particles and fibers to enhance product handling.

Soft Tissue Reconstruction Market

Market Opportunity

According to certain third-party estimates, there were more than 100,000 procedures in the United States in 2019 using biologic matrices for plastic and reconstructive surgery, which constituted an approximately $500 million market. Plastic and reconstructive surgery is performed to treat structures of the human body that are affected aesthetically or functionally due to defects, abnormalities, trauma, infection, burns, tumors or disease. Plastic and reconstructive surgery is generally performed to improve function and ability, but it may also be performed to achieve a more natural appearance of the affected anatomical structure. Clinical practice of plastic and reconstructive surgery includes: excision of tumors of the skin, vasculature, chest, oral and oropharyngeal cavities and extremities and reconstructions of the same; debridement, skin grafting and skin flaps for burn reconstructions; trauma surgery for the hands, upper and lower limbs and facial region; congenital or acquired malformations related to the hands, face, skull and jaw; surgical removal of vascular abnormalities; a range of aesthetic surgeries; and reconstructions of the breast, which is one of the most common applications of biologic matrices.

Limitations of Existing Solutions

Autologous tissue repair procedures are options for stabilizing soft tissue defects in various applications. However, these methods have limitations that include, but are not limited to, infection and extended healing times. Synthetic products provide a substitute when autologous reconstruction is not feasible or desired. Yet, they too have their limitations that include, but are not limited to, foreign body reaction which can lead to pain and other complications. Human acellular dermal matrix, or HADM, products offer a biologic alternative for reconstructive procedures, but they have their own limitations which can ultimately lead to issues with how rapidly and to what extent an implant is integrated.

Our Solution

SimpliDerm was designed to offer improved biocompatibility and better functioning in the patient. It is marketed for use for the repair or replacement of damaged or insufficient integumental tissue or for the repair, reinforcement or supplemental support of soft tissue defects or any other homologous use of human integument. SimpliDerm is a pre-hydrated, HADM manufactured with our patented cell removal technology, a process that maintains the biological and structural integrity of the tissue's extracellular matrix components and allows for rapid integration, cellular repopulation and revascularization at the surgical site. Its structurally intact extracellular matrix is designed to closely resemble that which occurs naturally.

Our Non-Core Products: Contract Manufacturing

We fulfill tissue processing contracts through our contract manufacturing services at our Richmond, California facility in order to utilize as much as possible of the starting human biological material from

which we produce our core orthopedic/spinal repair and soft tissue reconstruction products, leverage our existing overhead and improve our cash flow. For the year ended December 31, 2019, our net sales from contract manufacturing was approximately $12.0 million, representing approximately 27.9% of our total net sales.

Clinical Data

We have accumulated a substantial body of pre-clinical and clinical data for our Core Products. We believe that the reported outcomes from our studies help to differentiate our Core Products in the marketplace.

Implantable Electronic Device

Pre-Clinical and Clinical Studies

In a pre-clinical rabbit model, the CanGaroo envelope was more successful in providing a barrier surrounding a cardiovascular implantable electronic device, or CIED, compared to a pacemaker canister alone. To evaluate our CanGaroo envelope, we have conducted two post-market studies involving 1,122 patients. We are also conducting a retrospective study of approximately 600 patients, and are planning to initiate an additional 30-patient retrospective study in the near term. The SECURE Study was a prospective, single arm, observational, post-market study assessing patients who underwent the implantation of a CIED in a CanGaroo envelope. The results of the SECURE Study provided evidence supporting the safety of the CanGaroo envelope when used for the implantation of CIEDs in humans. The CARE Study was a retrospective, consecutive case series, post market study. The low rates of CanGaroo envelope complications observed in the CARE Study support the safety of the product when used in a human CIED implantation. The recently initiated CARE Plus Study is an ongoing retrospective cohort study of the outcomes in patients who received a CanGaroo envelope, Medtronic's synthetic TYRX envelope or no envelope during their CIED implantation. The CARE Plus Study is being conducted at a single site with an estimated 600 patients to be evaluated. The HEAL Study is a planned, retrospective cohort study of 30 CIED patients who are presenting for their latest reoperation after a previous implantation. Patients evaluated in the study will be from one of three cohorts based on whether a CanGaroo envelope, Medtronic's synthetic TYRX envelope or no envelope was used during the prior implantation.

Orthopedic/Spinal Repair

Pre-Clinical and Clinical Studies

Characterization studies were conducted to evaluate whether the manufacturing processes for our viable bone matrices improve certain product characteristics affecting the key elements of bone formation, including osteogenesis, osteoconduction and osteoinduction, versus traditional viable bone matrix manufacturing processes. Our viable bone matrices showed improvements in all of these characteristics, as well as less cell death. A prospective, post-market clinical study is being conducted to evaluate outcomes in patients undergoing cervical or lumbar interbody fusion surgery using ViBone. This study is ongoing and interim results showed a decrease in neck pain compared to the baseline. For the patients reviewed as of September 30, 2019, all patients displayed either fusion or probable fusion at the surgery site.

Soft Tissue Reconstruction

Pre-Clinical and Clinical Studies

SimpliDerm was implanted in non-human primates and explanted at two weeks, four weeks and three months. Tissue samples, characterized with staining, cytokine analysis and gene expression markers, showed a lower inflammatory response than with the market-leading HADM. Currently, we are collecting clinical data in an Investigational Review Board, or IRB, approved, retrospective, multi-center study evaluating patients who have undergone breast reconstruction post-mastectomy with SimpliDerm and patients receiving other HADMs. These data will inform us as to the design of future clinical feasibility and pivotal studies to support potential regulatory applications for a breast reconstruction indication for SimpliDerm.

Preliminary Financial Results for the Third Quarter Ended September 30, 2020

We are currently finalizing our financial quarterly closing process for the three months ended September 30, 2020. While complete financial information and operating data are not yet available, set forth below are

certain preliminary estimates of the results of operations that we expect to report for our third quarter of 2020. However, our actual results may differ materially from these estimates due to the completion of our financial closing procedures, final adjustments and other developments that may arise between now and the time the financial results for the three months ended September 30, 2020 are finalized. All percentage comparisons to the prior year comparable period are measured to the midpoint of the range provided below.

The following are our preliminary estimates for the three months ended September 30, 2020:

- Net sales is expected to be between $11.2 million and $11.4 million, a 1% increase from $11.1 million in the corresponding prior year period. The estimated increase in net sales is due to the expected growth of between $2.0 million and $2.2 million in net sales of our Core Products, largely offset by an expected decline of between $1.9 million and $2.1 million in net sales of our Non-Core Products. Net sales generated by our Core Products is expected to grow 27%, to between $9.9 million and 10.1 million in the three months ended September 30, 2020 compared to $7.9 million in the three months ended September 30, 2019. The estimated increase in net sales of our Core Products can be primarily attributed to significant volume growth of our orthopedic/spinal repair products as well as SimpliDerm, the latter of which was launched in the second half of 2019. The estimated increase in net sales of our orthopedic/spinal repair products is due to a broadening of our commercial relationships. Net sales generated by our Non-Core Products is expected to decrease by 60.0%, to between $1.2 million and $1.4 million in the three months ended September 30, 2020 from $3.3 million in the three months ended September 30, 2019. Despite initial shipments to three new customers during the three months ended September 30, 2020, this estimated decrease is due largely to the reduction in the volume of products purchased by one significant contract customer following the expiration of its contract with us in the first half of 2020.
- Gross margin is expected to be between 43% and 47%, a decline from 50% in the corresponding prior year period. Gross margin, excluding intangible asset amortization, is expected to be between 50% and 54%, a decline from 57% in the corresponding prior year period. The estimated decline in gross margin is due to an extended plant maintenance shutdown for two consecutive weeks during the third quarter of 2020. This shutdown caused idle capacity during the shutdown resulting in plant costs being charged directly to cost of goods sold during this shutdown period rather than being a component of inventory. An extended shutdown occurred in the fourth quarter of 2019 and as such, did not impact our gross margin in the corresponding prior year period.
- Loss from operations is expected to be between $2.2 million and $2.8 million, a 38.9% increase from $1.8 million in the corresponding prior year period. The estimated increase in operating loss is due to the gross margin impact of the extended plant shutdown noted above as well as various general and administrative costs incurred in preparation for our initial public offering, including an estimated non-cash charge of approximately $0.8 million related to the issuance of 375,000 shares of Series A convertible preferred stock to an affiliate of HighCape Partners in exchange for the extinguishment of our contingent obligation to pay them an advisory fee associated with the CorMatrix acquisition.
- Because our financial quarterly closing procedures for the quarter ended September 30, 2020 are not yet complete, we are unable to provide a preliminary estimate regarding our net loss at this time. However, we expect to recognize a material amount of non-cash loss on extinguishment of debt during this period resulting from the conversion of approximately $2.0 million in aggregate principal amount of convertible bridge promissory notes into shares of our Series A convertible preferred stock in September 2020. We also expect to recognize a material amount of non-cash preferred stock dividends during this period and contingent and non-contingent beneficial conversion feature charges effecting net loss attributable to common stockholders associated with the Series A convertible preferred stock issued in September 2020.

The estimates above represent the most current information available to management and do not present all necessary information for an understanding of our financial condition as of and the results of operations for the quarter ended September 30, 2020. We have provided a range for the preliminary results described above primarily because our financial closing procedures for the quarter ended

September 30, 2020 are not yet complete. As a result, there is a possibility that our final results will vary from these preliminary estimates. We currently expect that our final results will be within the ranges described above. It is possible, however, that our final results will not be within the ranges we currently estimate. The estimates for the three months ended September 30, 2020 are not necessarily indicative of any future period and should be read together with "Risk Factors," "Special Note Regarding Forward-Looking Statements," "Management's Discussion and Analysis of Financial Condition and Results of Operations," "Selected Consolidated Financial Data" and our financial statements and related notes included elsewhere in this prospectus.

The preliminary financial data included in this registration statement has been prepared by, and is the responsibility of, our management. PricewaterhouseCoopers LLP has not audited, reviewed, compiled or applied agreed-upon procedures with respect to the preliminary financial data. Accordingly, PricewaterhouseCoopers LLP does not express an opinion or any other form of assurance with respect thereto.

We expect our closing procedures with respect to the three months ended September 30, 2020 to be completed in November 2020. Accordingly, our financial statements as of and for the three months ended September 30, 2020 will not be available until after this offering is completed.

Risk Factors

Our business is subject to a number of risks that you should be aware of before making an investment decision. You should carefully consider all of the information set forth in this prospectus and, in particular, should evaluate the specific factors set forth under "Risk Factors" in deciding whether to invest in our common stock. Among these important risks are the following:

- Our long-term growth depends on our ability to enhance our products, expand our product indications and develop, acquire and commercialize additional product offerings.
- A substantial portion of our net sales is generated through our commercial partners and independent sales agents, which subjects us to various risks.
- Our revenue and profitability could be materially and adversely affected if we fail to maintain our relationships with our existing contract manufacturing customers and enter into agreements with new contract manufacturing customers, or if existing contract manufacturing customers reduce purchases of our products. Our relationships with these customers also subject us to certain risks.
- We plan to expand our direct sales force, and if we are unable to successfully expand, manage and maintain our direct sales force, we may not be able to generate greater market share and revenue growth.
- We have incurred operating losses since our inception, expect to continue to incur significant expenses and operating losses in the future, and may not be able to achieve or sustain profitability.
- Our business has been, and may continue to be, adversely affected by the outbreak of the novel strain of coronavirus disease, COVID-19, and may be adversely affected by any future pandemic, epidemic or outbreak of an infectious disease in the United States or worldwide.
- Adverse changes in general domestic and global economic conditions and instability and disruption of credit markets, including as a result of the current COVID-19 pandemic or any other outbreak of an infectious disease, could adversely affect our business, financial condition, results of operations and liquidity.
- Our future growth depends on physician awareness of the distinctive characteristics, benefits, safety, clinical efficacy and cost-effectiveness of our products.
- Our success depends on the continued and future acceptance of our products by the medical community.
- We face significant and continuing competition from other companies, some of which have longer operating histories, more established products and/or greater resources than we do, which could adversely affect our business, financial condition and results of operations.

- Pricing pressure, as a result of cost-containment efforts of our customers, purchasing groups, third-party payors and governmental organizations, could adversely affect our sales and profitability.
- The processing of human tissue for our products is technically complex, requiring high levels of quality control and precision, which subjects us to increased production risks.
- Because we depend upon a limited number of third-party suppliers and manufacturers and, in certain cases, exclusive suppliers for raw materials essential to our business, we may incur significant product development costs and experience material delivery delays if we lose any significant supplier, which could materially and adversely affect our business, financial condition and results of operations.
- If we are unable to obtain, maintain and adequately protect our intellectual property rights, our competitive position could be harmed or we could be required to incur significant expenses to enforce or defend our rights.

Corporate Information

We were incorporated in Delaware in August 2015 as a subsidiary of Tissue Banks International, Inc., or TBI (now KeraLink International, or KeraLink). In November 2015, all of the assets and substantially all of the liabilities of the musculoskeletal division of TBI were contributed to us and 75% of the ownership interests in us were transferred to HighCape Partners QP, L.P., or HighCape Partners QP, certain of its affiliates, and Deerfield Private Design Fund III, L.P., or Deerfield. Our offices are located at 12510 Prosperity Drive, Suite 370, Silver Spring, Maryland 20904. Our telephone number is (240) 247-1170. Our corporate website is *www.aziyo.com*. The information contained on, or that can be accessed through our website, is not incorporated by reference into this prospectus, and you should not consider information on our website to be part of this prospectus or in deciding to purchase our common stock.

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

We are an “emerging growth company” as defined in the Jumpstart Our Business Startups Act of 2012, as amended, or the JOBS Act, and a “smaller reporting company” as defined in Rule 12b-2 under the Securities Exchange Act of 1934, as amended, or the Exchange Act. As such, we may take advantage of certain exemptions from various reporting requirements that are applicable to other publicly traded entities that are not emerging growth companies or smaller reporting companies. With respect to emerging growth companies, these exemptions include:

- the option to present only two years of audited financial statements and only two years of related Management’s Discussion and Analysis of Financial Condition and Results of Operations disclosure in this prospectus;
- not being required to comply with the auditor attestation requirements of Section 404 of the Sarbanes-Oxley Act of 2002, or the Sarbanes-Oxley Act;
- not being required to comply with any requirement that may be adopted by the Public Company Accounting Oversight Board regarding mandatory audit firm rotation or a supplement to the auditor’s report providing additional information about the audit and the financial statements (i.e., an auditor discussion and analysis);
- not being required to submit certain executive compensation matters to stockholder advisory votes, such as “say-on-pay,” “say-on-frequency” and “say-on-golden parachutes;” and
- not being required to disclose certain executive compensation related items such as the correlation between executive compensation and performance and comparisons of the chief executive officer’s compensation to median employee compensation.

We have elected to take advantage of certain of these reduced disclosure obligations in the registration statement of which this prospectus is a part and may elect to take advantage of some or all of these reduced reporting requirements in the future. As a result, the information that we provide to our stockholders may be different than the information you might receive from other public reporting companies in which you hold equity interests. See “Risk Factors — Risks Related to Our Common Stock and this Offering — We are an ‘emerging growth company’ and a ‘smaller reporting company,’ and the reduced

disclosure requirements applicable to emerging growth companies and smaller reporting companies may make our common stock less attractive to investors."

Section 107 of the JOBS Act also provides that an emerging growth company can take advantage of the extended transition period, provided in Section 13(a) of the Exchange Act, for complying with new or revised accounting standards. In other words, an emerging growth company can delay the adoption of certain accounting standards until those standards would otherwise apply to private companies. We have elected to use this extended transition period for complying with new or revised accounting standards until the earlier of the date we (i) are no longer an emerging growth company or (ii) affirmatively and irrevocably opt out of the extended transition period provided in the JOBS Act. As a result, our consolidated financial statements and the reported results of operations contained therein may not be directly comparable to those of other public companies.

We will remain an emerging growth company until the earliest of: (i) the last day of the first fiscal year in which our annual gross revenues are $1.07 billion or more; (ii) the last day of 2025; (iii) the date that we become a "large accelerated filer" as defined in Rule 12b-2 under the Exchange Act, which would occur if the market value of our common equity held by non-affiliates is $700 million or more as of the last business day of our most recently completed second fiscal quarter; or (iv) the date on which we have issued more than $1.0 billion in non-convertible debt securities during the previous three years.

Even after we cease to be an emerging growth company, we will remain a smaller reporting company until the fiscal year following the earlier of (i) our determination that the market value of the voting and non-voting shares held by non-affiliates is $250 million or more but less than $700 million as of the last business day of our second fiscal quarter and our annual revenues are $100 million or more during our most recently completed fiscal year, or (ii) the market value of the voting and non-voting shares held by non-affiliates is $700 million or more measured on the last business day of our second fiscal quarter. If we are a smaller reporting company at the time we cease to be an emerging growth company, we may continue to rely on exemptions from certain disclosure requirements that are available to smaller reporting companies, including reduced financial and executive compensation disclosure. In addition, even if we cease to be an emerging growth company, we will remain exempt from the auditor attestation requirements of Section 404 of the Sarbanes-Oxley Act provided we do not qualify as an "accelerated filer" as defined in Rule 12b-2 under the Exchange Act, which would occur if our annual revenue was $100 million or more during our most recently completed fiscal year and the market value of our common equity held by non-affiliates is $75 million or more as of the last business day of our most recently completed second fiscal quarter, and only after we have been subject to the reporting requirements of the Exchange Act for a period of at least 12 calendar months.

THE OFFERING

Class A common stock offered by us	2,941,176 shares
Option to purchase additional shares	The underwriters have a 30-day option to purchase up to 441,176 additional shares of our Class A common stock at the initial public offering price less estimated underwriting discounts and commissions.
Class A common stock to be outstanding after this offering	7,827,031 shares (or 8,268,207 shares if the underwriters exercise their option to purchase additional shares in full).
Class B common stock to be outstanding after this offering	2,398,868 shares.
Total Class A and Class B common stock to be outstanding after this offering	10,225,899 shares (or 10,667,075 shares if the underwriters exercise their option to purchase additional shares in full).
Use of proceeds	We estimate that the net proceeds from this offering will be approximately $43.0 million (or approximately $50.0 million if the underwriters exercise in full their option to purchase additional shares of our Class A common stock), at an assumed initial public offering price of $17.00 per share, which is the midpoint of the price range set forth on the cover page of this prospectus, after deducting the estimated underwriting discount and commissions and the estimated offering expenses payable by us. We anticipate that we will use the net proceeds of this offering to hire additional sales personnel and expand our marketing programs, to fund product development and clinical research activities and the remainder for working capital and other general corporate purposes. See “Use of Proceeds” beginning on page 81 for additional information.
Voting rights	Following this offering, we will have two classes of common stock: Class A common stock and Class B common stock. The rights of the holders of Class A common stock and Class B common stock are identical, except with respect to voting and conversion. Each share of Class A common stock will be entitled to one vote and shares of Class B common stock will be non-voting, except as may be required by law. Each share of Class B common stock may be converted into one share of Class A common stock at the option of its holder, subject to the ownership limitations provided for in our amended and restated certificate of incorporation to become effective upon the closing of this offering. See “Description of Capital Stock” for additional information.

Risk factors	Investing in our common stock involves a high degree of risk. You should carefully read the "Risk Factors" beginning on page 20 and the other information included in this prospectus for a discussion of factors you should consider carefully before deciding to invest in our common stock.
Proposed Nasdaq Global Market symbol	"AZYO"

Certain of our existing stockholders, including entities affiliated with certain of our directors, have indicated an interest in purchasing an aggregate of approximately $20 million in shares of our common stock in this offering at the initial public offering price. However, because indications of interest are not binding agreements or commitments to purchase, the underwriters may determine to sell more, fewer or no shares in this offering to any or all of these stockholders, or any or all of these stockholders may determine to purchase more, fewer or no shares in this offering. The underwriters will receive the same underwriting discount on any shares purchased by these stockholders as they will on any other shares sold to the public in this offering. To the extent shares of common stock offered hereby are purchased by entities affiliated with Deerfield, such shares will be issued in the form of Class B common stock that will be convertible into an equivalent number of shares of our Class A common stock. The public offering price of and underwriting discount on such shares of Class B common stock will be identical to the shares of Class A common stock otherwise offered hereby. Unless otherwise indicated or as the context otherwise requires, references to Class A common stock being offered hereby include the shares of Class A common stock into which shares of our Class B common stock purchased in this offering are convertible, and references to our "common stock" refer to shares of our Class A common stock and shares of our Class B common stock or either, as the context may require.

The number of shares of our common stock that will be outstanding after this offering is based on 648,456 shares of our Class A common stock and no shares of Class B common stock outstanding as of August 31, 2020, assumes no issuance of Class B common stock in connection with this offering, and excludes:

- 288,156 shares of our Class A common stock issuable upon exercise of stock options outstanding under our 2015 Stock Option / Stock Issuance Plan, referred to as our 2015 Plan, as of August 31, 2020, at a weighted-average exercise price of $6.43 per share;
- 740,957 shares of Class A common stock issuable upon the exercise of stock options and the settlement of restricted stock units, or RSUs, to be granted in connection with this offering under our 2020 Incentive Award Plan, referred to as our 2020 Plan, which will become effective in connection with this offering, to certain of our executive officers, employees and consultants, at, with respect to such stock options, an exercise price per share equal to the initial public offering price in this offering;
- 945,005 additional shares of our Class A common stock reserved for future issuance under our 2020 Plan, which will become effective in connection with this offering, as well as any automatic increases in the number of shares of our common stock reserved for future issuance under our 2020 Plan; and
- 143,150 shares of our Class A common stock that will become available for future issuance under our 2020 Employee Stock Purchase Plan, or our 2020 ESPP, which will become effective in connection with this offering, and shares of our common stock that become available pursuant to provisions in the 2020 ESPP that automatically increase the share reserve under our 2020 ESPP.

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

- a one-for-13.9549 reverse stock split of our common stock, which became effective on September 29, 2020;
- the automatic conversion of all outstanding shares of our Series A convertible preferred stock into an aggregate of 2,295,245 shares of our Class A common stock and of all outstanding shares of

our Series A-1 convertible preferred stock into an aggregate of 1,317,425 shares of our Class B common stock, in each case, upon the closing of this offering;

- the issuance of an aggregate of 1,884,107 shares of our Class A common stock and 1,081,443 shares of our Class B common stock to the holders of our Series A convertible preferred stock and Series A-1 convertible preferred stock, respectively, in respect of a liquidation preference payable to such holders in kind immediately prior to the closing of this offering pursuant to our certificate of incorporation (as currently in effect), based on an assumed initial public offering price of $17.00 per share (the midpoint of the price range set forth on the cover page of this prospectus) (a $1.00 increase in the assumed initial public offering price of $17.00 per share would decrease the number of shares of our Class A common stock and Class B common stock issuable in respect of such liquidation preference by an aggregate of 104,672 shares and 60,080 shares, respectively; a $1.00 decrease in the assumed initial public offering price of $17.00 per share would increase the number of shares of our Class A common stock and Class B common stock issuable in respect of such liquidation preference by an aggregate of 117,757 shares and 67,590 shares, respectively);
- the assumed net exercise of a warrant to purchase shares of our Class A common stock outstanding as of August 31, 2020, which we refer to as the Common Stock Warrant, that will expire if not exercised prior to the closing of this offering, and which will result in the issuance of 5,204 shares of our Class A common stock, assuming the fair market value of our Class A common stock for purposes of such net exercise will be equal to the assumed initial public offering price of $17.00 per share (the midpoint of the price range set forth on the cover page of this prospectus) (a $1.00 increase in the assumed initial public offering price of $17.00 per share would increase the number of shares of our Class A common stock issuable in connection with such assumed net exercise by 137 shares; a $1.00 decrease in the assumed initial public offering price of $17.00 per share would decrease the number of shares of our Class A common stock issuable in connection with such assumed net exercise by 153 shares);
- the assumed gross exercise, for an aggregate exercise price of approximately $0.4 million, of certain warrants to purchase 405,000 shares of Series A preferred stock outstanding as of August 31, 2020, which we refer to as the Preferred Stock Warrants, that will expire if not exercised prior to the closing of this offering, which, assuming the automatic conversion of the shares of Series A preferred stock issued pursuant to such exercise into shares of Class A common stock, will result in the issuance of 29,021 shares of our Class A common stock in respect of such conversion and an additional 23,822 shares of Class A common stock in respect of the liquidation preference payable in kind to holders of our Series A preferred stock immediately prior to the closing of this offering, in each case, upon the closing of this offering;
- the issuance and sale of an aggregate of (i) 5,039,427 shares of our Series A convertible preferred stock, including 2,039,427 shares of our Series A convertible preferred stock issued upon the conversion of approximately $2.0 million in aggregate principal amount of convertible promissory notes, which we refer to as the 2020 Bridge Notes, together with accrued and unpaid interest thereon, and (ii) 375,000 shares of our Series A convertible preferred stock to an affiliate of HighCape Partners in exchange for the extinguishment of our obligation to pay an advisory fee, in each case, in September 2020;
- the filing and effectiveness of our current certificate of incorporation effecting a reclassification of our then outstanding common stock to Class A common stock and authorizing our Series A-1 convertible preferred stock and our Class B common stock and the issuance to Deerfield of 18,384,536 shares of Series A-1 convertible preferred stock in exchange for an equal number of shares of Series A convertible preferred stock pursuant to an exchange agreement, in each case, in September 2020;
- no exercise of outstanding options or warrants after August 31, 2020, other than as described above;

- the filing and effectiveness of our restated certificate of incorporation, which we refer to as our Post-IPO Certificate of Incorporation, and the effectiveness of our amended and restated bylaws, which we refer to as our Post-IPO Bylaws, which will occur upon the closing of this offering; and
- no exercise by the underwriters of their option to purchase additional shares of our Class A common stock.

SUMMARY CONSOLIDATED FINANCIAL DATA

The following tables set forth our summary consolidated financial data for the periods and as of the dates indicated. We have derived the consolidated statements of operations data for the years ended December 31, 2018 and 2019 from our audited consolidated financial statements included elsewhere in this prospectus. We have derived the consolidated statements of operations data for the six months ended June 30, 2019 and 2020 and the consolidated balance sheet data as of June 30, 2020 from our unaudited consolidated financial statements included elsewhere in this prospectus. We have prepared the unaudited consolidated financial information set forth below on the same basis as our audited consolidated financial statements and have included all adjustments, consisting only of normal recurring adjustments, that we consider necessary for a fair presentation of our financial position and results of operations as of the applicable dates and for the applicable periods.

Our historical results are not necessarily indicative of the results that should be expected for any future period, and our results for the interim period are not necessarily indicative of the results that should be expected for the full year ending December 31, 2020. You should read the following summary consolidated financial data together with the more detailed information contained in "Selected Consolidated Financial Data," "Management's Discussion and Analysis of Financial Condition and Results of Operations" and our consolidated financial statements and the related notes included elsewhere in this prospectus.

	Year Ended December 31,		Six Months Ended June 30,	
	2018	2019	2019	2020
	(in thousands, except share and per share data)			
Consolidated Statements of Operations Data:				
Net sales	$ 39,038	$ 42,901	$ 19,709	$ 18,442
Cost of goods sold	23,093	23,133	10,376	9,443
Gross profit	15,945	19,768	9,333	8,999
Operating expenses:				
Sales and marketing	13,165	16,161	7,157	8,297
General and administrative	8,520	9,616	4,293	5,699
Research and development	2,481	2,400	1,235	1,948
Total operating expenses	24,166	28,177	12,685	15,944
Loss from operations	(8,221)	(8,409)	(3,352)	(6,945)
Interest expense	5,519	5,381	2,686	2,783
Other (income) expense	(2,200)	(1,881)	—	—
Loss before provision for income taxes	(11,540)	(11,909)	(6,038)	(9,728)
Provision for income taxes	26	30	14	10
Net loss and net loss attributable to common stockholders	$ (11,566)	$ (11,939)	$ (6,052)	$ (9,738)
Net loss per share attributable to common stockholders — basic and diluted[(1)]	$ (18.37)	$ (18.48)	$ (9.38)	$ (15.02)
Weighted average shares of common stock outstanding used to compute net loss per share attributable to common stockholders — basic and diluted[(1)]	629,534	645,994	645,143	648,277
Pro forma net loss per share attributable to common stockholders — basic and diluted (unaudited)[(1)]		(1.89)		(1.48)
Pro forma weighted average shares of common stock outstanding used to compute pro forma net loss per share attributable to common stockholders — basic and diluted (unaudited)[(1)]		6,309,291		6,577,529

(1) See Notes 14 and 15 to our consolidated financial statements included elsewhere in this prospectus for an explanation of the method used to calculate the historical and pro forma basic and diluted net loss per share attributable to common stockholders

and the weighted average number of shares used in the computation of the per share amounts. All share and per share amounts set forth in the table above have been adjusted to give retrospective effect to the one-for-13.9549 reverse stock split of our common stock effected on September 29, 2020.

	As of June 30, 2020		
	Actual	Pro Forma[1]	Pro Forma As Adjusted[2][3]
		(in thousands)	
Consolidated Balance Sheet Data:			
Cash	$ 990	$ 4,395	$ 47,395
Working capital[4]	(3,310)	96	43,096
Total assets	42,195	46,590	88,600
Long-term debt, including current portion	26,061	24,061	24,061
Long-term revenue interest obligation, including current portion	19,433	19,433	19,433
Series A convertible preferred stock	44,899	—	—
Total stockholders' equity (deficit)[5]	(64,723)	(14,172)	28,827

[1] The pro forma consolidated balance sheet data gives effect to:

- the automatic conversion of all outstanding shares of our Series A convertible preferred stock into an aggregate of 2,295,245 shares of our Class A common stock and of all outstanding shares of our Series A-1 convertible preferred stock into an aggregate of 1,317,425 shares of our Class B common stock, in each case, upon the closing of this offering;
- the issuance of an aggregate of 1,884,107 shares of our Class A common stock and 1,081,443 shares of our Class B common stock to the holders of our Series A convertible preferred stock and Series A-1 convertible preferred stock, respectively, in respect of a liquidation preference payable to such holders in kind immediately prior to the closing of this offering pursuant to our certificate of incorporation (as currently in effect), based on an assumed initial public offering price of $17.00 per share (the midpoint of the price range set forth on the cover page of this prospectus);
- the assumed net exercise of the Common Stock Warrant, which will result in the issuance of 5,204 shares of our Class A common stock, assuming the fair market value of our Class A common stock for purposes of such net exercise will be equal to the assumed initial public offering price of $17.00 per share (the midpoint of the price range set forth on the cover page of this prospectus);
- the assumed gross exercise, for an aggregate exercise price of approximately $0.4 million, of our Preferred Stock Warrants, which, assuming the automatic conversion of the shares of Series A preferred stock issued pursuant to such exercise into shares of Class A common stock, will result in the issuance of 29,021 shares of our Class A common stock in respect of such conversion and an additional 23,822 shares of Class A common stock in respect of the liquidation preference payable in kind to holders of our Series A preferred stock immediately prior to the closing of this offering;
- the issuance and sale of an aggregate of (i) 5,039,427 shares of our Series A convertible preferred stock, including 2,039,427 shares of our Series A convertible preferred stock issued upon the conversion of approximately $2.0 million in aggregate principal amount of the 2020 Bridge Notes, together with accrued and unpaid interest thereon, and (ii) 375,000 shares of our Series A convertible preferred stock to an affiliate of HighCape Partners in exchange for the extinguishment of our obligation to pay an advisory fee, in each case, in September 2020; and
- the filing and effectiveness of our current certificate of incorporation effecting a reclassification of our then outstanding common stock to Class A common stock and authorizing our Series A-1 convertible preferred stock and our Class B common stock and the issuance to Deerfield of 18,384,536 shares of Series A-1 convertible preferred stock in exchange for an equal number of shares of Series A convertible preferred stock pursuant to an exchange agreement, in each case, in September 2020.

The number of shares of common stock issuable to holders of our Series A and Series A-1 convertible preferred stock in respect of the liquidation preference described above, the number of shares of Class A common stock issuable upon the net exercise of the Common Stock Warrant and the number of shares of Series A convertible preferred stock issuable upon the assumed net exercise of the Preferred Stock Warrants, in each case, as described above, will depend on the actual initial public offering price determined at pricing. See "— The Offering" for information regarding the expected impact of a $1.00 increase or decrease in the assumed initial public offering price per share on the number of shares issuable in connection with the events described in the foregoing sentence.

[2] Reflects the pro forma adjustments described in footnote (1) and the issuance and sale of shares of common stock in this offering at an assumed initial public offering price of $17.00 per share, which is the midpoint of the price range set forth on the cover page of this prospectus, after deducting the estimated underwriting discount and commissions and estimated offering expenses payable by us.

[3] Each $1.00 increase (decrease) in the assumed initial public offering price of $17.00 per share, which is the midpoint of the price range set forth on the cover page of this prospectus, would increase (decrease) the pro forma as adjusted amount of each of cash, working capital, total assets, additional paid-in capital and total stockholders' equity by $2.7 million, assuming that the number

of shares offered by us, as set forth on the cover page of this prospectus, remains the same and after deducting the estimated underwriting discount and commissions and estimated offering expenses payable by us. Similarly, each increase (decrease) of 1.0 million shares in the number of shares offered by us at the assumed initial public offering price, after deducting the estimated underwriting discount and commissions and estimated offering expenses payable by us, would increase (decrease) each of cash, working capital, total assets, additional paid-in capital and total stockholders' equity by $15.8 million. The pro forma information discussed above is illustrative only and will be adjusted based on the actual initial public offering price and other terms of our initial public offering determined at pricing.

(4) We define working capital as our total current assets less our total current liabilities. See our consolidated financial statements included elsewhere in this prospectus for further details regarding our current assets and liabilities.

(5) The pro forma and pro forma as adjusted columns do not reflect the non-cash potential loss on extinguishment of debt related to the conversion of the 2020 Bridge Notes, see Note 20 to our consolidated financial statements included elsewhere in this prospectus.

Non-GAAP Financial Measures

This prospectus presents our gross margin, excluding intangible asset amortization, for the years ended December 31, 2018 and 2019 and for the six months ended June 30, 2019 and 2020. We calculate gross margin, excluding intangible asset amortization, as gross profit, excluding amortization expense relating to intangible assets we acquired in our acquisition of all of the commercial assets of CorMatrix Cardiovascular, Inc., or CorMatrix, in 2017, or the CorMatrix Acquisition, divided by net sales. Gross margin, excluding intangible asset amortization, is a supplemental measure of our performance, is not defined by or presented in accordance with U.S. generally accepted accounting principles, or GAAP, has limitations as an analytical tool and should not be considered in isolation or as an alternative to our GAAP gross margin, gross profit or any other financial performance measure presented in accordance with GAAP. We present gross margin, excluding intangible asset amortization, because we believe that it provides meaningful supplemental information regarding our operating performance by removing the impact of amortization expense, which is not indicative of our overall operating performance. We believe this provides our management and investors with useful information to facilitate period-to-period comparisons of our operating results. Our management uses this metric in assessing the health of our business and our operating performance, and we believe investors' understanding of our operating performance is similarly enhanced by our presentation of this metric.

Although we use gross margin, excluding intangible asset amortization, as described above, this metric has limitations as an analytical tool and should not be considered in isolation or as a substitute for financial information presented in accordance with GAAP. In addition, other companies, including companies in our industry, may use other measures to evaluate their performance, which could reduce the usefulness of this non-GAAP financial measure as a tool for comparison.

The following table presents a reconciliation of our gross margin, excluding intangible asset amortization, for the years ended December 31, 2018 and 2019 and for the six months ended June 30, 2019 and 2020 to the most directly comparable GAAP financial measure, which is our GAAP gross margin.

	Year Ended December 31,		Six Months Ended June 30,	
	2018	2019	2019	2020
	(dollars in thousands)			
Net sales	$ 39,038	$ 42,901	$ 19,709	$ 18,442
Cost of Goods Sold	23,093	23,133	10,376	9,443
Gross profit	$ 15,945	$ 19,768	$ 9,333	$ 8,999
Intangible amortization expense	$ 3,398	$ 3,398	$ 1,699	$ 1,699
Cost of Goods Sold, excluding intangible amortization	$ 19,695	$ 19,735	$ 8,677	$ 7,744
Gross profit, excluding intangible amortization	$ 19,343	$ 23,166	$ 11,032	$ 10,698
Gross margin	41%	46%	47%	49%
Gross margin, excluding intangible amortization	50%	54%	56%	58%

RISK FACTORS

Investing in our common stock involves a high degree of risk. You should carefully consider the risks and uncertainties described below and the other information in this prospectus before making an investment in our common stock. Our business, financial condition, results of operations and prospects could be materially and adversely affected if any of these risks occurs, and as a result, the market price of our common stock could decline and you could lose all or part of your investment. This prospectus also contains forward-looking statements that involve risks and uncertainties. See "Special Note Regarding Forward-Looking Statements." Our actual results could differ materially and adversely from those anticipated in these forward-looking statements as a result of certain factors, including those set forth below.

Risks Related to Our Business

Our long-term growth depends on our ability to enhance our products, expand our product indications and develop, acquire and commercialize additional product offerings.

Our industry is highly competitive and subject to rapid change and technological advancements. Competition intensifies as technical advances in each field are made and become more widely known. We can give no assurance that others will not develop products, services and processes with significant advantages over the products, services and processes that we offer or are seeking to develop. It is, therefore, important to our business that we continue to enhance our existing product offerings, expand our product indications and develop or otherwise introduce and successfully commercialize new products. Developing, acquiring and commercializing products is expensive and time-consuming and could divert management's attention away from our core business. Even if we are successful in developing additional products, the success of any new product offering or enhancements to any of our existing products will depend on several factors, including our ability to:

- properly identify and anticipate physician and patient needs;
- develop and introduce new products and product enhancements in a timely manner;
- distinguish our products from those of our competitors;
- develop an effective and dedicated sales and marketing team;
- enter into successful agreements with commercial partners, independent sales agents and other third parties where it is beneficial for us to do so;
- adequately protect our intellectual property, avoid infringing, misappropriating or otherwise violating the intellectual property rights of third parties and obtain and maintain necessary intellectual property licenses from third parties;
- demonstrate, if required, the safety and efficacy of new products with data from pre-clinical studies and clinical trials;
- obtain the necessary regulatory clearances or approvals for new products, product enhancements and expanded indications;
- maintain full compliance with FDA, European Union Medical Devices regulations and other regulatory requirements applicable to new devices or products or modifications of existing devices or products;
- provide adequate training to potential users of our products;
- receive adequate coverage and reimbursement for our products; and
- otherwise compete effectively against products and enhancements developed by our competitors.

If we are not successful in expanding our indications and developing, acquiring and commercializing new products and product enhancements, our ability to increase our net sales may be impaired, which could have a material adverse effect on our business, financial condition and results of operations. In addition, our research and development efforts may require a substantial investment of time and resources before we are adequately able to determine the commercial viability of a new product, technology or other innovation.

Even if we are able to successfully develop and commercialize new product offerings or enhancements, they may be quickly rendered obsolete by changing customer preferences or the introduction by our competitors of products embodying new technologies or features and/or otherwise not produce sales in excess of the costs of development, any of which could also materially and adversely affect our business, financial condition and results of operations. Furthermore, to the extent we seek to enhance our products and broaden our product portfolio through acquisitions or other commercial transactions, we will be subject to additional risks. See "— We regularly evaluate opportunities to make acquisitions of, investments in, and licenses or other commercial arrangements involving, other companies or technologies, and to enter into other strategic transactions. These transactions entail significant risks."

A substantial portion of our net sales is generated through our commercial partners and independent sales agents, which subjects us to various risks.

We currently rely on the efforts of our commercial partners and independent sales agents to generate a substantial portion of our net sales, and we expect to continue to rely on these third parties to generate a substantial portion of our net sales in the future while we work to grow our direct sales force. As a result, the impairment or termination of these relationships for any reason, or the failure of these parties to diligently sell our products and comply with applicable laws and regulations, could materially and adversely affect our ability to generate revenue and profits. Because our commercial partners and independent sales agents control the relationships with our end customers, if our relationship with any commercial partner or independent sales agent ends, we will likely also lose our relationship with their customers. Furthermore, our success is partially dependent on the willingness and ability of the sales representatives and other employees of our commercial partners and independent sales agents to diligently sell our products. However, we cannot guarantee that they will be successful in marketing our products. In addition, because our commercial partners and independent sales agents do not sell our products exclusively, they may focus their sales efforts and resources on other products that produce better margins or greater commissions for them or are incorporated into a broader strategic relationship with a partner. Because we do not control the sales representatives and other employees of our commercial partners, we cannot guarantee that our sales processes, regulatory compliance and other priorities will be consistently communicated and executed. In addition, we do not have staff in many of the areas covered by our commercial partners and independent sales agents, which makes it particularly difficult for us to monitor their performance. While we may take steps to mitigate the risks associated with noncompliance by our commercial partners and independent sales agents, there remains a risk that they will not comply with regulatory requirements or our requirements and policies. Actions by the sales representatives and other employees of our commercial partners and independent sales agents that are beyond our control could result in flat or declining sales in that territory, harm to the reputation of our company or our products or legal liability, any of which could have a material adverse effect on our business, financial condition and results of operations. In addition to the risk of losing customers, the operation of local laws and our agreements with our commercial partners and independent sales agents would make it difficult for us to replace a commercial partner or independent sales agent we feel is underperforming.

In order to increase our sales, particularly with respect to our Core Products, we intend to develop relationships and arrangements with additional commercial partners and/or independent sales agents, which we may not be able to do on commercially reasonable terms or at all. If we are unable to establish new commercial partner and independent sales agent relationships and maintain our relationships with our existing commercial partners and independent sales agents, in each case, on commercially reasonable terms, we will be unable to increase sales of our products and our business, financial condition and results of operations could be materially and adversely affected.

In addition, certain of our commercial partners may, from time to time, account for a significant portion of our net sales and/or accounts receivable. Sales to Surgalign Holdings, one of our commercial partners, accounted for 12% and 11% of our net sales during the year ended December 31, 2019 and six months ended June 30, 2020, respectively and represented 23% and 13% of our accounts receivable as of December 31, 2019 and June 30, 2020, respectively. Sales to Medtronic, also one of our commercial partners, accounted for 15% of our net sales during the six months ended June 30, 2020 and represented 27% of our accounts receivable as of June 30, 2020. The loss of one or more significant commercial partners, or a material reduction in their purchases of our products, would adversely affect our business,

financial condition and results of operations. We are also subject to the risk that any such commercial partner will experience financial difficulties that prevent them from making payments to us on a timely basis or at all.

Our revenue and profitability could be materially and adversely affected if we fail to maintain our relationships with our existing contract manufacturing customers and enter into agreements with new contract manufacturing customers, or if existing contract manufacturing customers reduce purchases of our products. Our relationships with these customers also subject us to certain risks.

Our contract manufacturing operations are an important component of our business, enabling us to utilize as much as possible of the human biological material from which we produce our core orthopedic/spinal repair and soft tissue reconstruction products, leverage our existing overhead and improve our cash flow. In addition, we have historically generated a significant portion of our net sales from our contract manufacturing customers, which represented approximately 41.8% and 27.9% of our net sales for the years ended December 31, 2018 and 2019, respectively and 30.6% and 15.4% of our net sales for the six months ended June 30, 2019 and 2020, respectively. As a result, if we are unable to maintain our relationships with our existing contract manufacturing customers and establish relationships with new contract manufacturing customers on terms that are favorable to us, or if our existing contract manufacturing customers materially reduce their purchases of our products, our sales and profitability will be adversely affected.

In addition, although we have invested, and expect to continue to invest, significant time and resources cultivating our relationships with these customers, these relationships subject us to certain risks. For example, our contract manufacturing customers may use their experience with our products to develop their own solutions, which they may be able to produce at a lower cost than the price they pay for our products. This is particularly true given that many of our customers are large, established companies that may be able to achieve greater economies of scale in manufacturing and production and/or experience synergies from vertical integration. In addition, our contract manufacturing customers routinely audit and inspect our facilities, processes and practices to ensure that our manufacturing process and products meet their internal standards and applicable regulatory standards. To date, we have passed all such audits and inspections. However, we may not do so in the future, and any failure to perform to our customers' satisfaction in these audits could significantly harm our relationships with them and our reputation, which could materially and adversely affect our business, financial condition and results of operations. Furthermore, the need to comply with our customers' internal requirements could result in increased development, manufacturing, warranty and administrative costs. A significant increase in these costs could adversely affect our business, financial condition and results of operations. There is also a risk that we may be unable to supply products in the quantities and of the quality required by these customers within their required timeframes, which would also jeopardize our relationships with them. Disagreements or disputes may also arise from time to time. Any of these events, to the extent they cause our customers to reduce purchases of our products or terminate their relationships with us, could have a material adverse effect on our business, financial condition and results of operations.

In addition, our sales to these customers may be impacted by changes in their buying habits over which we have no control. Such changes may be driven by, among other things, changes in market share, cyclicality, inventory reductions, spending patterns, cost-cutting measures, product development activity and timelines and changes in supply chain management, as well as the impact of general economic conditions. These customers may also experience financial difficulties or other problems that may prevent them from making payments to us on a timely basis or at all. Any of these events could cause our operating results to fluctuate from period to period, make it more difficult for us to manage our inventory and production schedules and otherwise adversely affect our business, financial condition and results of operations.

We plan to expand our direct sales force, and if we are unable to successfully expand, manage and maintain our direct sales force, we may not be able to generate greater market share and revenue growth.

Prior to the CorMatrix Acquisition, we had a very small direct sales force and sold our Core Products primarily through independent sales agents or to other companies for resale or incorporation into their products. Though our orthopedic/spinal repair products are now primarily sold through our commercial partners, we currently utilize our direct sales force to sell CanGaroo and our cardiovascular products, as

well as our SimpliDerm product. As of June 30, 2020, our direct sales organization consisted of 27 sales representatives, who are focused on increasing market access and market penetration by selling our products, managing our commercial partners, who assist in selling CanGaroo, and providing technical assistance. Our operating results are directly dependent upon the efforts of these employees. If our direct sales force fails to adequately promote, market and sell our products and effectively manage and assist our commercial partners, our net sales may be adversely affected.

In addition, in order to expand our network of hospital and physician customers, drive deeper penetration in our current accounts and provide additional technical assistance to our commercial partners, we plan to expand the size and geographic scope of our direct sales force. This growth may require us to split or adjust existing sales territories, which may adversely affect our ability to retain customers in those territories. Additionally, our future success will depend largely on our ability to continue to hire, train, retain and motivate skilled sales personnel with significant industry experience and technical knowledge of regenerative medicine and related products. Because the competition for their services is high, we cannot assure you we will be able to hire and retain additional personnel on favorable or commercially reasonable terms, if at all. Failure to hire or retain qualified sales personnel would prevent us from expanding our business and generating additional revenue. In addition, it typically takes a substantial period of time before newly hired sales personnel are effective. Though we currently utilize commercial partners and independent sales agents to sell certain of our products, there is no guarantee that we will be able to establish relationships with additional parties, or that our existing commercial partners and independent sales agents will purchase or otherwise commercialize any products we may seek to introduce in the future. If we are unable to expand our sales and marketing capabilities, we may not be able to effectively commercialize our products, which could have a material adverse effect on our business, financial condition and results of operations.

We are working to grow our direct sales force for certain of our products, which may result in higher fixed costs and may slow our ability to reduce costs in the face of a sudden decline in demand for our products.

A key component of our growth involves expanding the size and geographic scope of our direct sales force. A direct sales force may subject us to higher fixed costs than those of other companies that market competing products primarily through third parties due to the costs that we will bear associated with employee benefits, training and managing sales personnel. As a result, we could be at a competitive disadvantage relative to competitors who rely more heavily on third parties to market and sell their products. Additionally, these fixed costs may slow our ability to reduce costs in the face of a sudden decline in demand for our products, which could have a material adverse effect on our business, financial condition and results of operations.

We have incurred operating losses since our inception, expect to continue to incur significant expenses and operating losses in the future, and may not be able to achieve or sustain profitability.

We have incurred net losses since our inception in 2015. For the years ended December 31, 2018 and 2019, we had net losses of $11.6 million and $11.9 million, respectively, and for the six months ended June 30, 2019 and 2020, we had net losses of $6.1 million and $9.7 million, respectively. As of June 30, 2020, we had an accumulated deficit of $66.7 million. To date, we have financed our operations primarily through private placements of our convertible preferred stock, amounts borrowed under our credit facilities and sales of our products. We have devoted the majority of our resources to acquisition and integration, manufacturing costs, research and development, clinical activity and investing in our commercial infrastructure through our direct sales force and commercial partners in order to expand our presence and to promote awareness and adoption of our products.

We expect that our operating expenses will continue to increase as we grow our sales organization, expand our product development and clinical and research activities, and incur additional costs associated with being a public company. As a result, we expect to continue to incur operating losses in the future and may never achieve profitability. Furthermore, even if we do achieve profitability, we may not be able to sustain or increase profitability on an ongoing basis. If we do not achieve or sustain profitability, it will be more difficult for us to finance our business and accomplish our strategic objectives, either of which would have a material adverse effect on our business, financial condition and results of operations and

cause the market price of our Class A common stock to decline. In addition, failure of our products to significantly penetrate existing or new markets would negatively affect our business, financial condition and results of operations.

Our recurring losses from operations and financial condition raise substantial doubt about our ability to continue as a going concern.

Without giving effect to the anticipated net proceeds from this offering, based on our current operating plans, there is substantial doubt as to whether our future cash flows together with our existing cash will be sufficient to meet our anticipated operating needs into 2021. In our audited consolidated financial statements for the year ended December 31, 2019 and our unaudited interim consolidated financial statements for the six months ended June 30, 2020, we concluded that this circumstance raised substantial doubt about our ability to continue as a going concern within one year from the original issuance date of such financial statements and from the date of the registration statement of which this prospectus forms a part. Similarly, in its report on such financial statements, our independent registered public accounting firm included an explanatory paragraph stating that our recurring losses from operations and accumulated deficit raise substantial doubt about our ability to continue as a going concern. If our existing resources are not sufficient and we are unable to increase our product sales, we will need to raise additional capital to finance our operations, which we may not be able to do on acceptable terms or at all. If we are unable to increase our sales and/or raise additional capital and continue as a going concern, we may have to liquidate the company, and it is likely that investors will lose all or a part of their investment. After this offering, in our own required quarterly assessments, we may again conclude that there is substantial doubt about our ability to continue as a going concern, and future reports from our independent registered public accounting firm may also contain statements expressing substantial doubt about our ability to continue as a going concern. If we seek additional financing to fund our business activities in the future and there remains substantial doubt about our ability to continue as a going concern, investors or other financing sources may be unwilling to provide additional funding on commercially reasonable terms or at all.

Our business has been, and may continue to be, adversely affected by the outbreak of the novel strain of coronavirus disease, COVID-19, and may be adversely affected by any future pandemic, epidemic or outbreak of an infectious disease in the United States or worldwide.

If a pandemic, epidemic or outbreak of an infectious disease occurs in the United States or worldwide, our business may be adversely affected. In December 2019, a novel strain of coronavirus, SARS-CoV-2, was identified in Wuhan, China. Since then, SARS-CoV-2, and the resulting disease, COVID-19, has spread to most countries and all 50 states within the United States. The COVID-19 pandemic has negatively impacted our business, financial condition and results of operations by significantly decreasing and delaying the number of procedures performed using our products, and we expect the pandemic to continue to negatively impact our business, financial condition and results of operations. Similar to the general trend in elective and other surgical procedures, the number of procedures performed using our products has decreased significantly as healthcare organizations in the United States have prioritized the treatment of patients with COVID-19 or have otherwise altered their operations to prepare for and respond to the pandemic. For example, in the United States, governmental authorities have recommended, and in certain cases required, that elective, specialty and other non-emergency procedures and appointments be suspended or canceled in order to avoid patient exposure to medical environments and the risk of potential infection with the novel coronavirus, and to focus limited resources and personnel capacity on the treatment of COVID-19 patients. Beginning in March 2020, a significant number of procedures using our products have been postponed or cancelled, which has negatively impacted sales of our products. Decreases in procedures have been most prevalent in regions experiencing significant outbreaks, while healthcare organizations in other regions have continued to undertake procedures using our products at reduced levels as compared to before the pandemic. The COVID-19 pandemic could also adversely impact the initiation, continuation and completion of our clinical trials by, for example, delaying procedures using our products or reducing the number of patients, healthcare providers or clinical facilities available or willing to participate in the clinical trials. These delays could result in increased costs, delays in advancing our product development, delays in testing the effectiveness of our technology or termination of the clinical studies altogether. These measures and challenges will likely continue for the duration of the pandemic, which is uncertain, and may continue to reduce our net sales and negatively

impact our business, financial condition and results of operations while the pandemic continues. Further, even after the pandemic ultimately subsides, we anticipate there will be a substantial backlog of patients seeking procedures and appointments for a variety of medical conditions and, as a result, patients seeking procedures performed using our products will have to navigate limited provider capacity. We believe this limited capacity of providers, hospitals and other healthcare facilities could have a significant adverse effect on our business, financial condition and results of operations during and following the COVID-19 pandemic.

Numerous state and local jurisdictions, including those where our facilities are located, have imposed, and others in the future may impose, "shelter-in-place" orders, quarantines, executive orders and similar government orders and restrictions for their residents to control the spread of COVID-19. Such orders or restrictions have resulted in reduced operations at our manufacturing facilities, travel restrictions and cancellation of events and have restricted the ability of our sales representatives and those of our commercial partners and independent sales agents to attend procedures in which our products are used, among other effects, thereby significantly and negatively impacting our operations. Other disruptions or potential disruptions include restrictions on the ability of our sales representatives and other personnel, and those of our commercial partners and independent sales agents, to travel and access customers for training and case support; inability of our suppliers to manufacture and deliver to us on a timely basis or at all; delays in our ability to obtain medical records for tissue donors, which we need in order to release our products; disruptions in our production schedule and ability to manufacture and assemble products; inventory shortages or obsolescence; delays in actions of regulatory bodies; delays in clinical trials and studies; diversion of or limitations on employee resources that would otherwise be focused on the operations of our business, including because of sickness of employees or their families or the desire of employees to avoid contact with groups of people; delays in growing or reductions in our direct sales force, including through delays in hiring, lay-offs, furloughs or other losses of sales representatives; restrictions in our ability to ship our products to customers; business adjustments or disruptions of certain third parties, including suppliers, medical institutions and clinical investigators with whom we conduct business; negative impact on our customers' credit profiles, which may adversely impact our future collection experience; and additional government requirements or other incremental mitigation efforts that may further impact our or our suppliers' capacity to manufacture our products. The extent, to which the COVID-19 pandemic or any future pandemic, epidemic or outbreak of an infectious disease impacts our business, will depend on future events and developments, which are highly uncertain and cannot be predicted, including the severity and spread of the disease and the effectiveness of actions to contain the disease or treat its impact, among others. As new information regarding COVID-19 continues to emerge, it is difficult to predict what impact this disease will ultimately have on our business.

Adverse changes in general domestic and global economic conditions and instability and disruption of credit markets, including as a result of the current COVID-19 pandemic or any other outbreak of an infectious disease, could adversely affect our business, financial condition, results of operations and liquidity.

We are subject to risks arising from adverse changes in general domestic and global economic conditions, including any recession, economic slowdown or disruption of credit markets. While the potential economic impact brought by, and the duration of, any pandemic, epidemic or outbreak of an infectious disease, including COVID-19, may be difficult to assess or predict, the current COVID-19 pandemic has resulted in, and may continue to result in, significant disruption of global financial markets. These events, and any financial crisis that may occur in the future, could make it more difficult and more expensive for hospitals and health systems to obtain credit, which may contribute to pressures on their operating margins. As a result, hospitals and health systems may curtail and reduce capital and overall spending, which may have a significant adverse effect on our business. In addition, the current economic downturn that has resulted from the COVID-19 pandemic has resulted and may continue to result in, and any economic downturn that may occur in the future may also result in, higher unemployment and a reduction in the number of individuals covered by private insurance, which may result in an increase in the cost of uncompensated care for hospitals. Higher unemployment may also result in a shift in reimbursement patterns as unemployed individuals switch from private plans to public plans such as U.S. Medicaid or Medicare. As economic conditions deteriorate and unemployment increases, any significant shift in coverage for the unemployed may have an unfavorable impact on our business.

In addition, the current COVID-19 pandemic and any other disruption in the capital and credit markets could impede our access to capital, which could be further adversely affected if we are unable to maintain our current credit ratings. Should we have limited access to additional financing sources, we may need to defer capital expenditures or seek other sources of liquidity, which may not be available to us on acceptable terms or at all. Similarly, if our suppliers face challenges in obtaining credit or other financial difficulties, they may be unable to provide the materials required to manufacture our products. All of these factors related to global economic conditions, which are beyond our control, could adversely impact our business, financial condition, results of operations and liquidity.

Our future growth depends on physician awareness of the distinctive characteristics, benefits, safety, clinical efficacy and cost-effectiveness of our products.

We focus our sales, marketing and training efforts on physicians, surgeons and other healthcare professionals. The acceptance of our products depends in part on our ability to educate these individuals as to the distinctive characteristics, benefits, safety, clinical efficacy and cost-effectiveness of our products compared to alternative products, procedures and therapies. We support our direct sales force, commercial partners and independent sales agents through in-person educational programs and online medical educational materials, among other things. We also produce marketing materials, including materials outlining our products, for our sales teams using printed, video and multimedia formats. However, our efforts to educate physicians, surgeons and other healthcare professionals regarding our products may not be successful, particularly in markets in which we rely exclusively on the efforts of our commercial partners and independent sales agents. A failure to educate physicians and surgeons may impair our ability to achieve market acceptance of our products and adversely affect our business, financial condition and results of operations.

Our success depends on the continued and future acceptance of our products by the medical community.

Even if we are able to increase awareness of our products among healthcare professionals, there can be no assurance that this will translate into greater acceptance of our products by the medical community. We believe physicians, surgeons and other healthcare professionals will only adopt our products if they determine, based on experience, clinical data and published peer reviewed journal articles, that the use of our products in a particular procedure is a favorable alternative to other available methods. Physicians also are more interested in using cost-effective products as they face increasing cost-containment pressure. In general, physicians may be slow to change their medical treatment practices and adopt our products for a variety of reasons, including, among others:

- their lack of experience using our products;
- lack of evidence supporting additional patient benefits from use of our products over conventional methods;
- pressure to contain costs;
- preference for other treatment modalities or our competitors' products;
- perceived liability risks generally associated with the use of new products and procedures;
- limited availability of coverage and/or reimbursement from third-party payors; and
- the time that must be dedicated to learning how to use our products.

The degree of market acceptance of our products will continue to depend on a number of factors, some of which are outside of our control, including, among other things:

- the actual and perceived safety and efficacy of our products;
- the potential and perceived advantages of our products over alternative treatments;
- clinical data and the clinical indications for which our products are approved;
- product labeling or product insert requirements of the FDA, the European Union or other regulatory authorities, including any limitations or warnings contained in approved labeling;
- the cost of using our products relative to the use of our competitors' products or alternative treatment modalities;

- relative convenience and ease of administration;
- the strength of marketing and distribution support;
- the timing of market introduction of competitive products;
- publicity concerning our products or competing products and treatments;
- our reputation and the reputation of our products;
- the prevalence and severity of any adverse events patients experience involving our products;
- the shelf life of our products and our ability to manage the logistics of the end-user supply chain; and
- sufficient and readily accessible third-party insurance coverage and reimbursement for procedures incorporating our products.

In addition, we believe recommendations for, and support of our products by, influential physicians are essential for market acceptance and adoption. If we do not receive this support (e.g., because we are unable to demonstrate favorable long-term clinical data or otherwise), physicians and hospitals may not use our products, which would significantly impair our ability to increase our sales and prevent us from achieving and sustaining profitability.

Unfavorable results from any of our pre-clinical studies or clinical trials, comparative effectiveness, economic or other studies, or from similar trials or studies conducted by others, may negatively affect the use or adoption of our products by physicians, hospitals and payors, which could have a negative impact on the market acceptance of our products and their profitability.

We regularly conduct a variety of pre-clinical studies and clinical trials, comparative effectiveness studies and economic and other studies of our products in an effort to generate clinical and real-world outcomes and cost effectiveness data in order to obtain product approval and drive further penetration in the markets we serve. If a clinical study conducted by us or a third party fails to demonstrate statistically significant results supporting performance, use benefits or compelling health or economic outcomes from using our products, physicians may elect not to use our products. Furthermore, in the event of an adverse clinical study outcome, our products may not achieve “standard-of-care” status, where they exist, for the conditions in question, which could deter the adoption of our products. Also, if serious adverse events are reported during the conduct of a study, it could affect continuation of the study, product approval or clearance and product adoption. In addition, U.S. and foreign regulatory authorities routinely conduct audits of clinical studies and such audits may result in adverse regulatory actions. If we are unable to develop a body of statistically significant evidence from our clinical study program, whether due to adverse results or the inability to complete properly designed studies, domestic and international public and private payors could refuse to cover procedures using our products, limit the manner in which they cover our products or reduce the price they are willing to pay or reimburse for procedures using our products. Any of these events could have a negative impact on market acceptance of procedures using our products and their profitability, which could have a material adverse effect on our business, financial condition and results of operations.

We will need to continue to expand our organization, and managing growth may be more difficult than we expect.

Managing our growth may be more difficult than we expect. We anticipate that a period of significant expansion will be required to penetrate and service the markets for our existing and anticipated future products and to continue to develop new products. This expansion will place a significant strain on our management, operational and financial resources. To manage the expected growth of our operations and personnel, we must both modify our existing operational and financial systems, procedures and controls and implement new systems, procedures and controls. We must also expand our finance, administrative and operations staff. Management may be unable to hire, train, retain, motivate and manage necessary personnel or to identify, manage and exploit existing and potential strategic relationships and market opportunities. If we fail to meet these challenges effectively, there may be an adverse effect on our business, financial condition and results of operations.

We regularly evaluate opportunities to make acquisitions of, investments in, and licenses or other commercial arrangements involving, other companies or technologies, and to enter into other strategic transactions. These transactions entail significant risks.

Our success depends, in part, on our ability to continually enhance and broaden our product offerings in response to changing customer demands, competitive pressures and advances in technologies. Accordingly, although we have no current commitments with respect to any acquisition or investment, we regularly review potential acquisitions of, investments in, and licenses or other commercial arrangements involving, complementary businesses, products or technologies instead of developing them ourselves. In addition, in regularly evaluating our financial and operating performance, we may decide to sell one or more of our product lines or another portion of our business. Opportunities to engage in these transactions may not be readily available to us at commercially reasonable prices, on other terms acceptable to us or at all. Even if such opportunities are available, these transactions involve significant risks. In connection with one or more of these transactions, we may:

- issue additional equity securities that would dilute the value of your investment in us;
- use cash that we may need in the future to operate our business;
- incur debt that could have terms unfavorable to us or that we might be unable to repay;
- structure the transaction in a manner that has unfavorable tax consequences, such as a stock purchase that does not permit a step-up in the tax basis for the assets acquired;
- incur asset impairment or other acquisition-related charges, or unforeseen costs, expenditures and risks;
- be unable to realize the anticipated benefits, such as increased revenues, cost savings or synergies from additional sales of existing or newly acquired products;
- experience dissynergies in shared functions following a divestment of any portion of our business;
- be unable to successfully integrate, operate, maintain and manage any newly acquired operations;
- divert management’s attention from the existing business to integrate, operate, maintain and manage any newly acquired operations and personnel, or to manage the complexities involved in separating divested operations, services, products and personnel;
- be unable to secure the services of key employees related to an acquisition or, in the case of a divestiture, lose one or more of our key employees;
- face increased scrutiny and review of our company and operations from government and other regulatory authorities; and
- otherwise be unable to succeed in the marketplace with the acquisition.

The occurrence of any of the above could materially and adversely affect our business, financial condition and results of operations. Furthermore, business acquisitions also involve the risk of unknown liabilities associated with the acquired business, which could be material. Such liabilities could include lack of compliance with government regulations that could subject us to investigation, civil and criminal sanctions, litigation and/or other actions that make it impossible to realize the anticipated benefits of the transaction. For example, we may acquire a company that was not compliant with FDA quality requirements or was making payments or other forms of remuneration to physicians to induce them to use their products. Incurring unknown liabilities or the failure to complete or realize the anticipated benefits of an acquisition, investment or other commercial arrangement, whether resulting from one or more of the factors described above or otherwise, could have a material and adverse effect on our business, financial condition and results of operations.

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

From time to time, we may implement or acquire new lines of business or introduce new products and services within our existing business lines. There are risks and uncertainties associated with these efforts, particularly in instances where the markets are not fully developed or are evolving. In developing and commercializing new lines of business and new products and services, we may invest significant time

and resources. External factors, such as regulatory compliance obligations, competitive alternatives, lack of market acceptance and shifting market preferences, may also affect the successful implementation of a new line of business or a new product or service. Failure to successfully plan for and manage these risks in the development and implementation of new lines of business or new products or services could have a material adverse effect on our business, financial condition and results of operations.

We face significant and continuing competition from other companies, some of which have longer operating histories, more established products and/or greater resources than we do, which could adversely affect our business, financial condition and results of operations.

We operate in highly competitive markets that are characterized by intense competition, subject to rapid change and significantly affected by new product introductions, technological advancements and other market activities of industry participants. Our competitors have historically dedicated, and will continue to dedicate, significant resources to promote their products and to develop new products that compete with ours. Customers in our target markets consider many factors when selecting a product, including product efficacy, ease of use, price, availability of payor coverage and adequate third-party reimbursement for procedures using the product, customer support services for technical-, clinical- and reimbursement-related matters and customer preference for, and loyalty to, particular products or a particular manufacturer. We expect competition to remain intense as competitors introduce additional competing products and enhancements to their existing products, and continue expanding into geographic markets where we currently operate or plan to expand. Product introductions or enhancements by competitors, which may have advanced technology, better features or lower pricing, may make our products obsolete or less competitive. As a result, we will be required to devote continued efforts and financial resources to develop and commercialize new products and enhancements to our existing products, deliver cost-effective clinical outcomes, manage our costs and expand our geographic reach.

Many of our current and potential competitors have longer operating histories and substantially greater financial, technical, marketing, sales, distribution and other resources than we do, which may prevent us from achieving significant market penetration or improved operating results. Certain competitors' products, such as competitors of SimpliDerm, are subject to a simpler reimbursement process than are our products. Competitors may also be able to leverage their market share and other resources to set prices at a level below that which is profitable for us. These companies may also enjoy other competitive advantages, including, without limitation:

- greater company, product and brand recognition;
- better quality and greater volume of clinical data;
- more effective marketing to and education of physicians and other healthcare professionals;
- greater control of key intellectual property and more expansive portfolios of intellectual property rights;
- more experience in obtaining and maintaining regulatory clearances or approvals for products and product enhancements;
- more established relationships with hospitals and other healthcare providers, physicians, suppliers, customers and third-party payors;
- additional lines of products, and the ability to bundle products to offer greater incentives to gain a competitive advantage;
- more established sales, marketing and worldwide distribution networks;
- better product support and service;
- superior product safety, reliability and durability;
- more effective pricing and revenue strategies; and
- more effective clinical training programs.

Our ability to achieve and maintain profitability will depend, in part, on our ability to develop or acquire proprietary products that reach the market in a timely manner, receive adequate coverage and

reimbursement for procedures using our products, and are safer and more effective than their alternatives, as well as our ability to otherwise compete effectively on the factors listed above. If we are unable to do so, our sales and/or margins will decrease, which could have a material adverse effect on our business, financial condition and results of operations.

Pricing pressure as a result of cost-containment efforts of our customers, purchasing groups, third-party payors and governmental organizations could adversely affect our sales and profitability.

Medical technology companies, healthcare systems and group purchasing organizations, or GPOs, have intensified competitive pricing pressure as a result of industry trends and new technologies. Rising healthcare costs have resulted in numerous cost reform initiatives by legislators, regulators and third-party payors. This cost reform has triggered a consolidation trend in the healthcare industry to aggregate purchasing power and, as a result, purchasing decisions are increasingly shifting to hospitals, integrated delivery networks, or IDNs, and other hospital groups, and away from individual surgeons and physicians. Many existing and potential facility customers for our products within the United States are members of GPOs and IDNs, including accountable care organizations or public-based purchasing organizations, and our business is partly dependent on contracts with these organizations. Purchases of our products can be contracted under national tenders or with larger hospital GPOs. GPOs and IDNs negotiate pricing arrangements with healthcare product manufacturers and distributors and offer the negotiated prices to affiliated hospitals and other members. GPOs and IDNs typically award contracts on a category-by-category basis through a competitive bidding process and, at any given time, we are typically in various stages of responding to bids and negotiating and renewing GPO and IDN agreements. Bids are generally solicited from multiple manufacturers or service providers with the intention of obtaining lower pricing. Due to the highly competitive nature of the bidding process and the GPO and IDN contracting processes in the United States, we may not be able to obtain or maintain contract positions with major GPOs and IDNs across our product portfolio. Furthermore, GPO and IDN contracts are typically terminable without cause upon 60 to 90 days' notice. In addition, while having a contract with a major purchaser for a given product category can facilitate sales, there can be no guarantee that sales volumes for those products will be maintained. For example, GPOs and IDNs are increasingly awarding contracts to multiple suppliers for the same product category and, even when we are the sole contracted supplier of a GPO or IDN for a certain product category, members of the GPO or IDN are generally free to purchase from other suppliers. If we are unable to maintain and renew our contracts with our current GPO and IDN customers and negotiate contracts with new customers on favorable terms, or if sales volumes under these agreements decline, our business, financial condition and results of operations could be materially and adversely affected.

In addition, most of our customers purchase our products directly and then bill third-party payors for procedures using those products. Because there is typically no separate reimbursement for supplies used in surgical procedures, the additional cost associated with the use of our products can affect the profit margin of the hospital or surgery center where the procedure is performed. Some of our target customers may be unwilling to adopt our products in light of the additional associated cost or may negotiate for lower pricing. Further, any decline in the amount payors are willing to reimburse our customers for procedures using our products, including those as a result of healthcare reform initiatives, could make it difficult for existing customers to continue using or to adopt our products and could create additional pricing pressure for us. In addition to these competitive forces, we continue to see pricing pressure as hospitals introduce new pricing structures into their contracts and agreements, including fixed price formulas, capitated pricing and episodic or bundled payments intended to contain healthcare costs. If we are forced to lower the price we charge for our products, our margins will decrease, which could impair our ability to grow our business and have a material adverse effect on our business, financial condition and results of operations and impair our ability to grow our business.

Outside the United States, centralized governmental healthcare authorities may exert pricing pressures in an effort to lower healthcare costs. Implementation of healthcare reforms and competitive bidding contract tenders may limit the price or the level at which reimbursement is provided for our products and adversely affect both our pricing flexibility and the demand for our products. Healthcare providers may respond to such cost-containment pressures by substituting lower-cost products or other therapies for our products. Our failure to offer acceptable prices to these customers could adversely affect our sales and profitability in these markets.

We expect that market demand, government regulation, third-party coverage and reimbursement policies and societal pressures will continue to change the healthcare industry worldwide, resulting in further business consolidations and alliances among our customers, which may exert further downward pressure on the prices for our products.

The processing of human tissue for our products is technically complex, requiring high levels of quality control and precision, which subjects us to increased production risks.

We manufacture our human tissue products using technically complex processes requiring specialized facilities, highly specific raw materials, skill and diligence by our personnel and other production constraints. The complexity of these processes, as well as strict company and government standards for the manufacture and storage of our products, subjects us to production risks. In addition to ongoing production risks, process deviations or unanticipated effects of approved process changes may result in non-compliance with regulatory requirements, including stability requirements or specifications. For example, our bone allograft products FiberCel, ViBone and OsteGro V, must be shipped and maintained within a specified temperature range. If environmental conditions deviate from that range, our products' remaining shelf-lives could be impaired or their safety and efficacy could be adversely affected, making them unsuitable for use. The occurrence of this or any other actual or suspected production or distribution problem can lead to lost inventories, customer returns and, in some cases, recalls, with consequential damage to our reputation and customer relationships and the risk of product liability. The investigation and remediation of any potential or identified problems can cause production delays and result in substantial additional expenses and lost revenue. In addition, we may experience difficulties in scaling up processing and production of our human tissue products, including problems related to yields, quality control and assurance, tissue availability, adequacy of control policies and procedures and availability of skilled personnel. Furthermore, developing and maintaining our production capabilities has required, and will continue to require, the investment of significant resources, and we cannot guarantee that we will be able to achieve economies of scale. If we are unable to process and produce our human tissue products on a timely basis, at acceptable quality and costs and in sufficient quantities, or if we experience technological problems, delays in production, failure in the storage of our products or other loss of supply, our business would be materially and adversely affected.

Performance issues, service interruptions or price increases by our shipping carriers could adversely affect our business, harm our reputation and impair our ability to provide our products on a timely basis or at all.

Expedited, reliable shipping is essential to our operations. We rely heavily on providers of transport services for reliable, timely and secure point-to-point transport of our products to our customers and for tracking of these shipments. Should a carrier encounter delivery performance issues such as loss, delays, damage or destruction of any of our products, it would be costly to replace these products in a timely manner and such occurrences may damage our reputation and lead to decreased demand for our products and increased cost and expense to our business. This risk is particularly high with respect to FiberCel, ViBone and OsteGro V, which must be shipped and maintained within a specified temperature range. In addition, any significant increase in shipping rates could adversely affect our operating margins and results of operations. Similarly, strikes, severe weather, natural disasters, equipment malfunctions or other service interruptions affecting the delivery services we use, would impair our ability to process orders for our products on a timely basis or at all, which could have a material adverse effect on our business, financial condition and results of operations.

If our facilities are damaged or become inoperable, we will be unable to continue to research, develop and supply our products and, as a result, there will be an adverse effect on our business until we are able to secure new facilities and rebuild our inventory.

We do not have redundant facilities. We perform most of our research and development activity and manufacture our tissue-based products at our facility in Richmond, California. The SIS ECM biomaterial used in our medical device products are manufactured by Cook Biotech Incorporated, or Cook Biotech, at their facility in West Lafayette, Indiana and converted to a finished product at our facility in Roswell, Georgia. Regulatory approvals of our products are limited to one or more specifically approved manufacturing facilities. As a result, if we fail to produce enough of a product at a facility, or if any of our production facilities were to be shut down or otherwise become unavailable for any reason, finding

alternative manufacturing capabilities and obtaining the necessary regulatory approvals would require a considerable amount of time and expense and would cause a significant disruption in service to our customers.

Disruption to our facilities could arise for a variety of reasons, including technical, labor or other difficulties, equipment malfunction, contamination due to a COVID-19 infection or otherwise, the failure of our employees to follow specific protocols and procedures, the destruction of, or damage to, any facility (as a result of a natural or man-made disaster, including, but not limited to, a tornado, flood, fire, power outage or other event), quality control issues or other reasons. Any disruption in the operation of our facilities as a result of any of the above could impair our product development and commercialization efforts and result in lost sales, lost customers and harm to our reputation, any of which would negatively impact our growth prospects and profitability and have a material adverse effect on our business, financial condition and results of operations. In addition, certain of these events, such as natural or man-made disasters, would cause us to incur additional losses, including the time and expense required to repair and/or replace our equipment and to rebuild our inventory. Although we possess insurance for damage to our property and the disruption of our business, this insurance may not be sufficient to cover all of our potential losses and may not continue to be available to us on acceptable terms or at all.

Because we depend upon a limited number of third-party suppliers and manufacturers and, in certain cases, exclusive suppliers for products essential to our business, we may incur significant product development costs and experience material delivery delays if we lose any significant supplier, which could materially and adversely affect our business, financial condition and results of operations.

We obtain some of our raw materials from a limited group of suppliers and rely on a single supplier to source the SIS ECM biomaterial used to manufacture CanGaroo and our cardiovascular products for reasons of quality assurance, cost-effectiveness, availability or constraints resulting from regulatory requirements. For us to be successful, our suppliers must be able to provide us with products and components in substantial quantities, in compliance with regulatory requirements, in accordance with agreed upon specifications, at acceptable costs and on a timely basis. Our efforts to maintain a continuity of supply and high quality and reliability may not be successful on a timely basis or at all. Manufacturing disruptions experienced by our suppliers may jeopardize our supply of finished products. Due to the stringent regulations and requirements of the FDA and other similar non-U.S. regulatory agencies regarding the manufacture of our products, we may not be able to quickly establish additional or replacement sources for certain raw materials. A change in suppliers could require significant effort or investment in circumstances where the items supplied are integral to product performance or incorporate unique technology. Transitioning to a new supplier could be time-consuming and expensive, may result in interruptions in our operations and product delivery, could affect the performance specifications of our products or could require that we modify the design of those systems.

A reduction or interruption in manufacturing, or an inability to secure alternative sources of raw materials or components, could have a material and adverse effect on our business, financial condition, results of operations and cash flows. One or more of our suppliers may refuse to extend us credit with respect to our purchasing or leasing of equipment, supplies, products or components, or may only agree to extend us credit on significantly less favorable terms or subject to more onerous conditions. This could significantly disrupt our ability to purchase or lease required equipment, supplies, products and components in a cost-effective and timely manner, and could have a material adverse effect on our business, financial condition and results of operations. Any casualty, natural disaster or other disruption of any of our sole-source suppliers' operations, for example due to a COVID-19 infection of employees of the supplier, or any unexpected loss of any existing exclusive supply contract, could have a material adverse effect on our business, financial condition and results of operations. In addition, if a change in manufacturer results in a significant change to any product, a new 510(k) clearance from the FDA or similar international regulatory authorization may be necessary before we implement the change, which could cause substantial delays.

Certain of our products are dependent on the availability of tissue from human donors, and any disruption in supply could adversely affect our business, financial condition and results of operations.

The products we manufacture for the orthopedic/spinal repair and soft tissue reconstruction markets, as well as our contract manufacturing products, require that we obtain human tissue. The success of our

business depends, in part, on the availability of tissue from human donors. Any inability to obtain tissue from our sources will interfere with our ability to effectively meet demand for these products. The recovery of human tissue for our products is very labor-intensive, and it is, therefore, difficult to maintain a steady supply stream. In addition, the availability of acceptable donors is relatively limited and may be impacted by regulatory changes, general public opinion of the donation process and the reputation of our company and the third-party procurement firms with which we partner to manage the donation process. Media reports or other negative publicity concerning both improper methods of tissue recovery from donors and disease transmission from donated tissue, including bones and dermis, may limit widespread acceptance of our products. Unfavorable reports of improper or illegal tissue recovery practices, both in the United States and internationally, as well as incidents of improperly processed tissue leading to transmission of disease, may broadly affect the rate of future tissue donation and market acceptance of allograft technologies and donated tissue use. Potential patients may not be able to distinguish our products, technologies and tissue recovery and processing procedures from others engaged in tissue recovery. In addition, unfavorable reports about us or any of our third-party procurement firms may make families of potential donors or donors themselves, from whom we are required to obtain consent before processing tissue, reluctant to agree to donate tissue to for-profit tissue processors. Any disruption in the supply of any human tissue component could materially harm our ability to manufacture our products until a new source of supply, if any, could be found. We may be unable to find a sufficient alternative supply channel within a reasonable period of time, on commercially reasonable terms or at all, which would have a material adverse effect on our business, financial condition and results of operations.

Increased prices for raw materials used in our products could adversely affect our business, financial condition and results of operations.

Our profitability is affected by the prices of the raw materials used in the manufacture of our products. These prices may fluctuate based on a number of factors beyond our control, including changes in supply and demand, general economic conditions, labor costs, delivery costs, competition, import duties, excises and other indirect taxes, currency exchange rates and government regulation. Due to the highly competitive nature of the healthcare industry and the cost containment efforts of our customers and third-party payors, we may be unable to pass along cost increases for key components or raw materials through higher prices to our customers. If the cost of key components or raw materials increases, and we are unable to fully recover these increased costs through price increases or offset these increases through other cost reductions, we could experience lower margins and profitability. Significant increases in the prices of raw materials that cannot be recovered through productivity gains, price increases or other methods could adversely affect our business, financial condition and results of operations.

If we are not able to accurately forecast demand for our products and manage our inventory, our margins could decrease and we could lose sales, either of which could have a material adverse effect on our business, financial condition and results of operations.

While we must maintain sufficient inventory levels to operate our business successfully and meet customer demand for our products, we must be careful to avoid amassing excess inventory. To ensure adequate inventory supply, we must forecast inventory needs and place orders with our suppliers based on our estimates of future demand for our products. Demand for our products can change rapidly and unexpectedly, including during the time between when raw materials are ordered from our suppliers and the finished product is offered for sale. Our ability to accurately forecast demand for our products could be negatively affected by a number of factors, many of which are beyond our control, including our failure to accurately manage our expansion strategy, product introductions by competitors, an increase or decrease in customer demand for our products or for products of our competitors, our failure to accurately forecast customer acceptance of new products, unanticipated changes in general market conditions, reimbursement or regulatory matters and weakening of economic conditions. Inventory levels that exceed the demand for our products may result in inventory write-downs or write-offs, which would adversely affect our gross margins. For example, in 2019, our launch of SimpliDerm resulted in reduced demand for certain of our other dermis inventory and resulted in inventory write-downs. Conversely, if we underestimate demand for our products, additional supplies of raw materials or additional manufacturing capacity may not be available when required on terms that are acceptable to us or at all, and suppliers or our third-party manufacturer may not be able to allocate sufficient capacity in order to meet our increased requirements. As a result, we may not be able to meet customer demand for our products,

resulting in lost sales and potential damage to our reputation and customer relationships, any of which would adversely affect our business, financial condition and results of operations.

In addition, while we seek to maintain sufficient levels of inventory in order to protect ourselves from supply interruptions, our products generally have a shelf life of two to three years. We are, therefore, subject to the risk that a portion of our inventory will become obsolete or expire, which could have a material adverse effect on our profitability and cash flows due to the resulting inventory impairment charges and costs required to replace such inventory.

If hospitals and other healthcare providers are unable to obtain coverage or adequate reimbursement for procedures performed with our products, it is unlikely our products will be widely used.

In the United States, the commercial success of our existing products and any products we may develop or acquire in the future will depend, in part, on the extent to which governmental payors at the federal and state levels, including Medicare and Medicaid, private health insurers and other third-party payors, provide coverage and establish adequate reimbursement levels for procedures utilizing our products. Hospitals and other healthcare providers that purchase our products for treatment of their patients generally rely on third-party payors to pay for all or part of the costs and fees associated with our products as part of a "bundled" rate for the associated procedures. The existence of coverage and adequate reimbursement for procedures using our products by government and private payors is critical to market acceptance of our existing and future products. Neither hospitals nor surgeons are likely to use our products if they do not receive adequate reimbursement for the procedures utilizing our products.

Many private payors currently base their reimbursement policies on the coverage decisions and payment amounts determined by the Centers for Medicare and Medicaid Services, or CMS, which administers the Medicare program. Others may adopt different coverage or reimbursement policies for procedures performed with our products, while some governmental programs, such as Medicaid, have reimbursement policies that vary from state to state, some of which may not pay for the procedures performed with our products in an adequate amount, if at all. Because the Medicare and Medicaid programs are increasingly used as models for how private payors and other governmental payors develop their coverage and reimbursement policies, a Medicare national or local non-coverage decision, denying coverage for procedures using one or more of our products, could result in private and other third-party payors also denying coverage. Third-party payors also may deny reimbursement for procedures using our products if they determine that a product used in a procedure was not medically necessary, was not used in accordance with cost-effective treatment methods, as determined by the third-party payor, or was used for an unapproved use. Unfavorable coverage or reimbursement decisions by government programs or private payors underscore the uncertainty that our products face in the market and could have a material adverse effect on our business.

Many hospitals and clinics in the United States belong to GPOs, which typically incentivize their hospital members to make a relatively large proportion of purchases of similar products from a limited number of vendors that have contracted to offer discounted prices. Such contracts often include exceptions for purchasing certain innovative new technologies, however. Accordingly, the commercial success of our products may also depend to some extent on our ability to either negotiate favorable purchase contracts with key group purchasing organizations and/or persuade hospitals and clinics to purchase our product "off contract."

The healthcare industry in the United States has experienced a trend toward cost containment as government and private payors seek to control healthcare costs by paying service providers lower rates. While it is expected that hospitals will be able to obtain coverage for procedures using our products, the level of payment available to them for such procedures may change over time. State and federal healthcare programs, such as Medicare and Medicaid, closely regulate provider payment levels and have sought to contain, and sometimes reduce, payment levels. Private payors frequently follow government payment policies and are likewise interested in controlling increases in the cost of medical care. In addition, some payors are adopting pay-for-performance programs that differentiate payments to healthcare providers based on the achievement of documented quality-of-care metrics, cost efficiencies or patient outcomes. These programs are intended to provide incentives to providers to deliver the same or better results while consuming fewer resources. As a result of these programs, and related payor efforts to reduce payment levels, hospitals and other providers are seeking ways to reduce their costs, including the amounts they pay

to medical device manufacturers. We may not be able to sell our products profitably if third-party payors deny or discontinue coverage or reduce their levels of payment below that which we project, or if our production costs increase at a greater rate than payment levels. Adverse changes in payment rates by payors to hospitals could adversely impact our ability to market and sell our products and negatively affect our financial performance.

In international markets, medical device regulatory requirements and healthcare payment systems vary significantly from country to country, and many countries have instituted price ceilings on specific product lines. We cannot assure you that our products will be considered cost-effective by international third-party payors, that reimbursement will be available or, if available, that the third-party payors' reimbursement policies will not adversely affect our ability to sell our products profitably. Any failure to receive regulatory or reimbursement approvals would negatively impact market acceptance of our products in any international markets in which those approvals are sought.

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

Our business exposes us to the risk of product liability claims that are inherent in the manufacturing, processing, investigating and marketing of medical devices and human and animal tissue products. We are, and may in the future be, subject to product liability claims and lawsuits, including potential class actions or mass tort claims, alleging that our products have resulted or could result in an unsafe condition or injury. Product liability claims may be made by patients and their families, healthcare providers or others selling our products. Product liability claims may include, among other things, allegations of defects in manufacturing, defects in design, a failure to warn of dangers inherent in the product, negligence, strict liability or a breach of warranties. We may be subject to such claims even if the apparent injury is due to the actions of others or the pre-existing health of the patient. For example, we rely on physicians and other healthcare providers to properly and correctly use our products. If these physicians or other healthcare providers are not properly trained or are negligent in using our products, the capabilities of our products may be diminished or the patient may suffer critical injury. In addition, we may be subject to product liability claims, as well as a number of other risks, as a result of physicians and other healthcare providers using our products "off-label." See "— The misuse or off-label use of our products may harm our reputation in the marketplace, result in injuries that lead to product liability suits or result in costly investigations, fines or sanctions by regulatory bodies if we are deemed to have engaged in the promotion of these uses, any of which could be costly to our business."

Defending a lawsuit, regardless of merit, could be costly, divert management attention and result in adverse publicity, which could result in the withdrawal of, or reduced acceptance of, our products in the market. If we cannot successfully defend against product liability claims, we could incur substantial liability and costs. In addition, regardless of merit or eventual outcome, product liability claims may result in:

- harm to our business reputation;
- investigations by regulators;
- significant legal costs;
- distraction of management's attention from our primary business;
- substantial monetary awards to patients or other claimants;
- loss of revenue;
- exhaustion of any available insurance and our capital resources; and
- decreased demand for our products.

Although we have product liability insurance that we believe is adequate, this insurance is subject to deductibles and coverage limitations, and we may not be able to maintain this insurance. Also, it is possible that claims could exceed the limits of our coverage or be excluded from coverage under our policy, and may increase the cost of maintaining our coverage. If we are unable to maintain product liability insurance at an acceptable cost or on acceptable terms with adequate coverage or otherwise protect ourselves against potential product liability claims, or if we underestimate the amount of insurance we need, we

could be exposed to significant liabilities, which may harm our business. One or more product liability claims could have a significant adverse effect on our business, financial condition and results of operations.

We bear the risk of warranty claims on our products.

We bear the risk of warranty claims on our products. We may not be successful in claiming recovery under any warranty or indemnity provided to us by our suppliers or vendors in the event of a successful warranty claim against us by a customer, and any recovery from such supplier or vendor may not be adequate. Furthermore, we may not have any, or have an adequate, warranty provided by our supplier. In addition, warranty claims brought by our customers related to third-party components may arise after our ability to bring corresponding warranty claims against such suppliers expires, which could result in costs to us.

Defects, failures or quality issues associated with our products could lead to product recalls or safety alerts, adverse regulatory actions, litigation, including product liability claims, and negative publicity, any of which may erode our competitive advantage and market share and have a material adverse effect on our reputation, business, financial condition and results of operations.

Quality is extremely important to us and our customers due to the serious and costly consequences of product failure. Quality and safety issues may occur with respect to any of our products, and our future operating results will depend on our ability to maintain an effective quality control system and effectively train and manage our workforce with respect to our quality system. The development, manufacture and control of our products are subject to extensive and rigorous regulation by numerous government agencies, including the FDA, the Competent Authorities of the European Union and similar foreign agencies. Compliance with these regulatory requirements, including but not limited to the FDA's Quality System Regulation, or QSR, current Good Manufacturing Practices, or GMPs and adverse events/recall reporting requirements in the United States and other applicable regulations worldwide, is subject to continual review and is monitored rigorously through periodic inspections by the FDA and foreign regulatory authorities. If we fail to comply with our reporting obligations, the FDA, the Competent Authorities of the European Union or other regulatory authority could take action, including issuance of warning letters and/or untitled letters, administrative actions, criminal prosecution, imposition of civil monetary penalties, revocation of our device clearance, seizure of our products or delay in the clearance of future products.

The FDA and foreign regulatory authorities may also require post-market testing and surveillance to monitor the performance of approved products. Our facilities and those of our suppliers, commercial partners and independent sales agents are also subject to periodic regulatory inspections. If the FDA or a foreign authority were to conclude that we have failed to comply with any of these requirements, it could institute a wide variety of enforcement actions, ranging from a public warning letter to more severe sanctions, such as product recalls or seizures, withdrawals, monetary penalties, consent decrees, injunctive actions to halt the manufacture or distribution of products, import detentions of products made outside the United States, export restrictions, restrictions on operations or other civil or criminal sanctions. Civil or criminal sanctions could be assessed against our officers, employees, or us. Any adverse regulatory action, depending on its magnitude, may restrict us from effectively manufacturing, marketing and selling our products.

If our products do not function as designed, or are designed improperly, we or the third-party manufacturer of such products may withdraw such products from the market, whether by choice or as a result of regulatory requirements. In August 2019, we recalled and discarded certain production lots of CanGaroo from the market due to suture breakage. In January 2018, we recalled five of our allograft tissue implants because a pre-sterilized donor culture should have been disqualified, each of which had a negative effect on our business, financial condition and results of operations. Any product recall we or a third-party manufacturer may conduct in the future, whether voluntary or required, may have also negatively affect our business financial condition and results of operations, and this effect may be material.

In addition, we cannot predict the results of future legislative activity or future court decisions, any of which could increase regulatory requirements, subject us to government investigations or expose us to unexpected litigation. Any regulatory action or litigation, regardless of the merits, may result in substantial costs, divert management's attention from other business concerns and place additional restrictions on

our sales or the use of our products. In addition, negative publicity, including regarding a quality or safety issue, could damage our reputation, reduce market acceptance of our products, cause us to lose customers and decrease demand for our products. Any actual or perceived quality issues may also result in issuances of physician's advisories against our products or cause us to conduct voluntary recalls. Any product defects or problems, regulatory action, litigation, negative publicity or recalls could disrupt our business and have a material adverse effect on our business, financial condition and results of operations.

Our operating results may fluctuate significantly from quarter to quarter and year to year due to the seasonality of our business, as well as a variety of other factors, many of which are outside of our control.

Our quarterly and annual results of operations may vary significantly in the future, and period-to-period comparisons of our operating results may not be meaningful. Accordingly, the results of any one quarter or other period should not be relied upon as an indication of our future performance. Our quarterly and annual financial results may fluctuate as a result of a variety of factors, many of which are outside our control and, as a result, may not fully reflect the underlying performance of our business. One such factor includes seasonal variations in our sales. We have experienced and may in the future experience higher sales in the fourth quarter as hospitals in the United States increase their purchases of our products to coincide with the end of their budget cycles. Satisfaction of patient deductibles through the course of the year also results in increased sales later in the year. In general, our first quarter usually has lower sales than the preceding fourth quarter as patient deductibles are re-established with the new year, thereby increasing their out-of-pocket costs.

Other factors that may cause fluctuations in our quarterly and annual results include, among other things:

- the timing of medical procedures using our products;
- the announcement or introduction of new products by our competitors;
- failure of government health benefit programs and private health plans to cover our products or to timely and adequately reimburse the users of our products;
- the impact of the COVID-19 pandemic, or any other pandemic, epidemic or outbreak of an infectious disease in the United States or worldwide that impacts the number of procedures being performed;
- the rate of reimbursement for procedures using our products by government and private insurers;
- whether our products are granted pass-through reimbursement status or included in the "bundled" reimbursement structure;
- changes in purchasing patterns by our commercial partners or customers, or the loss of any significant customer or group of customers;
- our ability to upgrade and develop our systems and infrastructure to accommodate growth;
- the amount and timing of operating costs and capital expenditures relating to the expansion of our business, operations and infrastructure;
- changes in, or enactment of, new laws or regulations promulgated by federal, state or local governments;
- changes in our supply or manufacturing costs;
- cost containment initiatives or policies developed by government and commercial payors that create financial incentives not to use our products;
- our inability to demonstrate that our products are cost-effective or superior to competing products;
- our ability to develop new products;
- the degree of competition in our industry and any changes in the competitive landscape;
- discovery of product defects during the manufacturing process;

- initiation of a government investigation into potential non-compliance with laws or regulations, or the initiation of a voluntary or involuntary recall with respect to one or more of our products;
- sanctions imposed by federal or state governments due to non-compliance with laws or regulations; and
- general economic conditions as well as economic conditions specific to the healthcare industry.

We have based our current and future expense levels largely on our investment plans and estimates of future events, although certain of our expense levels are, to a large extent, fixed. We may be unable to adjust spending in a timely manner to compensate for any unexpected revenue shortfall. Accordingly, any significant shortfall in sales relative to our planned expenditures would have an immediate adverse effect on our business, results of operations and financial condition. Further, as a strategic response to changes in the competitive environment or to changes in laws and regulations, we may from time to time make certain pricing, service or marketing decisions (e.g., reduce prices) that could have a material and adverse effect on our business, financial condition and results of operations. Due to the foregoing factors, our revenue and operating results are and will remain difficult to forecast.

Our indebtedness and our Revenue Interest Obligation to Ligand Pharmaceuticals Incorporated may limit our flexibility in operating our business and adversely affect our financial health and competitive position.

As of June 30, 2020, we had $32.0 million of indebtedness outstanding, consisting of $19.7 million outstanding under our Term Loan Facility (as defined under "Management's Discussion and Analysis of Financial Condition and Results of Operations — Liquidity and Capital Resources — Description of Certain Indebtedness") (net of $0.3 million of unamortized discount and deferred financing costs), $5.9 million outstanding under our Revolving Credit Facility (as defined under "Management's Discussion and Analysis of Financial Condition and Results of Operations — Liquidity and Capital Resources — Description of Certain Indebtedness") (with $1.0 million of additional borrowings available thereunder), $2.0 million outstanding under the 2020 Bridge Notes, $3.0 million outstanding pursuant to a promissory note under the Paycheck Protection Program of the Coronavirus Aid, Relief and Economic Stability Act, or the CARES Act, which we refer to as the PPP Loan, and a $1.4 million promissory note payable to one of our suppliers. In addition, we are party to a royalty agreement with Ligand Pharmaceuticals Incorporated, or Ligand, pursuant to which we assumed a restructured, long-term obligation to Ligand, which we refer to as the Revenue Interest Obligation, that requires us to pay Ligand 5.0% of future sales of the products we acquired from CorMatrix (as well as products substantially similar to those products), subject to annual minimum payments of $2.75 million and certain milestone payments if sales of the acquired products exceed certain thresholds. See "Management's Discussion and Analysis of Financial Condition and Results of Operations — Critical Accounting Policies and Significant Judgments and Estimates — Revenue Interest Obligation."

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

In addition, the agreements governing our Term Loan Facility and Revolving Credit Facility contain, and any agreements evidencing or governing other future indebtedness may also contain, certain covenants that limit our ability to engage in certain transactions that may be in our long-term best interests. Subject to certain limited exceptions, these covenants limit our ability to, among other things:

- incur additional indebtedness;
- incur certain liens;
- pay dividends or make other distributions on equity interests;
- enter into agreements restricting their subsidiaries' ability to pay dividends;
- redeem, repurchase or refinance subordinated indebtedness;
- consolidate, merge or sell or otherwise dispose of their assets;
- make investments, loans, advances, guarantees and acquisitions;
- enter into transactions with affiliates;
- amend or modify their governing documents;
- amend or modify certain material agreements;
- alter the business conducted by them and their subsidiaries; and
- enter into sale and leaseback transactions.

In addition to these covenants, the agreements governing our Term Loan Facility and Revolving Credit Facility also contain a financial covenant, which is tested on a monthly basis, and requires us to achieve a specified minimum net product revenue (as defined therein) for the preceding 12-month period. While we were in compliance with all covenants under these agreements as of June 30, 2020, we have had past breaches requiring waivers and there can be no guarantee that we will not breach these covenants in the future. Our ability to comply with these covenants may be affected by events and factors beyond our control. In the event that we breach one or more covenants, our lenders may choose to declare an event of default and require that we immediately repay all amounts outstanding, terminate any commitment to extend further credit and foreclose on the collateral granted to them to collateralize such indebtedness. The occurrence of any of these events could have a material adverse effect on our business, financial condition and results of operations.

In addition, we may be able to incur significant additional indebtedness in the future. Although the agreements governing our Term Loan Facility and Revolving Credit Facility contain restrictions on the incurrence of additional indebtedness by us, such restrictions are subject to a number of qualifications and exceptions, and the indebtedness incurred in compliance with these restrictions could be substantial. Also, these restrictions do not prohibit us from incurring obligations that do not constitute indebtedness as defined therein. To the extent that we incur additional indebtedness or such other obligations, the risks associated with our substantial indebtedness described above will increase.

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

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

We may be unable to obtain forgiveness of the PPP Loan, in whole or in part, in accordance with the provisions of the CARES Act, which could adversely affect our financial condition.

In May 2020, we entered into a promissory note with Silicon Valley Bank, or SVB, under the Paycheck Protection Program of the CARES Act pursuant to which SVB agreed to make a loan to us in the amount of approximately $3.0 million. The PPP Loan matures in May 2022, bears interest at a rate of 1.0% per annum and requires no payments during the first six months from the date of the loan.

The PPP Loan is unsecured and guaranteed by the Small Business Administration, or the SBA. Under the terms of the PPP Loan, the principal amount of the loan may be forgiven to the extent it is used for qualifying expenses as described in the CARES Act and we otherwise request forgiveness in accordance with the terms of the PPP Loan and the requirements of the SBA. While we expect to request that a significant portion of the principal amount of the PPP Loan be forgiven and to comply with all corresponding requirements, we cannot guarantee that we will be successful in obtaining forgiveness of all or any part of such principal amount. We will be required to repay any principal amount of the PPP Loan that is not forgiven, together with accrued and unpaid interest, in equal monthly installments prior to the maturity date of the loan, which would further restrict our operating and financial flexibility.

Our future capital needs are uncertain and we may need to raise funds in the future, and such funds may not be available on acceptable terms or at all.

We believe that the net proceeds from this offering, together with our existing cash and our availability under our Revolving Credit Facility will enable us to fund our operating expenses and capital expenditure requirements through 2022. However, we have based these estimates on assumptions that may prove to be incorrect, and we could spend our available financial resources much faster than we currently expect. Any future funding requirements will depend on many factors, including, among other things:

- continued patient, physician and market acceptance of our products;
- the scope, rate of progress and cost of our current and future pre-clinical studies and clinical trials;
- the cost of our research and development activities and the cost of commercializing new products or technologies;
- the cost and timing of expanding our sales and marketing capabilities;
- the cost of filing and prosecuting patent applications and maintaining, defending and enforcing our patent or other intellectual property rights;
- the cost of defending, in litigation or otherwise, any claims that we infringe, misappropriate or otherwise violate third-party patents or other intellectual property rights;
- the cost and timing of additional regulatory approvals;
- costs associated with any product recall that may occur;
- the effect of competing technological and market developments;
- the expenses we incur in manufacturing and selling our products;
- the costs of developing and commercializing new products or technologies;
- the extent to which we acquire or invest in products, technologies and businesses, although we currently have no commitments or agreements relating to any of these types of transactions;
- the costs of operating as a public company;
- unanticipated general, legal and administrative expenses; and
- the effects on any of the above of the current COVID-19 pandemic or any other pandemic, epidemic or outbreak of infectious disease.

In addition, our operating plan may change as a result of any number of factors, including those set forth above and other factors currently unknown to us, and we may need additional funds sooner than anticipated. Any additional equity or debt financing that we raise may contain terms that are not favorable to us or our stockholders. If we raise additional funds by selling additional shares of our common stock or other securities convertible (directly or indirectly) into or exercisable or exchangeable for shares of our common stock after this offering, the issuance of such securities will result in dilution to our stockholders. The price per share at which we sell additional shares of our common stock, or securities convertible into or exercisable or exchangeable for shares of our common stock, in future transactions may be higher or lower than the price per share paid by investors in this offering. Furthermore, investors purchasing any securities we may issue in the future may have rights superior to your rights as a holder of our common stock.

In addition, any future debt financing into which we enter may impose upon us covenants that restrict our operations, including limitations on our ability to incur liens or additional debt, pay dividends, repurchase our common stock, make certain investments and engage in certain merger, consolidation or asset sale transactions. If we raise additional funds through collaboration and licensing arrangements with third parties, it may be necessary to relinquish some rights to our technologies or our products, or grant licenses on terms that are not favorable to us.

Furthermore, we cannot be certain that additional funding will be available to us on acceptable terms, if at all. If we do not have, or are not able to obtain, sufficient funds, we may have to delay development or commercialization of our products or license to third parties the rights to commercialize products or technologies that we would otherwise seek to commercialize. We also may have to reduce marketing, customer support or other resources devoted to our products or cease operations. Any of these factors could harm our business, financial condition and results of operations.

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

In the ordinary course of our business, we may become exposed to, or collect and store, sensitive data, including procedure-based information and legally protected health information, credit card, and other financial information, insurance information and other potentially personally identifiable information. We also store sensitive intellectual property and other proprietary business information. Regardless of any precautions we may take, our information technology, or IT, and infrastructure, and that of our technology partners and providers, may be vulnerable to cyberattacks by hackers or viruses or breaches due to employee error, malfeasance or other disruptions. We rely extensively on IT systems, networks and services, including internet sites, data hosting and processing facilities and tools, physical security systems and other hardware, software and technical applications and platforms, some of which are managed, hosted, provided and/or used by third parties or their vendors, to assist in conducting our business. A significant breakdown, invasion, corruption, destruction or interruption of critical information technology systems or infrastructure, by our workforce, others with authorized access to our systems or unauthorized persons could negatively impact operations. The ever-increasing use and evolution of technology, including cloud-based computing, creates opportunities for the unintentional dissemination or intentional destruction of confidential information stored in our or our third-party providers' systems, portable media or storage devices. We could also experience a business interruption, theft of confidential information or reputational damage from industrial espionage attacks, malware or other cyber-attacks, which may compromise our system infrastructure or lead to data leakage, either internally or at our third-party providers.

Unauthorized disclosure of sensitive or confidential patient or employee data, including personally identifiable information, whether through breach of computer systems, systems failure, employee negligence, fraud or misappropriation, or otherwise, or unauthorized access to or through our information systems and networks, whether by our employees or third parties, could result in negative publicity, legal liability and damage to our reputation. Unauthorized disclosure of personally identifiable information could also expose us to sanctions for violations of data privacy laws and regulations around the world. Although we have general liability and cybersecurity insurance coverage, our insurance may not cover all claims, continue to be available to us on reasonable terms or be sufficient in amount to cover one or more large claims; additionally, the insurer may disclaim coverage as to any claim. The successful assertion of one or more large claims against us that exceed or are not covered by our insurance coverage or changes in our insurance policies, including premium increases or the imposition of large deductible or co-insurance requirements, could have a material adverse effect on our business, prospects, operating results and financial condition.

Despite our security measures, there can be no assurance that our efforts will prevent breakdowns or breaches to our or our third-party providers' databases or systems, or any resulting unauthorized access to, or disclosure and use of, non-public or other legally protected information. Phishing, social engineering and other attacks upon IT systems are increasing in their frequency, levels of persistence, sophistication and intensity, and are being conducted by sophisticated and organized groups and individuals with a wide

range of motives and expertise. In addition to unauthorized access to or acquisition of personal information, confidential information, intellectual property or other sensitive information, such attacks could include the deployment of harmful malware and ransomware, and may use a variety of methods, including denial-of-service attacks, social engineering and other means, to attain such unauthorized access or acquisition or otherwise affect service reliability and threaten the confidentiality, integrity and availability of information. Because the techniques used to obtain unauthorized access, disable or degrade service, or sabotage systems change frequently and often are not foreseeable or recognized until launched against a target, we may be unable to anticipate these techniques or to implement adequate preventative measures. Any such breakdowns or breaches, or resulting access, disclosure, or other loss of information, could significantly disrupt our business and result in legal claims or proceedings, liability under laws that protect the privacy of personal information, and damage to our reputation, any of which could have a material and adverse effect on our business, financial condition and results of operations.

Our success depends on our ability to retain and motivate key management personnel and other employees and consultants, to attract, retain and motivate additional qualified personnel and to effectively navigate changes in our senior management team.

Our success depends to a significant extent on our ability to attract, retain and motivate key management personnel and other employees and consultants for our business, including scientific, technical and sales and marketing personnel. There is currently a shortage of skilled executives and other personnel in our industry, which is likely to continue. As a result, competition for skilled personnel is intense and the turnover rate can be high. We may not be able to attract and retain personnel on acceptable terms, given the competition among numerous regenerative medicine and other healthcare companies, for individuals with similar skill sets. Many of the companies that we compete against for qualified personnel have substantially greater financial and other resources and different risk profiles than we do. They may also provide more diverse opportunities, better chances for career advancement and/or more attractive compensation. Some of these characteristics may be more appealing to high quality candidates than what we can offer. Furthermore, in order to offer attractive compensation, we may need to increase the level of cash compensation that we pay to them, which will reduce funds available for research and development and support of our commercialization and sales growth objectives. There can be no assurance that we will have sufficient cash available to offer our employees and consultants attractive compensation or that we will realize any corresponding benefits from the payment of such compensation. We are also vulnerable to the risk that these individuals may take actions, either within or outside the scope of their duties, that intentionally or unintentionally tarnish our brand and reputation or otherwise adversely affect our business. We also cannot prevent our senior management team from terminating their employment with us. Losing the services of any member of our senior management team could materially harm our business until a suitable replacement is found, and such replacement may not have equal experience and capabilities. In addition, we do not maintain “key person” insurance policies on the lives of any of our management team or other employees. The inability to recruit or a loss of the services of any executive, key employee or consultant may impede the progress of our research, development, commercialization and sales growth objectives, which could have a material adverse effect on our business, financial condition, results of operations and our ability to grow our business.

In addition, we have recently added a new Chief Financial Officer, Chief Commercial Officer and Chief Medical Officer. These changes, and any other changes to our senior management team we experience in the future, subject us to a number of additional risks, including risks pertaining to the coordination of responsibilities and tasks, the creation of new management systems and processes, differences in management style, effects on corporate culture and the need for transfer of historical knowledge. If our management team does not work together harmoniously, efficiently allocate responsibilities between themselves and implement and abide by effective controls, our operations will be adversely affected.

Our sales into foreign markets expose us to risks associated with international sales and operations.

Though we have historically focused our market development and commercial activities primarily in the United States, we have obtained marketing registrations, developed commercial and distribution capabilities and are currently selling CanGaroo and our cardiovascular products in several countries outside the United States primarily through independent sales agents. Our international sales subject us to additional risks as compared to those we face in the United States.

The sale and shipment of our products across international borders subject us to extensive U.S. and foreign governmental trade, import and export and customs regulations and laws, including but not limited to, the Export Administration Regulations and trade sanctions against embargoed countries, which are administered by the Office of Foreign Assets Control within the Department of the Treasury, or OFAC, as well as the laws and regulations administered by the Department of Commerce. These regulations limit our ability to market, sell, distribute or otherwise transfer our products or technology to prohibited countries or persons.

Compliance with these regulations and laws is costly, and failure to comply with applicable legal and regulatory obligations could adversely affect us in a variety of ways that include, but are not limited to, significant criminal, civil and administrative penalties, including imprisonment of individuals, monetary fines, denial of export privileges, seizure of shipments and restrictions on certain business activities. The failure to comply with applicable legal and regulatory obligations could also result in the disruption of our distribution and sales activities.

These risks may limit or disrupt our sales and commercialization efforts outside the United States, restrict the movement of funds or result in the deprivation of contractual rights or the taking of property by nationalization or expropriation without fair compensation. Operating in international markets also requires significant management attention and financial support, and, as a result, will divert these resources away from our other operations.

We are subject to anti-bribery, anti-corruption and anti-money laundering laws, including the U.S. Foreign Corrupt Practices Act, as well as export control laws, customs laws, sanctions laws and other laws governing our operations. If we fail to comply with these laws, we could be subject to civil or criminal penalties, other remedial measures and legal expenses, any of which would adversely affect our business, financial condition and results of operations.

We currently are and, as we increase our international presence and global sales, will increasingly be, exposed to trade and economic sanctions and other restrictions imposed by the United States, the European Union and other governments and organizations. The U.S. Departments of Justice, Commerce, State and Treasury and other federal agencies and authorities have a broad range of civil and criminal penalties they may seek to impose against corporations and individuals for violations of economic sanctions laws, export control laws, the U.S. Foreign Corrupt Practices Act, or the FCPA, and other federal statutes and regulations, including those established by OFAC. In addition, the U.K. Bribery Act of 2010, or the Bribery Act, prohibits both domestic and international bribery, as well as bribery across both private and public sectors. An organization that "fails to prevent bribery" by anyone associated with the organization can be charged under the Bribery Act unless the organization can establish the defense of having implemented "adequate procedures" to prevent bribery. Under these laws and regulations, as well as other anti-corruption laws, anti-money laundering laws, export control laws, customs laws, sanctions laws and other laws governing our operations, various government agencies may require export licenses, may seek to impose modifications to business practices, including cessation of business activities in sanctioned countries or with sanctioned persons or entities and modifications to compliance programs, which may increase compliance costs, and may subject us to fines, penalties and other sanctions. A violation of these laws or regulations would negatively affect our business, financial condition and results of operations.

As our international operations increase, we expect to implement policies and procedures designed to ensure compliance by us and our directors, officers, employees, representatives, consultants and agents with the FCPA, OFAC restrictions, the Bribery Act and other export control, anti-corruption, anti-money-laundering and anti-terrorism laws and regulations. We cannot assure you, however, that any such policies and procedures will be sufficient or that directors, officers, employees, representatives, consultants and agents have not engaged, and will not engage, in conduct for which we may be held responsible, nor can we assure you that our business partners have not engaged, and will not engage, in conduct that could materially affect their ability to perform their contractual obligations to us or result in our being held liable for such conduct. Violations of the FCPA, OFAC restrictions, the Bribery Act or other export control, anti-corruption, anti-money laundering and anti-terrorism laws or regulations may result in severe criminal or civil sanctions, and we may be subject to other liabilities, which could have a material adverse effect on our business, financial condition and results of operations.

Our officers, employees, independent contractors, principal investigators, consultants, commercial partners and independent sales agents may engage in misconduct or activities that are improper under other laws and regulations, which would create liability for us.

We are exposed to the risk that our officers, employees, independent contractors (including contract research organizations, or CROs), principal investigators, consultants, commercial partners and independent sales agents may engage in fraudulent conduct or other illegal activity and/or may fail to disclose unauthorized activities to us. Misconduct by these parties could include, but is not limited to, intentional, reckless and/or negligent failures to comply with the laws and regulations of the FDA and its foreign counterparts, including, but not limited to, those relating to the manufacture, processing, packing, holding, investigating or distributing in commerce of medical devices, biological products and/or HCT/Ps, requiring the reporting of true, complete and accurate information to such regulatory bodies (including any safety problems associated with the use of our products), and relating to the conduct of clinical trials and the protection of human research subject.

In particular, companies involved in the manufacture of medical products are subject to laws and regulations intended to ensure that medical products that will be used in patients are safe and effective, and specifically that they are not adulterated or contaminated, that they are properly labeled, and have the identity, strength, quality and purity that which they are represented to possess. Further, companies involved in the research and development of medical products are subject to extensive laws and regulations intended to protect research subjects and ensure the integrity of data generated from clinical trials and of the regulatory review process. Any misconduct in any of these areas, whether by our own employees or by contractors, vendors, business associates, consultants or other entities acting as our agents, could result in regulatory sanctions, criminal or civil liability and serious harm to our reputation. It is not always possible to identify and deter misconduct, and the precautions we take to detect and prevent this activity may not be effective in preventing such conduct, mitigating risks, or reducing the chance of governmental investigations or other actions or lawsuits stemming from a failure to comply with these laws or regulations. If any such investigations or other actions or lawsuits are instituted against us, those actions could have a significant impact on our business, financial condition and results of operations, including, without limitation, the imposition of significant fines and other sanctions that may materially impair our ability to run a profitable business. Even if we are successful in defending against the imposition of any such fines or other sanctions, we could be required to incur substantial legal fees and other costs, and management's attention will be diverted from our core business operations, either of which would negatively affect our business, financial condition and results of operations.

Our ability to use certain tax attributes to offset future income tax liabilities may be subject to limitations.

We have certain net operating losses and other tax attributes, as described in Note 11 to our consolidated financial statements included elsewhere in this prospectus, including net operating loss carryforwards, or NOLs, for federal income tax purposes of approximately $32.0 million and state NOLs of approximately $10.5 million. If not utilized, $17.6 million of our NOLs will begin to expire for federal income tax purposes beginning in 2036, and our state NOLs will expire beginning in 2030. Our ability to utilize our federal NOLs will depend on our future income, and there is a risk that our NOLs could expire unused and be unavailable to offset future income tax liabilities, which could adversely affect our operating results.

In addition, our ability to utilize our NOLs may be subject to an annual limitation under the Internal Revenue Code of 1986, as amended, or the Code. In general, under Sections 382 and 383 of the Code, a corporation that undergoes an "ownership change" is subject to limitations on its ability to utilize its pre-change NOLs or tax credits to offset future taxable income. If we undergo an ownership change in connection with this offering or have previously undergone an ownership change, our ability to utilize federal NOLs or tax credits could be limited by Sections 382 and 383 of the Code. Additionally, future changes in our stock ownership, many of which are outside of our control, could result in an ownership change under Sections 382 and 383 of the Code. Our state NOLs or credits may also be impaired under state tax law. Accordingly, we may not be able to utilize a material portion of our federal and state NOLs or credits. Our ability to utilize our NOLs or credits is conditioned upon our attaining profitability and generating U.S. federal and state taxable income. Valuation allowances have been provided for all deferred tax assets related to our federal and state NOLs.

In addition, other tax attributes, such as interest carryforwards, are also subject to various limits on their use under the Code. We have established valuation allowances for our interest carry forwards to reflect these limitations and their anticipated impact on our ability to utilize these tax attributes following the adoption of the December 2017 tax reform legislation known as H.R. 1, commonly referred to as the Tax Cuts and Jobs Act, or the TCJA, in the United States.

Changes in tax laws, unfavorable resolution of tax contingencies or exposure to additional income tax liabilities could have a material impact on our results of operations or financial condition.

We are subject to income taxes as well as non-income based taxes in the United States. We may from time to time be subject to tax audits in various jurisdictions. Tax authorities may disagree with certain positions we have taken and assess additional taxes. We regularly assess the likely outcomes of any tax audits to which we are subject in order to determine the appropriateness of our tax provision and have established contingency reserves for material, known tax exposures. However, the calculation of such tax exposures involves the application of complex tax laws and regulations in many jurisdictions, as well as interpretations as to the legality under state aid rules of the European Union of tax advantages granted in certain jurisdictions. Therefore, there can be no assurance that we will accurately predict the outcomes of any tax audits to which we may be subject or that issues raised by tax authorities will be resolved at a financial cost that does not exceed our related reserves and the actual outcomes of any such audit could have a material impact on our results of operations or financial condition.

Changes in tax laws and regulations, or their interpretation and application, in the jurisdictions where we are subject to tax, could materially impact our effective tax rate. For example, changes in tax law implemented by the TCJA became effective in 2018 and 2019, and we expect the U.S. Treasury to continue to issue future notices and regulations under the TCJA. Certain provisions of the TCJA and the regulations issued thereunder could have a significant impact on our future results of operations as could interpretations made by us in the absence of regulatory guidance and judicial interpretations. In addition, in 2018, we established valuation allowances against certain deferred tax assets (including interest carry forwards) to reflect certain limitations on these assets and their anticipated impact on our ability to utilize these tax assets following the adoption of the TCJA. We are continuing to examine the impact of TCJA. As the expected impact of certain aspects of the legislation is unclear and subject to change, we note that the TCJA could adversely affect our business, financial condition and results of operations.

Additionally, the U.S. Congress, government agencies in jurisdictions outside the United States where we do business and the Organization for Economic Co-operation and Development, or OECD, have recently focused on issues related to the taxation of multinational corporations. One example is in the area of “base erosion and profit shifting,” where profits are claimed to be earned for tax purposes in low-tax jurisdictions, or payments are made between affiliates from a jurisdiction with high tax rates to a jurisdiction with lower tax rates. The OECD has released several components of its comprehensive plan to create an agreed set of international rules for fighting base erosion and profit shifting. As a result, the tax laws in the United States and other countries, in which we do business, could change on a prospective or retroactive basis and any such changes could materially adversely affect our business, financial condition and results of operations.

Changes in accounting standards and subjective assumptions, estimates and judgments by management related to complex accounting matters could significantly affect our business, financial condition and results of operations.

U.S. GAAP, and related accounting pronouncements, implementation guidelines and interpretations with regard to a wide range of matters that are relevant to our business are highly complex. These matters include, but are not limited to, revenue recognition, leases, income taxes, impairment of goodwill and long-lived assets and equity-based compensation. Changes in these rules, guidelines or interpretations could significantly change our reported or expected financial performance or financial condition.

In addition, the preparation of financial statements in conformity with GAAP requires management to make assumptions, estimates and judgments that affect the amounts reported in our consolidated financial statements and accompanying notes. We base our estimates and judgments on historical experience and on various other assumptions that we believe to be reasonable under the circumstances. The results of these estimates form the basis for making judgments about the carrying values of assets, liabilities and equity,

and the amount of net sales and expenses that are not readily apparent from other sources. Our operating results may be adversely affected if our assumptions change or if actual circumstances differ from those in our assumptions, which could cause our operating results to fall below the expectations of securities analysts and investors, resulting in a decline in our stock price.

As we conduct clinical studies designed to generate long-term data on some of our existing products, the data we generate may not be consistent with our existing data and may demonstrate less favorable safety or efficacy.

We are currently collecting and plan to continue collecting long-term clinical data regarding the quality, safety and effectiveness of some of our existing products. The clinical data collected and generated as part of these studies will further strengthen our clinical evaluation concerning safety and performance of these products. We believe that this additional data will help with the marketing of our products by providing surgeons and physicians with additional confidence in their long-term safety and efficacy. If the results of these clinical studies are negative, these results could reduce demand for our products and significantly reduce our ability to achieve expected net sales. We do not expect to undertake such studies for all of our products and will only do so in the future where we anticipate the benefits will outweigh the costs and risks. For these reasons, surgeons and physicians could be less likely to purchase our products than competing products for which longer-term clinical data are available. Also, we may not choose or be able to generate the comparative data that some of our competitors have or are generating and we may be subject to greater regulatory and product liability risks. If we are unable to or determined not to collect sufficient long-term clinical data supporting the quality, safety and effectiveness of our existing products, our business, financial condition and results of operations could be adversely affected.

The estimates of market opportunity and forecasts of market and sales growth included in this prospectus may prove to be inaccurate, and even if the markets in which we compete achieve the forecasted growth, our business could fail to grow at similar rates, if at all.

Market opportunity estimates and growth forecasts are inherently uncertain. Our estimates of the annual total addressable markets for our products are based on a number of internal and third-party estimates and assumptions, including, without limitation, the number of implantable electronic device procedures and orthopedic/spinal repair procedures, as well as the number of procedures using biologic products annually in the United States. While we believe our assumptions and the data underlying our estimates are reasonable, these assumptions and estimates may not be correct and the conditions supporting our assumptions or estimates may change at any time, thereby reducing the predictive accuracy of these underlying factors. As a result, our estimates of the annual total addressable market for any of our products may prove to be incorrect. If the actual number of procedures, the price at which we are able to sell any of our products, or the annual total addressable market is smaller than we have estimated, it may impair our sales growth and have an adverse impact on our business, financial condition and results of operations.

Risks Related to Government Regulation

The regulatory approval and clearance processes of the FDA and comparable foreign authorities are lengthy, time consuming and inherently unpredictable, and if we are ultimately unable to obtain regulatory approval or other marketing authorizations for our products and product candidates, our business will be substantially harmed.

The medical device and biologics industries are regulated extensively by governmental authorities, principally the FDA, the E.U. legislative bodies, and corresponding state and foreign regulatory agencies and authorities. The time required to obtain approval, clearance, certification of conformity or other marketing authorizations from the FDA, European Union Notified Bodies, and comparable foreign authorities is unpredictable but can often take many years following the commencement of clinical trials and depends upon numerous factors, including the substantial discretion of the regulatory authorities. In addition, policies, regulations, or the type and amount of clinical data necessary to gain clearance or approval may change during the course of a product candidate's clinical development and may vary among jurisdictions.

Before we can market or sell a new medical device or a new use of or a claim for or significant modification to an existing medical device in the United States, we must obtain either clearance from the FDA under Section 510(k) of the Federal Food, Drug, and Cosmetic Act, or FDCA, or approval of an application for

premarket approval, or PMA, unless an exemption applies. In the United States, we have obtained 510(k) premarket clearance from the FDA to market products such as our CanGaroo, VasCure, ProxiCor and Tyke products. In the 510(k) premarket clearance process, the FDA must determine that a proposed device is "substantially equivalent" to a device legally on the market, known as a "predicate" device, with respect to intended use, technology and safety and effectiveness, in order to clear the proposed device for marketing. Clinical data is sometimes required to support a finding of substantial equivalence. Under certain conditions, a medical device is required to be approved under a PMA before it may be legally marketed. The PMA pathway requires an applicant to demonstrate the safety and effectiveness of the device based, in part, on extensive data, including, but not limited to, technical, nonclinical, clinical trial, manufacturing and labeling data. The PMA process is typically required for devices that are deemed to pose the greatest risk, such as life-sustaining, life-supporting or implantable devices. However, some devices are automatically subject to the PMA pathway regardless of the level of risk they pose because they have not previously been classified into a lower risk class by the FDA. Manufacturers of these devices may request that FDA review such devices in accordance with the *de novo* classification procedure, which allows a manufacturer whose novel device would otherwise require the submission and approval of a PMA prior to marketing to request down-classification of the device on the basis that the device presents low or moderate risk. If the FDA agrees with the down classification based on a *de novo* submission, the FDA will authorize the device for marketing. This device type can then be used as a predicate device for future 510(k) submissions.

The process of obtaining regulatory clearances or approvals, or completing the *de novo* classification process, to market a medical device can be costly and time consuming, and we may not be able to successfully obtain pre-market reviews on a timely basis, if at all. If the FDA requires us to go through a lengthier, more rigorous examination for our products than we expect, our product introductions or modifications could be delayed or canceled, which could cause our sales to decline. Further, even where a PMA is not required, we cannot assure you that we will be able to obtain 510(k) clearances with respect to such product candidates or modifications to previously cleared products.

The FDA or any foreign regulatory bodies can delay, limit or deny approval or clearance of our product candidates or require us to conduct additional nonclinical or clinical testing or abandon a program for many reasons, including:

- the FDA or the applicable foreign regulatory agency's disagreement with the design or implementation of our clinical trials;
- negative or ambiguous results from our clinical trials or results that may not meet the level of statistical significance required by the FDA or comparable foreign regulatory agencies for approval;
- serious and unexpected drug or device-related side effects experienced by participants in our clinical trials or by individuals using devices similar to our products or natural product candidates;
- our inability to demonstrate to the satisfaction of the FDA or the applicable foreign regulatory body that our product candidates are safe and effective for their intended uses, or in the case of the 510(k) clearance process, that our product candidate is substantially equivalent to a predicate device;
- the FDA's or the applicable foreign regulatory agency's disagreement with the interpretation of data from pre-clinical studies or clinical trials;
- our inability to demonstrate the clinical and other benefits of our product candidates outweigh any safety or other perceived risks;
- the FDA's or the applicable foreign regulatory agency's requirement for additional pre-clinical studies or clinical trials;
- the FDA's or the applicable foreign regulatory agency's disagreement regarding the formulation, labeling or the specifications of our products or future product candidates;
- the FDA's or the applicable foreign regulatory agency's failure to approve the manufacturing processes or facilities of third-party manufacturers with which we contract; or

- the potential for approval or clearance policies or regulations of the FDA or the applicable foreign regulatory agencies to significantly change in a manner rendering our clinical data insufficient for approval.

Of the large number of products in development, only a small percentage successfully complete the FDA or foreign regulatory approval processes and are commercialized. The lengthy approval or marketing authorization process, as well as the unpredictability of future clinical trial results, may result in our failing to obtain regulatory clearance, approval or other marketing authorization to market our product candidates, which would significantly harm our business, financial condition and results of operations.

Even if we eventually complete clinical testing and receive approval or clearance of an FDA or foreign marketing application for our product candidates, the FDA or the applicable foreign regulatory agency may grant clearance, approval or other marketing authorization contingent on the performance of costly additional clinical trials, including post-market clinical trials. The FDA or the applicable foreign regulatory agency also may clear, approve or authorize for marketing a product candidate for a more limited indication or patient population than we originally requested, and the FDA or applicable foreign regulatory agency may not approve or authorize the labeling that we believe is necessary or desirable for the successful commercialization of a product candidate. Any delay in obtaining, or inability to obtain, applicable regulatory clearance, approval or other marketing authorization would delay or prevent commercialization of that product candidate and would materially adversely impact our business and prospects.

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

Some of our marketed products are subject to Medical Device Reporting, or MDR, obligations, which require that we report to the FDA or the Competent Authorities of the European Union, any incident in which our products may have caused or contributed to a death or serious injury, or in which our products malfunctioned and, if the malfunction were to recur, it could likely cause or contribute to a death or serious injury. The timing of our obligation to report under the MDR regulations is triggered by the date we become aware of the adverse event as well as the nature of the event. We may fail to report adverse events of which we become aware within the prescribed timeframe. We may also fail to recognize that we have become aware of a reportable adverse event, especially if it is not reported to us as an adverse event or if it is an adverse event that is unexpected or removed in time from the use of our product. If we fail to comply with our reporting obligations, the FDA, or the Competent Authorities of the European Union, could take action, including warning letters, untitled letters, administrative actions, criminal prosecution, imposition of civil monetary penalties, revocation of our device clearance or approval, seizure of our products or delay in clearance or approval of future products.

The FDA, the Competent Authorities of the European Union, and foreign regulatory bodies have the authority to require the recall of commercialized products in the event of material deficiencies or defects in design or manufacture of a product or in the event that a product poses an unacceptable risk to health. The FDA's authority to require a recall must be based on a finding that there is reasonable probability that the device could cause serious injury or death. We may also choose to voluntarily recall a product if any material deficiency is found. A government-mandated or voluntary recall by us could occur as a result of an unacceptable risk to health, component failures, malfunctions, manufacturing defects, labeling or design deficiencies, packaging defects or other deficiencies or failures to comply with applicable regulations. Product defects or other errors may occur in the future.

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

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

Modifications to our medical device products may require new 510(k) clearances or other marketing authorizations, and if we make modifications to such products without obtaining requisite marketing authorization, we may be required to cease marketing or recall the modified products until clearances or other marketing authorizations are obtained.

Any modification to a cleared or approved medical device that could significantly affect its safety or effectiveness, or that would constitute a major change in its intended use, design or manufacture, requires a new 510(k) clearance or, possibly, approval of a PMA. The FDA requires every manufacturer to make this determination in the first instance, but the FDA may review any manufacturer's decision. The FDA may not agree with our decisions regarding whether new clearances or approvals are necessary. We may make modifications or add features to any of our product candidates that are cleared under the 510(k) clearance process in the future that we believe do not require a new 510(k) clearance or approval of a PMA. If the FDA disagrees with our determination and requires us to submit new 510(k) notifications or PMA applications for modifications to our products for which we have concluded that new clearances or approvals are unnecessary, we may be required to cease marketing or to recall the modified product until we obtain clearance or approval, and we may be subject to significant regulatory fines or penalties. In addition, the FDA may not approve or clear our products for the indications that are necessary or desirable for successful commercialization or could require clinical trials to support any modifications. Any delay or failure in obtaining required clearances or approvals for such changes would adversely affect our ability to introduce new or enhanced products in a timely manner, which in turn would harm our future growth. Any of these actions would harm our operating results.

The misuse or off-label use of our products may harm our reputation in the marketplace, result in injuries that lead to product liability suits or result in costly investigations, fines or sanctions by regulatory bodies if we are deemed to have engaged in the promotion of these uses, any of which could be costly to our business.

Our currently marketed products have been cleared by the FDA for specific indications. For example, our SimpliDerm product has been labeled for use to repair or replace damaged or inadequate integumental tissue and our CanGaroo envelope is intended to securely hold an implantable electronic device to create a stable environment when implanted in the body. We train our marketing personnel and direct sales force to not promote our devices for uses outside of the FDA-approved indications for use, known as "off-label uses." We cannot, however, prevent a physician from using our products off-label, when in the physician's independent professional medical judgment, he or she deems it appropriate. There may be increased risk of injury to patients if physicians attempt to use our products off-label. Furthermore, the use of our products for indications other than those authorized by the FDA or by any foreign regulatory body may not effectively treat such conditions, which could harm our reputation in the marketplace among physicians and patients.

If the FDA or any foreign regulatory body determines that our promotional materials or training constitute promotion of an off-label use, it could request that we modify our training or promotional materials or subject us to regulatory or enforcement actions, including the issuance or imposition of an untitled letter, which is used for violators that do not necessitate a warning letter, injunction, seizure, civil fine or criminal penalties. It is also possible that other federal, state or foreign enforcement authorities might take action under other regulatory authority, such as false claims laws, if they consider our business activities to constitute promotion of an off-label use, which could result in significant penalties, including, but not limited to, criminal, civil and administrative penalties, damages, fines, disgorgement, exclusion from participation in government healthcare programs and the curtailment of our operations.

In addition, physicians may misuse our products or use improper techniques if they are not adequately trained, potentially leading to injury and an increased risk of product liability. If our devices are misused or used with improper technique, we may become subject to costly litigation by our customers or their patients. As described above, product liability claims could divert management's attention from our core business, harm our reputation, be expensive to defend and result in sizeable damage awards against us that may not be covered by insurance.

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

We are subject to ongoing and pervasive regulatory requirements governing, among other things, the manufacture, marketing, advertising, medical device reporting, sale, promotion, import, export, registration and listing of devices. For example, we must submit periodic reports to the FDA as a condition of receiving 510(k) clearances and other marketing authorizations. These reports include information about failures and certain adverse events associated with the device after its clearance. Failure to submit such reports, or failure to submit the reports in a timely manner, could result in enforcement action by the FDA. Following its review of the periodic reports, the FDA might ask for additional information or initiate further investigation.

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

- untitled letters or warning letters;
- fines, injunctions, consent decrees and civil penalties;
- recalls, termination of distribution, administrative detention or seizure of our products;
- customer notifications or repair, replacement or refunds;
- operating restrictions or partial suspension or total shutdown of production;
- delays in or refusal to grant our requests for future clearances or approvals or foreign marketing authorizations of new products, new intended uses or modifications to existing products;
- withdrawals or suspensions of our current 510(k) clearances, resulting in prohibitions on sales of our products;
- FDA refusal to issue certificates to foreign governments needed to export products for sale in other countries; and
- criminal prosecution.

Any of these sanctions could result in higher than anticipated costs or lower than anticipated sales and have a material adverse effect on our reputation, business, financial condition and results of operations.

In addition, the FDA may change its clearance policies, adopt additional regulations or revise existing regulations, or take other actions, which may prevent or delay clearance or approval of our future products under development or impact our ability to modify our currently cleared products on a timely basis. Such policy or regulatory changes could impose additional requirements upon us that could delay our ability to obtain new clearances or approvals, increase the costs of compliance or restrict our ability to maintain our clearances of our current products. Over the last several years, the FDA has proposed reforms to its 510(k) clearance process, and such proposals could include increased requirements for clinical data and a longer review period, or could make it more difficult for manufacturers to utilize the 510(k) clearance process for their products. For example, in November 2018, FDA officials announced steps that the FDA intends to take to modernize the premarket notification pathway under Section 510(k) of the FDCA. Among other things, the FDA announced that it planned to develop proposals to drive manufacturers utilizing the 510(k) pathway toward the use of newer predicates. These proposals included plans to

potentially sunset certain older devices that were used as predicates under the 510(k) clearance pathway, and to potentially publish a list of devices that have been cleared on the basis of demonstrated substantial equivalence to predicate devices that are more than 10 years old. These proposals have not yet been finalized or adopted, and the FDA may work with Congress to implement such proposals through legislation. Accordingly, it is unclear the extent to which any proposals, if adopted, could impose additional regulatory requirements on us that could delay our ability to obtain new 510(k) clearances, increase the costs of compliance or restrict our ability to maintain our current clearances, or otherwise create competition that may negatively affect our business.

More recently, in September 2019, the FDA finalized guidance describing an optional "safety and performance based" premarket review pathway for manufacturers of "certain, well-understood device types" to demonstrate substantial equivalence under the 510(k) clearance pathway by showing that such device meets objective safety and performance criteria established by the FDA, thereby obviating the need for manufacturers to compare the safety and performance of their medical devices to specific predicate devices in the clearance process. The FDA is developing a list of device types appropriate for the "safety and performance based" pathway and will continue to develop product-specific guidance documents that identify the performance criteria for each such device type, as well as the testing methods recommended in the guidance documents, where feasible. The FDA may establish performance criteria for classes of devices for which we or our competitors seek or currently have received clearance, and it is unclear the extent to which such performance standards, if established, could impact our ability to obtain new 510(k) clearances or otherwise create competition that may negatively affect our business.

In addition, FDA regulations and guidance are often revised or reinterpreted by the FDA in ways that may significantly affect our business and our products. Any new statutes, regulations or revisions or reinterpretations of existing regulations may impose additional costs or lengthen review times of any future products or make it more difficult to obtain clearance or approval for, manufacture, market or distribute our products. We cannot determine what effect changes in regulations, statutes, legal interpretation or policies, when and if promulgated, enacted or adopted may have on our business in the future. Such changes could, among other things, require: additional testing prior to obtaining clearance or approval; changes to manufacturing methods; recall, replacement or discontinuance of our products; or additional record keeping.

The FDA's and other regulatory authorities' policies may change and additional government regulations may be promulgated that could prevent, limit or delay regulatory clearance or approval of our product candidates. We cannot predict the likelihood, nature or extent of government regulation that may arise from future legislation or administrative action, either in the United States or abroad. If we are slow or unable to adapt to changes in existing requirements or the adoption of new requirements or policies, or if we are not able to maintain regulatory compliance, we may lose any marketing approval that we may have obtained and we may not achieve or sustain profitability.

Our HCT/P products are subject to extensive government regulation, and our failure to comply with these requirements could cause our business to suffer.

In the United States, we sell human tissue-derived bone allografts, such as ViBone, FiberCel and OsteGro V, which are referred to by the FDA as HCT/Ps. Certain HCT/Ps are regulated by the FDA solely under Section 361 of the Public Health Service Act, or PHSA, and are referred to as "Section 361 HCT/Ps," while other HCT/Ps are subject to FDA's regulatory requirements applicable to medical devices or biologics. Section 361 HCT/Ps do not require 510(k) clearance, PMA approval, biologics license application, or BLA, or other premarket authorization from FDA before marketing. We believe our HCT/Ps are regulated solely under Section 361 of the PHSA and, therefore, we have not sought or obtained 510(k) clearance, PMA approval, or licensure through a BLA. The FDA could disagree with our determination that our human tissue products are Section 361 HCT/Ps and could determine that these products are biologics requiring a BLA or medical devices requiring 510(k) clearance or PMA approval, and could require that we cease marketing such products and/or recall them pending appropriate clearance, approval or license from the FDA. For example, in public comments, the FDA has suggested that the use of human-derived acellular dermal matrices, such as SimpliDerm, may not be considered HCT/Ps when utilized in breast reconstruction procedures. As a result, we may be required to conduct clinical studies and/or seek approval of a PMA before we are able to market SimpliDerm for use in breast reconstruction.

Even though we believe that our HCT/Ps are not subject to premarket approval or review, HCT/Ps are subject to donor eligibility and screening, Good Tissue Practices, product labeling and post-market reporting requirements. If we or our suppliers fail to comply with these requirements, we could be subject to FDA enforcement action, including, for example, warning letters, fines, injunctions, product recalls or seizures and, in the most serious cases, criminal penalties.

The clinical trial process is lengthy and expensive with uncertain outcomes. We have limited data and experience regarding the safety and efficacy of our products. Results of earlier studies may not be predictive of future clinical trial results, or the safety or efficacy profile for such products.

Clinical testing is difficult to design and implement, can take many years, can be expensive and carries uncertain outcomes. The long-term effects of using our products in a large number of patients have not been studied, and the results of short-term clinical use of such products do not necessarily predict long-term clinical benefits or reveal long-term adverse effects.

The results of pre-clinical studies and clinical trials of our products conducted to date and ongoing or future studies and trials of our current, planned or future products may not be predictive of the results of later clinical trials, and interim results of a clinical trial do not necessarily predict final results. Our interpretation of data and results from our clinical trials do not ensure that we will achieve similar results in future clinical trials. In addition, pre-clinical and clinical data are often susceptible to various interpretations and analyses, and many companies that have believed their products performed satisfactorily in pre-clinical studies and earlier clinical trials have, nonetheless, failed to replicate results in later clinical trials. Products in later stages of clinical trials may fail to show the desired safety and efficacy despite having progressed through nonclinical studies and earlier clinical trials. Failure can occur at any stage of clinical testing. Our clinical studies may produce negative or inconclusive results, and we may decide, or regulators may require us, to conduct additional clinical and non-clinical testing in addition to those we have planned.

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

- we may be required to submit an investigational device exemption, or IDE, application to the FDA, which must become effective prior to commencing certain human clinical trials of medical devices, and the FDA may reject our IDE application and notify us that we may not begin clinical trials;
- regulators and other comparable foreign regulatory authorities may disagree as to the design or implementation of our clinical trials;
- regulators and/or IRBs, or other reviewing bodies may not authorize us or our investigators to commence a clinical trial or to conduct or continue a clinical trial at a prospective or specific trial site;
- we may not reach agreement on acceptable terms with prospective CROs and clinical trial sites, the terms of which can be subject to extensive negotiation and may vary significantly among different CROs and trial sites;
- clinical trials may produce negative or inconclusive results, and we may decide, or regulators may require us, to conduct additional clinical trials or abandon product development programs;
- the number of subjects or patients required for clinical trials may be larger than we anticipate, enrollment in these clinical trials may be insufficient or slower than we anticipate, and the number of clinical trials being conducted at any given time may be high and result in fewer available patients for any given clinical trial, or patients may drop out of these clinical trials at a higher rate than we anticipate;
- our third-party contractors, including those manufacturing products or conducting clinical trials on our behalf, may fail to comply with regulatory requirements or meet their contractual obligations to us in a timely manner or at all;

- we might have to suspend or terminate clinical trials for various reasons, including a finding that the subjects are being exposed to unacceptable health risks;
- we may have to amend clinical trial protocols or conduct additional studies to reflect changes in regulatory requirements or guidance, which we may be required to submit to an IRB and/or regulatory authorities for re-examination;
- regulators, IRBs or other parties may require or recommend that we or our investigators suspend or terminate clinical research for various reasons, including safety signals or noncompliance with regulatory requirements;
- the cost of clinical trials may be greater than we anticipate;
- clinical sites may not adhere to the clinical protocol or may drop out of a clinical trial;
- we may be unable to recruit a sufficient number of clinical trial sites;
- regulators, IRBs or other reviewing bodies may fail to approve or subsequently find fault with our manufacturing processes or facilities of third-party manufacturers with which we enter into agreement for clinical and commercial supplies, the supply of devices or other materials necessary to conduct clinical trials may be insufficient, inadequate or not available at an acceptable cost, or we may experience interruptions in supply;
- approval policies or regulations of the FDA, the European Union or applicable foreign regulatory agencies may change in a manner rendering our clinical data insufficient for approval; and
- our current or future products may have undesirable side effects or other unexpected characteristics.

In addition, disruptions caused by the COVID-19 pandemic may increase the likelihood that we encounter such difficulties or delays in initiating, enrolling, conducting or completing our planned and ongoing clinical trials. Any of these occurrences may significantly harm our business, financial condition and prospects. In addition, many of the factors that cause, or lead to, a delay in the commencement or completion of clinical trials may also ultimately lead to the denial of regulatory approval of our product candidates.

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

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

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

The ability of the FDA to review and clear or approve new products can be affected by a variety of factors, including government budget and funding levels, statutory, regulatory and policy changes, the

FDA's ability to hire and retain key personnel and accept the payment of user fees and other events that may otherwise affect the FDA's ability to perform routine functions. Average review times at the FDA have fluctuated in recent years as a result. In addition, government funding of other government agencies that fund research and development activities is subject to the political process, which is inherently fluid and unpredictable. Disruptions at the FDA and other agencies may also slow the time necessary for medical devices and biologics or modifications to cleared or for approved medical devices and biologics to be reviewed and/or approved by necessary government agencies, which would adversely affect our business. For example, over the last several years, including for 35 days beginning on December 22, 2018, the U.S. government has shut down several times and certain regulatory agencies, such as the FDA, have had to furlough critical FDA employees and stop critical activities.

Separately, in response to the COVID-19 pandemic, on March 10, 2020, the FDA announced its intention to postpone most foreign inspections of manufacturing facilities and products, and, on March 18, 2020, the FDA temporarily postponed routine surveillance inspections of domestic manufacturing facilities. Subsequently, on July 10, 2020, the FDA announced its intention to resume certain on-site inspections of domestic manufacturing facilities subject to a risk-based prioritization system. The FDA intends to use this risk-based assessment system to identify the categories of regulatory activity that can occur within a given geographic area, ranging from mission critical inspections to resumption of all regulatory activities. Regulatory authorities outside the United States may adopt similar restrictions or other policy measures in response to the COVID-19 pandemic. If a prolonged government shutdown occurs, or if global health concerns continue to prevent the FDA, the European Union or other regulatory authorities from conducting their regular inspections, reviews, or other regulatory activities, it could significantly impact the ability of the FDA, the European Union or other regulatory authorities to timely review and process our regulatory submissions, which could have a material adverse effect on our business.

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

There are numerous U.S. federal and state, as well as foreign, laws pertaining to healthcare fraud and abuse, including anti-kickback, false claims and physician transparency laws. Our business practices and relationships with providers and hospitals are subject to scrutiny under these laws. We may also be subject to patient information privacy and security regulation by both the federal government and the states and foreign jurisdictions in which we conduct our business. The healthcare laws and regulations that may affect our ability to operate include:

- the federal Anti-Kickback Statute, which prohibits, among other things, persons and entities from knowingly and willfully soliciting, offering, receiving or providing remuneration, directly or indirectly, in cash or in kind, to induce either the referral of an individual or furnishing or arranging for a good or service, for which payment may be made, in whole or in part, under federal healthcare programs, such as Medicare and Medicaid. A person or entity does not need to have actual knowledge of the statute or specific intent to violate it to have committed a violation;
- the federal civil and criminal false claims laws, including the federal civil False Claims Act, which prohibit, among other things, individuals or entities from knowingly presenting, or causing to be presented, claims for payment from Medicare, Medicaid or other federal healthcare programs that are false or fraudulent. Moreover, the government may assert that a claim including items or services resulting from a violation of the federal Anti-Kickback Statute constitutes a false or fraudulent claim for purposes of the federal civil False Claims Act. Private individuals can bring False Claims Act "qui tam" actions, on behalf of the government and such individuals, commonly known as "whistleblowers," may share in amounts paid by the entity to the government in fines or settlement. When an entity is determined to have violated the federal civil False Claims Act, the government may impose civil penalties, including treble damages, and exclude the entity from participation in Medicare, Medicaid and other federal healthcare programs;
- the federal Civil Monetary Penalties Law, which prohibits, among other things, offering or transferring remuneration to a federal healthcare beneficiary that a person knows or should know

is likely to influence the beneficiary's decision to order or receive items or services reimbursable by the government from a particular provider or supplier;

- the Health Insurance Portability and Accountability Act of 1996, or HIPAA, which created additional federal criminal statutes that prohibit, among other things, executing a scheme to defraud any healthcare benefit program and making false statements relating to healthcare matters. Similar to the federal Anti-Kickback Statute, a person or entity does not need to have actual knowledge of the statute or specific intent to violate it to have committed a violation;
- the federal Physician Sunshine Act, which requires certain manufacturers of drugs, devices, biologics and medical supplies for which payment is available under Medicare, Medicaid or the Children's Health Insurance Program, or CHIP, to report annually to CMS, information related to payments and other transfers of value to physicians, which is defined broadly to include doctors, dentists, optometrists, podiatrists and chiropractors, and teaching hospitals, and applicable manufacturers and group purchasing organizations, to report annually ownership and investment interests held by such physicians and their immediate family members. Manufacturers are required to submit annual reports to CMS and failure to do so may result in civil monetary penalties for all payments, transfers of value or ownership or investment interests not reported in an annual submission, and may result in liability under other federal laws or regulations. Effective January 1, 2022, these reporting obligations will extend to include payments and transfers of value made to certain nonphysician providers such as physician assistants and nurse practitioners; and
- analogous state and foreign law equivalents of each of the above federal laws, such as anti-kickback and false claims laws, which may apply to items or services reimbursed by any third-party payor, including commercial insurers or patients; state laws that require device companies to comply with the industry's voluntary compliance guidelines and the applicable compliance guidance promulgated by the federal government or otherwise restrict payments that may be made to healthcare providers and other potential referral sources; state laws that require device manufacturers to report information related to payments and other transfers of value to physicians and other healthcare providers or marketing expenditures; and state laws related to insurance fraud in the case of claims involving private insurers.

These laws and regulations, among other things, constrain our business, marketing and other promotional activities by limiting the kinds of financial arrangements we may have with hospitals, physicians or other potential purchasers of our products, as well as independent sales agents and distributors. Due to the breadth of these laws, the narrowness of statutory exceptions and regulatory safe harbors available, and the range of interpretations to which they are subject, it is possible that some of our current or future practices might be challenged under one or more of these laws.

To enforce compliance with the healthcare regulatory laws, certain enforcement bodies have recently increased their scrutiny of interactions between healthcare companies and healthcare providers, which has led to a number of investigations, prosecutions, convictions and settlements in the healthcare industry. Responding to investigations can be time-and resource-consuming and can divert management's attention from the business. Additionally, as a result of these investigations, healthcare providers and entities may have to agree to additional compliance and reporting requirements as part of a consent decree or corporate integrity agreement. Any such investigation or settlement could increase our costs or otherwise have an adverse effect on our business. Even an unsuccessful challenge or investigation into our practices could cause adverse publicity, and be costly to respond to. If our operations are found to be in violation of any of the healthcare laws or regulations described above or any other healthcare regulations that apply to us, we may be subject to penalties, including administrative, civil and criminal penalties, damages, fines, exclusion from participation in government healthcare programs, such as Medicare and Medicaid, imprisonment, contractual damages, reputational harm, disgorgement and the curtailment or restructuring of our operations.

In addition, members of our management and companies with which they are affiliated or have been affiliated with in the past, have been, and may in the future be, involved in investigations, prosecutions, convictions or settlements in the healthcare industry. For example, Kevin Rakin, the chairman of our board of directors, was named as a defendant in United States ex rel. Webb v. Advanced BioHealing, Inc., or

ABH, a whistleblower suit relating to sales methods employed by sales representatives of ABH, a biotechnology company for which Mr. Rakin served as its chief executive officer. All claims in the lawsuit were dismissed with prejudice pursuant to a settlement agreement, in which Mr. Rakin expressly denied that he engaged in any wrongful conduct, and Mr. Rakin agreed to pay to the United States $2.5 million. Any investigations, prosecutions, convictions or settlements involving members of our management and companies with which they are or have been affiliated may be detrimental to our reputation and could negatively affect our business, financial condition and results of operations.

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

In March 2010, the Affordable Care Act, or ACA, was enacted in the United States, which made a number of substantial changes in the way healthcare is financed by both governmental and private insurers. Among other ways in which it may impact our business, the ACA established a new Patient-Centered Outcomes Research Institute to oversee and identify priorities in comparative clinical effectiveness research in an effort to coordinate and develop such research, implemented payment system reforms, including a national pilot program on payment bundling to encourage hospitals, physicians and other providers to improve the coordination, quality and efficiency of certain healthcare services through bundled payment models, and expanded the eligibility criteria for Medicaid programs.

Since its enactment, there have been judicial, U.S. Congressional and executive branch challenges to certain aspects of the ACA, and we expect there will be additional challenges and amendments to the ACA in the future. For example, the TCJA was enacted, which includes a provision repealing, effective January 1, 2019, the tax-based shared responsibility payment imposed by the ACA on certain individuals who fail to maintain qualifying health coverage for all or part of a year that is commonly referred to as the “individual mandate”. On December 14, 2018, a U.S. District Court judge in the Northern District of Texas ruled that the individual mandate is a critical and inseverable feature of the ACA and, therefore, because it was repealed as part of the Tax Act, the remaining provisions of the ACA are invalid as well. On December 18, 2019, the U.S. Court of Appeals for the 5th Circuit affirmed the District Court’s decision that the individual mandate was unconstitutional but remanded the case back to the District Court to determine whether the remaining provisions of the ACA are invalid as well. On March 2, 2020, the U.S. Supreme Court granted the petitions for writs of certiorari to review the case, although it is unclear when a decision will be made or how the Supreme Court will rule. In addition, there may be other efforts to challenge, repeal or replace the ACA. We are continuing to monitor any changes to the ACA that, in turn, may potentially impact our business in the future.

In addition, other legislative changes have been proposed and adopted since the ACA was enacted. On August 2, 2011, the Budget Control Act of 2011 was signed into law, which, among other things, reduced Medicare payments to providers by 2% per fiscal year, effective on April 1, 2013 and, due to subsequent legislative amendments to the statute, was to remain in effect through 2029. The CARES Act, which was signed into law on March 27, 2020, temporarily suspended these reductions from May 1, 2020 through December 31, 2020, and extended the sequester by one additional year, through 2030. In addition, on January 2, 2013, the American Taxpayer Relief Act of 2012 was signed into law, which, among other things, reduced Medicare payments to several providers, including hospitals, and increased the statute of limitations period for the government to recover overpayments to providers from three to five years.

We expect additional state and federal healthcare reform measures to be adopted in the future, any of which could limit reimbursement for healthcare products and services, which could result in reduced demand for our products or additional pricing pressure.

Failure to comply with data protection laws and regulations could lead to government enforcement actions (which could include civil or criminal penalties), private litigation and/or adverse publicity and could negatively affect our operating results and business.

We and our commercial partners, independent sales agents, suppliers and other business partners may be subject to federal, state and foreign data protection laws and regulations (i.e., laws and regulations that address data privacy and security). In the United States, numerous federal and state laws and regulations, including state data breach notification laws, state health information privacy laws, and federal and state consumer protection laws and regulations (e.g., Section 5 of the FTC Act), that govern the collection,

use, disclosure and protection of health-related and other personal information could apply to our operations or the operations of our partners. We may also be subject to U.S. federal rules, regulations and guidance concerning data security for medical devices, including guidance from the FDA. In addition, we may obtain health information from third parties (including research institutions from which we obtain clinical trial data) that are subject to privacy and security requirements under HIPAA. Depending on the facts and circumstances, we could be subject to criminal penalties if we knowingly obtain, use, or disclose individually identifiable health information maintained by a HIPAA-covered entity in a manner that is not authorized or permitted by HIPAA.

In addition, the California Consumer Privacy Act, or CCPA, became effective on January 1, 2020. The CCPA gives California residents expanded rights to access and delete their personal information, opt out of certain personal information sharing and receive detailed information about how their personal information is used by requiring covered companies to provide new disclosures to California consumers (as that term is broadly defined) and provide such consumers new ways to opt out of certain sales of personal information. The CCPA provides for civil penalties for violations, as well as a private right of action for data breaches that is expected to increase data breach litigation. Although there are limited exemptions for certain health-related information, including certain clinical trial data, the CCPA may increase our compliance costs and potential liability. Additionally, a new California ballot initiative, the California Privacy Rights Act, appears to have garnered enough signatures to be included on the November 2020 ballot, and if voted into law by California residents, would impose additional data protection obligations on companies doing business in California, including additional consumer rights processes and opt outs for certain uses of sensitive data. It would also create a new California data protection agency specifically tasked to enforce the law, which would likely result in increased regulatory scrutiny of California businesses in the areas of data protection and security. Similar laws have been proposed in other states and at the federal level, and if passed, such laws may have potentially conflicting requirements that would make compliance challenging.

Foreign data protection laws, including the E.U. General Data Protection Regulation, or the GDPR, which became effective in May 2018, may also apply to health-related and other personal information obtained outside of the United States. The GDPR imposes stringent data protection requirements for the processing of personal data in the European Economic Area, or EEA. The GDPR imposes several stringent requirements for controllers and processors of personal data, including, for example, higher standards for obtaining consent from individuals to process their personal data, more robust disclosures to individuals and a strengthened individual data rights regime, shortened timelines for data breach notifications, limitations on retention and secondary use of information (including for research purposes), increased requirements pertaining to health data and pseudonymised (i.e., key-coded) data and additional obligations when we contract third party processors in connection with the processing of the personal data. The GDPR also imposes strict rules on the transfer of personal data out of the EEA, to the United States and other third countries. Recent legal developments in Europe have created complexity and uncertainty regarding transfers of personal data from the EEA to the United States, e.g. on July 16, 2020, the Court of Justice of the European Union, or the CJEU, invalidated the E.U.-U.S. Privacy Shield Framework, or the Privacy Shield, under which personal data could be transferred from the EEA to U.S. entities who had self-certified under the Privacy Shield scheme. While the CJEU upheld the adequacy of the standard contractual clauses (a standard form of contract approved by the European Commission as an adequate personal data transfer mechanism, and potential alternative to the Privacy Shield), it made clear that reliance on them alone may not necessarily be sufficient in all circumstances. European data protection law provides that E.U. and EEA member states may make their own further laws and regulations limiting the processing of health-related data, which could limit our ability to use and share personal data or could cause our costs to increase, and harm our business and financial condition. Failure to comply with the requirements of GDPR and the applicable national data protection and marketing laws may result in fines of up to €20,000,000 or up to 4% of the total worldwide annual turnover of the preceding financial year, whichever is higher, and other administrative penalties as well as individual claims for compensation.

In addition, the United Kingdom leaving the European Union could also lead to further legislative and regulatory changes. It remains unclear how the United Kingdom data protection laws or regulations will develop in the medium to longer term and how data transfer to the United Kingdom from the European Union and the EEA will be regulated, especially following the United Kingdom’s departure from the

European Union on January 31, 2020. However, the United Kingdom has transposed the GDPR into domestic law with the Data Protection Act 2018, which remains in force following the United Kingdom's departure from the European Union. Compliance with these and any other applicable privacy and data security laws and regulations is a rigorous and time-intensive process, and we may be required to put in place additional mechanisms ensuring compliance with the new data protection rules. If we fail to comply with any such laws or regulations, we may face significant fines and penalties that could adversely affect our business, financial condition and results of operations.

Compliance with U.S. and foreign privacy and security laws, rules and regulations could require us to take on more onerous obligations in our contracts, require us to engage in costly compliance exercises, restrict our ability to collect, use and disclose data, or in some cases, impact our ability, or the ability of our commercial partners, independent sales agents, suppliers or other business partners, to operate in certain jurisdictions. Each of these constantly evolving laws can be subject to varying interpretations. Failure to comply with U.S. and foreign data protection laws and regulations could result in government investigations and enforcement actions (which could include civil or criminal penalties), fines, private litigation and/or adverse publicity and could negatively affect our operating results and business. Moreover, patients about whom we or our partners obtain information, as well as the providers who share this information, may contractually limit our ability to use and disclose the information. Claims that we have violated individuals' privacy rights, failed to comply with data protection laws, or breached our contractual obligations, even if we are not found liable, could be expensive and time-consuming to defend and could result in adverse publicity that could have a material and adverse effect on our business, financial condition and results of operations.

Risks Related to Intellectual Property

If we are unable to obtain, maintain and adequately protect our intellectual property rights, our competitive position could be harmed or we could be required to incur significant expenses to enforce or defend our rights.

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

Some of our intellectual property rights depend on licensing agreements with third parties, and our patent coverage includes protection provided by licensed patents. If in the future we no longer have rights to one or more of these licensed patents, our patent coverage may be compromised, which in turn could adversely affect our ability to protect our products and defend against competitors.

We have sought to protect our proprietary position by filing patent applications in the United States and abroad related to our products that we view as important to our business. This process is expensive and time-consuming, and we may not be able to file and prosecute all necessary or desirable patent applications at a reasonable cost or in a timely manner. In addition, we cannot provide any assurances that any of our patents have, or that any of our pending patent applications that mature into issued patents will include, claims with a scope sufficient to protect our existing products, any enhancements we may develop to our existing products or any new products we may develop or acquire and introduce in the future. We, or our licensors, may fail to identify patentable aspects of inventions made in the course of development and commercialization activities before it is too late to obtain patent protection on them. Therefore, we may miss potential opportunities to strengthen our patent position. Other parties may have developed technologies that may be related or competitive to our system, may have filed or may file patent applications and may have received or may receive patents that overlap or conflict with our patent applications, either by claiming the same methods or devices or by claiming subject matter that could dominate our patent position.

The patent positions of regenerative medicine companies, including our patent position, may involve complex legal, scientific and factual questions, and, therefore, the scope, validity, ownership and enforceability of any patent claims that we may obtain cannot be predicted with certainty. Patents, if

issued, may be challenged, deemed unenforceable, narrowed, invalidated or circumvented. Proceedings challenging our patents could result in either loss of the patent or denial of the patent application or loss or reduction in the scope of one or more of the claims of the patent or patent application. In addition, such proceedings may be costly. Thus, any patents that we currently own or may own may not provide any protection against competitors. Furthermore, an adverse decision in an interference proceeding can result in a third party receiving the patent right sought by us, which in turn could affect our ability to commercialize our products. In recent years, patent rights have been the subject of significant litigation. Changes in either the patent laws or interpretation of the patent laws in the United States and other countries may diminish the value of our owned or licensed patents or narrow the scope of our patent protection.

Though an issued patent is presumed valid and enforceable, its issuance is not conclusive as to its inventorship, scope, validity or enforceability, and it may not provide us with adequate proprietary protection or competitive advantages against competitors with similar products. Competitors could attempt to replicate some or all of the competitive advantages we derive from our development efforts, willfully infringe, misappropriate or otherwise violate our intellectual property rights, design around our patents or develop and obtain patent protection for more effective technologies, designs or methods.

CanGaroo and SimpliDerm are the only current products covered by issued patents. We rely on unpatented trade secrets and know-how for several of our current products to develop and maintain our competitive position. However, trade secrets and know-how can be difficult to protect and enforce against third parties. Accordingly, we cannot be certain that these intellectual property rights will provide us with adequate protection or enable us to prevent third parties from developing or commercializing competitive products.

We may be unable to prevent the unauthorized disclosure or use of our technical knowledge or trade secrets by consultants, suppliers, vendors, current and former employees, distributors, commercial partners or independent sales agents. The laws of some foreign countries do not protect our proprietary rights to the same extent as the laws of the United States, and we may encounter significant problems in protecting our proprietary rights in these countries.

Our ability to enforce our patent rights depends on our ability to detect infringement. It may be difficult to detect infringers who do not advertise the components that are used in their products. Moreover, it may be difficult or impossible to obtain evidence of infringement in a competitor’s or potential competitor’s product. We may not prevail in any lawsuits that we initiate and the damages or other remedies awarded, if we were to prevail, may not be commercially meaningful.

In addition, proceedings to enforce or defend our patents could put our patents at risk of being invalidated, held unenforceable or interpreted narrowly, which could limit our ability to stop or prevent us from stopping others from using or commercializing similar or identical technology and products, or limit the duration of the patent protection of our technology and products. Such proceedings could provoke third parties to assert claims against us, including that some or all of the claims in one or more of our patents are invalid or otherwise unenforceable. If any of the patents covering our products are narrowed, invalidated or found unenforceable, or if a court found that valid, enforceable patents held by third parties covered one or more of our products, our competitive position could be harmed or we could be required to incur significant expenses to enforce or defend our rights.

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

- any of our patents, or any of our pending patent applications, if issued, will include claims having a scope sufficient to protect our products;
- any of our pending patent applications will issue as patents;
- we will be able to successfully commercialize our products on a substantial scale, if approved, before the relevant patents we currently have, or may have, expire;
- we were the first to conceive and reduce to practice the inventions covered by each of our patents and pending patent applications;
- we were the first to file patent applications for these inventions;

- others will not develop similar or alternative technologies that do not infringe, misappropriate or otherwise violate our owned or licensed patents and other intellectual property rights;
- any of our patents will ultimately be found to be valid and enforceable;
- ownership of our patents or patent applications will not be challenged by third parties;
- any patents issued to us will provide a basis for an exclusive market for our commercially viable products, will provide us with any competitive advantages or will not be challenged by third parties;
- our competitors will not conduct research and development activities in countries where we do not have patent rights, or in countries where research and development safe harbor laws exist, and then use the information learned from such activities to develop competitive products for sale in our major commercial markets;
- we will develop additional proprietary technologies or products that are separately patentable; or
- our commercial activities or products will not infringe, misappropriate or otherwise violate the patents and other intellectual property rights of others.

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

We may not enter into invention assignment and confidentiality agreements with all of our employees and contractors and such agreements could be ineffective or breached.

We rely, in part, upon unpatented trade secrets, unpatented know-how and continuing technological innovation to develop and maintain our competitive position, which we seek to protect, in part, by confidentiality agreements with our employees, consultants, independent sales agents, collaborators and third-party vendors. We also seek to enter agreements with our employees and consultants that obligate them to assign any inventions created during their work for us to us and have non-compete agreements with some, but not all, of our consultants. However, we may not obtain these agreements in all circumstances and the assignment of intellectual property under such agreements may not be self-executing. If the employees, consultants or collaborators that are parties to these agreements breach or violate their respective terms, we may not have adequate remedies for any such breach or violation. It is possible that technology relevant to our business will be independently developed by a person that is not a party to such an agreement. Furthermore, if the employees and consultants who are parties to these agreements breach or violate the terms of these agreements, we may not have adequate remedies for any such breach or violation, and we could lose our trade secrets through such breaches or violations. Further, our trade secrets could otherwise become known or be independently discovered by our competitors. Any of the foregoing could have a material and adverse effect on our business, financial condition and results of operations.

The patent protection we obtain for our products may not be sufficient enough to provide us with any competitive advantage or our patents may be challenged.

Our owned and licensed patents and pending patent applications, if issued, may not provide us with any meaningful protection or prevent competitors from designing around our patent claims to circumvent our patents by developing similar or alternative technologies or products in a non-infringing manner. For example, a third party may develop a competitive product that provides benefits similar to one or more of our products but falls outside the scope of our patent protection or license rights. If the patent protection provided by the patents and patent applications we hold or pursue with respect to our products is not sufficiently broad to impede such competition, our ability to successfully commercialize our products could be negatively affected, which would harm our business.

It is possible that defects of form in the preparation or filing of our patents or patent applications may exist, or may arise in the future, for example with respect to proper priority claims, inventorship, claim scope, or requests for patent term adjustments. If we or our collaborators or licensors, fail to establish, maintain or protect such patents and other intellectual property rights, such rights may be reduced or eliminated. If our collaborators or licensors are not fully cooperative or disagree with us as to the prosecution, maintenance or enforcement of any patent rights, such patent rights could be compromised. If there are material defects in the form, preparation, prosecution or enforcement of our patents or

patent applications, such patents may be invalid and/or unenforceable, and such applications may never result in valid and enforceable patents. Any of these outcomes could impair our ability to prevent competition from third parties, which may have an adverse impact on our business.

Pending patent applications cannot be enforced against third parties practicing the technology claimed in such applications unless and until a patent issues from such applications. Assuming the other requirements for patentability are met, currently, the first to file a patent application is generally entitled to the patent. However, prior to March 16, 2013, in the United States, the first to invent was entitled to the patent. Publications of discoveries in the scientific literature often lag behind the actual discoveries, and patent applications in the United States and other jurisdictions are not published until 18 months after filing, or in some cases not at all. Therefore, we cannot be certain that we were the first to make the inventions claimed in our patents or pending patent applications, or that we were the first to file for patent protection of such inventions. Similarly, we cannot be certain that parties from whom we do or may license or purchase patent rights were the first to make relevant claimed inventions, or were the first to file for patent protection for them. If third parties have filed prior patent applications on inventions claimed in our patents or applications that were filed on or before March 15, 2013, an interference proceeding in the United States can be initiated by such third parties to determine who was the first to invent any of the subject matter covered by the patent claims of our applications. If third parties have filed such prior applications after March 15, 2013, a derivation proceeding in the United States can be initiated by such third parties to determine whether our invention was derived from theirs.

Moreover, because the issuance of a patent is not conclusive as to its inventorship, scope, validity or enforceability, our owned and licensed patents or pending patent applications may be challenged in the courts or patent offices in the United States and abroad. There is no assurance that all of the potentially relevant prior art relating to our patents and patent applications has been found. If such prior art exists, it may be used to invalidate a patent, or may prevent a patent from issuing from a pending patent application. For example, such patent filings may be subject to a third-party submission of prior art to the U.S. Patent and Trademark Office, or USPTO, or to other patent offices around the world. Alternately or additionally, we may become involved in post-grant review procedures, oppositions, derivation proceedings, ex parte reexaminations, inter partes review, supplemental examinations or interference proceedings or challenges in district court, in the United States or in various foreign patent offices, including both national and regional, challenging patents or patent applications in which we have rights, including patents on which we rely to protect our business. In addition, if we seek to enforce our patents against third parties, third parties may initiate such challenges in response. An adverse determination in any such challenges may result in loss of the patent or in patent or patent application claims being narrowed, invalidated or held unenforceable, in whole or in part, or in denial of the patent application or loss or reduction in the scope of one or more claims of the patent or patent application, any of which could limit our ability to stop others from using or commercializing similar or identical technology and products, or limit the duration of the patent protection of our technology and products. In addition, given the amount of time required for the development, testing and regulatory review of new product candidates, patents protecting such candidates might expire before or shortly after such candidates are commercialized. Any of the foregoing could have a material and adverse effect on our business, financial condition and results of operations.

Litigation or other proceedings or third-party claims of intellectual property infringement, misappropriation or other violations could require us to spend significant time and money, prevent us from selling our products and adversely affect our stock price.

Our commercial success will depend in part on not infringing, misappropriating or otherwise violating the patents or other proprietary rights of third parties. Significant litigation regarding patent rights occurs in our industry. Our competitors in both the United States and abroad, many of which have substantially greater resources and have made substantial investments in patent portfolios and competing technologies, may have applied for or obtained or may in the future apply for and obtain, patents that will prevent, limit or otherwise interfere with our ability to make, use and sell our products. We do not always conduct independent reviews of patents issued to third parties. In addition, patent applications in the United States and elsewhere can be pending for many years before issuance, or unintentionally abandoned patents or applications can be revived, so there may be applications of others now pending or recently revived patents of which we are unaware. These applications may later result in issued patents, or the revival of

previously abandoned patents, that will prevent, limit or otherwise interfere with our ability to make, use or sell our products. Third parties may, in the future, assert claims that we are employing their proprietary technology without authorization, including claims from competitors or from non-practicing entities that have no relevant product sales and against whom our own patent portfolio may have no deterrent effect. As we continue to commercialize our products in their current or updated forms, launch new products and enter new markets, we expect competitors may claim that one or more of our products infringe, misappropriate or otherwise violate their intellectual property rights as part of business strategies designed to impede our successful commercialization and entry into new markets. The large number of patents, the rapid rate of new patent applications and issuances, the complexities of the technology involved and the uncertainty of litigation may increase the risk of business resources and management's attention being diverted to patent litigation. We may in the future receive letters or other threats or claims from third parties inviting us to take licenses under, or alleging that we infringe, their patents.

Moreover, we may become party to future adversarial proceedings regarding our patent portfolio or the patents of third parties. Such proceedings could include supplemental examination or contested post-grant proceedings, such as review, reexamination, inter parties review, interference or derivation proceedings before the USPTO and challenges in U.S. District Court. Patents may be subjected to opposition, post-grant review or comparable proceedings lodged in various foreign, both national and regional, patent offices. The legal threshold for initiating litigation or contested proceedings may be low, so that even lawsuits or proceedings with a low probability of success might be initiated. Litigation and contested proceedings can also be expensive and time-consuming, and our adversaries in these proceedings may have the ability to dedicate substantially greater resources to prosecuting these legal actions than we can. We may also occasionally use these proceedings to challenge the patent rights of others. We cannot be certain that any particular challenge will be successful in limiting or eliminating the challenged patent rights of the third party.

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

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

Any litigation or claim against us, even those without merit, may cause us to incur substantial costs, and could place a significant strain on our financial resources, divert the attention of management from our core business and harm our reputation. If we are found to infringe, misappropriate or otherwise violate the intellectual property rights of third parties, we could be required to pay substantial damages (possibly treble damages) and/or substantial royalties and could be prevented from selling our products unless we obtain a license or are able to redesign our products to avoid infringement, misappropriation or violation. Any such license may not be available on reasonable terms, if at all, and there can be no assurance that we would be able to redesign our products in a way that would not infringe, misappropriate or otherwise violate the intellectual property rights of others. We could encounter delays in product introductions while we attempt to develop alternative methods or products. If we fail to obtain any required licenses or

make any necessary changes to our products or technologies, we may have to withdraw existing products from the market or may be unable to commercialize one or more of our products.

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

We may not have sufficient resources to bring these actions to a successful conclusion. There could also be public announcements of the results of hearings, motions or other interim proceedings or developments. If securities analysts or investors perceive these results to be negative, it could have a material adverse effect on the market price of shares of our Class A common stock. Any of the foregoing could have a material and adverse effect on our business, financial condition and results of operations.

If we are unable to protect the confidentiality of our trade secrets, our business and competitive position could be harmed.

In addition to patent protection, we also rely upon copyright and trade secret protection, as well as non-disclosure agreements and invention assignment agreements with our employees, consultants, independent sales agents and other third parties, to protect our confidential and proprietary information. In addition to contractual measures, we try to protect the confidential nature of our proprietary information using commonly accepted physical and technological security measures. Such measures may not, for example, in the case of misappropriation of a trade secret by an employee or third party with authorized access, provide adequate protection for our proprietary information. Our security measures may not prevent an employee or consultant from misappropriating our trade secrets and providing them to a competitor, and recourse we take against such misconduct may not provide an adequate remedy to protect our interests fully. Unauthorized parties may also attempt to copy or reverse engineer certain aspects of our products that we consider proprietary. Enforcing a claim that a party illegally disclosed or misappropriated a trade secret can be difficult, expensive and time-consuming, and the outcome is unpredictable. Even though we use commonly accepted security measures, trade secret violations are often a matter of state law, and the criteria for protection of trade secrets can vary among different jurisdictions. In addition, trade secrets may be independently developed by others in a manner that could prevent legal recourse by us. If any of our confidential or proprietary information, such as our trade secrets, were to be disclosed or misappropriated, or if any such information was independently developed by a competitor, it could have a material and adverse effect on our business, financial condition and results of operations.

We may be unable to enforce our intellectual property rights throughout the world.

Obtaining, maintaining and enforcing intellectual property rights is expensive and it is cost prohibitive to do so throughout the world. Accordingly, we may determine not to obtain, maintain or enforce intellectual property rights in certain jurisdictions. In addition, the laws of some foreign countries do not protect intellectual property rights to the same extent as the laws of the United States. Many companies have encountered significant problems in protecting and defending intellectual property rights in certain foreign jurisdictions. This could make it difficult for us to stop infringement of our foreign patents, if obtained, or the misappropriation or other violation of our other intellectual property rights. For example, some foreign countries have compulsory licensing laws under which a patent owner must grant licenses to third parties. In addition, some countries limit the enforceability of patents against third parties, including government agencies or government contractors. In these countries, patents may provide limited or no benefit. Patent protection must ultimately be sought on a country-by-country basis, which is an expensive and time-consuming process with uncertain outcomes. Accordingly, we may choose not to seek patent protection in certain countries, and we will not have the benefit of patent protection in such countries.

Proceedings to enforce our patent rights in foreign jurisdictions could result in substantial costs and divert our efforts and attention from other aspects of our business. Accordingly, our efforts to protect our intellectual property rights in such countries may be inadequate. In addition, changes in the law and

legal decisions by courts in the United States and foreign countries may affect our ability to obtain adequate protection for our technology and the enforcement of our intellectual property. Any of the foregoing could have a material and adverse effect on our business, financial condition and results of operations.

Third parties may assert ownership or commercial rights to inventions we develop.

Third parties may in the future make claims challenging the inventorship or ownership of our intellectual property. We have written agreements with collaborators that provide for the ownership of intellectual property arising from our collaborations. In addition, we may face claims by third parties that our agreements with employees, contractors or consultants obligating them to assign intellectual property to us are ineffective or in conflict with prior or competing contractual obligations of assignment, which could result in ownership disputes regarding intellectual property we have developed or will develop and interfere with our ability to capture the commercial value of such intellectual property. Litigation may be necessary to resolve an ownership dispute, and if we are not successful, we may be precluded from using certain intellectual property or may lose our exclusive rights in such intellectual property. Either outcome could harm our business and competitive position. Any of the foregoing could have a material and adverse effect on our business, financial condition and results of operations.

Third parties may assert that our employees or consultants have wrongfully used or disclosed confidential information or misappropriated trade secrets.

We employ individuals who previously worked with other companies, including our competitors or potential competitors. Although we try to ensure that our employees and consultants do not use the proprietary information or know-how of others in their work for us, we may be subject to claims that we or our employees, consultants or independent contractors have inadvertently or otherwise used or disclosed intellectual property or personal data, including trade secrets or other proprietary information, of a former employer or other third party. Litigation may be necessary to defend against these claims. If we fail in defending any such claims or settling those claims, in addition to paying monetary damages or a settlement payment, we may lose valuable intellectual property rights or personnel. Even if we are successful in defending against such claims, litigation could result in substantial costs and be a distraction to management and other employees. Any of the foregoing could have a material and adverse effect on our business, financial condition and results of operations.

Recent changes in U.S. patent laws may limit our ability to obtain, defend and/or enforce our patents.

Recent patent reform legislation could increase the uncertainties and costs surrounding the prosecution of our patent applications and the enforcement or defense of our issued patents. The Leahy-Smith America Invents Act, or the Leahy-Smith Act, includes a number of significant changes to U.S. patent law. These include provisions that affect the way patent applications are prosecuted and also affect patent litigation. The USPTO recently developed new regulations and procedures to govern administration of the Leahy-Smith Act, and many of the substantive changes to patent law associated with the Leahy-Smith Act, and in particular, the first to file provisions, which became effective on March 16, 2013, could affect us. The first to file provisions limit the rights of an inventor to patent an invention if the inventor was not the first to file an application for patenting that invention, even if such invention was the first invention. Accordingly, it is not clear what, if any, impact the Leahy-Smith Act will have on the operation of our business. This will require us to be cognizant going forward of the timing from invention to filing of a patent application and be diligent in filing patent applications, but circumstances could prevent us from promptly filing patent applications on our inventions.

In addition, the Leahy-Smith Act and its implementation could increase the uncertainties and costs surrounding the enforcement and defense of our issued patents. For example, the Leahy-Smith Act provides that an administrative tribunal known as the Patent Trial and Appeals Board, or PTAB, provides a venue for challenging the validity of patents at a cost that is much lower than district court litigation and on timelines that are much faster. This applies to all of our U.S. patents, even those issued before March 16, 2013. Furthermore, because of a lower evidentiary standard in USPTO proceedings compared to the evidentiary standard in U.S. federal courts necessary to invalidate a patent claim, a third party could potentially provide evidence in a USPTO proceeding sufficient for the USPTO to hold a claim invalid even though the same evidence would be insufficient to invalidate the claim if first presented in a district

court action. Although it is not clear what, if any, long-term impact the PTAB proceedings will have on the operation of our business, patent challenge proceedings before the PTAB since its inception in 2013 have resulted in the invalidation of many U.S. patent claims. The availability of the PTAB as a lower-cost, faster and potentially more potent tribunal for challenging patents could increase the likelihood that our own patents will be challenged, thereby increasing the uncertainties and costs of maintaining and enforcing them. Any failure by us to adequately address the uncertainties and costs surrounding recent patent legislation could have a material and adverse effect on our business, financial condition and results of operations.

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

Periodic maintenance and annuity fees on any issued patent are due to be paid to the USPTO and European and other patent agencies over the lifetime of a patent. In addition, the USPTO and European and other patent agencies require compliance with a number of procedural, documentary, fee payment and other similar provisions during the patent application process. While an inadvertent failure to make payment of such fees or to comply with such provisions can in many cases be cured by payment of a late fee or by other means in accordance with the applicable rules, there are situations in which such noncompliance will result in the abandonment or lapse of the patent or patent application, and the partial or complete loss of patent rights in the relevant jurisdiction. Non-compliance events that could result in abandonment or lapse of a patent or patent application include failure to respond to official actions within prescribed time limits, non-payment of fees and failure to properly legalize and submit formal documents within prescribed time limits. If we or our licensors fail to maintain the patents and patent applications covering our product candidates or if we or our licensors otherwise allow our patents or patent applications to be abandoned or lapse, our competitors might be able to enter the market, which would hurt our competitive position, could impair our ability to successfully commercialize our product candidates in any indication for which they are approved, and could have a material and adverse effect on our business, financial condition and results of operations.

In addition, any of the intellectual property rights that we own or license that are developed through the use of U.S. government funding will be subject to additional federal regulations. Pursuant to the Bayh-Dole Act of 1980, or Bayh-Dole Act, the government will receive a license under inventions developed under a government-funded program and may require us to manufacture products embodying such inventions in the United States. Under certain circumstances, the government may also claim ownership in such inventions or compel us to license them to third parties. Any failure by us to comply with federal regulations regarding intellectual property rights that were developed through the use of U.S. government funding could have a material and adverse effect on our business, financial condition and results of operations.

If we do not obtain patent term extension in the United States under the Hatch-Waxman Amendments and in foreign countries under similar legislation, thereby potentially extending the term of marketing exclusivity for our product candidates, our business may be materially harmed.

Patents have a limited lifespan. In the United States, if all maintenance fees are timely paid, the natural expiration of a patent is generally 20 years from its earliest U.S. non-provisional filing date. Various extensions may be available, but the life of a patent, and the protection it affords, is limited. Even if patents covering our product candidates are obtained, once the patent life has expired for a product, we may be open to competition from competitive products. Given the amount of time required for the development, testing and regulatory review of new product candidates, patents protecting such candidates might expire before or shortly after such candidates are commercialized. As a result, our owned and licensed patent portfolio may not provide us with sufficient rights to exclude others from commercializing products similar or identical to ours.

In the United States, a patent that covers an FDA-approved drug, biologic or medical device may be eligible for a term extension designed to restore the period of the patent term that is lost during the premarket regulatory review process conducted by the FDA. Depending upon the timing, duration and conditions of FDA marketing approval of our product candidates, we may be able to extend the term of a patent covering each product candidate under the Drug Price Competition and Patent Term Restoration Act of 1984, referred to as the Hatch-Waxman Amendments and similar legislation in the European

Union. The Hatch-Waxman Amendments permit a patent term extension of up to five years for a patent covering an approved product as compensation for effective patent term lost during product development and the FDA regulatory review process. However, we may not receive an extension if we fail to apply within applicable deadlines, fail to apply prior to expiration of relevant patents or otherwise fail to satisfy applicable requirements. Moreover, the length of the extension could be less than we request. A patent term extension cannot extend the remaining term of a patent beyond a total of 14 years from the date of product approval, and only claims covering such approved product, a method for using it or a method for manufacturing it may be extended. In the European Union, our product candidates may be eligible for term extensions based on similar legislation. If we are unable to obtain patent term extension or the term of any such extension is less than we request, the period during which we can enforce our patent rights for that product will be shortened and our competitors may obtain approval to market competing products sooner. As a result, our revenue from applicable products could be reduced, possibly materially.

Further, under certain circumstances, patent terms covering our products or product candidates may be extended for time spent during the pendency of the patent application in the USPTO (referred to as Patent Term Adjustment, or PTA). The laws and regulations underlying how the USPTO calculates the PTA is subject to change and any such PTA granted by the USPTO could be challenged by a third-party. If we do not prevail under such a challenge, the PTA may be reduced or eliminated, resulting in a shorter patent term, which may negatively impact our ability to exclude competitors. Because PTA added to the term of patents covering products has particular value, our business may be adversely affected if the PTA is successfully challenged by a third party and our ability to exclude competitors is reduced or eliminated. Any of the foregoing could have a material and adverse effect on our business, financial condition and results of operations.

We depend on certain technologies that are licensed to us. We do not control the intellectual property rights covering these technologies, and any loss of our rights to these technologies or the rights licensed to us could prevent us from selling our products and adversely impact our business.

We are a party to license agreements under which we are granted rights to intellectual property that is important to our business, and we may need to enter into additional license agreements in the future. We rely on these licenses in order to be able to use and sell various proprietary technologies that are material to our business, as well as technologies we intend to use in our future commercial activities. For example, we expect that we will be dependent on our licensing arrangements with Cook Biotech, relating to CanGaroo and our cardiovascular products. Our rights to use these technologies and the inventions claimed in the licensed patents are subject to the continuation of and our compliance with the terms of those license agreements. Our existing license agreements impose, and we expect that future license agreements will also impose on us, various diligence obligations, milestone payments, royalties and other obligations. If we fail to comply with our obligations under these agreements, or if we are subject to a bankruptcy proceeding, the licensor may have the right to terminate the license, in which case we would not be able to market products covered by the license, which would adversely affect our business, financial condition and results of operations.

As we have done previously, we may need to obtain additional licenses from third parties in order to advance our research or allow commercialization of our products and technologies. The in-licensing and acquisition of third-party intellectual property is a competitive area, and a number of more established companies are also pursuing strategies to in-license or acquire third-party intellectual property rights that we may consider attractive or necessary. These established companies may have a competitive advantage over us due to their size, cash resources and greater clinical development and commercialization capabilities. Furthermore, companies that perceive us to be a competitor may be unwilling to assign or license rights to us. Accordingly, we may not be able to obtain any of these licenses on commercially reasonable terms or at all. Even if we are able to obtain a license, it may be non-exclusive, thereby giving our competitors access to the same technologies licensed to us. In the event that we are not able to acquire a license, we may be required to expend significant time and resources to develop or license replacement technology. If we are unable to do so, we may be unable to develop or commercialize the affected products and technologies, which could materially harm our business. In addition, the third parties owning such intellectual property rights could seek either an injunction prohibiting our sales, or, with respect to our sales, an obligation on our part to pay royalties or other forms of compensation and damages.

In some cases, we may not have the right to control the prosecution, maintenance or filing of the patents that are licensed to us, or the enforcement of these patents against infringement by third parties. Some of our patents and patent applications were not filed by us, but were either acquired by us or are licensed from third parties. Thus, these patents and patent applications were not drafted by us, and we did not control or have any input into the prosecution of these patents and patent applications prior to our acquisition of, or our entry into a license with respect to, such patents and patent applications. We cannot be certain that the drafting or prosecution of these patents and patent applications will result or has resulted in valid and enforceable patents. Further, since we do not always retain complete control over our ability to enforce our licensed patent rights against third-party infringement, we cannot be certain that our licensor will elect to enforce these patents to the extent that we would choose to do so, or in a way that will ensure that we retain the rights we currently have under the applicable license agreement. If our licensor fails to properly enforce the patents subject to our license agreement in the event of third-party infringement, our ability to retain our competitive advantage with respect to the applicable products may be materially and adversely affected.

Licensing of intellectual property is an important part of our business and involves complex legal, business and scientific issues. Disputes may arise between us and our licensors regarding intellectual property that is subject to a license agreement, including, with respect to, among other things:

- the scope of rights granted under the license agreement and other interpretation-related issues;
- whether our licensor had the right to grant the rights granted to us under the license agreement;
- whether and the extent to which our technology and processes infringe, misappropriate or otherwise violate intellectual property of the licensor that is not subject to the license agreement;
- our right to sublicense patent and other rights to third parties under collaborative development relationships;
- our involvement in the prosecution and enforcement of the licensed patents and our licensor's overall patent enforcement strategy;
- our diligence obligations with respect to the use of the licensed technology in relation to our development and commercialization of our products and technologies, and what activities satisfy those diligence obligations;
- the ownership of inventions and know-how resulting from the joint creation or use of intellectual property by our licensors and us and our partners; and
- the amounts of royalties, milestones or other payments due under the license agreement.

In addition, we may become the owner of intellectual property that was obtained through assignments, which may be subject to re-assignment back to the original assignor upon our failure to prosecute or maintain such intellectual property, upon our breach of the agreement pursuant to which such intellectual property was assigned, or upon our bankruptcy.

The resolution of any contract interpretation disagreement that may arise could narrow what we believe to be the scope of our rights to the relevant intellectual property or technology, or increase what we believe to be our financial or other obligations under the relevant agreement. If disputes over intellectual property that we have licensed prevent or impair our ability to maintain our current licensing arrangements on acceptable terms, or if intellectual property is re-assigned back to the original assignor, we may be unable to successfully develop and commercialize or continue selling products that utilize the affected intellectual property, any of which could impair our ability to execute our growth strategy and could have a material and adverse effect on our business, financial condition and results of operations.

We may not be able to protect and enforce our trademarks and trade names, or build name recognition in our markets of interest, thereby harming our competitive position.

We have not yet registered certain of our trademarks in all of our potential markets. If we apply to register these and other trademarks in the United States and other countries, our applications may not be allowed for registration in a timely fashion or at all, and our registered trademarks may not be maintained or enforced. In addition, the registered or unregistered trademarks or trade names that we own may be

challenged, infringed, circumvented, declared generic, lapsed or determined to be infringing on or dilutive of other marks. We may not be able to protect our rights in these trademarks and trade names, which we need in order to build name recognition. In addition, third parties may file for registration of trademarks similar or identical to our trademarks, thereby impeding our ability to build brand identity and possibly leading to market confusion. If they succeed in registering or developing common law rights in such trademarks, and if we are not successful in challenging such rights, we may not be able to use these trademarks to develop brand recognition of our technologies, products or services. In addition, there could be potential trade name or trademark infringement claims brought by owners of other registered trademarks or trademarks that incorporate variations of our registered or unregistered trademarks or trade names. Further, we may in the future enter into agreements with owners of such third party trade names or trademarks to avoid potential trademark litigation which may limit our ability to use our trade names or trademarks in certain fields of business.

In addition, opposition or cancellation proceedings may in the future be filed against our trademark applications and registrations, and our trademarks may not survive such proceedings. In addition, third parties may file first for our trademarks in certain countries. If they succeed in registering such trademarks, and if we are not successful in challenging such third party rights, we may not be able to use these trademarks to market our products in those countries. If we do not secure registrations for our trademarks, we may encounter more difficulty in enforcing them against third parties than we otherwise would. If we are unable to establish name recognition based on our trademarks and trade names, we may not be able to compete effectively, which could have a material adverse effect on our business, financial condition, results of operations and prospects.

Risks Related to Our Common Stock and this Offering

There has been no prior public market for our common stock, and an active trading market may never develop or be sustained.

Prior to this offering, there has been no public market for our common stock. The initial public offering price for our common stock will be determined through negotiations with the underwriters. Although we have applied to list our Class A common stock on The Nasdaq Global Market, an active trading market for our Class A common stock may never develop or be sustained following this offering. Moreover, even if an active trading market does develop, we may have a relatively small public float following this offering. If an active market for our Class A common stock does not develop or our public float is not sufficiently large, it may be difficult for you to sell shares you purchase in this offering, without depressing the market price for the shares, or at all. An inactive trading market may also impair our ability to raise capital by selling shares of our common stock and enter into strategic partnerships or acquire other complementary products, technologies or businesses by using shares of our common stock as consideration. Furthermore, although we have applied to list our Class A common stock on The Nasdaq Global Market, even if listed, there can be no guarantee that we will continue to satisfy the continued listing standards of The Nasdaq Global Market. If we fail to satisfy the continued listing standards, we could be de-listed, which would negatively impact the price of our Class A common stock and further impair your ability to sell your shares at or above the price you paid for them.

We expect that the price of our Class A common stock will fluctuate substantially and you may not be able to sell the shares you purchase in this offering at or above the initial public offering price.

The initial public offering price for the shares of our common stock sold in this offering is determined by negotiation between the representatives of the underwriters and us. This price may not reflect the market price of our Class A common stock following this offering. In addition, the market price of our Class A common stock is likely to be highly volatile and may fluctuate substantially due to a variety of factors, many of which are outside of our control, including, among other things:

- the volume and timing of sales of our products;
- the introduction of new products or product enhancements by us or others in our industry;
- developments related to the COVID-19 pandemic;
- disputes or other developments with respect to our or others' intellectual property rights;

- our ability to develop, obtain regulatory clearance or approval for, and market new and enhanced products on a timely basis;
- changes or proposed changes in laws or regulations or differing interpretations or enforcement thereof affecting our business;
- product liability claims, other litigation or regulatory investigations;
- annual or quarterly variations in our results of operations or those of others in our industry, or results of operations that otherwise vary from those expected by securities analysts and investors;
- publications, reports or other media exposure of our products or those of others in our industry, or of our industry generally;
- announcements by us or others in our industry, or by our or their respective suppliers, distributors or other business partners, regarding, among other things, significant contracts, price reductions, capital commitments or other business developments, the entry into or termination of strategic transactions or relationships, securities offerings or other financing initiatives, and public reaction thereto;
- additions or departures of key management personnel;
- changes in governmental regulations or in reimbursement;
- changes in earnings estimates or recommendations by securities analysts, or other changes in investor perceptions of the investment opportunity associated with our common stock relative to other investment alternatives;
- the development and sustainability of an active trading market for our Class A common stock;
- general market conditions and other factors, including factors unrelated to our operating performance or the operating performance of our competitors; and
- other factors discussed in this “Risk Factors” section and elsewhere in this prospectus.

In recent years, the stock markets generally have experienced extreme price and volume fluctuations that have often been unrelated or disproportionate to the operating performance of those companies, including, as a result of the COVID-19 pandemic. Broad market and industry factors may significantly affect the market price of our Class A common stock, regardless of our actual operating performance. These fluctuations may be even more pronounced in the trading market for our Class A common stock shortly following this offering. If the market price of shares of our Class A common stock after this offering does not ever exceed the initial public offering price, you may not realize any return on your investment in us and may lose some or all of your investment.

In addition, in the past, class action litigation has often been instituted against companies whose securities have experienced periods of volatility in market price. Securities litigation brought against us following volatility in our stock price, regardless of the merit or ultimate results of such litigation, could result in substantial costs, which would hurt our financial condition and operating results and divert management’s attention and resources away from our business.

If our operating and financial performance in any given period does not meet the guidance we provide to the public, the market price of our Class A common stock may decline.

We may, but are not obligated to, provide public guidance on our expected operating and financial results for future periods. Any such guidance will be comprised of forward-looking statements subject to certain risks and uncertainties similar to those described in this prospectus and any additional risks and uncertainties described from time to time in our public filings or other public statements. Our actual results may not always be in line with or exceed any guidance we have provided, especially in times of economic uncertainty. Even if we do issue public guidance, there can be no assurance that we will continue to do so in the future. If, in the future, we provide guidance, and our operating and/or financial results for a particular period do not meet such guidance or the expectations of investment analysts, or if we reduce, withdraw or otherwise change our guidance for future periods, or stop providing guidance, the market price of our Class A common stock will likely decline.

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

After this offering, our principal stockholders each holding more than 5% of our Class A common stock will collectively control approximately 57.9% of our outstanding Class A common stock. As a result, these stockholders, if they act together, will be able to control the management and affairs of our company and most matters requiring stockholder approval, including the election of directors and approval of significant corporate transactions. The interests of these stockholders may not be the same as or may even conflict with your interests. For example, these stockholders could attempt to delay or prevent a change in control of the company, even if such change in control would benefit our other stockholders, thereby depriving our other stockholders of an opportunity to receive a premium for their common stock as part of a sale of the company or our assets. Conversely, these stockholders may pursue acquisitions, divestitures and other transactions that, in their judgment, could enhance the value of their investment, even though such transactions might involve risks to you. Even in the absence of any actual conflict of interest, the degree of control possessed by these stockholders may affect the prevailing market price of our Class A common stock due to investors' perceptions that such conflicts of interest may exist or arise. As a result, this concentration of ownership may not be in the best interests of our other stockholders and may impair your ability to realize any return on your investment in us and may impair your ability to avoid losing some or all of your investment.

Certain of our existing stockholders, including certain affiliates of our directors, have indicated an interest in purchasing shares of our common stock in this offering at the initial public offering price. However, because indications of interest are not binding agreements or commitments to purchase, the underwriters may determine to sell more, fewer or no shares in this offering to any of these stockholders, or any of these stockholders may determine to purchase more, fewer or no shares in this offering. The foregoing discussion does not give effect to any potential purchases by these stockholders in this offering.

If you purchase shares of common stock in this offering, you will suffer immediate dilution of your investment.

The initial public offering price of our common stock is substantially higher than the pro forma as adjusted net tangible book value per share of our common stock. Therefore, if you purchase shares of our common stock in this offering, you will pay a price per share that substantially exceeds our net tangible book value per share after this offering. To the extent shares of common stock are subsequently issued under outstanding options or warrants, you will incur further dilution. Based on an assumed initial public offering price of $17.00 per share, the midpoint of the price range set forth on the cover page of this prospectus, you would experience immediate dilution of $16.49 per share, representing the difference between our pro forma as adjusted net tangible book value per share as of June 30, 2020 and the assumed initial public offering price. In addition, purchasers of common stock in this offering will have contributed approximately 48.4% of the aggregate price paid by all purchasers of our stock but will own only approximately 28.8% of our common stock outstanding after this offering.

We have broad discretion in the use of the net proceeds from this offering and may not use them effectively.

Our management will have broad discretion in the application of the net proceeds from this offering and could use these proceeds in ways that do not improve our results of operations or enhance the value of our common stock. We expect that we will use the net proceeds of this offering to hire additional sales personnel and expand our marketing programs and to fund product development and clinical research activities and that we will use the remainder for working capital and other general corporate purposes, as set forth under "Use of Proceeds." We may also use a portion of the net proceeds from this offering to acquire, in-license or invest in products, technologies or businesses that are complementary to our business. However, we currently have no agreements or commitments to complete any such transaction. This expected use of the net proceeds from this offering represents our intentions based upon our current plans and business conditions, which could change in the future as our plans and business conditions evolve. As of the date of this prospectus, we cannot predict with certainty all of the particular uses for the net proceeds from this offering or the amounts that we will actually spend on the uses set forth above. We may find it necessary or advisable to use the net proceeds for other purposes and, as a result, our management will retain broad discretion over the application of the net proceeds from this offering. The failure by

our management to apply these funds effectively could result in financial losses that could have a material adverse effect on our business, financial condition and results of operations and cause the market price of our Class A common stock to decline. Pending their use, we may invest the net proceeds from this offering in a manner that does not produce income or that loses value.

A significant portion of our total outstanding shares are eligible to be sold into the market in the near future, which could cause the market price of our Class A common stock to drop significantly, even if our business is doing well.

Sales of a substantial number of shares of our common stock in the public market, or the perception in the market that the holders of a large number of shares intend to sell their shares, could reduce the market price of our Class A common stock. After this offering, we will have outstanding 10,225,899 shares of Class A common stock and Class B common stock, collectively, based on the number of shares outstanding as of August 31, 2020, after giving effect to (i) the automatic conversion of all outstanding shares of our Series A convertible preferred stock into 2,295,245 shares of our Class A common stock and of all outstanding shares of our Series A-1 convertible preferred stock into an aggregate of 1,317,425 shares of our Class B common stock, in each case, upon the closing of this offering, (ii) the issuance of an aggregate of 1,884,107 shares of our Class A common stock and 1,081,443 shares of our Class B common stock to the holders of our Series A convertible preferred stock and Series A-1 convertible preferred stock, respectively, in respect of a liquidation preference payable to such holders in kind immediately prior to the closing of this offering, (iii) the assumed net exercise of the Common Stock Warrant prior to the closing of this offering, which will result in the issuance of 5,204 shares of our Class A common stock, (iv) the assumed gross exercise, for an aggregate exercise price of approximately $0.4 million, of our Preferred Stock Warrants, which, assuming the automatic conversion of the shares of Series A preferred stock issued pursuant to such exercise into shares of Class A common stock, will result in the issuance of 29,021 shares of our Class A common stock in respect of such conversion and an additional 23,822 shares of Class A common stock in respect of the liquidation preference payable in kind to holders of our Series A preferred stock immediately prior to the closing of this offering, (v) the issuance and sale of an aggregate of (x) 5,039,427 shares of our Series A convertible preferred stock, including 2,039,427 shares of our Series A convertible preferred stock issued upon the conversion of approximately $2.0 million in aggregate principal amount of the 2020 Bridge Notes, together with accrued and unpaid interest thereon, and (y) 375,000 shares of our Series A convertible preferred stock to an affiliate of HighCape Partners in exchange for the extinguishment of our obligation to pay an advisory fee, in each case, in September 2020, and (vi) the filing and effectiveness of our current certificate of incorporation effecting a reclassification of our then outstanding common stock to Class A common stock and authorizing our Series A-1 convertible preferred stock and our Class B common stock and the issuance to Deerfield of 18,384,536 shares of Series A-1 convertible preferred stock in exchange for an equal number of shares of Series A convertible preferred stock pursuant to an exchange agreement, in each case, in September 2020, in the case of each of clauses (i) through (vi) above, as described elsewhere in this prospectus. This includes the 2,941,176 shares that we are selling in this offering, which may be resold in the public market immediately without restriction, unless purchased by our affiliates. As a holder of our Class B common stock, Deerfield will only have the right to convert each share of our Class B common stock into one share of Class A common stock at its election to the extent that as a result of such conversion, it would not beneficially own in excess of 4.9% of any class of our securities registered under the Exchange Act. As a result, Deerfield may not be deemed an “affiliate” for purposes of Rule 144 and, as a result, any securities it purchases in this offering may be freely tradable. The remaining 7,284,723 shares are currently restricted as a result of securities laws or lock-up agreements (which may be waived, with or without notice, by Piper Sandler & Co. and Cowen and Company, LLC) but will become eligible to be sold at various times beginning 180 days after the date of this prospectus, unless held by one of our affiliates, in which case the resale of those securities will be subject to volume limitations under Rule 144 of the Securities Act of 1933, as amended, or the Securities Act. Because Deerfield may not be deemed an “affiliate” for purposes of Rule 144, up to 2,398,868 shares of Class B common stock that Deerfield will own upon conversion of its Series A-1 convertible preferred stock and the issuance of additional shares of Class B common stock in respect of the liquidation preference payable in kind described above, in each case, in connection with this offering may become freely tradable and not subject to volume limitations following the 180-day lock-up period. Moreover, after this offering, holders of an aggregate of 7,102,053 shares of our common stock will have rights, subject to certain conditions and limitations, to require us to file registration statements

covering their shares or to include their shares in registration statements that we may file for ourselves or other stockholders, until such rights terminate pursuant to the terms of our Investor Rights Agreement, as described elsewhere in this prospectus under the heading "Description of Capital Stock — Registration Rights." We also intend to register all shares of Class A common stock that we may issue under our equity compensation plans. Once we register these shares, they can be freely sold in the public market upon issuance, subject to volume limitations applicable to affiliates and the lock-up agreements described in the "Underwriting" section of this prospectus.

The market price of our common stock may drop significantly when the restrictions on resale by our existing stockholders lapse or when we are required to register the sale of our stockholders' remaining shares of our common stock. A decline in the trading price of our common stock might impede our ability to raise capital through the issuance of additional shares of our Class A common stock or other equity securities and may impair your ability to sell shares of our common stock at a price higher than the price you paid for them or at all.

The dual class structure of our common stock and the option of the holders of shares of our Class B common stock to convert into shares of our Class A common stock may limit your ability to influence corporate matters.

Our Class A common stock, which is the stock we are offering in this initial public offering, has one vote per share, while our Class B common stock is non-voting. Nonetheless, each share of our Class B common stock may be converted at any time into one share of Class A common stock at the option of its holder, subject to the limitations provided for in our restated certificate of incorporation that prohibit the conversion of our Class B common stock into shares of Class A common stock to the extent that, upon such conversion, such holder would beneficially own in excess of 4.9% of any class of our securities registered under the Exchange Act. Consequently, if holders of Class B common stock following this offering exercise their option to make this conversion, such exercise will have the effect of increasing the relative voting power of those prior holders of our Class B common stock (subject to the ownership limitation described in the previous sentence) and increasing the number of outstanding shares of our voting common stock, and correspondingly decreasing the relative voting power of the current holders of our Class A common stock, which may limit your ability to influence corporate matters. Because our Class B common stock is generally non-voting, stockholders who own more than 10% of our common stock overall but 10% or less of our Class A common stock will not be required to report changes in their ownership from transactions in our Class B common stock pursuant to Section 16(a) of the Securities Exchange Act of 1934, as amended, or the Exchange Act, and would not be subject to the short-swing profit provisions of Section 16(b) of the Exchange Act.

You may be diluted by the future issuance of additional common stock in connection with our incentive plans, acquisitions or otherwise.

After this offering, we will have 192,172,969 shares of Class A common stock authorized but unissued and 17,601,132 shares of Class B common stock authorized but unissued. Our Post-IPO Certificate of Incorporation will authorize us to issue these shares of common stock and other securities convertible into or exercisable or exchangeable for shares of our common stock for the consideration and on the terms and conditions established by our board of directors in its sole discretion, whether in connection with acquisitions or otherwise. As of August 31, 2020, we had 288,156 shares of our Class A common stock issuable upon the exercise of outstanding options under our 2015 Plan at a weighted average exercise price of $6.43 per share, 172,605 of which were vested as of such date, 740,957 shares of Class A common stock issuable upon the exercise of stock options and the settlement of RSUs to be granted in connection with this offering under our 2020 Plan to certain of our executive officers, employees and consultants, at, with respect to such stock options, an exercise price per share equal to the initial public offering price in this offering, 945,005 additional shares of our Class A common stock reserved for future issuance under our 2020 Plan, not including the additional shares of Class A common stock that will be reserved for future issuance under our 2020 Plan pursuant to provisions in the 2020 Plan that automatically increase the number of shares of our Class A common stock reserved for future issuance thereunder, and 143,150 shares of our Class A common stock that will become available for future issuance under our 2020 ESPP, not including the additional shares of Class A common stock that will be reserved for future issuance under our 2020 ESPP pursuant to provisions in the 2020 ESPP that automatically increase the number

of shares of our Class A common stock reserved for future issuance thereunder. See "Executive and Director Compensation." Any additional shares of common stock that we issue, including under our 2020 Plan, 2020 ESPP or other equity incentive plans that we may adopt in the future, would dilute the percentage ownership and voting power held by the investors who purchase common stock in this offering. In the future, we may also issue additional securities if we need to raise capital, including, but not limited to, in connection with acquisitions, which could constitute a material portion of our then-outstanding shares of our common stock.

We are an "emerging growth company" and a "smaller reporting company," and the reduced disclosure requirements applicable to emerging growth companies and smaller reporting companies may make our common stock less attractive to investors.

We are an "emerging growth company," as defined in the JOBS Act, and a "smaller reporting company," as defined in Rule 12b-2 under the Exchange Act. Emerging growth companies and smaller reporting companies may take advantage of certain exemptions from various reporting requirements that are applicable to other publicly-traded entities that are not emerging growth companies or smaller reporting companies.

With respect to emerging growth companies, these exemptions include:

- the option to present only two years of audited financial statements and only two years of related Management's Discussion and Analysis of Financial Condition and Results of Operations in this prospectus;
- not being required to comply with the auditor attestation requirements of Section 404 of the Sarbanes-Oxley Act;
- not being required to comply with any requirement that may be adopted by the Public Company Accounting Oversight Board regarding mandatory audit firm rotation or a supplement to the auditor's report providing additional information about the audit and the financial statements (i.e., an auditor discussion and analysis);
- not being required to submit certain executive compensation matters to stockholder advisory votes, such as "say-on-pay," "say-on-frequency" and "say-on-golden parachutes"; and
- not being required to disclose certain executive compensation related items such as the correlation between executive compensation and performance and comparisons of the chief executive officer's compensation to median employee compensation.

We have elected to take advantage of certain of these reduced disclosure obligations in the registration statement of which this prospectus is a part and may elect to take advantage of other reduced reporting requirements in the future. As a result, the information that we provide to our stockholders may be different than the information you might receive from other public reporting companies in which you hold equity interests. In addition, the JOBS Act permits emerging growth companies to delay adopting new or revised accounting standards until such time as those standards apply to private companies. We have elected to use this extended transition period for complying with new or revised accounting standards until the earlier of the date we (i) are no longer an emerging growth company or (ii) affirmatively and irrevocably opt out of the extended transition period provided in the JOBS Act. As a result, our consolidated financial statements and the reported results of operations contained therein may not be directly comparable to those of other public companies. We cannot predict whether investors will find our common stock less attractive because of our reliance on these exemptions. If some investors do find our common stock less attractive, there may be a less active trading market for our Class A common stock and our stock price may be reduced or more volatile.

We will remain an emerging growth company, and will be able to take advantage of the foregoing exemptions, until the earliest of: (i) the last day of the first fiscal year in which our annual gross revenues are $1.07 billion or more; (ii) the last day of 2025; (iii) the date that we become a "large accelerated filer" as defined in Rule 12b-2 under the Exchange Act, which would occur if the market value of our common equity held by non-affiliates is $700 million or more as of the last business day of our most recently completed second fiscal quarter; or (iv) the date on which we have issued more than $1.0 billion in non-convertible debt securities during the previous three years.

Even after we cease to be an emerging growth company, we will still be a smaller reporting company until such time as (i) we determine that the market value of the voting and non-voting shares held by non-affiliates is $250 million or more but less than $700 million as of the last business day of our second fiscal quarter and our annual revenues are $100 million or more during our most recently completed fiscal year, or (ii) the market value of the voting and non-voting shares held by non-affiliates is $700 million or more measured on the last business day of our second fiscal quarter. If we are a smaller reporting company at the time we cease to be an emerging growth company, we may continue to rely on exemptions from certain disclosure requirements that are available to smaller reporting companies, including reduced financial and executive compensation disclosure. In addition, even if we cease to be an emerging growth company, we will remain exempt from the auditor attestation requirements of Section 404 of the Sarbanes-Oxley Act provided we do not qualify as an "accelerated filer" as defined in Rule 12b-2 under the Exchange Act, which would occur if our annual revenue was $100 million or more during our most recently completed fiscal year and the market value of our common equity held by non-affiliates is $75 million or more as of the last business day of our most recently completed second fiscal quarter, and only after we have been subject to the reporting requirements of the Exchange Act for a period of at least 12 calendar months.

We will incur increased costs as a result of operating as a public company, and our management will be required to devote substantial time to new compliance initiatives and corporate governance practices.

As a public company, and particularly after we are no longer an emerging growth company, we will incur significant legal, accounting and other expenses that we did not incur as a private company. The Sarbanes-Oxley Act, the Dodd-Frank Wall Street Reform and Consumer Protection Act, the listing requirements of The Nasdaq Global Market and other applicable securities rules and regulations impose various requirements on public companies, including establishment and maintenance of effective disclosure and financial controls and corporate governance practices. Our management and other personnel will need to devote a substantial amount of time to these compliance initiatives, which will divert their attention away from our core business operations and revenue-producing activities. Moreover, these rules and regulations will increase our legal and financial compliance costs and will make some activities more time-consuming and costly. For example, we expect that these rules and regulations may make it more difficult and more expensive for us to obtain director and officer liability insurance, which in turn could require us to incur substantially higher costs to obtain the same or similar coverage or accept reduced policy limits and coverage, which in turn could also make it more difficult for us to attract and retain qualified individuals to serve on our board of directors and as our executive officers.

We are evaluating these rules and regulations, and cannot predict or estimate the amount of additional costs we may incur or the timing of such costs. These rules and regulations are often subject to varying interpretations, in many cases due to their lack of specificity, and, as a result, their application in practice may evolve over time as new guidance is provided by regulatory and governing bodies. This could result in continuing uncertainty regarding compliance matters and higher costs necessitated by ongoing revisions to disclosure and governance practices. In addition, if we fail to comply with these rules and regulations, we could be subject to a number of penalties, including the delisting of our Class A common stock, fines, sanctions or other regulatory action or civil litigation.

Failure to comply with requirements to design, implement and maintain effective internal control over financial reporting could have a material adverse effect on our business and stock price.

As a private company, we have not been required to evaluate our internal control over financial reporting in a manner that meets the standards of publicly traded companies required by Section 404(a) of the Sarbanes-Oxley Act, or Section 404.

As a public company, we will have significant requirements for enhanced financial reporting and internal controls. The process of designing, implementing and maintaining effective internal controls is a continuous effort that will require us to anticipate and react to changes in our business and the economic and regulatory environments. In this regard, we will need to continue to dedicate internal resources, potentially engage outside consultants, adopt a detailed work plan to assess and document the adequacy of internal control over financial reporting, continue steps to improve control processes as appropriate, validate through testing whether such controls are functioning as documented, and implement a continuous reporting and improvement process for internal control over financial reporting. If we are

unable to establish or maintain appropriate internal financial reporting controls and procedures, it could cause us to fail to meet our reporting obligations on a timely basis, result in material misstatements in our consolidated financial statements and adversely affect our operating results. In addition, we will be required, pursuant to Section 404, to furnish a report by our management on, among other things, the effectiveness of our internal control over financial reporting in the second annual report following the closing of this offering. This assessment will need to include disclosure of any material weaknesses identified by our management in our internal control over financial reporting. The rules governing the standards that must be met for our management to assess our internal control over financial reporting are complex and require significant documentation and testing. Testing and maintaining internal controls may divert our management's attention from other matters that are important to our business. In addition, once we are no longer an emerging growth company, provided we then qualify as an "accelerated filer" as defined in Rule 12b-2 under the Exchange Act, we will be required to include in the annual reports that we file with the SEC an attestation report on our internal control over financial reporting issued by our independent registered public accounting firm.

In connection with the implementation of the necessary procedures and practices related to internal control over financial reporting, we may identify deficiencies that we may not be able to remediate in time to meet the deadline imposed by the Sarbanes-Oxley Act for compliance with the requirements of Section 404. In addition, we may encounter problems or delays in completing the remediation of any deficiencies identified by our independent registered public accounting firm in connection with the issuance of their attestation report. Our testing, or the subsequent testing by our independent registered public accounting firm, may reveal deficiencies in our internal controls over financial reporting that are deemed to be material weaknesses. Any material weaknesses could result in a material misstatement of our annual or quarterly consolidated financial statements or disclosures that may not be prevented or detected.

Furthermore, we may not be able to conclude, on an ongoing basis, that we have effective internal control over financial reporting in accordance with Section 404, or our independent registered public accounting firm may not be able to issue an unqualified attestation report once we become subject to the corresponding requirement under Section 404. If either we are unable to conclude that we have effective internal control over financial reporting or our independent registered public accounting firm is unable to provide us with an unqualified report, investors could lose confidence in our reported financial information, which could have a material adverse effect on the trading price of our Class A common stock.

Our disclosure controls and procedures may not prevent or detect all errors or acts of fraud.

Upon the closing of this offering, we will become subject to the periodic reporting requirements of the Exchange Act. We designed our disclosure controls and procedures to provide reasonable assurance that information we must disclose in reports we file or submit under the Exchange Act is accumulated and communicated to management, and recorded, processed, summarized and reported within the time periods specified in the rules and forms of the Securities and Exchange Commission, or the SEC. We believe that any disclosure controls and procedures, no matter how well-conceived and operated, can provide only reasonable, not absolute, assurance that the objectives of the control system are met.

These inherent limitations include the realities that judgments in decision-making can be faulty, and that breakdowns can occur because of simple error or mistake. Additionally, controls can be circumvented by the individual acts of some persons, by collusion of two or more people or by an unauthorized override of the controls. Accordingly, because of the inherent limitations in our control system, misstatements due to error or fraud may occur and not be detected.

If securities or industry analysts do not publish research or reports about our business, or if they issue an adverse or misleading opinion regarding our Class A common stock, our stock price and trading volume would likely decline.

The trading market for our Class A common stock, should it develop, will be influenced by the research and reports that industry or securities analysts publish about us and our business. We do not control these analysts. As a newly public company, we may be slow to attract research coverage and the analysts, who publish information about our Class A common stock, will have had relatively little experience with us or our industry, which could affect their ability to accurately forecast our results and could make it

more likely that we fail to meet their estimates. If no or few securities or industry analysts commence coverage of us, the trading price for our stock would be negatively impacted. In the event we obtain securities or industry analyst coverage, if any of the analysts who cover us issue an adverse or misleading opinion regarding us, our business model, our financial performance, our stock price or otherwise, our stock price would likely decline. If one or more of these analysts ceases coverage of us or fails to publish reports on us regularly, we could lose visibility in the financial markets, which in turn could cause our stock price or trading volume to decline and result in the loss of all or a part of your investment in us.

Provisions in our Post-IPO Certificate of Incorporation and Post-IPO Bylaws and under Delaware law could make an acquisition of our company, which may be beneficial to our stockholders, more difficult and may prevent attempts by our stockholders to replace or remove our current management.

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

- a classified board of directors with three-year staggered terms, which may delay the ability of stockholders to change the membership of a majority of our board of directors;
- no cumulative voting in the election of directors, which limits the ability of minority stockholders to elect director candidates;
- the exclusive right of our board of directors to elect a director to fill a vacancy created by the expansion of the board of directors or the resignation, death or removal of a director, which prevents stockholders from filling vacancies on our board of directors;
- the ability of our board of directors to authorize the issuance of shares of preferred stock and to determine the terms of those shares, including preferences and voting rights, without stockholder approval, which could be used to significantly dilute the ownership of a hostile acquirer;
- the ability of our board of directors to alter our bylaws without obtaining stockholder approval;
- the required approval of the holders of at least two-thirds of the shares entitled to vote at an election of directors to adopt, amend or repeal our bylaws or repeal the provisions of our Post-IPO Certificate of Incorporation regarding the election and removal of directors;
- a prohibition on stockholder action by written consent, which forces stockholder action to be taken at an annual or special meeting of our stockholders;
- the requirement that a special meeting of stockholders may be called only by the chairman of the board of directors, the chief executive officer, the president or the board of directors, which may delay the ability of our stockholders to force consideration of a proposal or to take action, including the removal of directors; and
- advance notice procedures that stockholders must comply with in order to nominate candidates to our board of directors or to propose matters to be acted upon at a stockholders' meeting, which may discourage or deter a potential acquirer from conducting a solicitation of proxies to elect the acquirer's own slate of directors or otherwise attempting to obtain control of us.

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

Our Post-IPO Certificate of Incorporation will designate specific courts as the exclusive forum for certain litigation that may be initiated by our stockholders, which could limit our stockholders' ability to obtain a favorable judicial forum for disputes with us or our directors, officers or employees.

Our Post-IPO Certificate of Incorporation that will become effective upon the closing of this offering provides that, unless we consent in writing to the selection of an alternative forum, the Court of Chancery of the State of Delaware will be the exclusive forum for (i) any derivative action or proceeding brought on our behalf, (ii) any action asserting a claim of breach of a fiduciary duty or other wrongdoing by any of our directors, officers, employees or agents to us or our stockholders, (iii) any action asserting a claim arising pursuant to any provision of the DGCL or our Post-IPO Certificate of Incorporation or Post-IPO Bylaws, (iv) any action to interpret, apply, enforce or determine the validity of our certificate of incorporation or bylaws or (v) any action asserting a claim governed by the internal affairs doctrine; provided that, the exclusive forum provision will not apply to suits brought to enforce any liability or duty created by the Securities Act, the Exchange Act, the rules and regulations thereunder or any other claim for which the federal courts have exclusive jurisdiction; and provided further that, if and only if the Court of Chancery of the State of Delaware dismisses any such action for lack of subject matter jurisdiction, such action may be brought in another state or federal court sitting in the State of Delaware. Our Post-IPO Certificate of Incorporation further provides that, unless we consent in writing to the selection of an alternative forum, the federal district courts of the United States of America shall, to the fullest extent permitted by law, be the sole and exclusive forum for the resolution of any complaint asserting a cause of action arising under the Securities Act. Any person or entity purchasing or otherwise acquiring any interest in shares of our capital stock shall be deemed to have notice of and to have consented to the provisions of our Post-IPO Certificate of Incorporation described above.

We believe these provisions benefits us by providing increased consistency in the application of Delaware law by chancellors particularly experienced in resolving corporate disputes and in the application of the Securities Act by federal judges, as applicable, efficient administration of cases on a more expedited schedule relative to other forums and protection against the burdens of multi-forum litigation. However, these provisions may limit a stockholder's ability to bring a claim in a judicial forum that it finds favorable for disputes with us or our directors, officers or other employees or agents, which may discourage such lawsuits against us and our directors, officers and other employees and agents.

Because we do not anticipate paying any cash dividends on our common stock in the foreseeable future, capital appreciation, if any, would be your sole source of gain.

We have never declared or paid any cash dividends on our common stock. We currently anticipate that we will retain future earnings for the development, operation and expansion of our business and do not anticipate declaring or paying any cash dividends for the foreseeable future. As a result, capital appreciation, if any, of our common stock would be your sole source of gain on an investment in our common stock for the foreseeable future. See the "Dividend Policy" section of this prospectus for additional information.

We could be subject to securities class action litigation.

In the past, securities class action litigation has often been brought against a company following a decline in the market price of its securities. This risk is especially relevant for us because medical device companies have experienced significant stock price volatility in recent years. If we face such litigation, it could result in substantial costs and a diversion of management's attention and resources, which could harm our business.

SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS

This prospectus contains forward-looking statements that involve substantial risks and uncertainties. All statements other than statements of historical facts contained in this prospectus are forward-looking statements. In some cases, you can identify forward-looking statements by terms such as “may,” “will,” “should,” “expect,” “plan,” “anticipate,” “could,” “intend,” “target,” “project,” “contemplate,” “believe,” “estimate,” “predict,” “potential,” “would” or “continue” or the negative of these terms or other similar expressions. Forward-looking statements include, but are not limited to, statements concerning:

- estimates regarding our total addressable market, future results of operations, financial position, research and development costs, capital requirements and our needs for additional financing;
- our ability to grow market share;
- our ability to enhance our products, expand our indications and develop, acquire and commercialize additional products;
- our ability to expand, manage and maintain our direct sales and marketing organization and our relationships with our commercial partners and independent sales agents;
- the impact on our business, financial condition and results of operations from the ongoing and global COVID-19 pandemic, or any other pandemic, epidemic or outbreak of an infectious disease in the United States or worldwide;
- the rate and degree of market acceptance of our products;
- our ability to expand our organization and manage our growth;
- our ability to navigate the risks involved in acquisitions of, investments in, and licenses or other commercial arrangements involving, other companies or technologies, and other strategic transactions;
- competitive companies and technologies in our industry;
- our ability to accurately forecast customer demand and manage our inventory;
- our ability to achieve and maintain adequate levels of coverage or reimbursement for procedures performed with our products and any future products we may seek to commercialize;
- our ability to obtain additional financing in this or future offerings and to forecast our liquidity needs;
- our ability to hire and retain our senior management and other highly qualified personnel;
- our business model and strategic plans for our products, technologies and business, including our implementation thereof;
- our ability to commercialize or obtain regulatory approvals for our products, and the effect of delays in commercializing or obtaining regulatory approvals;
- FDA, the European Union or other U.S. or foreign regulatory actions affecting us or the healthcare industry generally, including healthcare reform measures in the United States and international markets;
- the timing or likelihood of regulatory filings and approvals;
- our ability to establish and maintain intellectual property protection and system or avoid claims of infringement, misappropriation or violation;
- the volatility of the trading price of our Class A common stock;
- our expectations regarding the use of proceeds from this offering; and
- our expectations about market trends.

The forward-looking statements in this prospectus are only predictions. We have based these forward-looking statements largely on our current expectations and projections about future events and financial

trends that we believe may affect our business, financial condition and results of operations. These forward-looking statements speak only as of the date of this prospectus and are subject to a number of risks, uncertainties and assumptions described under the sections in this prospectus entitled “Risk Factors” and “Management’s Discussion and Analysis of Financial Condition and Results of Operations” and elsewhere in this prospectus. Because forward-looking statements are inherently subject to risks and uncertainties, some of which cannot be predicted or quantified and some of which are beyond our control, you should not rely on these forward-looking statements as predictions of future events. The events and circumstances reflected in our forward-looking statements may not be achieved or occur and actual results could differ materially from those projected in the forward-looking statements. Moreover, we operate in an evolving environment. New risk factors and uncertainties may emerge from time to time, and it is not possible for management to predict all risk factors and uncertainties. Except as required by applicable law, we do not plan to publicly update or revise any forward-looking statements contained herein, whether as a result of any new information, future events, changed circumstances or otherwise. The forward-looking statements contained in this prospectus are excluded from the safe harbor protection provided by the Private Securities Litigation Reform Act of 1995 and Section 27A of the Securities Act.

In addition, statements that “we believe” and similar statements reflect our beliefs and opinions on the relevant subject. These statements are based on information available to us as of the date of this prospectus. While we believe that information provides a reasonable basis for these statements, that information may be limited or incomplete. These statements are inherently uncertain, and investors are cautioned not to unduly rely on these statements.

You should read this prospectus with the understanding that our future results, levels of activity, performance and achievements may be different from what we expect. We qualify all of our forward-looking statements by these cautionary statements.

INDUSTRY AND OTHER DATA

Unless otherwise indicated, information contained in this prospectus concerning our industry and the markets in which we operate, including our general expectations, market position and market opportunity, is based on our management's estimates and research, as well as industry and general publications and research, surveys and studies conducted by third parties. We believe the information from these third-party publications, research, surveys and studies included in this prospectus is reliable. Management's estimates are derived from publicly available information, their knowledge of our industry and their assumptions based on such information and knowledge, which we believe to be reasonable. This data involves a number of assumptions and limitations which are necessarily subject to a high degree of uncertainty and risk due to a variety of factors, including those described in "Risk Factors." These and other factors could cause our future performance to differ materially from our assumptions and estimates.

USE OF PROCEEDS

We estimate that the net proceeds to us from our issuance and sale of shares of our Class A common stock in this offering will be approximately $43.0 million, assuming an initial public offering price of $17.00 per share, which is the midpoint of the price range set forth on the cover page of this prospectus, and after deducting the estimated underwriting discount and commissions and estimated offering expenses payable by us. If the underwriters' option to purchase additional shares from us is exercised in full, we estimate that our net proceeds will be approximately $50.0 million.

Assuming no exercise of the underwriters' option to purchase additional shares of our Class A common stock, each $1.00 increase (decrease) in the assumed initial public offering price of $17.00 per share would increase (decrease) the net proceeds to us from this offering by approximately $2.7 million, assuming that the number of shares offered by us, as set forth on the cover page of this prospectus, remains the same and after deducting the estimated underwriting discount and commissions and estimated offering expenses payable by us. Each increase (decrease) of 1.0 million in the number of shares we are offering would increase (decrease) the net proceeds to us from this offering by $15.8 million, assuming the assumed initial public offering price stays the same and after deducting the estimated underwriting discount and commissions and estimated offering expenses payable by us.

The principal purposes of this offering are to obtain additional capital to support our operations, to create a public market for shares of our Class A common stock and to facilitate our future access to the public equity markets. We anticipate that we will use the net proceeds of this offering as follows:

- approximately $7.9 million to hire additional sales personnel and expand our marketing programs;
- approximately $10.6 million to fund product development and clinical research activities; and
- the remainder for working capital and other general corporate purposes.

We may also use a portion of the net proceeds from this offering to acquire, in-license or invest in products, technologies or businesses that are complementary to our business. However, we currently have no agreements, or commitments or understandings with respect to any such transaction.

As of August 31, 2020, we had $0.2 million of cash on hand and $1.8 million available under our Revolving Credit Facility. Based on our planned use of the net proceeds of this offering, our current cash and our availability under our Revolving Credit Facility, we estimate that such funds will be sufficient to enable us to fund our operating expenses and capital expenditure requirements through 2022. We have based this estimate on assumptions that may prove to be incorrect, and we could use our available capital resources sooner than we currently expect. We may satisfy our future cash needs through the sale of equity securities, debt financings, working capital lines of credit, corporate collaborations or license agreements, grant funding, interest income earned on invested cash balances or a combination of one or more of these sources.

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

DIVIDEND POLICY

We have never declared or paid any cash dividends on our capital stock. We intend to retain future earnings, if any, to finance the operation and expansion of our business and do not anticipate paying any cash dividends in the foreseeable future. Any future determination related to our dividend policy will be made at the discretion of our board of directors after considering our financial condition, results of operations, capital requirements, business prospects and other factors the board of directors deems relevant, and subject to the restrictions contained in any future financing instruments. In addition, our ability to pay cash dividends is currently restricted by the terms of the agreements governing our Term Loan Facility and our Revolving Credit Facility.

CAPITALIZATION

The following table sets forth our cash and capitalization as of June 30, 2020, as follows:

- on an actual basis;
- on a pro forma basis to reflect:
  - the automatic conversion of all outstanding shares of our Series A convertible preferred stock into 2,295,245 shares of Class A common stock and of all outstanding shares of our Series A-1 convertible preferred stock into an aggregate of 1,317,425 shares of our Class B common stock, in each case, upon the closing of this offering;
  - the issuance of an aggregate of 1,884,107 shares of our Class A common stock and 1,081,443 shares of our Class B common stock to the holders of our Series A convertible preferred stock and Series A-1 convertible preferred stock, respectively, in respect of a liquidation preference payable to such holders in kind immediately prior to the closing of this offering pursuant to our certificate of incorporation (as currently in effect), based on an assumed initial public offering price of $17.00 per share (the midpoint of the price range set forth on the cover page of this prospectus);
  - the assumed net exercise of the Common Stock Warrant, which will result in the issuance of 5,204 shares of our Class A common stock, assuming the fair market value of our common stock for purposes of such net exercise will be equal to the assumed initial public offering price of $17.00 per share (the midpoint of the price range set forth on the cover page of this prospectus);
  - the assumed gross exercise, for an aggregate exercise price of approximately $0.4 million, of our Preferred Stock Warrants, which, assuming the automatic conversion of the shares of Series A preferred stock issued pursuant to such exercise into shares of Class A common stock, will result in the issuance of 29,021 shares of our Class A common stock in respect of such conversion and an additional 23,822 shares of Class A common stock in respect of the liquidation preference payable in kind to holders of our Series A preferred stock immediately prior to the closing of this offering;
  - the issuance and sale of an aggregate of (i) 5,039,427 shares of our Series A convertible preferred stock, including 2,039,427 shares of our Series A convertible preferred stock issued upon the conversion of approximately $2.0 million in aggregate principal amount of the 2020 Bridge Notes, together with accrued and unpaid interest thereon, and (ii) 375,000 shares of our Series A convertible preferred stock to an affiliate of HighCape Partners in exchange for the extinguishment of our obligation to pay an advisory fee, in each case, in September 2020;
  - the issuance of 179 shares of our Class A common stock pursuant to the exercise of an outstanding option under our 2015 Plan subsequent to June 30, 2020;
  - the filing and effectiveness of our current certificate of incorporation effecting a reclassification of our then outstanding common stock to Class A common stock and authorizing our Series A-1 convertible preferred stock and our Class B common stock and the issuance to Deerfield of 18,384,536 shares of Series A-1 convertible preferred stock in exchange for an equal number of shares of Series A convertible preferred stock pursuant to an exchange agreement, in each case, in September 2020; and
  - the filing and effectiveness of our Post-IPO Certificate of Incorporation which will occur upon the closing of this offering;
- on a pro forma as adjusted basis to give further effect to our issuance and sale of 2,941,176 shares of Class A common stock in this offering at an assumed initial public offering price of $17.00 per share, which is the midpoint of the price range set forth on the cover page of this prospectus, after deducting the estimated underwriting discount and commissions and estimated offering expenses payable by us.

Our capitalization following the closing of this offering will be adjusted based on the actual initial public offering price and other terms of this offering determined at pricing. You should read this information in conjunction with our consolidated financial statements and the related notes appearing at the end of this prospectus, the information set forth under the headings "Use of Proceeds," "Selected Consolidated Financial Data" and "Management's Discussion and Analysis of Financial Condition and Results of Operations" and the other financial information contained in this prospectus.

	As of June 30, 2020		
	Actual	Pro Forma	Pro Forma As Adjusted[1]
	(in thousands, except share and per share data)		
Cash	$ 990	$ 4,395	$ 47,395
Total long-term debt[2][4]	$ 26,061	24,061	24,061
Total revenue interest obligation[3][4]	19,433	19,433	19,433
Preferred stock warrant liability[4]	247	—	—
Series A convertible preferred stock, par value $0.001 per share; 45,500,000 shares authorized, 45,000,000 shares issued and outstanding, actual; no shares authorized, issued or outstanding, pro forma and pro forma as adjusted	44,899	—	—
Series A-1 convertible preferred stock, par value $0.001 per share; no shares authorized, issued or outstanding, actual, pro forma and pro forma as adjusted[5]	—	—	—
Stockholders' equity (deficit):			
Preferred stock, par value $0.001 per share; no shares authorized, issued or outstanding, actual; 10,000,000 shares authorized and no shares issued or outstanding, pro forma and pro forma as adjusted	—	—	—
Common stock, par value $0.001 per share; 4,514,543 shares authorized, 648,277 shares issued and outstanding, actual; no shares authorized, pro forma and pro forma as adjusted; no shares issued and outstanding, pro forma; no shares issued and outstanding, pro forma as adjusted	1	—	—
Class A Common stock, par value $0.001 per share; no shares authorized, issued and outstanding, actual; 200,000,000 shares authorized, pro forma and pro forma as adjusted; 4,885,855 shares issued and outstanding, pro forma; 7,827,031 shares issued and outstanding, pro forma as adjusted	—	5	8
Class B Common stock, par value $0.001 per share; no shares authorized, issued or outstanding, actual; 20,000,000 shares authorized, pro forma and pro forma as adjusted; 2,398,868 shares issued and outstanding, pro forma; 2,398,868 shares issued and outstanding, pro forma as adjusted	—	2	2
Additional paid-in capital	1,952	53,328	96,325
Accumulated deficit[6]	(66,676)	(67,508)	(67,508)
Total stockholders' equity (deficit)	(64,723)	(14,173)	28,827
Total capitalization	$ 25,917	29,321	$ 72,321

[1] Each $1.00 increase (decrease) in the assumed initial public offering price of $17.00 per share, which is the midpoint of the price range set forth on the cover page of this prospectus, would increase (decrease) the pro forma as adjusted amount of each of cash, additional paid-in capital, total stockholders' equity and total capitalization by $2.7 million, assuming that the number of shares offered by us, as set forth on the cover page of this prospectus, remains the same and after deducting the estimated

underwriting discount and commissions and estimated offering expenses payable by us. Similarly, each increase (decrease) of 1.0 million shares in the number of shares offered by us at the assumed initial public offering price per share, after deducting the estimated underwriting discount and commissions and estimated offering expenses payable by us, would increase (decrease) the pro forma as adjusted amount of each of cash, additional paid-in capital, total stockholders' equity and total capitalization by approximately $15.8 million.

(2) Represents our long-term debt, including current portion. For a discussion of our debt obligations, see "Management's Discussion and Analysis of Financial Condition and Results of Operations — Liquidity and Capital Resources — Description of Certain Indebtedness."

(3) Represents our revenue interest obligation, including current portion. For a discussion of our revenue interest obligation, see "Management's Discussion and Analysis of Financial Condition and Results of Operations — Critical Accounting Policies and Significant Judgments and Estimates — Revenue Interest Obligation" and Note 9 to our consolidated financial statements included elsewhere in this prospectus.

(4) See our consolidated financial statements and the related notes appearing at the end of this prospectus, which include all liabilities.

(5) Subsequent to June 30, 2020, we issued 18,384,536 shares of our Series A-1 convertible preferred stock to Deerfield in exchange for an equal number of shares of our Series A convertible preferred stock pursuant to an exchange agreement. Upon the closing of this offering, all outstanding shares of our Series A-1 convertible preferred stock will automatically convert into shares of our Class B common stock.

(6) The pro forma and pro forma as adjusted columns do not reflect the non-cash potential loss on extinguishment of debt related to the conversion of the 2020 Bridge Notes, see Note 20 to our consolidated financial statements included elsewhere in this prospectus.

The number of shares in the table above does not include:

- 288,156 shares of our Class A common stock issuable upon exercise of stock options outstanding under our 2015 Plan as of June 30, 2020, at a weighted-average exercise price of $6.43 per share;
- 740,957 shares of Class A common stock issuable upon the exercise of stock options and the settlement of RSUs to be granted in connection with this offering under our 2020 Plan, which will become effective in connection with this offering, to certain of our executive officers, employees and consultants, at, with respect to such stock options, an exercise price per share equal to the initial public offering price in this offering;
- 945,005 additional shares of our Class A common stock reserved for future issuance under our 2020 Plan, which will become effective in connection with this offering, as well as any automatic increases in the number of shares of our common stock reserved for future issuance under our 2020 Plan; and
- 143,150 shares of our Class A common stock that will become available for future issuance under our 2020 ESPP, which will become effective in connection with this offering, and shares of our common stock that become available pursuant to provisions in the 2020 ESPP that automatically increase the share reserve under our 2020 ESPP.

DILUTION

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

As of June 30, 2020, we had a historical net tangible book value of $(88.3) million, or $(136.19) per share of common stock. Our historical net tangible book value per share represents total tangible assets less total liabilities and convertible preferred stock, divided by the number of shares of our common stock outstanding as of June 30, 2020.

Our pro forma net tangible book value as of June 30, 2020 was $(37.7) million, or $(5.18) per share of our common stock. Pro forma net tangible book value represents the amount of our total tangible assets less total liabilities, after giving effect to (i) the automatic conversion of all shares of our Series A convertible preferred stock into an aggregate of 2,295,245 shares of our Class A common stock and of all outstanding shares of our Series A-1 convertible preferred stock into an aggregate of 1,317,425 shares of our Class B common stock, in each case, upon the closing of this offering, (ii) the issuance of an aggregate of 1,884,107 shares of our Class A common stock and 1,081,443 shares of our Class B common stock to the holders of our Series A convertible preferred stock and Series A-1 convertible preferred stock, respectively, in respect of a liquidation preference payable to such holders in kind immediately prior to the closing of this offering pursuant to our certificate of incorporation (as currently in effect), based on an assumed initial public offering price of $17.00 per share (the midpoint of the price range set forth on the cover page of this prospectus), (iii) the assumed net exercise of the Common Stock Warrant, which will result in the issuance of 5,204 shares of our Class A common stock, assuming the fair market value of our Class A common stock for purposes of such net exercise will be equal to the assumed initial public offering price of $17.00 per share (the midpoint of the price range set forth on the cover page of this prospectus), (iv) the assumed gross exercise, for an aggregate exercise price of approximately $0.4 million, of our Preferred Stock Warrants, which, assuming the automatic conversion of the shares of Series A preferred stock issued pursuant to such exercise into shares of Class A common stock, will result in the issuance of 29,021 shares of our Class A common stock in respect of such conversion and an additional 23,822 shares of Class A common stock in respect of the liquidation preference payable in kind to holders of our Series A preferred stock immediately prior to the closing of this offering, (v) the issuance and sale of an aggregate of (x) 5,039,427 shares of our Series A convertible preferred stock, including 2,039,427 shares of our Series A convertible preferred stock issued upon the conversion of approximately $2.0 million in aggregate principal amount of the 2020 Bridge Notes, together with accrued and unpaid interest thereon, and (y) 375,000 shares of our Series A convertible preferred stock to an affiliate of HighCape Partners in exchange for the extinguishment of our obligation to pay an advisory fee, in each case, in September 2020, (vi) the issuance of 179 shares of our Class A common stock pursuant to the exercise of an outstanding option under our 2015 Plan subsequent to June 30, 2020, and (vii) the filing and effectiveness of our current certificate of incorporation effecting a reclassification of our then outstanding common stock to Class A common stock and authorizing our Series A-1 convertible preferred stock and our Class B common stock and the issuance to Deerfield of 18,384,536 shares of Series A-1 convertible preferred stock in exchange for an equal number of shares of Series A convertible preferred stock pursuant to an exchange agreement, in each case, in September 2020. Pro forma net tangible book value per share represents our pro forma net tangible book value divided by the total number of shares outstanding as of June 30, 2020, after giving effect to the pro forma adjustments described above.

After giving further effect to our issuance and sale of 2,941,176 shares of Class A common stock in this offering at an assumed initial public offering price of $17.00 per share, which is the midpoint of the price range set forth on the cover page of this prospectus, and after deducting the estimated underwriting discount and commissions and estimated offering expenses payable by us, our pro forma as adjusted net tangible book value as of June 30, 2020 would have been approximately $5.3 million, or approximately $0.51 per share. This amount represents an immediate increase in pro forma net tangible book value of $131.01 per share to our existing stockholders and an immediate dilution of approximately $16.49 per share to new investors participating in this offering. We determine dilution by subtracting the pro forma as adjusted net tangible book value per share after this offering from the amount of cash that a new

investor paid for a share of common stock. The following table illustrates this dilution:

Assumed initial public offering price per share		$ 17.00
Historical net tangible book value per share as of June 30, 2020	$ (136.19)	
Increase (decrease) per share attributable to the pro forma adjustments described above	131.01	
Pro forma net tangible book value (deficit) per share as of June 30, 2020	(5.18)	
Increase per share attributable to this offering	5.69	
Pro forma as adjusted net tangible book value per share after this offering		$ 0.51
Dilution per share to new investors in this offering		$ 16.49

Each $1.00 increase (decrease) in the assumed initial public offering price of $17.00 per share, which is the midpoint of the price range set forth on the cover page of this prospectus, would increase (decrease) the pro forma as adjusted net tangible book value per share after this offering by $0.27 per share, and dilution in pro forma net tangible book value per share to new investors by $16.75, assuming that the number of shares offered by us, as set forth on the cover page of this prospectus, remains the same and after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us. Each increase (decrease) of 1.0 million shares in the number of shares offered by us would increase (decrease) our pro forma as adjusted net tangible book value per share after this offering by $1.55 per share and decrease (increase) the dilution to new investors by $18.03 per share, assuming that the assumed initial public offering price remains the same, and after deducting the estimated underwriting discounts and commissions and the estimated offering expenses payable by us.

If the underwriters exercise their option to purchase additional 441,176 shares of our Class A common stock in full, the pro forma as adjusted net tangible book value per share after this offering would be $1.15, the increase in pro forma net tangible book value per share would be $0.63 and the dilution per share to new investors would be $15.85, in each case assuming an initial public offering price of $17.00 per share, which is the midpoint of the price range set forth on the cover page of this prospectus, and after deducting the estimated underwriting discounts and commissions and the estimated offering expenses payable by us.

The following table summarizes, on the pro forma as adjusted basis described above, as of June 30, 2020, the differences between the number of shares purchased from us, the total consideration paid to us in cash and the average price per share that existing stockholders and new investors paid. The calculation below is based on an assumed initial public offering price of $17.00 per share, which is the midpoint of the price range set forth on the cover page of this prospectus, before deducting the estimated underwriting discounts and commissions and estimated offering expenses payable by us.

	Shares Purchased		Total Consideration		Average Price Per Share
	Number	Percent	Amount	Percent	
Existing stockholders[(1)]	7,284,723	71.2%	$ 53,374,988	51.6%	$ 7.33
New investors	2,941,176	28.8	50,000,000	48.4	$ 17.00
Total	10,225,899	100.0%	103,374,988	100.0%	

(1) Certain of our existing stockholders, including entities affiliated with certain of our directors, have indicated an interest in purchasing an aggregate of approximately $20 million in shares of our common stock in this offering at the initial public offering price. The presentation in this table regarding ownership by existing stockholders does not give effect to any purchases in this offering by such stockholders.

If the underwriters exercise their option to purchase additional shares of our Class A common stock in full:

- the percentage of shares of common stock held by existing stockholders will decrease to approximately 68% of the total number of shares of our common stock outstanding after this offering; and
- the number of shares held by new investors will increase to 3,382,352, or approximately 32% of the total number of shares of our common stock outstanding after this offering.

The foregoing tables and calculations are based on the number of shares of our common stock outstanding as of June 30, 2020, after giving effect to the pro forma adjustments described above, assume no issuance of Class B common stock in connection with this offering and exclude:

- 288,156 shares of our Class A common stock issuable upon the exercise of stock options outstanding under our 2015 Plan as of June 30, 2020, at a weighted-average exercise price of $6.43 per share;
- 740,957 shares of Class A common stock issuable upon the exercise of stock options and the settlement of RSUs to be granted in connection with this offering under our 2020 Plan, which will become effective in connection with this offering, to certain of our executive officers, employees and consultants, at, with respect to such stock options, an exercise price per share equal to the initial public offering price in this offering;
- 945,005 additional shares of our Class A common stock reserved for future issuance under our 2020 Plan, which will become effective in connection with this offering, as well as any automatic increases in the number of shares of our common stock reserved for future issuance under our 2020 Plan; and
- 143,150 shares of our Class A common stock that will become available for future issuance under our 2020 ESPP, which will become effective in connection with this offering, and shares of our common stock that become available pursuant to provisions in the 2020 ESPP that automatically increase the share reserve under our 2020 ESPP.

To the extent any of the outstanding options or warrants described above are exercised, new options are issued or we issue additional shares of common stock or other equity or convertible debt securities in the future, there will be further dilution to new investors. If all of the outstanding options and warrants described above had been exercised as of June 30, 2020, the pro forma as adjusted net tangible book value per share after this offering would be $0.70, and total dilution per share to new investors would be $16.30.

SELECTED CONSOLIDATED FINANCIAL DATA

The following tables set forth our selected consolidated financial data for the periods and as of the dates indicated. We have derived the consolidated statements of operations data for the years ended December 31, 2018 and 2019 and the consolidated balance sheet data as of December 31, 2018 and 2019 from our audited consolidated financial statements included elsewhere in this prospectus. We have derived the consolidated statements of operations data for the six months ended June 30, 2019 and 2020 and the consolidated balance sheet data as of June 30, 2020 from our unaudited consolidated financial statements included elsewhere in this prospectus. We have prepared the unaudited consolidated financial information set forth below on the same basis as our audited consolidated financial statements and have included all adjustments, consisting only of normal recurring adjustments, that we consider necessary for a fair presentation of our financial position and results of operations as of the applicable dates and for the applicable periods.

Our historical results are not necessarily indicative of the results that should be expected for any future period, and our results for the interim period are not necessarily indicative of the results that should be expected for the full year ending December 31, 2020. You should read the following selected consolidated financial data together with the more detailed information contained "Management's Discussion and Analysis of Financial Condition and Results of Operations" and our consolidated financial statements and the related notes included elsewhere in this prospectus.

	Year Ended December 31,		Six Months Ended June 30,	
	2018	2019	2019	2020
	(in thousands, except share and per share data)			
Consolidated Statements of Operations Data:				
Net sales	$ 39,038	$ 42,901	$ 19,709	$ 18,442
Cost of goods sold	23,093	23,133	10,376	9,443
Gross profit	15,945	19,768	9,333	8,999
Operating expenses:				
Sales and marketing	13,165	16,161	7,157	8,297
General and administrative	8,520	9,616	4,293	5,699
Research and development	2,481	2,400	1,235	1,948
Total operating expenses	24,166	28,177	12,685	15,944
Loss from operations	(8,221)	(8,409)	(3,352)	(6,945)
Interest expense	5,519	5,381	2,686	2,783
Other (income) expense	(2,200)	(1,881)	—	—
Loss before provision for income taxes	(11,540)	(11,909)	(6,038)	(9,728)
Provision for income taxes	26	30	14	10
Net loss and net loss attributable to common stockholders	$ (11,566)	$ (11,939)	$ (6,052)	$ (9,738)
Net loss per share attributable to common stockholders — basic and diluted[(1)]	$ (18.37)	$ (18.48)	$ (9.38)	$ (15.02)
Weighted average shares of common stock outstanding used to compute net loss per share attributable to common stockholders — basic and diluted[(1)]	629,534	645,994	645,143	648,277
Pro forma net loss per share attributable to common stockholders — basic and diluted (unaudited)[(1)]		(1.89)		(1.48)
Pro forma weighted average shares of common stock outstanding used to compute pro forma net loss per share attributable to common stockholders — basic and diluted (unaudited)[(1)]		6,309,291		6,577,529

(1) See Notes 14 and 15 to our consolidated financial statements included elsewhere in this prospectus for an explanation of the method used to calculate the historical and pro forma basic and diluted net loss per share attributable to common stockholders and the weighted average number of shares used in the computation of the per share amounts. All share and per share amounts set forth in the table above have been adjusted to give retrospective effect to the one-for-13.9549 reverse stock split of our common stock effected on September 29, 2020.

	As of December 31,		As of
	2018	2019	June 30, 2020
		(in thousands)	
Consolidated Balance Sheet Data:			
Cash	$ 2,367	$ 2,482	$ 990
Working capital[(1)]	4,790	172	(3,310)
Total assets	47,741	44,772	42,195
Long-term debt, including current portion	17,819	21,304	26,061
Long-term revenue interest obligation, including current portion	20,253	19,346	19,433
Preferred stock warrant liability	249	247	247
Total liabilities	49,736	55,434	62,019
Convertible preferred stock	41,411	44,449	44,899
Additional paid-in capital	1,592	1,826	1,952
Accumulated deficit	(44,999)	(56,938)	(66,676)
Total stockholders' deficit	(43,406)	(55,111)	(64,723)

(1) We define working capital as our total current assets less our total current liabilities. See our consolidated financial statements included elsewhere in this prospectus for further details regarding our current assets and liabilities.

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

The following discussion and analysis should be read in conjunction with our consolidated financial statements and related notes included elsewhere in this prospectus. This discussion contains forward-looking statements reflecting our current expectations, estimates, plans and assumptions concerning events and financial trends that involve risks and may affect our future operating results and financial position. Actual results and the timing of events may differ materially from those contained in these forward-looking statements due to a number of factors, including those discussed in the sections entitled "Risk Factors" and "Special Note Regarding Forward-Looking Statements."

Overview

We are a commercial-stage regenerative medicine company focused on creating the next generation of differentiated products and improving outcomes in patients undergoing surgery, concentrating on patients receiving implantable medical devices. From our proprietary tissue processing platforms, we have developed a portfolio of advanced regenerative medical products that are designed to be very similar to natural biological material. Our proprietary products, which we refer to as our Core Products, are designed to address the implantable electronic device/cardiovascular, orthopedic/spinal repair and soft tissue reconstruction markets, which represented a combined $3 billion market opportunity in the United States in 2019. To expand our commercial reach, we have commercial relationships with major medical device companies, such as Boston Scientific and Medtronic, to promote and sell some of our Core Products. We believe our focus on our unique regenerative medicine platforms and our Core Products will ultimately maximize our probability of continued clinical and commercial success and will create a long-term competitive advantage for us.

We estimate that more than two million patients were either implanted with medical devices, such as pacemakers, defibrillators, neuro-stimulators, spinal fusion and trauma fracture hardware or tissue expanders for breast reconstruction, in the United States in 2019. This number is driven by advances in medical device technologies and an aging population with a growing incidence of comorbidities, including diabetes, obesity and cardiovascular and peripheral vascular diseases. These comorbidities can exacerbate various immune responses and other complications that can be triggered by a device implant.

Our Core Products are targeted to address unmet clinical needs with the goal of promoting healthy tissue formation and avoiding complications associated with medical device implants, such as scar-tissue formation, capsular contraction, erosion, migration, non-union of implants and implant rejection. We believe that we have developed the only biological envelope, which is covered by a number of patents, that forms a natural, systemically vascularized pocket for holding implanted electronic devices. We have a proprietary processing technology for manufacturing bone regenerative products for use in orthopedic/spinal repair that preserves a cell's ability to regenerate bone and decelerates cell apoptosis, or programmed cell death. We have a patented cell removal technology that produces undamaged extracellular matrices for use in soft tissue reconstruction. In pre-clinical and clinical studies, our products have supported and, in some cases, accelerated tissue healing, and thereby improved patient outcomes.

Our Non-Core Products are those fulfilled through tissue processing contracts at our Richmond, California facility. These contracts serve to utilize as much as possible of the starting human biological material from which we produce our orthopedic/spinal repair and soft tissue reconstruction products, leverage our existing overhead and improve our cash flow. The resulting processed materials, including particulate bone, precision milled bone, cellular bone matrix, acellular dermis and other soft tissue products, are sold to medical/surgical companies as finished products and as a subcomponent of their products. Additionally, we process amniotic membrane as finished product for selected customers.

We process all of our products at our two manufacturing facilities in Roswell, Georgia and Richmond, California, and stock inventory of raw materials, components and finished goods at those locations. We rely on a single or limited number of suppliers for certain raw materials and components. Except for the porcine tissue supplier of our raw materials for our CanGaroo and cardiovascular products, which is Cook Biotech, we generally have no long-term supply agreements with our suppliers, as we obtain supplies on a purchase order basis. Specifically, we acquire donated human tissue directly through tissue procurement firms engaged by us. We primarily ship our Core Products from our facilities directly to hospital customers.

Since inception, we have financed our operations primarily through private placements of our convertible preferred stock, amounts borrowed under our credit facilities and sales of our products. We have devoted the majority of our resources to acquisitions and integration, manufacturing costs, research and development, clinical activity and investing in our commercial infrastructure through our direct sales force and our commercial partners in order to expand our presence and to promote awareness and adoption of our products. As of June 30, 2020, we had approximately 150 employees, of which 27 were direct sales representatives.

We have incurred significant operating losses since our inception. We incurred a net loss of $11.6 million for the year ended December 31, 2018 and a net loss of $11.9 million for the year ended December 31, 2019, and incurred a net loss of $6.1 million for the six months ended June 30, 2019 and a net loss of $9.7 million for the six months ended June 30, 2020. Our accumulated deficit as of June 30, 2020 was $66.7 million.

We expect to continue to incur significant expenses and operating losses for the foreseeable future as we grow our sales organization and expand our product development and clinical and research activities. In addition, upon the closing of this offering, we expect to incur additional costs and expenses associated with operating as a public company.

Our ability to achieve profitability will depend on our ability to generate sales from existing or new products sufficient to exceed our ongoing operating expenses and capital requirements. Because of the numerous risks and uncertainties affecting product sales and our ongoing commercialization and product development efforts, we are unable to predict with any certainty whether we will be able to increase sales of our products or the timing or amount of ongoing expenditures we will be required to incur. Accordingly, even if we are able to increase sales of our products, we may not become profitable. As a result, we anticipate that we will need substantial additional funding to support our continuing operations and pursue our growth strategy. Until such time as we are able to generate sufficient sales from our products, we expect to finance our operations through equity offerings, debt financings or other capital sources, which may include collaborations or license agreements with other companies or other strategic transactions. We may not be able to raise additional funds or enter into such other agreements or arrangements when needed on favorable terms or at all. If we fail to raise capital or enter into such agreements as and when needed, we will be unable to execute our growth strategy and may be forced to reduce or terminate some or all of our operations.

We believe that the net proceeds from this offering, together with our existing cash and our availability under our Revolving Credit Facility, will be sufficient to fund our operating expenses and capital expenditure requirements through 2022. We have based this estimate on assumptions that may prove to be wrong, and we could exhaust our available capital resources sooner than we expect. Without taking into account the net proceeds we expect to receive from this offering, we concluded that there is substantial doubt about our ability to continue as a going concern for one year from the original issuance date of the audited consolidated financial statements and the unaudited interim consolidated financial statements included elsewhere in this prospectus and from the date of the registration statement of which this prospectus forms a part. Our independent registered public accounting firm has included a going concern paragraph in its opinion with respect to this substantial doubt. See “— Liquidity and Capital Resources — Funding Requirements.”

Impact of COVID-19

We are closely monitoring the impact of the COVID-19 pandemic on our business. In March 2020, the World Health Organization declared COVID-19 a global pandemic and recommended various containment and mitigation measures worldwide. Since that time, the number of procedures performed using our products has decreased significantly, as governmental authorities in the United States have recommended, and in certain cases required, that elective, specialty and other non-emergency procedures and appointments be suspended or canceled in order to avoid patient exposure to medical environments and the risk of potential infection with COVID-19, and to focus limited resources and personnel capacity on the treatment of COVID-19 patients. As a result, beginning in March 2020, a significant number of procedures using our products have been postponed or cancelled, which has negatively impacted sales of our products. These measures and challenges will likely continue for the duration of the pandemic, which is uncertain, and will likely continue to reduce our net sales and negatively impact our business, financial

condition and results of operations while the pandemic continues. Even after the pandemic ultimately subsides, we expect there will be a substantial backlog of patients seeking procedures and appointments for a variety of medical conditions. As a result, we believe this limited capacity of providers, hospitals and other healthcare facilities could have a significant adverse effect on our business, financial condition and results of operations following the end of the pandemic.

In addition, numerous state and local jurisdictions, including those where our facilities are located, have imposed, and others in the future may impose or re-impose, "shelter-in-place" orders, quarantines, executive orders and similar government orders and restrictions for their residents to control the spread of COVID-19. Such orders or restrictions have resulted in reduced operations at our manufacturing facilities, travel restrictions and cancellation of events, and have restricted the ability of our sales representatives and those of our commercial partners and independent sales agents to attend procedures in which our products are used, among other effects, thereby significantly and negatively impacting our operations.

The extent to which the COVID-19 pandemic impacts our future financial condition and results of operations will depend on future events and developments, which are highly uncertain and cannot be predicted, including the severity and spread of the disease and the effectiveness of actions to contain the disease or treat its impact, among others. As new information regarding COVID-19 continues to emerge, it is difficult to predict the degree to which this disease will ultimately have on our business.

Components of Our Results of Operations

Net Sales

We recognize revenue on the sale of our Core Products and our Non-Core Products. With respect to our Core Products, CanGaroo and our cardiovascular products are sold to hospitals and other healthcare facilities primarily through our direct sales force, commercial partners or independent sales agents. Our orthopedic/spinal repair products are sold through commercial partners. Our soft tissue reconstruction product SimpliDerm is sold directly to hospitals and other healthcare facilities through direct sales and independent sales agents. Our contract manufacturing products are sold directly to corporate customers. Gross to net sales adjustments include sales returns and prompt payment and volume discounts.

Expenses

In recent years, we have incurred significant costs in the operation of our business. We expect our expenses to continue to increase for the foreseeable future as we grow our sales and marketing organization, expand our product development and clinical activities and increase our administrative infrastructure. As a result, we will need to generate significant net sales in order to achieve profitability. Below is a breakdown of our main expense categories and the related expenses incurred in each category:

Costs of Goods Sold

Our cost of goods sold relate to purchased raw materials and the processing and conversion costs of such raw materials consisting primarily of salaries and benefits, supplies, quality control testing and the manufacturing overhead incurred at our processing facilities in Richmond, California and Roswell, Georgia. Both facilities have additional capacity, which if utilized, would further leverage our fixed overhead. Cost of goods sold also includes the amortization of intangibles generated from the CorMatrix Acquisition in 2017.

Sales and Marketing Expenses

Sales and marketing expenses are primarily related to our direct sales force, consisting of salaries, commission compensation, fringe benefits, auto/travel, meals and other expenses. Outside of our direct sales force, we incur significant expenses relating to commissions to our CanGaroo commercial partners and independent sales agents. Additionally, this expense category includes distribution costs as well as market research, trade show attendance, advertising and public relations and customer service expenses. We expect sales and marketing expenses to grow commensurate with sales increases, and to an even larger degree in the near-term due to a continued focus on growing our direct sales force and increasing marketing activities, particularly with respect to our CanGaroo and SimpliDerm product lines.

General and Administrative Expenses

General and administrative, or G&A, expenses consist of compensation, consulting, legal, human resources, information technology, accounting, insurance and general business expenses. We expect our

general and administrative expenses to increase as we prepare to become and then function as a public company, especially as a result of hiring additional personnel and incurring greater director and officer insurance premiums, greater investor and public relations costs, and additional costs associated with accounting, legal, tax-related and other services associated with maintaining compliance with exchange listing and SEC requirements.

Research and Development Expenses

Research and development, or R&D, expenses consist primarily of salaries and fringe benefits, laboratory supplies, clinical trials and outside service costs. Our product development efforts primarily relate to new offerings in support of the orthopedic/spinal repair market and activities associated with the development of a CanGaroo envelope with anti-infective properties. We also conduct clinical trials to validate the performance characteristics of our products and to capture patient data necessary to support our commercial efforts.

Results of Operations

Comparison of the Years Ended December 31, 2018 and 2019

	Year Ended December 31,					
	2018		2019		Change 2018 / 2019	
(in thousands, except percentages)	Amount	% of Net Sales	Amount	% of Net Sales	$	%
Net Sales	$ 39,038	100.0%	$ 42,901	100.0%	$ 3,863	9.9%
Cost of goods sold	23,093	59.2%	23,133	53.9%	40	0.0%
Gross Profit	15,945	40.8%	19,768	46.1%	3,823	24.0%
Sales and marketing	13,165	33.7%	16,161	37.7%	2,996	22.8%
General and administrative	8,520	21.8%	9,616	22.4%	1,096	12.9%
Research and development	2,481	6.4%	2,400	5.6%	(81)	(3.3)%
Loss from operations	(8,221)	(21.1)%	(8,409)	(19.6)%	(188)	(2.3)%
Interest expense	5,519	14.1%	5,381	12.5%	(138)	(2.5)%
Other (income) expense, net	(2,200)	(5.6)%	(1,881)	(4.4)%	319	14.5%
Loss before provision of income taxes	(11,540)	(29.6)%	(11,909)	(27.8)%	(369)	(3.2)%
Income tax expense	26	0.0%	30	0.0%	4	15.4%
Net loss	**$ (11,566)**	(29.6)%	**$ (11,939)**	(27.8)%	$ (373)	(3.3)%

Net Sales

Net sales grew $3.9 million, or 9.9%, to $42.9 million in the year ended December 31, 2019 compared to $39.0 million in the year ended December 31, 2018. The increase in net sales was due to the significant growth of our Core Products net sales, which grew $8.2 million, partially offset by a decrease of $4.3 million in net sales of our Non-Core Products.

Net sales information for our Core Products and Non-Core Products is summarized as follows:

	Year Ended December 31,				Change 2018 / 2019	
(in thousands, except percentages)	2018	% of Net Sales	2019	% of Net Sales	$	%
Products:						
Core Products	$ 22,720	58.2%	$ 30,918	72.1%	$ 8,198	36.1%
Non-Core Products	16,318	41.8%	11,983	27.9%	(4,335)	(26.6)%
Total Net Sales	**$ 39,038**	100.0%	**$ 42,901**	100.0%	$ 3,863	9.9%

Net sales generated by our Core Products grew $8.2 million, or 36.1%, to $30.9 million in the year ended December 31, 2019 compared to $22.7 million in the year ended December 31, 2018. The Core Products net sales growth can be largely attributed to the volume growth of our orthopedic/spinal repair products and CanGaroo. The growth in our orthopedic/spinal repair products was due to a broadening of

our commercial agreements with respect to these products, including the commencement of our agreement with Medtronic in April of 2019, and the CanGaroo increases were primarily due to the efforts of our expanded direct sales force and the commencement of our commercial agreement with Boston Scientific in May of 2019.

Net sales generated by our Non-Core Products decreased $4.3 million, or 26.6%, to $12.0 million in the year ended December 31, 2019 compared to $16.3 million in the year ended December 31, 2018. This decrease was primarily due to the reduction in volumes from one significant contract customer after the customer engaged a second tissue supplier. We anticipate a further decline in net sales generated by our Non-Core Products in the year ended December 31, 2020 compared to the year ended December 31, 2019 due to a further reduction in the volume of products purchased by this significant contract customer following the expiration of its contract with us in the first quarter of 2020, as well as the impact of the COVID-19 pandemic. We expect this decline will be partially offset by revenue we expect to begin receiving in the fourth quarter of 2020 under new contract manufacturing agreements into which we have recently entered.

Cost of Goods Sold

Cost of goods sold was $23.1 million in the years ended December 31, 2018 and 2019, and included, in each case, $3.4 million of intangible asset amortization expenses. Gross margin in the year ended December 31, 2019 improved to 46.1%, compared to 40.8% in the year ended December 31, 2018, which was primarily due to an increase in Core Product sales, between years that have higher gross margins than the Non-Core Products. Intangible amortization expense included in cost of goods sold totaled approximately $3.4 million for both the years ended December 31, 2018 and 2019. The year ended December 31, 2019 also included inventory write-downs, due to excessive or expiring product, totaling $1.0 million, caused largely by the launch of SimpliDerm which reduced demand for certain other dermis inventory.

Operating Expenses

Sales and Marketing

Sales and marketing expenses increased $3.0 million, or 22.8%, to $16.2 million in the year ended December 31, 2019 compared to $13.2 million in the year ended December 31, 2018. As a percentage of sales, sales and marketing expenses rose to 37.7% in the year ended December 31, 2019 from 33.7% in the year ended December 31, 2018. The increase was primarily due to a significant increase in the number of personnel in our direct sales force, marketing and hospital contracting functions. Collectively, these personnel additions increased expenses in the year ended December 31, 2019 by $2.5 million.

General and Administrative

G&A expenses increased $1.1 million, or 12.9%, to $9.6 million in the year ended December 31, 2019 compared to $8.5 million in the year ended December 31, 2018. As a percentage of net sales, G&A expenses remained relatively constant at 22.4% and 21.8% in the years ended December 31, 2019 and 2018, respectively. The dollar increase was primarily due to senior leadership additions beginning during mid-2018 and continuing into 2019, including our Chief Executive Officer and Chief Commercial Officer, to support and drive the growth of the business.

Research and Development

R&D expenses remained flat between years with $2.4 million being incurred in the year ended December 31, 2019 compared to $2.5 million in the year ended December 31, 2018. We continue to focus our R&D efforts on the development of our pipeline products in the orthopedic/spinal repair and CanGaroo product groups. With respect to the costs of the individual development projects, the majority of our costs are internal salaries and benefits as well as laboratory supplies. These costs represent shared resources amongst all projects.

Interest Expense

Interest expense decreased to approximately $5.4 million in the year ended December 31, 2019 compared to approximately $5.5 million in the year ended December 31, 2018. The decrease in interest expense in

the year ended December 31, 2019 was due to the lower interest rate negotiated under our Term Loan Facility as part of a July 2019 amendment, as well as the repayment in mid-2018 of a promissory note to a former tissue supplier.

Other (Income) Expense, net

Other (income) expense, net was approximately $1.9 million in the year ended December 31, 2019 and $2.2 million in the year ended December 31, 2018. In both the years ended December 31, 2019 and 2018, we revalued our Revenue Interest Obligation (see below for further discussion) which resulted in gains of $1.9 million and $0.5 million, respectively. Such gains were recorded as Other Income in the respective periods. The year ended December 31, 2018 period also included a gain of $1.5 million due to the early extinguishment of debt related to the repayment of a promissory note to a former tissue supplier.

Comparison of the Six Months Ended June 30, 2019 and 2020

	Six Months Ended June 30,					
	2019		2020		Change 2019 / 2020	
(in thousands, except percentages)	Amount	% of Net Sales	Amount	% of Net Sales	$	%
Net Sales	$19,709	100.0%	$18,442	100.0%	$(1,267)	(6.4)%
Cost of goods sold	10,376	52.6%	9,443	51.2%	(933)	(9.0)%
Gross Profit	9,333	47.4%	8,999	48.8%	(334)	(3.6)%
Sales and marketing	7,157	36.3%	8,297	45.0%	1,140	15.9%
General and administrative	4,293	21.8%	5,699	30.9%	1,406	32.7%
Research and development	1,235	6.3%	1,948	10.6%	713	57.8%
Loss from operations	(3,352)	(17.0)%	(6,945)	(37.7)%	(3,593)	(107.2)%
Interest expense	2,686	13.6%	2,783	15.1%	97	3.6%
Other (income) expense, net	—	0.0%	—	0.0%	—	0.0%
Loss before provision of income taxes	(6,038)	(30.6)%	(9,728)	(52.7)%	(3,690)	(61.1)%
Income tax expense	14	0.1%	10	0.1%	(4)	(28.4)%
Net loss	**$ (6,052)**	(30.7)%	**$ (9,738)**	(52.8)%	$(3,686)	(60.9)%

Net Sales

Net sales decreased $1.3 million, or 6.4%, to $18.4 million in the six months ended June 30, 2020 compared to $19.7 million in the six months ended June 30, 2019. The decrease in net sales was due to a decline of $3.2 million in net sales of our Non-Core Products, partially offset by $1.9 million of growth in net sales of our Core Products.

Net sales information for our Core Products and Non-Core Products is summarized as follows:

	For the Six Months June 30,				Change 2019 / 2020	
(in thousands, except percentages)	2019	% of Net Sales	2020	% of Net Sales	$	%
Products:						
Core Products	$13,683	69.4%	$15,611	84.6%	$ 1,928	14.1%
Non-Core Products	6,026	30.6%	2,831	15.4%	(3,195)	(53.0)%
Total Net Sales	**$19,709**	100%	**$18,442**	100%	$(1,267)	(6.4)%

Net sales generated by our Core Products grew $1.9 million, or 14.1%, to $15.6 million in the six months ended June 30, 2020 compared to $13.7 million in the six months ended June 30, 2019. The Core Products net sales growth can be largely attributed to significant volume growth of our orthopedic/spinal repair products, along with increases in CanGaroo and SimpliDerm, the latter of which was launched in the second half of 2019. The significant growth in the orthopedic/spinal repair products was due to a broadening of our commercial partnerships, including the commencement of our Medtronic commercial partnership in April of 2019. This growth in net sales of our Core Products occurred despite the impact of the COVID-19 pandemic, which negatively affected our sales principally during the second quarter of 2020.

Net sales generated by our Non-Core Products decreased $3.2 million, or 53.0%, to $2.8 million in the six months ended June 30, 2020 from $6.0 million in the six months ended June 30, 2019. This decrease was due to both the reduction in the volume of products purchased by one significant contract customer after the customer engaged a second tissue supplier and the further reduction following the expiration of its contract with us in the first quarter of 2020, as well as the impact of the COVID-19 pandemic, which negatively affected our sales principally during the second quarter of 2020.

Cost of Goods Sold

Cost of goods sold decreased $0.9 million, or 9.0%, to $9.4 million in the six months ended June 30, 2020 compared to $10.4 million in the six months ended June 30, 2019, and included, in each case, $1.7 million of intangible asset amortization expenses. Gross margin in the six months ended June 30, 2020 improved to 48.8%, compared to 47.4% in the six months ended June 30, 2019. Cost of goods sold for the six months ended June 30, 2019 included inventory write-downs, due to excessive or expiring product, totaling $0.5 million, caused largely by the launch of SimpliDerm which reduced demand for certain other dermis inventory. This inventory write-down caused a decrease to our gross margin of 2.5% in the six months ended June 30, 2019. Gross margin in the six months ended June 30, 2020 was negatively impacted by production inefficiencies due to the COVID-19 pandemic which resulted in a production slow down in April and May of 2020.

Operating Expenses

Sales and Marketing

Sales and marketing expenses increased $1.1 million, or 15.9%, to $8.3 million in the six months ended June 30, 2020 compared to $7.2 million in the six months ended June 30, 2019. As a percentage of sales, sales and marketing expenses rose to 45.0% in the six months ended June 30, 2020 from 36.3% in the six months ended June 30, 2019. The increase was primarily due to a significant increase in the number of personnel in our direct sales force which enabled us to cover new territories, as well as additions to our marketing and hospital contracting functions. Collectively, these personnel additions increased expenses in the six months ended June 30, 2020 by $1.3 million.

General and Administrative

G&A expenses increased $1.4 million, or 32.7%, to $5.7 million in the six months ended June 30, 2020 compared to $4.3 million in the six months ended June 30, 2019. As a percentage of net sales, G&A expenses rose to 30.9% in the six months ended June 30, 2020 from 21.8% in the six months ended June 30, 2019. The dollar increase was primarily due to senior leadership additions beginning during late 2019, including the hiring of our Chief Commercial Officer and Chief Medical Officer, to support and drive the growth of the business, which increased G&A expenses by $0.7 million. Also contributing to the overall increase between years were higher legal and accounting fees of $0.4 million incurred to support various business initiatives.

Research and Development

R&D expenses increased $0.7 million, or 57.8%, to $1.9 million in the six months ended June 30, 2020 compared to $1.2 million in the six months ended June 30, 2019. We continue to focus our R&D efforts on the development of our pipeline products in the orthopedic/spinal repair and CanGaroo product groups, with the growth in R&D expenses in the six months ended June 30, 2020 largely attributable to the work performed on the development of our CanGaroo anti-infective product.

Interest Expense

Interest expense remained generally consistent at $2.8 million in the six months ended June 30, 2020 compared to approximately $2.7 million in the six months ended June 30, 2019. We expect to recognize a material amount of non-cash loss on debt extinguishment in the third quarter of 2020 resulting from the conversion of approximately $2.0 million in aggregate principal amount of convertible bridge promissory notes into shares of our Series A convertible preferred stock in September 2020.

Seasonality

Historically, we have experienced seasonality in our first and fourth quarters, and we expect this trend to continue. We have experienced and may in the future experience higher sales in the fourth quarter as a

result of hospitals in the United States increasing their purchases of our products to coincide with the end of their budget cycles. Satisfaction of patient deductibles throughout the course of the year also results in increased sales later in the year, once patients have paid their annual insurance deductibles in full, which reduces their out-of-pocket costs. Conversely, our first quarter generally has lower sales than the preceding fourth quarter as patient deductibles are re-established with the new year, which increases their out-of-pocket costs.

Liquidity and Capital Resources

As of December 31, 2019 and June 30, 2020, we had cash of approximately $2.6 million and $1.0 million, respectively, and availability under our Revolving Credit Facility of $3.6 million and $1.0 million, respectively. Since inception, we have financed our operations primarily through private placements of our convertible preferred stock, amounts borrowed under our credit facilities and sales of our products. Our historical cash outflows have primarily been associated with acquisition and integration, manufacturing costs, general and marketing, research and development, clinical activity, investing in our commercial infrastructure through our direct sales force and our commercial partners in order to expand our presence and to promote awareness and adoption of our products. As of June 30, 2020, our accumulated deficit was $66.7 million. We expect to recognize a material amount of non-cash preferred stock dividends in the third quarter of 2020 and contingent and non–contingent beneficial conversion feature charges associated with the shares of Series A convertible preferred stock issued in September 2020.

We expect our losses to continue for the foreseeable future and these losses will continue to have an adverse effect on our financial position. Because of the numerous risks and uncertainties associated with our commercialization and development efforts, we are unable to predict when we will become profitable, and we may never become profitable. Our inability to achieve and then maintain profitability would negatively affect our business, financial condition, results of operations and cash flows. As discussed under "— Funding Requirements," we anticipate that we will need substantial additional funding to support our continuing operations and pursue our growth strategy.

Cash Flows for the Years Ended December 31, 2018 and 2019

	Year Ended December 31,	
	2018	2019
	(in thousands)	
Net cash (used in) provided by:		
Operating activities	$(5,447)	$(7,225)
Investing activities	(190)	(577)
Financing activities	7,311	7,979
Net increase in cash	**$ 1,674**	**$ 177**

Net Cash Used in Operating Activities

Net cash used in operating activities during the year ended December 31, 2019 totaled $7.2 million, primarily driven by a $11.9 million net loss reduced by non-cash related items, including $3.9 million in depreciation on fixed assets and amortization of intangible assets as well as $2.8 million in interest expense recorded as additional revenue interest obligation, offset by a $1.9 million gain on the revenue interest obligation. Working capital increases of $0.4 million also contributed to the net cash used in operations.

Net cash used in operating activities during the year ended December 31, 2018 totaled $5.4 million primarily driven by a $11.6 million net loss reduced by non-cash related items, including $3.8 million in depreciation on fixed assets and amortization of intangible assets as well as $2.7 million in interest expense recorded as additional revenue interest obligation, offset by a $1.5 million gain on early extinguishment of debt and a $0.5 million gain on the revenue interest obligation. Working capital reductions of $1.1 million also contributed to the net cash used for operations.

Net Cash Used in Investing Activities

Net cash used in investing activities during the year ended December 31, 2019 totaled approximately $0.6 million, which relates to the purchase of property and equipment, the majority of which are used in the production activities of our Richmond, California facility.

Net cash used in investing activities during the year ended December 31, 2018 totaled approximately $0.2 million, which relates to the purchase of property and equipment, the majority of which are used in the production activities of our Richmond, California facility.

Net Cash Provided by Financing Activities

Net cash provided by financing activities in the year ended December 31, 2019 totaled $8.0 million, which includes $3.5 million borrowed under the Term Loan Facility, net borrowings from the Revolving Credit Facility of approximately $2.6 million, and approximately $3.0 million in proceeds from the issuance of convertible preferred stock. These increases from financing activities were offset by approximately $1.9 million in payments on the revenue interest obligation.

Net cash provided by financing activities in the year ended December 31, 2018 totaled $7.3 million, which includes $3.0 million borrowed under the Term Loan Facility and approximately $10.0 million in proceeds from the issuance of convertible preferred stock. These increases from financing activities were offset by approximately $1.2 million in payments on the revenue interest obligation, net repayments on the Revolving Credit Facility of approximately $4.1 million and principal payments on our promissory notes to tissue suppliers totaling approximately $1.4 million.

Cash Flows for the Six Months Ended June 30, 2019 and 2020

	Six Months Ended June 30,	
	2019	2020
	(in thousands)	
Net cash (used in) provided by:		
Operating activities	$(2,252)	$(7,029)
Investing activities	(259)	(89)
Financing activities	697	5,568
Net decrease in cash	**$(1,814)**	**$(1,550)**

Net Cash Used in Operating Activities

Net cash used in operating activities during the six months ended June 30, 2020 totaled $7.0 million, primarily driven by a $9.7 million net loss reduced by non-cash related items, including $1.9 million in depreciation on fixed assets and amortization of intangible assets as well as $1.3 million in interest expense recorded as additional revenue interest obligation. Working capital increases of $0.8 million also contributed to the net cash used in operations. This increase is primarily comprised of a $2.4 million increase in inventory offset by a $1.4 million decrease in accounts receivable and a $0.3 million increase in accounts payable and accrued expenses. Included in the $2.4 million increase in inventory is a $2.1 million increase of FiberCel and SimpliDerm finished goods inventory in anticipation of expected growth in demand.

Net cash used in operating activities during the six months ended June 30, 2019 totaled $2.3 million primarily driven by a $6.0 million net loss reduced by non-cash related items, including $1.9 million in depreciation on fixed assets and amortization of intangible assets as well as $1.4 million in interest expense recorded as additional revenue interest obligation. Working capital reductions of $0.3 million also contributed to the net cash used for operations.

Net Cash Used in Investing Activities

Net cash used in investing activities during the six months ended June 30, 2020 totaled approximately $0.1 million, which relates to the purchase of property and equipment.

Net cash used in investing activities during the six months ended June 30, 2019 totaled approximately $0.3 million, which relates to the purchase of property and equipment.

Net Cash Provided by Financing Activities

Net cash provided by financing activities in the six months ended June 30, 2020 totaled $5.6 million, which includes $3.0 million of proceeds from a Paycheck Protection Program loan under the CARES Act, net borrowings from the Revolving Credit Facility of approximately $1.7 million, and approximately

$2.0 million in proceeds from the issuance of the 2020 Bridge Notes. These increases from financing activities were offset by approximately $1.2 million in payments on the revenue interest obligation.

Net cash provided by financing activities in the six months ended June 30, 2019 totaled $0.7 million, which was generated primarily from the $0.9 million of net borrowings from the Revolving Credit Facility.

Description of Certain Indebtedness

Credit Facilities

General

On July 15, 2019, Aziyo and Aziyo Med, LLC, which we refer to collectively as the Borrowers, entered into an amended and restated term loan credit agreement, which we refer to as the Term Loan Credit Agreement, with Midcap Financial Trust, as agent and lender, and the other lenders party thereto, which provided for the conversion of our existing term loans into borrowing under the Term Loan Credit Agreement (consisting of a $8.5 million tranche (Term Loan Tranche 1), a $5.0 million tranche (Term Loan Tranche 2) and a $3.0 million tranche (Term Loan Tranche 3)), and established a new $3.5 million tranche (Term Loan Tranche 4) and a new $5.0 million tranche (Term Loan Tranche 5). Commitments in respect of Term Loan Tranche 5 terminated without being borrowed on June 30, 2020. We refer to Term Loan Tranche 1, Term Loan Tranche 2, Term Loan Tranche 3 and Term Loan Tranche 4 collectively as the Term Loan Facility.

On July 15, 2019, the Borrowers also entered into an amended and restated revolving credit agreement, which we refer to as the Revolving Credit Agreement, with Midcap Funding IV Trust, as agent and lender, and the other lenders party thereto, which provided for a $8.0 million asset-based revolving credit facility, which we refer to as the Revolving Credit Facility.

As of June 30, 2020, we had $19.7 million of indebtedness outstanding under our Term Loan Facility (net of $0.3 million of unamortized discount and deferred financing costs) and $5.9 million outstanding under our Revolving Credit Facility (with $1.0 million of additional borrowings available thereunder).

Interest Rates and Fees

Borrowings under the Term Loan Facility accrue interest at a rate per year equal to the LIBOR Rate (as defined below) plus a margin of 7.25%.

Borrowings under the Revolving Credit Facility bear interest at the per annum rate equal to the LIBOR Rate plus a margin of 4.95%.

The LIBOR Rate is defined as the greater of 2.25% and the applicable London Interbank Offered Rate for U.S. dollar deposits divided by 1.00 minus the maximum effective reserve percentage for Eurocurrency funding.

Under the terms of the Revolving Credit Facility, we can borrow up to an amount, which we refer to as the Borrowing Base, equal to (1) 85.0% of the aggregate net amount at such time of the Eligible Accounts (as defined in the Revolving Credit Agreement), plus (2) 50% of the value of the Eligible Inventory (as defined in the Revolving Credit Agreement), valued at the lower of first-in-first-out cost or market cost, and after factoring in all rebates, discounts and other incentives or rewards associated with the purchase of the applicable Eligible Inventory (provided that the Borrowing Base will be automatically adjusted down, if necessary, such that the aggregate availability from Eligible Inventory shall never exceed the lesser of (x) an amount equal to 40.0% of the Borrowing Base and (y) $2,000,000). The amount available for borrowing under the Revolving Credit Facility may also be reduced by certain reserve amounts that may be established by the administrative agent from time to time.

In addition to paying interest on the principal amounts outstanding under the Revolving Credit Facility, we are required to pay an unused line fee to the lenders under the Revolving Credit Facility in respect of the unutilized commitments thereunder equal to 0.50% multiplied by the lesser of (1) the unutilized commitments and (2) $8,000,000 minus 40% of the Borrowing Base.

Mandatory Prepayments

The Term Loan Credit Agreement requires the Borrowers to prepay amounts outstanding under the Term Loan Facility, subject to certain exceptions, with: (1) 100% of any net casualty proceeds in excess of

$250,000 with respect to assets upon which the agent maintains a lien and (2) 100% of the net cash proceeds of non-ordinary course asset sales or sales pertaining to collateral upon which the Borrowing Base is calculated. In addition, the Borrowers are required to prepay all outstanding obligations under the Term Loan Facility upon the termination of all commitments under the Revolving Credit Facility and the repayment of the outstanding borrowings thereunder.

The Revolving Credit Agreement requires the Borrowers to prepay amounts outstanding under the Revolving Credit Facility (or provide cash collateral up to the amount of any outstanding letter of credit obligations) to the extent outstanding borrowings under the Revolving Credit Facility exceed the lesser of (1) $8,000,000 and (2) the Borrowing Base.

Optional Prepayment

The Borrowers may prepay the Term Loan Facility in whole but not in part at any time with at least 10 business days' prior written notice, provided, however, that such prepayment shall be accompanied by a portion of the Exit Fee (as defined below) equal to the amount prepaid divided by the then-outstanding principal amount of borrowings outstanding under the Term Loan Facility, and a prepayment fee equal to the amount prepaid multiplied by, in the case of Term Loan Tranche 1, Term Loan Tranche 2 or Term Loan Tranche 3, 3.0% until July 15, 2021 and 2.0% thereafter, and, in the case of Term Loan Tranche 4, 4.0% until November 21, 2020, 3.0% until November 21, 2021 and 2.0% thereafter. The "Exit Fee" is defined as an amount equal to 6.50% multiplied by the aggregate principal amount of all borrowings advanced to the Borrowers under the Term Loan Facility.

The Borrowers may prepay the Revolving Credit Facility in whole or in part at any time, provided, however, that any such partial prepayment shall be in an amount equal to $100,000 or a higher integral multiple of $25,000.

Amortization and Final Maturity

The Borrowers are required to make interest-only payments prior to February 1, 2021, the Initial Amortization Start Date. Commencing on the Initial Amortization Start Date, and continuing on the first day of each calendar month thereafter, in addition to interest payments, the Borrowers must repay an amount equal to the total principal amount of borrowings under the Term Loan Facility divided by 42, for a 42-month straight-line amortization of equal monthly principal payments; provided, however, that if certain conditions are satisfied prior to December 1, 2020 (including our completion of a qualified initial public offering and no continuing default or event of default), the Initial Amortization Start Date may, upon our request, be extended to August 1, 2021, in which case the principal payments to be made in respect of borrowings under the Term Loan Facility shall be in an amount equal to the total principal amount of borrowings under the Term Loan Facility divided by 36, for a 36-month straight-line amortization of equal monthly principal payments. The remaining unpaid balance on the Term Loan Facility, together with all accrued and unpaid interest thereon and any remaining unpaid amount of the Exit Fee, is due and payable on July 15, 2024.

Outstanding borrowings under the Revolving Credit Facility do not amortize and are due and payable on July 15, 2024.

Security

All obligations under the Term Loan Facility and the Revolving Credit Facility are, and any future guarantees of those obligations will be, secured by, among other things, and in each case subject to certain exceptions, a first priority lien on and security interest in, upon, and to all of each Borrower's assets, including all goods, equipment, inventory, contract rights or rights to payment of money, leases, license agreements, franchise agreements, general intangibles, commercial tort claims, documents, instruments (including any promissory notes), chattel paper (whether tangible or electronic), cash, deposit accounts, securities accounts, fixtures, letter of credit rights (whether or not the letter of credit is evidenced by a writing), securities, and all other investment property, supporting obligations, and financial assets, whether now owned or hereafter acquired, wherever located.

Covenants and Other Matters

The Term Loan Credit Agreement and the Revolving Credit Agreement each contain a number of covenants that, among other things and subject to certain exceptions, restrict the ability of the Borrowers to:

- incur additional indebtedness;
- incur certain liens;
- pay dividends or make other distributions on equity interests;
- enter into agreements restricting their subsidiaries' ability to pay dividends;
- redeem, repurchase or refinance subordinated indebtedness;
- consolidate, merge or sell or otherwise dispose of their assets;
- make investments, loans, advances, guarantees and acquisitions;
- enter into transactions with affiliates;
- amend or modify their governing documents;
- amend or modify certain material agreements;
- alter the business conducted by them and their subsidiaries; and
- enter into sale and leaseback transactions.

In addition, the Term Loan Credit Agreement and the Revolving Credit Agreement contain a financial covenant, which is tested on a monthly basis, and requires us to achieve a specified Minimum Net Product Revenue (as defined in the applicable credit agreement) for the preceding 12-month period.

The Term Loan Credit Agreement and the Revolving Credit Agreement each contains events of default, including, most significantly, a failure to timely pay interest or principal, insolvency, or an action by the FDA or such other material adverse event impacting the operations of Aziyo.

The Term Loan Credit Agreement and the Revolving Credit Agreement also contain certain customary representations and warranties and affirmative covenants, and certain reporting obligations. In addition, the lenders will be permitted to accelerate all outstanding borrowings and other obligations, terminate outstanding commitments and exercise other specified remedies upon the occurrence of certain events of default (subject to certain grace periods and exceptions), which include, among other things, payment defaults, breaches of representations and warranties, covenant defaults, certain cross-defaults and cross-accelerations to other indebtedness, certain events of bankruptcy and insolvency, certain judgments and changes of control.

The foregoing summary describes the material provisions of the Term Loan Facility and the Revolving Credit Facility, but may not contain all information that is important to you. We urge you to read the provisions of the agreements governing the Term Loan Facility and the Revolving Credit Facility, which have been filed as exhibits to the registration statement of which this prospectus forms a part.

PPP Loan

In May 2020, we entered into a promissory note with Silicon Valley Bank, or SVB, under the Paycheck Protection Program of the CARES Act pursuant to which SVB agreed to make a loan to us in the amount of approximately $3.0 million. The PPP Loan matures in May 2022, bears interest at a rate of 1.0% per annum and requires no payments during the first six months from the date of the loan. The PPP Loan is unsecured and guaranteed by the Small Business Administration, or the SBA.

Under the terms of the PPP Loan, the principal amount of the loan may be forgiven to the extent it is used for qualifying expenses as described in the CARES Act and we otherwise request forgiveness in accordance with the terms of the PPP Loan and the requirements of the SBA. The agreement governing the PPP Loan also provides that if we knowingly use the proceeds of such loan for unauthorized purposes, we may be subject to liability, including charges of fraud. We will be required to repay any principal amount of the PPP Loan that is not forgiven, together with accrued and unpaid interest, in equal monthly installments prior to the maturity date of the loan. In addition, we are permitted to prepay the PPP Loan at any time without penalty or premium. SVB will be permitted to accelerate all outstanding borrowings and other obligations and exercise other specified remedies upon the occurrence of certain events of default, which include, among other things, payment defaults, breaches of representations and warranties, covenant defaults, certain cross-defaults and cross-accelerations to other indebtedness, certain events of bankruptcy and insolvency, certain judgments and changes to our ownership or business structure.

2020 Bridge Notes

In April 2020, we entered into a bridge note purchase agreement pursuant to which we issued approximately $2.0 million in aggregate principal amount of convertible promissory notes, which we refer to as the 2020 Bridge Notes, to HighCape Partners QP, HighCape Partners and Deerfield. The 2020 Bridge Notes had a maturity date of April 1, 2025 and accrued interest at a rate of 5.0% per year. The aggregate principal amount of, and accrued interest on, the 2020 Bridge Notes automatically converted into an aggregate of 2,039,427 shares of our Series A convertible preferred stock upon the closing of our Series A convertible preferred stock financing in September 2020. See "Certain Relationships and Related Party Transactions — Convertible Bridge Notes."

Funding Requirements

We expect to continue to incur significant expenses and operating losses for the foreseeable future as we grow our sales organization and expand our product development and clinical and research activities. In addition, upon the closing of this offering, we expect to incur additional costs and expenses associated with operating as a public company.

Without giving effect to the anticipated net proceeds from this offering, based on our current operating plans, there is substantial doubt as to whether our future cash flows together with our existing cash will be sufficient to meet our anticipated operating needs into 2021. If our existing resources are not sufficient and we are unable to increase our product sales, we will need to raise additional capital to finance our operations, which we may not be able to do on acceptable terms or at all. With respect to our audited consolidated financial statements for the year ended December 31, 2019 and our unaudited interim consolidated financial statements for the six months ended June 30, 2020, we concluded that this circumstance raised substantial doubt about our ability to continue as a going concern from the original issuance date of such financial statements and from the date of the registration statement of which this prospectus forms a part. Additional information regarding our assessment is contained in Note 2 to the consolidated financial statements included elsewhere in this prospectus. Similarly, in its report on such financial statements, our independent registered public accounting firm included an explanatory paragraph stating that our recurring losses from operations and accumulated deficit raise substantial doubt about our ability to continue as a going concern.

Based on our current and planned business operations, we believe that the net proceeds from this offering, together with our existing cash and our availability under our Revolving Credit Facility, will be sufficient to fund our operating expenses and capital expenditure requirements through 2022. We have based this estimate on assumptions that may prove to be wrong, and we could exhaust our available capital resources sooner than we expect. If our available cash balances, net proceeds from this offering, and cash flow from operations, if any, are insufficient to satisfy our liquidity requirements, we may seek to raise additional capital through equity offerings, debt financings, collaborations or licensing arrangements. We may also consider raising additional capital in the future to expand our business, pursue strategic investments or take advantage of financing opportunities. Our present and future funding requirements will depend on many factors, including, among other things:

- continued patient, physician and market acceptance of our products;
- the scope, rate of progress and cost of our current and future pre-clinical studies and clinical trials;
- the cost of our research and development activities and the cost and timing of commercializing new products or technologies;
- the cost and timing of expanding our sales and marketing capabilities;
- the cost of filing and prosecuting patent applications and maintaining, defending and enforcing our patent or other intellectual property rights;
- the cost of defending, in litigation or otherwise, any claims that we infringe, misappropriate or otherwise violate third-party patents or other intellectual property rights;
- the cost and timing of additional regulatory approvals;
- costs associated with any product recall that may occur;
- the effect of competing technological and market developments;
- the expenses we incur in manufacturing and selling our products;

- the extent to which we acquire or invest in products, technologies and businesses, although we currently have no commitments or agreements relating to any of these types of transactions;
- the costs of operating as a public company;
- unanticipated general, legal and administrative expenses; and
- the effects on any of the above of the current COVID-19 pandemic or any other pandemic, epidemic or outbreak of infectious disease.

In addition, our operating plans may change as a result of any number of factors, including those set forth above and other factors currently unknown to us, and we may need additional funds sooner than anticipated. To the extent that we raise additional capital through the sale of equity or convertible debt securities, your ownership interest may be materially diluted, and the terms of such securities could include liquidation or other preferences that adversely affect your rights as a common stockholder. Debt financing and preferred equity financing, if available, may involve agreements that include restrictive covenants that limit our ability to take specific actions, such as incurring additional debt, making capital expenditures, creating liens, redeeming shares of our common stock and/or declaring dividends. If we raise funds through collaborations, licensing agreements or other strategic alliances, we may have to relinquish valuable rights to our technologies, future revenue streams, research programs or product candidates, or grant licenses on terms that may not be favorable to us. If we are unable to raise additional funds through equity or debt financings or other arrangements when needed, we may be required to delay the development or commercialization of our products, license to third parties the rights to commercialize products or technologies that we would otherwise seek to commercialize and reduce marketing, customer support or other resources devoted to our products or cease operations. See "Risk Factors — Risks Related to our Business — Our future capital needs are uncertain and we may need to raise funds in the future, and such funds may not be available on acceptable terms or at all."

Contractual Obligations

As of December 31, 2019, future minimum payments due under our contractual obligations are as follows:

	Payment Due by Period				
(in thousands)	**Total**	**Less than 1 Year**	**1 – 3 Years**	**3 – 5 Years**	**Thereafter**
Term Loan Facility[1]	$20,000	$ —	$16,667	$ 3,333	$ —
Revenue Interest Obligation[2]	20,396	2,750	8,250	8,250	1,146
Leases[3]	5,580	1,121	3,084	1,375	—
Note to Tissue Supplier[4]	1,692	1,692	—	—	—
HighCape Fee[5]	750	750	—	—	—
Total	$48,418	$6,313	$28,001	$12,958	$ 1,146

(1) Our Term Loan Facility bears interest at One Month LIBOR (subject to a LIBOR floor of 2.25%) plus 7.25% per annum (a reduction from 7.75% per annum prior to the July 2019 amendment) and includes interest only payments through January 2021 and interest and principal (equal monthly installments) payments from February 2021 through maturity in July 2024. See "—Description of Certain Indebtedness — Credit Facilities" for additional information. Interest expense on our Term Loan Facility totaled $1.7 million for the year ended December 31, 2019. The weighted average interest rate on Term Loan Facility borrowings was 9.8% and 9.7%, respectively, for the years ended December 31, 2018 and 2019.

(2) We are party to a royalty agreement with Ligand (as defined below) pursuant to which we are required to pay to Ligand 5.0% of future sales of the products we acquired from CorMatrix (as well as products substantially similar to those products), subject to certain annual minimum payments as included in the table above. Excluded from the table above is a $5.0 million payment that would be due to Ligand if cumulative sales of the acquired products exceed $100.0 million and a second $5.0 million if cumulative sales exceed $300.0 million during the ten-year term of the agreement which expires on May 31, 2027. These contingent payments were excluded due to the uncertainty on when the revenue milestones will be met, or if they will be met at all. See "—Critical Accounting Policies and Significant Judgments and Estimates — Revenue Interest Obligation" below for additional information regarding our obligations under this agreement.

(3) We lease two production facilities and one administrative and research facility under non-cancelable operating lease arrangements that expire between May 2021 and November 2025. The amounts above represent future minimum lease commitments.

(4) We entered into an unsecured promissory note with a tissue supplier in 2017. The note bears interest at a rate of 5.0% per annum and matures in August 2020.

(5) In connection with the CorMatrix Acquisition, we agreed to pay HighCape Partners Management, L.P. a one-time advisory fee of $750,000 upon the first to occur of any sale transaction (as defined in our certificate of incorporation, as currently in effect) and the closing of this offering. In September 2020, our obligation in respect of this fee was extinguished in connection with the issuance of 375,000 shares of Series A convertible preferred stock to HighCape Capital, L.P. See "Certain Relationships and Related Party Transactions — Transactions with HighCape Partners QP and its Affiliates — Advisory Fee."

Subsequent to December 31, 2019, in May 2020, we entered into a promissory note having a principal amount of approximately $3.0 million under the Paycheck Protection Program of the CARES Act. See "— Description of Certain Indebtedness — PPP Loan."

Off-Balance Sheet Financing Arrangements

We have no obligations, assets or liabilities which would be considered off-balance sheet arrangements as defined in Item 303(a)(4)(ii) of Regulation S-K.

Critical Accounting Policies and Significant Judgments and Estimates

The preparation of financial statements in conformity with U.S. GAAP requires that management make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the amounts of revenues and expenses reported during the period. On an ongoing basis, management evaluates these estimates and judgments, including those related to revenue, inventory valuation, valuation of intangibles, revenue interest obligation and stock-based compensation. Actual results may differ from those estimates. We have identified the following critical accounting policies:

Revenue Recognition

We enter into contracts to sell and distribute products to healthcare providers or commercial partners, or are produced and sold under contract manufacturing arrangements with corporate customers which are billed under ship and bill contract terms. Revenue is recognized when we have met our performance obligations pursuant to our contracts with our customers in an amount that we expect to be entitled to in exchange for the transfer of control of the products and services to our customers. For all net sales, we have no further performance obligations and revenue is recognized when control transfers which occurs either when: i) the product is shipped via common carrier; or ii) the product is delivered to the customer or distributor, in accordance with the terms of the agreement.

A portion of our product revenue is generated from consigned inventory maintained at hospitals, and from inventory physically held by our direct sales representatives. For these types of products sales, we retain control until the product has been used or implanted, at which time revenue is recognized.

We have elected to account for shipping and handling activities as a fulfillment cost rather than a separate performance obligation. Amounts billed to customers for shipping and handling are included as part of the transaction price and recognized as revenue when control of the underlying products is transferred to the customer. The related shipping and freight charges incurred by us are included in sales and marketing costs.

Contracts with customers state the final terms of the sale, including the description, quantity, and price of each implant distributed. The payment terms and conditions in our contracts vary; however, as a common business practice, payment terms are typically due in full within 30 to 60 days of delivery. We, at times, extend volume discounts to customers. We permit returns of our products in accordance with the terms of contractual agreements with customers.

Inventory Valuation

Inventories, consisting of purchased materials, direct labor and manufacturing overhead, are stated at the lower of cost or net realizable value, with cost determined using the average cost method. Inventory write-downs for unprocessed and certain processed donor tissue are recorded based on the estimated amount of inventory that will not pass the quality control process based on historical data. At each balance sheet date, we also evaluate inventories for excess quantities, obsolescence or shelf life expiration. This evaluation includes analysis of our current and future strategic plans, historical sales levels by product, projections of future demand, the risk of technological or competitive obsolescence for products, general market conditions and a review of the shelf life expiration dates for products. To the extent that management determines there is excess or obsolete inventory or quantities with a shelf life that is too near its expiration for us to reasonably expect that we can sell those products prior to their expiration, we adjust the carrying value of the inventory to its estimated net realizable value.

Due to the judgmental nature of inventory valuation, we may from time to time be required to adjust our assumptions as processes change and as we gain better information. Although we continue to refine the

assumptions, described above, on which we base our estimates, we cannot be sure that our estimates are accurate indicators of future events. Accordingly, future adjustments may result from refining these estimates. Such adjustments may be significant.

Valuation of Purchased Intangible Assets

Purchased intangible assets with finite lives are carried at acquired fair value, less accumulated amortization. Amortization is computed over the estimated useful lives of the respective assets. We periodically evaluate the period of amortization for purchased intangible assets to determine whether current circumstances warrant revised estimates of useful lives. We review our purchased intangible assets for impairment whenever events or changes in circumstances indicate the carrying value of an asset may not be recoverable. Recoverability is measured by a comparison of the carrying amount to the net undiscounted cash flows expected to be generated by the asset. Impairment exists when the carrying value of our asset exceeds the related estimated undiscounted future cash flows expected to be derived from the asset. If impairment exists, the carrying value of that asset is adjusted to its fair value. A discounted cash flow analysis is used to estimate an asset's fair value, using assumptions that market participants would apply. An impairment loss would be recorded for the excess of net carrying value over the fair value of the asset impaired. The results of impairment tests are subject to management's estimates and assumptions of projected cash flows and operating results. Changes in assumptions or market conditions could result in a change in estimated future cash flows and could result in a lower fair value and therefore an impairment, which could impact reported results.

Revenue Interest Obligation

In 2017, we completed an asset purchase agreement with CorMatrix and acquired all of the CorMatrix commercial assets and related intellectual property. As part of this acquisition, we entered into a royalty agreement with Ligand Pharmaceuticals Incorporated, or Ligand, pursuant to which we assumed a restructured, long-term obligation, which we refer to as the Revenue Interest Obligation, to Ligand, with an estimated present value on the acquisition date of $27.7 million. The terms of the Revenue Interest Obligation require us to pay Ligand, subject to certain annual minimums, 5% of future sales of the products we acquired from CorMatrix, including CanGaroo, ProxiCor, Tyke and VasCure, as well as products substantially similar to these products, such as the version of CanGaroo we are currently developing that is designed to have anti-infective properties. Furthermore, a $5.0 million payment will be due to Ligand if cumulative sales of these products exceed $100.0 million and a second $5.0 million will be due if cumulative sales exceed $300.0 million during the ten-year term of the agreement which expires on May 31, 2027.

We have estimated the fair value of the Revenue Interest Obligation, including contingent milestone payments and estimated sales-based payments, based on assumptions related to future sales of the acquired products. At each reporting period, the value of the Revenue Interest Obligation is re-measured based on current estimates of the net present value of future payments, with changes to be recorded in the consolidated statements of operations. In connection with our estimations at December 31, 2018 and 2019, it was determined that the estimated future payments, discounted at the original discount rate, have decreased since the prior estimates. In both instances, such decrease was primarily the result of delays in certain regulatory approvals that will impact the timing and extent of future sales and, thereby, will reduce expected future payments to Ligand. The change to estimated future payments yielded a reduction to the total Revenue Interest Obligation of approximately $0.5 million and $1.9 million for the years ended December 31, 2018 and 2019, respectively, with such amounts recognized as gains in Other (income) expense, net in our consolidated statement of operations. There was no change to the value of the Revenue Interest Obligation as of June 30, 2020 based on estimates of future payments at that date. The estimation of future sales and the possible attainment of sales milestones is subject to significant judgment. Different judgments would yield different valuations of the Revenue Interest Obligation and these differences could be significant.

Stock-Based Compensation

Compensation costs associated with stock option awards and other forms of equity compensation are measured at the grant-date fair value of the awards and recognized over the requisite vesting period of the awards on a straight-line basis.

Our policy is to grant stock options at an exercise price equal to 100.0% of the market value of a share of common stock at closing on the date of the grant. Our stock options generally have seven-year contractual terms and vest over a four-year period from the date of grant. We use the Black-Scholes model to value our stock option grants. The fair value of stock options is determined on the grant date using assumptions for the estimated fair value of the underlying common stock, expected term, expected volatility, dividend yield and the risk-free interest rate. Our board of directors determines the fair value of common stock considering the state of the business, input from management, third party valuations and other considerations. We use the simplified method for estimating the expected term used to determine the fair value of options. As there has been no public market for our common stock to date, we lack company-specific historical and implied volatility information. As a result, we estimate the expected volatility primarily based on the historical volatility of comparable companies in the industry whose share prices are publicly available and expect to continue to do so until such time as we have adequate historical data regarding the volatility of our own traded share price. We use a zero-dividend yield assumption as we have not paid dividends since inception nor do we anticipate paying dividends in the future. The risk-free interest rate approximates recent U.S. Treasury note auction results with a similar life to that of the option. The period expense is then recognized on a straight-line basis over the requisite service period for the entire award.

Determination of the Fair Value of our Common Stock

As discussed above, since there has been no public market for our common stock to date, the estimated fair value of our common stock has been determined by our board of directors as of the date of each option grant, with input from management, considering the most recently available third-party valuations of our common stock and our board of directors' assessment of the state of our business and additional objective and subjective factors that it believed were relevant and which may have changed from the date of the most recent third-party valuation through the date of the grant. These third-party valuations were performed in accordance with the guidance outlined in the American Institute of Certified Public Accountants' Accounting and Valuation Guide, Valuation of Privately-Held-Company Equity Securities Issued as Compensation. Our common stock valuations were prepared using either an option pricing method, or OPM, or a hybrid method, which used market approaches to estimate our enterprise value. The hybrid method is a probability-weighted expected return method, or PWERM, where the equity value in one or more of the scenarios is calculated using an OPM. The PWERM is a scenario-based methodology that estimates the fair value of our common shares based upon an analysis of future values for our company, assuming various outcomes. Our common stock value is based on the probability-weighted present value of expected future investment returns considering each of the possible outcomes available as well as the rights of each share class. The future value of our common stock under each outcome is discounted back to the valuation date at an appropriate risk-adjusted discount rate and probability weighted to arrive at an indication of value for our common stock. A discount for lack of marketability of our common stock is then applied to arrive at an indication of value for our common stock. The OPM treats common stock and preferred stock as call options on the total equity value of a company, with exercise prices based on the value thresholds at which the allocation among the various holders of a company's securities changes. Under this method, the shares of common stock have a value only if the funds available for distribution to shareholders exceeded the value of the preferred share liquidation preference at the time of the liquidity event, such as a strategic sale or a merger. These third-party valuations were performed at various dates, which resulted in valuations of our common shares of $0.39 per share as of June 30, 2017, $0.40 per share as of May 31, 2018 and $0.74 per share as of April 30, 2019. In addition to considering the results of these third-party valuations, our board of directors considered various objective and subjective factors to determine the fair value of our common stock as of each grant date, including:

- the prices at which we sold shares of preferred stock and the preferences of the preferred stock relative to our common stock at the time of each grant;
- the progress of our research and development programs, including the status and results of pre-clinical studies and clinical trials for our product candidates;
- our stage of development and commercialization and our business strategy;
- external market conditions affecting the regenerative medicine and medical device industry and trends within the regenerative medicine and medical device industry;

- our financial position, including cash on hand, and our historical and forecasted performance and results of operations;
- the lack of an active public market for our common stock and our preferred stock;
- the likelihood of achieving a liquidity event, such as an initial public offering, or IPO, or sale of our company in light of prevailing market conditions; and
- the analysis of IPOs and the market performance of similar companies in the regenerative medicine and medical device industry.

The assumptions underlying these valuations represented management's best estimate, which involved inherent uncertainties and the application of management's judgment. As a result, if we had used significantly different assumptions or estimates, the fair value of our common stock and our stock-based compensation expense could have been materially different.

Once a public trading market for our common stock has been established in connection with the closing of this offering, it will no longer be necessary for our board of directors to estimate the fair value of our common stock in connection with our accounting for granted stock options and other such awards we may grant, as the fair value of our common stock will be determined based on the quoted market price of our common stock.

Options Granted

The following table sets forth by grant date the number of shares subject to options granted from January 1, 2018 through the date of this prospectus, the per share exercise price of the options, the per share fair value of our common stock on each grant date, and the per share estimated fair value of the options:

Grant Date	Number of Shares Subject to Options Granted	Per Share Exercise Price of Options	Per Share Fair Value of Common Stock on Grant Date	Per Share Estimated Fair Value of Options
1/11/2018	38,875	$ 5.44	$ 5.44	$ 2.93
2/22/2018	38,689	$ 5.44	$ 5.44	$ 2.93
2/28/2018	3,225	$ 5.44	$ 5.44	$ 2.93
7/27/2018	159,299	$ 5.58	$ 5.58	$ 2.93
2/13/2019	7,703	$ 5.58	$ 5.58	$ 2.93
6/4/2019	8,492	$ 10.33	$ 10.33	$ 5.02
9/4/2019	21,498	$ 10.33	$ 10.33	$ 5.02
1/22/2020	27,410	$ 10.33	$ 18.70	$ 12.00

In June 2020, we performed a retrospective fair value assessment and concluded that the fair value of the common stock underlying stock options that we granted on January 20, 2020 was $18.70 per share for accounting purposes. We applied the fair value of our common stock from our retrospective fair value assessment to determine the fair value of these awards and calculate share-based compensation expense for accounting purposes. This reassessed value was based, in part, upon a third-party valuation of our common shares prepared as of April 30, 2019 with adjustments made by us to reflect expectations of an initial public offering as of January 20, 2020.

Recently Issued Accounting Pronouncements

See Note 3, "Recently Issued Accounting Standards," to our consolidated financial statements included elsewhere in this prospectus for information regarding recently issued accounting pronouncements.

Quantitative and Qualitative Disclosures About Market Risks

We are exposed to market risks in the ordinary course of our business, including risks relating to changes in interest rates, foreign currency and inflation. The following discussion provides additional information regarding these risks.

Interest Rate Risk

Our primary exposure to market risk relates to changes in interest rates. Borrowings under our Term Loan Facility and Revolving Credit Facility bear interest at variable rates, subject to an interest rate floor. Interest rate risk is highly sensitive due to many factors, including U.S. monetary and tax policies, U.S. and international economic factors and other factors beyond our control. A hypothetical 10% relative change in interest rates during the years ended December 31, 2018 or 2019 would not have had a material effect on our financial statements. We do not currently engage in hedging transactions to manage our exposure to interest rate risk.

Credit Risk

As of December 31, 2019, our cash and cash equivalents were maintained with one financial institution in the United States. While our deposit accounts are insured up to the legal limit, the balances we maintain may, at times, exceed this insured limit. We believe this financial institution has sufficient assets and liquidity to conduct its operations in the ordinary course of business with little or no credit risk to us.

Our accounts receivable relate to sales to customers. To minimize credit risk, ongoing credit evaluations of all customers' financial condition are performed. Two customers represented 10% or more of our accounts receivable as of December 31, 2019.

Foreign Currency Risk

Our business is primarily conducted in U.S. dollars. Any transactions that may be conducted in foreign currencies are not expected to have a material effect on our financial condition, results of operations or cash flows. As we grow our operations, our exposure to foreign currency risk could become more significant.

Impact of Inflation

Inflationary factors, such as increases in our cost of goods sold or other operating expenses, may adversely affect our operating results. While it is difficult to accurately measure the impact of inflation due to the imprecise nature of the estimates required, we do not believe inflation had a material effect on our financial condition or results of operations during the years ended December 31, 2018 and 2019. We cannot assure you, however, that we will be able to increase the selling prices of our products or reduce our operating expenses in an amount sufficient to offset the effects future inflationary pressures may have on our gross margin. Accordingly, we cannot assure you that our financial condition and results of operations will not be materially impacted by inflation in the future.

JOBS Act

Section 107 of the JOBS Act permits us, as an "emerging growth company," to take advantage of an extended transition period for adopting new or revised accounting standards until those standards would otherwise apply to private companies. We have elected to avail ourselves of this exemption and, as a result, for so long as we remain an emerging growth company, unless we subsequently choose to affirmatively and irrevocably opt out of the extended transition period, our financial statements may not be comparable to the financial statements of issuers who are required to comply with the effective dates for new or revised accounting standards that are applicable to public companies. Section 107 of the JOBS Act provides that we can elect to opt out of the extended transition period at any time, which election is irrevocable.

We will remain an emerging growth company until the earliest of: (i) the last day of the first fiscal year in which our annual gross revenues are $1.07 billion or more; (ii) the last day of 2025; (iii) the date that we become a "large accelerated filer" as defined in Rule 12b-2 under the Exchange Act, which would occur if the market value of our common equity held by non-affiliates is $700 million or more as of the last business day of our most recently completed second fiscal quarter; or (iv) the date on which we have issued more than $1.0 billion in non-convertible debt securities during the previous three years.

BUSINESS

Overview

We are a commercial-stage regenerative medicine company focused on creating the next generation of differentiated products and improving outcomes in patients undergoing surgery, concentrating on patients receiving implantable medical devices. From our proprietary tissue processing platforms, we have developed a portfolio of advanced regenerative medical products that are designed to be very similar to natural biological material. Our proprietary products, which we refer to as our Core Products, are designed to address the implantable electronic device/cardiovascular, orthopedic/spinal repair and soft tissue reconstruction markets, which represented a combined $3 billion market opportunity in the United States in 2019. To expand our commercial reach, we have commercial relationships with major medical device companies, such as Boston Scientific and Medtronic, to promote and sell some of our Core Products. We believe our focus on our unique regenerative medicine platforms and our Core Products will ultimately maximize our probability of continued clinical and commercial success and will create a long-term competitive advantage for us.

We estimate that more than two million patients were either implanted with medical devices, such as pacemakers, defibrillators, neuro-stimulators, spinal fusion and trauma fracture hardware or tissue expanders for breast reconstruction, in the United States in 2019. This number is driven by advances in medical device technologies and an aging population with a growing incidence of comorbidities, including diabetes, obesity and cardiovascular and peripheral vascular diseases. These comorbidities can exacerbate various immune responses and other complications that can be triggered by a device implant.

Our Core Products are targeted to address unmet clinical needs with the goal of promoting healthy tissue formation and avoiding complications associated with medical device implants, such as scar-tissue formation, capsular contraction, erosion, migration, non-union of implants and implant rejection. We believe that we have developed the only biological envelope, which is covered by a number of patents, that forms a natural, systemically vascularized pocket for holding implanted electronic devices. We have a proprietary processing technology for manufacturing bone regenerative products for use in orthopedic/spinal repair that preserves a cell’s ability to regenerate bone and decelerates cell apoptosis, or programmed cell death. We have a patented cell removal technology that produces undamaged extracellular matrices for use in soft tissue reconstruction. In pre-clinical and clinical studies, our products have supported and, in some cases, accelerated tissue healing, and thereby improved patient outcomes. Our Core and Non-Core product portfolio is highlighted in the table below.

Market		Product Brands	Description	Go-To-Market Strategy
CORE PRODUCTS	Implantable Electronic Devices and Cardiovascular	CanGaroo	Biological envelope that remodels into systemically connected, vascularized tissue for the long-term pocket protection of certain cardiac and neurostimulator implantable electronic devices	Direct and supported by commercial partners
		ProxiCor Tyke VasCure	Portfolio of extracellular matrices that retain the natural composition of collagen, growth factors and proteins for use in vascular and cardiac repair and pericardial closure	Direct and independent sales agents
	Orthopedic and Spinal Repair	FiberCel ViBone OsteGro V	Variety of viable matrices, produced with a proprietary process that is designed to protect and preserve native bone cells and reduce programmable cell death, for use in bone repair and fusion procedures	Commercial partners
	Soft Tissue Reconstruction	SimpliDerm	Pre-hydrated, human acellular dermal matrix, or HADM, that is designed to enable rapid integration, cellular repopulation and rapid revascularization at the surgical site	Direct and independent sales agents
NON-CORE PRODUCTS	Contract Manufacturing	Various Products	Contract manufacturing of particulate bone, precision milled bone, cellular bone matrix, acellular dermis, amnion and other soft tissue products to utilize fully our starting human biological materials, leverage our existing overhead and improve our cash flow	Corporate customers

Our growth strategy is focused on increasing penetration in our target markets. We believe we can expand our commercial penetration in these markets and thereby grow our business by increasing our direct sales force and developing and launching more clinically relevant products from our pipeline and, when possible and appropriate, from acquisitions.

Our go-to-market strategy includes a hybrid of a direct sales force, commercial partners and independent sales agents. As of June 30, 2020, we had 27 direct sales representatives who focus on gaining additional market access and driving market penetration, not only by selling our products, but also, where appropriate, by managing our commercial partners and providing technical assistance for selling our products. By growing our direct sales force and leveraging our existing commercial partners, we believe we can expand our customer base and further strengthen our existing customer relationships and increase penetration in our target markets.

We have a well-established and scalable manufacturing platform, consisting of two facilities that are supported by our corporate headquarters. Our Silver Spring, Maryland location is our headquarters and functions as a research and development and corporate support center. Our Roswell, Georgia location is our processing, production and distribution facility for all our implantable electronic device/cardiovascular products. Our Richmond, California location is our human tissue products facility. We believe we have sufficient operating capacity at both our Roswell and Richmond facilities to support future growth.

We have a proven track record of growing our business. Net sales from our Core Products grew from $22.7 million for the year ended December 31, 2018 to $30.9 million for the year ended December 31,

2019, representing an annual growth rate of 36%. Our total net sales increased from $39.0 million for the year ended December 31, 2018 to $42.9 million for the year ended December 31, 2019, representing an annual growth rate of 10%. Our gross margins improved from 41% in the year ended December 31, 2018 to 46% in the year ended December 31, 2019. Our gross margins, excluding intangible asset amortization, improved from 50% in the year ended December 31, 2018 to 54% in the year ended December 31, 2019. We incurred a net loss of $11.6 million for the year ended December 31, 2018, and a net loss of $11.9 million for the year ended December 31, 2019.

Net sales from our Core Products grew from $13.7 million for the six months ended June 30, 2019 to $15.6 million for the six months ended June 30, 2020. Our total net sales decreased from $19.7 million for the six months ended June 30, 2019 to $18.4 million for the six months ended June 30, 2020. Our gross margins improved from 47% in the six months ended June 30, 2019 to 49% in the six months ended June 30, 2020. Our gross margins, excluding intangible asset amortization, improved from 56% in the six months ended June 30, 2019 to 58% in the six months ended June 30, 2020. We incurred a net loss of $6.1 million for the six months ended June 30, 2019, and a net loss of $9.7 million for the six months ended June 30, 2020.

Gross margin, excluding intangible asset amortization, is a non-GAAP financial measure. See “Prospectus Summary — Summary Consolidated Financial Data — Non-GAAP Financial Measures” for a discussion regarding our use of gross margin, excluding intangible asset amortization, including its limitations and a reconciliation to the most directly comparable GAAP financial measure.

Our Competitive Strengths

Our mission is to provide advanced regenerative care products that improve the outcomes in patients primarily undergoing implantable device-related surgery. To accomplish this mission, we intend to establish our Core Products as the standard of care for treating patients undergoing such procedures. We believe our key competitive strengths position us well to execute on our growth strategy. Our key competitive strengths are:

- **Well-positioned in Large, Attractive and Growing Markets**. We believe that the implantable electronic devices/cardiovascular, the orthopedic/spinal repair and the soft tissue reconstruction markets, which represented a combined $3 billion market opportunity in the United States in 2019, will continue to experience accelerated growth, given advancements in implantable medical device technologies to treat more medical conditions and shifting global demographics that include an aging population; a greater incidence of comorbidities, such as diabetes, obesity and cardiovascular and peripheral vascular diseases; and increasing numbers of mastectomies and lumpectomies. We believe there is growing adoption of regenerative medicine products by the medical community as physicians become aware of the benefits of natural products, including reduced inflammation, scar-tissue formation and foreign body response, as compared to using traditional products made from synthetic materials.
- **Regenerative Medicine Technology Focus**. Our scientific expertise and know-how in regenerative medicine technology has allowed us to develop our proprietary platforms to create differentiated biomaterials, including our Core Products: CanGaroo, ProxiCor, Tyke, VasCure, FiberCel, ViBone, OsteGro V and SimpliDerm. These types of products, which are designed to more closely resemble natural products than similar traditionally processed products, have enabled us to advance the science of regenerative medicine as well as to process tissue and produce products at commercial scale.
- **Broad Portfolio of Core Products to Address the Needs of Physicians, Patients and Providers.** Physicians use our broad portfolio of regenerative medicine products to meet the needs of individual patients. The breadth of our current portfolio, which includes products used in implantable electronic devices/cardiovascular, orthopedic/spinal repair and soft tissue reconstructive procedures, gives us the flexibility to target a broad set of procedures, each with a full suite of products to accommodate both the clinical and economic factors that may affect purchasing decisions. Our experienced contracting and direct sales force teams are highly trained to assist clinicians in effectively using the full complement of our products.

- **Large and Growing Body of Clinical Data and FDA Cleared Products.** We have significant regulatory experience in obtaining FDA clearance for regenerative medicine products requiring 510(k) clearance and in navigating the comprehensive regulatory framework that applies to human cells, tissues and cellular and tissue-based products, or HCT/Ps. We have and continue to develop a body of pre-clinical, clinical and patient outcomes data, including third-party publications that reviewed the technical and clinical attributes of our products. We believe that our extensive in vivo and clinical data give us a competitive advantage.
- **Relationships with Care Providers.** Our medical and commercial teams have established extensive customer relationships in the healthcare industry. We have developed excellent relationships with physicians, nurses and hospital administrators. We believe we are well-positioned to leverage these relationships to increase our penetration in our target markets.
- **Commercial Relationships with Major Medical Device Companies.** We have commercial agreements with major medical device companies, including Boston Scientific, Biotronik, Medtronic, Surgalign Holdings and others, which we collectively refer to as our commercial partners, to promote or commercialize some of our products. Our commercial partners use their own network of more than 2,000 sales representatives, clinical specialists and independent sales agents, including approximately 1,400 of which are focused on our CanGaroo product and more than 800 of which are focused on our FiberCel, ViBone and OsteGro V products. We leverage this additional presence in targeted markets to significantly increase our opportunity to cost-effectively penetrate these large markets.
- **Established and Scalable Manufacturing and Commercial Infrastructure.** We have well-established relationships to obtain the human and animal tissues, which we need to manufacture our products, in the quantity needed and in a manner that preserves their integrity. We have sufficient capacity to increase the scale of our manufacturing, and the required quality control and regulatory capabilities to ensure that our products meet established specifications. We have developed rigorous medical, clinical, manufacturing, distribution and logistics capabilities designed to comply with FDA requirements. We pair our operational capabilities with a strong commercial team of sales, marketing and contracting professionals. Our established regulatory, operational and commercial infrastructure provides a firm foundation for growth as we continue to scale our business.
- **Executive Management Team with Extensive Experience in Regenerative Medicine.** Our executive management team has extensive experience in the regenerative medicine and medical device industries. This experience allows us to operate with a deep understanding of the underlying trends in regenerative medicine and the intertwined scientific, clinical, regulatory, commercial and manufacturing functions that drive success in this industry. We believe our team has the necessary experience to lead us through our continued commercial expansion and the development and launch of our pipeline products.

Our Growth Strategy

The key elements of our growth strategy are:

- **Increase Penetration in Our Target Markets.** We believe that the potential for growth in regenerative medicine in our target market segments presents a long-term opportunity to increase the use of our products. We plan to continue our growth and accelerate our penetration into our target markets by increasing the size of our direct sales force and by leveraging our relationships with our commercial partners that have well-established and significant cardiac rhythm and orthopedic/spinal sales infrastructure and experience in our target markets. We believe the breadth and flexibility of our current portfolio of products provides us with the capability to address a wider variety of implantable device procedures and soft tissue reconstructions, all of which should offer significant new growth opportunities.
- **Additional Growth through Selective Acquisitions.** We have demonstrated our ability to identify acquisition opportunities and integrate assets that complement our strategy and generate revenue and incremental gross profits. We were created in 2015 through the spin-out of the musculoskeletal

division of Tissue Banks International, or TBI now KeraLink International, or KeraLink, which provided us with tissue processing capabilities. We created additional value from this transaction by hiring scientific expertise to enhance these assets and develop a next generation of products. We then formed strategic partnerships to sell these products and improve our financial performance. Similarly, in 2017, we acquired biomaterial medical device assets, centered around the product we now sell as CanGaroo, from CorMatrix Cardiovascular. We followed the model that we had developed with the TBI asset acquisition. We brought in experienced leadership and expanded our clinical and commercial teams, which provided us with the opportunity to form new partnerships and commercialize CanGaroo. As a result, we again accelerated the growth of our revenue stream. We will continue to evaluate possible acquisitions that complement our existing portfolio and leverage our established commercial and manufacturing infrastructure.

- **Robust Pipeline of Innovative Core Products from Our Proven Research and Development Capabilities.** We have brought to market four commercial Core Products in the past three years. In addition to our current core commercial products, we have a pipeline of products being developed for the implantable electronic devices/cardiovascular market, the orthopedic/spinal repair market and the soft tissue reconstruction market that we expect to launch in the future. We will continue to conduct pre-clinical studies and clinical trials, gather patient data and perform other research to support the further adoption of our products in the marketplace.
- **Continuing to Expand the Reach of Our Direct Sales Force**. As of June 30, 2020, we had 27 direct sales representatives who focus on gaining additional market access and driving market penetration, not only by selling our products, but also, where appropriate, by managing our commercial partners and providing technical assistance for selling our products. Our sales team provides the critical knowledge of the advantages that our biological products provide for patients over those of our competitors. We plan to grow our sales organization in order to expand our network of hospital and physician customers, drive deeper penetration in current accounts and provide additional technical assistance to our commercial partners. We believe there is a significant opportunity to grow our business through this continued expansion of our commercial footprint.

Our Core Products/Solutions

Our portfolio of regenerative medicine Core Products has been developed to address the following specific markets:

Implantable Electronic Devices/Cardiovascular Market

Market Opportunity

In 2019, we estimate, based on industry sources and other third-party estimates, that there were more than 600,000 procedures in the United States to install or replace implantable electronic devices, such as pacemakers, pulse generators and defibrillators, as well as spinal cord neuromodulators and vagus nerve, deep brain and sacral nerve stimulators, which represents an estimated $600 million opportunity.

Limitations of Existing Solutions

Implantable electronic devices are now the standard of care for patients suffering from cardiac arrhythmias and heart failure. Such devices are implanted in soft tissue, which is not heavily vascularized, and its

implantation may trigger a biologic response that results in inflammation and fibrosis, leading to the device and its wire leads being encased in dense or calcified fibrous material.

In 2015, a group of third-party researchers published a systematic review and meta-analysis of 60 published reports, consisting of 21 prospective, nine case-control and 30 retrospective cohort studies published between 1981 and 2013, each of which examined the rate of infection associated with the implantation of electronic devices. The average rate of infection was between 1.0 and 1.3% and the reported rates of infection ranged from 0.3 to 16.4%. In 2019, a different group of third-party researchers published the results of a global, prospective randomized clinical trial focused on infection complications of implantable electronic cardiovascular devices which identified a 1.2% mean infection rate during 12-month follow-up in the control arm (3,488 patients), and this was later reported by other third-party researchers in 2020 to rise to 1.9% at the 36 months follow-up. However, infection is not the only significant complication associated with implantation. Data from third-party studies published in 2011 and 2016 indicated that migration occurred in 0.5 to 10.9% of such procedures, and data from third-party studies published in 2001 and 2007 indicated that erosion of the device through the skin occurred in 0.2 to 5.0% of such procedures. Thus, migration and erosion have been shown to be similarly frequent and can both result in infection or require replacement of the device. Other complications include those associated with Twiddler's syndrome, which is a malfunction of a pacemaker due to manipulation of the device by the patient, and discomfort at the implant site. In addition, capsular contracture can occur when scar tissue, or a capsule, around the device tightens and squeezes the implant. Capsular contraction may be more common following infection, collection of blood, or hematoma, and collection of the watery portion of blood, or seroma.

As patients with implants live longer, device reoperations are ever more common, including those to replace or upgrade the device, or to replace or revise the wire leads. The dense, under-vascularized capsule surrounding a device and its wire leads makes replacement or revision more difficult, increases the time needed for the extraction and replacement procedure and progressively increases the risk of infection. An increasing proportion of these cardiovascular electronic devices, that is, cardioverter/defibrillators, are now larger, heavier and more complex and have a greater frequency of complications associated with them than the smaller, less heavy and less complex devices. For neurostimulator devices, the common location of these devices, which is in the soft tissue of the abdomen or back, increases the risk of migration and erosion and that of patient discomfort when sleeping or sitting.

In 1972, Dr. Victor Parsonnet reported that enclosing pulse generators in a polyester pouch prevented migration and extrusion of the implanted device through the skin. BARD Vascular Systems manufactured the Parsonnet pouch, which was used in patients with little subcutaneous tissue. In 2008, TyRx Pharma introduced AIGS$_{RX}$, a synthetic, permanent mesh envelope, which was intended to securely hold either a pacemaker pulse generator or defibrillator and provide a safe space for these implants to be acclimated by the body. To prevent infections associated with the implantation procedure, the non-resorbable mesh was coated with a bioabsorbable material, which dissolved over a period of seven to ten days, during which time the antibiotics rifampicin and minocycline were released. In 2013, TyRx replaced the original product with AIGIS$_{RX}$R, a comparable product with the same two intended uses, but totally bioresorbable. In 2014, Medtronic acquired TyRx and now sells this totally bioresorbable synthetic product under the name TYRX.

TYRX is a relatively stiff synthetic mesh with rough edges, which may require the surgeon to make a larger incision than is needed only to implant the electronic device. The larger incision can lead to longer surgery times and complications at the time of replacement or upgrade of the implantable device. Third-party studies have shown that the synthetic TYRX mesh is broken down and reabsorbed within approximately nine weeks. According to published literature, synthetic mesh, unlike biological mesh, is not associated with the biological signaling needed to mitigate the anticipated and well-documented foreign body response that results in the production of scar tissue to form a capsule surrounding an implantable device. TYRX's primary benefit is to dispense antibiotics to reduce the rate of infection associated with device implantation.

Our Solution

CanGaroo was designed to mitigate complications deriving from implantable electronic devices and the shortcomings of synthetic envelopes. We believe that CanGaroo is the only biological product that forms

a natural, systemically vascularized pocket that conforms to and securely holds implantable electronic devices. CanGaroo is cleared for use with pacemaker pulse generators, defibrillators and other cardiac implantable electronic devices as well as vagus nerve stimulators, spinal cord neuromodulators, deep brain stimulators and sacral nerve stimulators.

The CanGaroo envelope is constructed from perforated, multi-laminate sheets of decellularized, non-crosslinked, lyophilized SIS ECM, derived from porcine small intestinal submucosa, a natural biomaterial, which is rich in natural growth factors, structural proteins and collagens. The ECM is sewn into the shape of a pouch, into which the device is placed. We sell the biological envelope in a variety of sizes, which allows it to accommodate various sized electronic devices, and it has a shelf life of 30 months.

CanGaroo is soft and pliable and is designed to conform to the implantable device for easy handling and implantation. The SIS ECM is designed to mitigate the biologic foreign body response that normally occurs around the electronic device. CanGaroo is remodeled into a surrounding layer of vital, vascularized tissue, potentially reducing the risk of capsular formation, migration and erosion of the implantable device through the skin, and complications associated with Twiddler's syndrome. CanGaroo may also facilitate the process of implantation and of device removal during its replacement, as well as enhance patient comfort.

Product	Description	Regulatory Pathway
CanGaroo Envelope 	Naturally occurring ECM scaffold intended to hold securely implantable electronic devices, creating an environment designed to enhance patient comfort and reduce device migration	Medical Device 510(k)-Cleared

Development Pipeline

We are currently developing a version of CanGaroo that combines the envelope with antibiotics and is designed to reduce the risk of infection following surgical implantation of an electronic device. As a first step, we recently completed a feasibility study that demonstrated the targeted release of antibiotics for CanGaroo. Based on feedback from the FDA, we believe that this product candidate will require 510(k) clearance of a 510(k) submission to be marketed in the United States.

Commercial Approach

We sell CanGaroo in the United States using our direct sales force and our commercial partners, Boston Scientific and Biotronik, which act as sales agents and give us access to approximately 1,400 sales representatives and clinical specialists to further expand our footprint and accelerate our sales. Our primary customers are electrophysiologists, cardiac surgeons and neurosurgeons. Our direct sales force is focused on gaining additional market access and driving market penetration, not only by selling our products, but also, where appropriate, by managing our commercial partners and providing technical assistance for selling our products. Our sales team provides the critical knowledge of the advantages that CanGaroo provides for patients over those of our competitors. We ship the product directly to hospitals.

Additional Cardiovascular Products

Through our direct sales force and independent sales agents, we also sell additional cardiovascular products derived from our specialized SIS ECM, all of which received 510(k) regulatory clearance as medical devices:

- ProxiCor is cleared for use as an intracardiac patch or pledget for tissue repair, i.e., atrial septal defect, ventricular septal defect and suture-line buttressing, as well as for the repair and reconstruction of the pericardium. ProxiCor enables cardiac and congenital heart surgeons to reestablish the essential native anatomical structures of the heart and pericardium by providing a natural bio-scaffold that allows the patient's own cells to form a new pericardial layer. Typically, the absence of a pericardial barrier often leads to scarring and the formation of adhesions between the heart and sternum, impairing normal heart function. We believe that the use of ProxiCor for pericardial repair potentially avoids adverse events associated with the use of synthetic materials or

highly processed biological materials, which can trigger an immune response, resulting in fibrotic or calcified scarring at the implant site.

- Tyke was developed based on a request by pediatric cardiovascular surgeons to deliver an ECM material that maintained the biomechanical properties found in our existing products, but was thinner, more pliable and better suited for intracardiac and branch pulmonary artery use in neonates and infants. Tyke is cleared for use in neonates and infants for the repair of pericardial structures; as an epicardial covering for damaged or repaired cardiac structures; and as a patch material for intracardiac defects, septal defect and annulus repair, suture-line buttressing and cardiac repair. We believe that Tyke is the only extra cellular material that has been specifically cleared for use in neonates and infants to repair pericardial structures.
- VasCure is cleared for use, and is used by, cardiovascular, vascular and general surgeons as, a patch material to repair or reconstruct the peripheral vasculature, including the carotid, renal, iliac, femoral and tibial blood vessels, by modeling into site-specific tissue and conforming to repair defects easily. VasCure is also cleared and is used for the closure of vessels, as a pledget, or for suture line buttressing when repairing vessels. It is designed to prevent and stop bleeding, resulting in minimal bleeding at suture lines. Unlike synthetic or cross-linked materials, VasCure approximates normal tissue and, we believe, is, therefore, less likely to provoke an immune response.

Orthopedic/Spinal Repair Market

Market Opportunity

According to industry sources, in the United States in 2019, there were an estimated 1.5 million surgical procedures for orthopedic and spinal repair, which, excluding the cost for spinal and orthopedic hardware, used bone repair products valued at more than $2 billion. The number of such surgeries has increased over the last several years, driven, in part, by a higher incidence of comorbidities and chronic inflammatory and degenerative conditions, including osteoarthritis.

Spinal fusion, the leading application for bone fusion surgeries in the United States, involves the use of grafting material to cause two vertebrae to grow together into one. In the United States in 2019, medical facilities performed 695,000 spinal fusion surgeries, of which approximately 400,000 were lumbar operations. Lower extremity applications, including ankle arthrodesis, or surgical immobilization of a joint by fusion of the adjacent bones, now represent a bone fusion market of approximately 165,000 fusions. With improving fixation methods, success rates have improved across these applications.

Limitations of Existing Solutions

Although success rates for orthopedic and spinal fusion have improved, inadequate bone healing remains one of the leading causes of failure for any fusion procedure. Fusion is especially challenging in patients who have underlying healing deficiencies because of such comorbidities as diabetes and obesity.

The addition of a bone material to sites of fixation for repair of defects or for creating fusion acts synergistically with hardware devices to enhance and accelerate the achievement of boney union. Autologous bone, which is harvested from the patient, is considered the gold standard for bone fusions. However, obtaining sufficient autologous material may not always be possible, may not yield good quality material, may cause donor site morbidity and pain and has an additional cost associated with its harvest.

Bone morphogenetic protein-2, or BMP-2, is currently the only FDA-approved osteoinductive growth factor for use as a bone graft substitute. However, with increasing clinical use of BMP-2, a growing and well-documented side effect profile has emerged. This profile includes postoperative inflammation and associated adverse effects, bone formation in unusual locations, bone resorption and inappropriate formation of fat cells.

Human graft products, sourced from a different individual than the patient receiving the tissue, are called allografts. These allograft products are typically processed using techniques that damage the extracellular matrix and induce cellular apoptosis, which results in premature cellular death. This cellular death results in less cells, prevents osteogenic differentiation and impedes the activity of osteoblasts, cells which form new bone. Synthetic materials and damaged allogenic bone lack or have diminished osteogenic properties.

Our Solution

Our bone regenerative products are processed by a proprietary method designed to protect and preserve the native bone cells (osteogenic) needed for bone formation and to decelerate cell apoptosis. Our products, besides being osteogenic, are also osteoinductive (ability to recruit cells and to signal the need for bone formation) and osteoconductive (three-dimensional scaffold appropriate for bone formation). These products, which have handling properties that support their placement by the surgeon and their integration with the patient's bone, are intended for use in patients mainly receiving orthopedic and spinal implants to enhance the bone repair process and include FiberCel, ViBone and OsteGro V, all of which are viable, cellular bone matrices.

FiberCel is a fiber-based bone repair product made from human tissue and engineered to be like natural tissue. It is marketed for use in orthopedic or reconstructive bone grafting procedures in combination with autologous bone or other forms of allograft bone or alone as a bone graft. FiberCel provides handling properties that are critical for use as a bone void filler in various orthopedic and spinal procedures. FiberCel contains cancellous bone particles with preserved living cells and demineralized cortical bone fibers to facilitate bone repair and healing.

ViBone is a particle-based bone repair product designed to perform and handle in a manner similar to an autograft and is marketed for use as allograft bone. ViBone contains cancellous and demineralized cortical bone particles.

OsteGro V, our newest product, leverages our proprietary process designed to protect and preserve native bone cells. OsteGro V is marketed for use for the repair, replacement or reconstruction of bone defects and contains cancellous bone particles as well as demineralized cortical bone particles and fibers designed to enhance product handling.

Products	Description	Regulatory Pathway
FiberCel, ViBone, and OsteGro V 	Allografts that perform and handle similarly to an autograft as a result of proprietary processing designed to protect the tissue environment and the cells	HCT/Ps

Development Pipeline

We are currently developing new bone fusion and repair products that offer features that we believe are either an improvement to currently available technologies or offer new features or enhancements, such as improved delivery or handling properties. These products are currently in development, and we expect these products to be regulated by the FDA as HCT/Ps.

Commercial Approach

Our commercial approach to the orthopedic/spinal repair market has been to leverage commercial partners with existing sales and marketing infrastructure in these areas, while we focus on research and development and the manufacturing of products. We currently have agreements in place with Medtronic, which acts as our commercial partner for FiberCel, and Surgalign Holdings, which acts as our commercial partner for ViBone. Under the terms of those agreements, Medtronic and Surgalign Holdings purchase products from us at specified prices and resell such products in the United States to the primary customers, which are hospitals and other healthcare facilities. We fulfill all orders from Medtronic and Surgalign Holdings by shipping these products directly to these hospitals and other healthcare facilities. We have several sales agreements with other commercial partners for OsteGro V, serving the orthopedic, spinal and dental markets.

Soft Tissue Reconstruction Market

Market Opportunity

According to certain third-party estimates, there were more than 100,000 procedures in the United States in 2019 using biologic matrices for plastic and reconstructive surgery, which constituted an approximately

$500 million market. Such surgery is performed to treat structures of the human body that are affected aesthetically or functionally due to defects, abnormalities, trauma, infection, burns, tumors or disease. Plastic and reconstructive surgery is generally performed to improve function and ability, but it may also be performed to achieve a more natural appearance of the affected anatomical structure. Clinical practice of plastic and reconstructive surgery includes excision of tumors of the skin, vasculature, chest, oral and oropharyngeal cavities and extremities and reconstructions of the same; debridement, skin grafting and skin flaps for burn reconstructions; trauma surgery for the hands, upper and lower limbs and facial region; congenital or acquired malformations related to the hands, face, skull and jaw; surgical removal of vascular abnormalities; a range of aesthetic surgeries; and reconstructions of the breast, which is one of the most common applications of biologic matrices.

Limitations of Existing Solutions

Autologous tissue repair procedures are options for stabilizing soft tissue defects in various applications. However, these methods have limitations. The procedure may not be surgically feasible or the patient may decline its use. In addition, autologous tissue reconstruction may cause complications, such as infection, extended recovery and healing time, loss of sensation or weakness at the donor site and prolonged time under anesthesia during surgery.

Synthetic products provide a substitute when autologous reconstruction is not feasible or desired. Yet, they too have their limitations. Implantation of products not recognized by the body as “self” may trigger a foreign body reaction. The result of this signaling cascade is encapsulation of the foreign body in fibrotic tissue, which may impede tissue healing and cause pain or other complications. Other major issues are damage to the surrounding soft tissue, altering of the mechanical properties or appearance of the original tissue and increased risk of infection. Active infections are also typically a contraindication to using a synthetic graft.

HADM products offer an “off the shelf” biologic choice for reconstructive procedures, but they have their own limitations. The use of harsh chemicals to remove the cells can damage the extracellular matrix. The products can lack uniformity as determined by pliability in each direction, elasticity and non-uniform thickness. Such issues can affect how rapidly and the extent to which the implant is integrated, as well as the resulting tissue strength. In addition, there is a limited availability in larger sizes for some of these products.

Our Solution

SimpliDerm was designed to offer improved biocompatibility and better functioning in the patient. It is marketed for use for the repair or replacement of damaged or insufficient integumental tissue or for the repair, reinforcement or supplemental support of soft tissue defects or any other homologous use of human integument. SimpliDerm a pre-hydrated, HADM manufactured with our patented cell removal technology, a process that maintains the biological and structural integrity of the tissue’s extracellular matrix components and is designed to allow for rapid integration, cellular repopulation and revascularization at the surgical site. Its structurally intact extracellular matrix is designed to closely resemble that which occurs naturally.

Product	Description	Regulatory Pathway
SimpliDerm 	Hydrated human acellular dermis designed to be used for repair or replacement of damaged or inadequate integumental tissue	HCT/P

Development Pipeline

One of the most common applications of biologic matrices in plastic and reconstructive surgery is breast reconstruction surgery during or after mastectomy. Mastectomy is a method of tumor removal for breast cancer in which all breast tissue, including the cancerous cells, is surgically removed. In the United States in 2019, there were more than 100,000 post-mastectomy breast reconstructions, of which

approximately 68% were bilateral operations, that is, both breasts were reconstructed. Breast reconstruction surgery is a surgical procedure generally used to restore a breast to near normal shape and appearance, following a mastectomy, and can be performed using either a prosthetic breast implant, referred to as implant-based reconstruction, or the patient's own tissue, referred to as autologous reconstruction. Additional reconstructive surgeries may be required following the initial breast reconstruction, including breast lift, also known as mastopexy, or breast revision surgery, in which the surgeon adjusts the position and shape of the breast.

In 2019, plastic surgeons used HADMs in approximately 66,000 women (approximately 109,000 breasts). The use of these materials is well-characterized in the clinical literature and recommended by recent U.S. and European consensus guidelines for certain surgical techniques. However, as of June 2020, no biologic matrix or any other soft tissue reinforcement material, including our product, has been approved or cleared by the FDA specifically for use in breast reconstruction surgery.

Breast implants are generally placed below the pectoral muscle, known as subpectoral positioning. This approach has limitations, such as decreased arm strength, muscle spasms, animation deformities, implant movement and pain. Changes in mastectomy techniques, including the preservation of more sub-dermal tissue on skin flaps, as well as advances in fat grafting and the availability of acellular dermal matrix, or ADM, for augmenting the tissue pocket have all created the opportunity to place the implant above the pectoral muscle, known as prepectoral positioning, and, in doing so, address complications arising from subpectoral placement. While the use of ADM is a key enabler for these prepectoral procedures, the sizes of ADMs required for these procedures may be three to four times the magnitude used for subpectoral reconstructions, exposing the patient to greater quantities of ADM and adding proportional additional expense to the procedure. Our goal is to develop SimpliDerm for these prepectoral procedures in larger size pieces with possibly reduced production costs. In addition, we plan to engage in discussions with the FDA regarding an Investigational Device Exemption, or IDE, clinical study protocol to study the safety and effectiveness of our SimpliDerm product, with the goal of obtaining FDA approval for use in prepectoral procedures.

Commercial Approach

SimpliDerm is sold through our direct sales force and independent sales agents to plastic and reconstructive surgeons. We ship the product directly to hospitals.

Our Non-Core Products: Contract Manufacturing

We fulfill tissue processing contracts through our contract manufacturing services at our Richmond, California facility in order to utilize as much as possible of the starting human biological material from which we produce our core orthopedic/spinal repair and soft tissue reconstruction products, leverage our existing overhead and improve our cash flow. The resulting processed materials, including particulate bone, precision milled bone, cellular bone matrix, acellular dermis and other soft tissue products, are sold to medical/surgical companies as finished products and as a subcomponent of their products. Additionally, we process amniotic membrane as finished product for select customers. We have multiple customers for most of our products and, as of June 30, 2020, more than 80% of our contracts were for a period of time of two years or more. We are seeking to increase our contract manufacturing sales with the goal that no one customer constitutes a predominate portion of our sales, that the average customer purchases numerous products and that the contracts are for multi-years. For the year ended December 31, 2019, our net sales from contract manufacturing was approximately $12.0 million, representing approximately 27.9% of our total net sales.

Clinical Data

We have accumulated a substantial body of clinical and pre-clinical data for our Core Products. We believe that the reported outcomes from our studies help to differentiate our Core Products in the marketplace.

Implantable Electronic Device

Pre-clinical Studies

In a pre-clinical rabbit model, the CanGaroo envelope was more successful in providing a barrier surrounding a cardiovascular implantable electronic device, or CIED, compared to a pacemaker canister

alone. Substantial tissue ingrowth was observed in the CanGaroo envelopes, which were observed to promote stabilization of the device when compared to implantation with only standard fixation methods, such as sutures through the CIED header or no fixation at all.

Clinical Studies

To evaluate our CanGaroo envelope, we have conducted two post-market studies involving 1,122 patients. We are also conducting a retrospective study of approximately 600 patients, and are planning to initiate an additional 30-patient retrospective study in the near term.

SECURE Study

The SECURE Study was a prospective, single arm, observational, post-market study assessing patients who underwent the implantation of a CIED in a CanGaroo envelope. The endpoints of the study were to determine: (a) the proportion of patients with CanGaroo-related adverse events and (b) the incidence of major infections observed in the pocket. A total of 1,026 patients were enrolled at 39 centers. The mean number of risk factors for CIED complications was 2.2 and the most common risk factors included congestive heart failure, obesity, device replacement/revision, diabetes and use of an oral systemic anticoagulant. There were 16 patients categorized as having had possible (n=14, 1.4%) and probable (n=2, 0.2%) CanGaroo-related events. Fourteen (1.4%) were in the former and two (0.2%) were in the latter category. The specific treatment-related adverse events included the following: one fever (0.1%); five hematomas (0.5%); one implantable cardiac device pocket erosion (0.1%); one pain (0.1%); four major pocket infections (0.4%); one superficial cellulitis (0.1%); and three superficial CIED infections (0.3%). In the total study population, twelve (1.2%) patients developed a major pocket infection. Even though migration was not an endpoint in the study, no such events were reported.

A total of 231 patients received CanGaroo envelopes hydrated in an antibiotic solution containing gentamicin. The hydration solution was not recorded for nine patients enrolled in the study. The remaining 786 patients received a CanGaroo envelope hydrated in saline alone or with another antibiotic. A post-hoc, subgroup analysis of the SECURE Study data prepared for the 2020 Heart Rhythm Society scientific sessions showed that after a mean follow-up time of 267 ± 180 days, the pocket infection rate was 0% in subjects with envelopes hydrated in a solution containing gentamicin (n = 73) and 0.6% in the subset of patients who received envelopes hydrated only with saline (n = 160).

We believe these results provide evidence supporting the safety of the CanGaroo envelope when used for the implantation of CIEDs in humans.

CARE Study

The CARE Study was a retrospective, consecutive case series, post market study. Data from 96 consecutive patients, who underwent simultaneous CIED and CanGaroo envelope implantation at a single institution, were retrospectively reviewed for the occurrence of CIED-related complications and infection over a three-month follow-up period of time. All envelopes were hydrated using sterile saline prior to implantation. The most common risk factors among enrolled patients included systemic anticoagulants, obesity, diabetes, congestive heart failure and renal insufficiency.

After a mean follow-up time of 98 ± 64 days, five patients (5.2%) developed a hematoma requiring intervention, and one patient (1.1%) developed a pocket infection. None of these events were deemed to be related to the CanGaroo envelope.

The low rates of CanGaroo envelope complications observed in the CARE Study support the safety of the product when used in a human CIED implantation.

CARE Plus Study

The recently initiated CARE Plus Study is an ongoing retrospective cohort study of the outcomes in patients who received a CanGaroo envelope, Medtronic’s synthetic TYRX envelope or no envelope during their CIED implantation. Planned assessments will evaluate adverse patient outcomes and any adverse events that occurred following implantation. The study is being conducted at a single site with an estimated 600 patients to be evaluated.

HEAL Study

The HEAL Study is a planned, retrospective cohort study of 30 CIED patients who are presenting for their latest reoperation after a previous implantation. Patients evaluated in the study will be from one of three cohorts based on whether a CanGaroo envelope, Medtronic's synthetic TYRX envelope or no envelope was used during the prior implantation. At reoperation, the current implant pockets of the patients will be examined and compared by a blinded histological biopsy and visually by using photographs.

Orthopedic/Spinal Repair

Pre-clinical Studies

In vitro and in vivo characterization studies were conducted to compare whether the manufacturing processes for our viable bone matrices improve certain product characteristics versus traditional viable bone matrix manufacturing processes. The characteristics evaluated addressed the three key elements for bone formation: osteogenesis, osteoconduction and osteoinduction. The assays included those for apoptosis, cell proliferation, osteogenic potential and osteoinduction, as well as for specific bone morphogenic proteins, bone formation factors, alkaline phosphatase and chemotaxis. Compared to viable bone matrices prepared with traditional processing methods, our viable bone matrices were superior in all of the characteristics examined, including less cell death. For example, ViBone exhibited 58% less apoptosis and had a 2.1-fold greater cell proliferation capability as compared to allografts processed by traditional methods. The cells from ViBone produced increased levels of the bone forming protein markers osteocalcin (20%), osteopontin (50%) and collagen type 1 (40%), when incubated in osteogenic cell culture media, compared to traditionally processed allografts, suggesting greater osteogenic potential. ViBone was tested for osteoinductive properties and was observed to have 9.1-fold higher levels of bone morphogenic protein 2 and 3.8-fold higher levels of bone morphogenic protein 7 than traditionally processed allografts. Additional growth factor testing for ViBone demonstrated higher amounts of transforming growth factor beta 1 (10.8-fold); insulin-like growth factor 1 (9.5-fold); and basic fibroblast growth factor (4.1-fold). An alkaline phosphatase, or ALP, assay was used as an indicator to determine cellular activity after exposure to C2C12 cells, which are model cells used for evaluating differentiation to bone forming cells. The ALP activity of cells exposed to ViBone was 6.1-fold greater than traditionally processed allografts. Also, there was a 1.9-fold increase in chemotaxis, or stem cell migration, toward ViBone as compared to traditionally processed allografts, supporting ViBone's enhanced osteoinductive properties. In order to evaluate the osteoinductivity in vivo, ViBone was implanted in athymic rats. At 28 days, new bone formation was observed.

Clinical Studies

A prospective, post-market clinical study was conducted to evaluate outcomes in patients undergoing cervical or lumbar interbody fusion surgery using ViBone. Fifty patients were enrolled in the cervical and lumbar groups and followed for 12 months post-procedure. An interim analysis was conducted on the first eight subjects who underwent cervical fusion and completed their 12-month visit. This study is ongoing and interim results showed a decrease in neck pain compared to the baseline. For the patients reviewed as of September 30, 2019, all patients displayed either fusion or probable fusion at the surgery site.

As of September 30, 2019, investigators had published the interim analysis for eight patients. Two subjects underwent a single-level procedure, and six subjects underwent multiple-level procedures, totaling 14 levels of treatment. The average reduction in neck pain at 12 months versus baseline was 46.1% for subjects who underwent a single-level procedure and 36.1% for subjects who underwent multiple-level procedures, each as measured by the Neck Disability Index and the Visual Analog Scale. The X-rays showed that 10 out of 14 levels displayed solid fusion. The other four levels showed probable fusion. There were no reports of serious device- or procedure-related adverse events.

Soft Tissue Reconstruction

Pre-clinical Studies

In vitro studies were conducted to evaluate and compare SimpliDerm to native human dermis and two other commercially available HADMs, in terms of morphological structure, composition, physical characteristics and chemical and thermal stability. Histological slides of SimpliDerm and native dermal matrix were prepared for microscopic examination, using hematoxylin and eosin, or H&E, Verhoff-Van

Gieson, or VVG, and collagen type IV stains. Stained samples of SimpliDerm retained the collagen structure (density and orientation), elastin, blood vessels and basement membrane complex that was observed in the native dermal matrix. Transmission electron microscopy demonstrated intact collagen fibril structures in native dermis and SimpliDerm, supporting the conclusion that the decellularization process used to produce SimpliDerm did not damage the ultrastructural architecture of the collagen matrix.

Additional testing was performed that compared the properties of SimpliDerm, AlloDerm RTU and DermACELL to native Dermis. These tests included Glycosaminoglycan content, matrix protein stability and differential scanning calorimetry. The glycosaminoglycan content of SimpliDerm and Alloderm RTU was similar, with a substantial reduction in the amount of glycosaminoglycans observed in DermACELL. Matrix protein stability was evaluated by determining acid-soluble collagen content and by performing collagenase degradation on the product samples. SimpliDerm was closest to native dermal matrix in both acid-soluble collagen content and collagenase degradation. Differential scanning calorimetry was performed on the samples, and SimpliDerm and AlloDerm RTU were equivalently close to native dermis, while DermACELL showed the largest difference. The combined testing indicates that SimpliDerm had a structurally intact matrix that was closest overall to native human dermis among the HADMs evaluated.

In addition, a non-human primate study was conducted evaluating the ability of SimpliDerm and AlloDerm RTU to regenerate host tissue two weeks, four weeks and three months after implantation. Explanted samples were subjected to analysis that included histology, growth factor analysis and gene expression characterization. H&E and VVG stains and staining for macrosialin, or CD68, were used to prepare tissue samples for microscopic observation. AlloDerm RTU samples demonstrated faster implant degradation and cell infiltration, and more inflammatory cells than SimpliDerm. Growth factor analysis of samples for tumor necrosis factor, an indicator for an inflammatory environment, was higher for AlloDerm RTU than SimpliDerm at three months. Gene expression analysis was performed for samples at all time points. Markers for evidence of an inflammatory response to the implants, including collagen synthesis, vascularization, fibrosis, myofibroblast presence and collagen crosslinking, were analyzed and compared. AlloDerm RTU was found to exhibit higher amounts of these inflammatory response markers. The histology, growth factor testing and gene expression data support the conclusion that compared to AlloDerm RTU, SimpliDerm showed less acute and chronic inflammation and less fibrosis, leading to a pro-remodeling microenvironment that promoted tissue repair and regeneration by three months post-implantation.

Clinical Studies

Currently, we are collecting clinical data in an Investigational Review Board, or IRB, approved, retrospective, multi-center study evaluating patients who have undergone breast reconstruction post-mastectomy with SimpliDerm and patients receiving other HADMs. These data will inform us as to the design of future clinical feasibility and pivotal studies to support potential regulatory applications for a breast reconstruction indication for SimpliDerm.

Competition

We operate in highly competitive markets that are subject to rapid technological change. Success in these markets depends primarily on product efficacy, ease of product use, product price, availability of payor coverage and adequate third-party reimbursement, customer support services for technical, clinical and reimbursement support and customer preference for, and loyalty to, the products.

We believe that the demonstrated clinical efficacy of our products, the breadth of our product portfolio, our in-house customer support services, our customer relationships and our reputation offer us advantages over our competitors.

Our Core Products compete primarily with implantable electronic device envelopes and other cardiovascular repair products, other orthobiologics and human-derived acellular dermis products. The CanGaroo envelope competes with the synthetic envelope TYRX from Medtronic. ProxiCor, Tyke and VasCure compete with bovine pericardium produced by numerous companies, including Gore’s Goretex and Terumo’s Vascutek. FiberCel, ViBone and OsteGro V compete with other viable bone matrices, such as Smith & Nephew’s Bio4, MTF’s Trinity ELITE, NuVasive’s OsteoCel, Vivex Biologics’ VIA Graft and LifeNet Health’s ViviGen. SimpliDerm competes primarily against human-derived acellular dermis matrix meshes, including AbbVie’s AlloDerm, Surgalign Holdings’ Cortiva, Stryker’s DermACELL and

Ethicon's FlexHD. SimpliDerm also competes against animal-derived biological mesh products, such as AbbVie's Strattice and Integra's SurgiMend, as well as various synthetic mesh products.

We also compete in the marketplace to recruit and retain qualified scientific, management and sales personnel, as well as to acquire technologies and technology licenses complementary to our products or advantageous to our business.

Our competitors' products in the soft tissue repair market have been approved and available for use for multiple years. During this time, private payors have developed policies for coverage based on available data and literature. Third-party payors generally do not currently cover SimpliDerm or procedures using SimpliDerm.

We are aware of several companies that compete, or are developing technologies, in our current and future product areas. As a result, we expect competition to remain intense. Our ability to compete successfully will depend primarily on our ability to develop proprietary products that reach the market in a timely manner, are used in procedures that receive adequate payor coverage and reimbursement, are cost-effective, and are safe and effective, as well as our reputation in the market and success of our sales strategy. See "Risk Factors — Risks Related to Our Business — We face significant and continuing competition from other companies, some of which have longer operating histories, more established products and/or greater resources than we do, which could adversely affect our business, financial condition and results of operations."

Sales and Marketing

We have dedicated substantial resources to establishing a multi-faceted sales and marketing organization in the United States. We sell CanGaroo in the United States using our direct sales force and our commercial partners, Boston Scientific and Biotronik, which act as sales agents, marketing CanGaroo and obtaining orders, and give us access to approximately 1,400 sales representatives and clinical specialists to further expand our footprint and accelerate our sales. Under the terms of these agreements, Boston Scientific and Biotronik receive a commission equal to a specified dollar amount per unit sold. Our additional cardiovascular products, ProxiCor, Tyke and VasCure, are sold using our direct sales force and other independent sales agents. Our commercial approach to the orthopedic/spinal repair market has been to leverage commercial partners with existing sales and marketing infrastructure in these areas, while we focus on research and development and the manufacturing of products. We currently have agreements in place with Medtronic, which acts as our commercial partner for FiberCel, and Surgalign Holdings, which acts as our commercial partner for ViBone. Under the terms of these agreements, Medtronic and Surgalign Holdings purchase products from us at a specified price and resell such products in the United States to the primary customers, which are hospitals and other healthcare facilities. We fulfill all orders from Medtronic and Surgalign Holdings by shipping these products directly to these hospitals and healthcare facilities. We have several sales agreements with other commercial partners for OsteGro V. SimpliDerm, our soft tissue reconstruction product, is sold using our direct sales force and independent sales agents. As of June 30, 2020, we had 27 direct sales representatives who focus on gaining additional market access and driving market penetration, not only by selling our products, but also, where appropriate, by managing our commercial partners and providing technical assistance for selling our products. These sales representatives are supported by teams of professionals focused on sales management, sales operations, ongoing training, analytics and marketing.

We have historically focused our market development and commercial activities primarily in the United States. However, we have obtained marketing registrations, developed commercial and distribution capabilities and are currently selling CanGaroo and cardiovascular products in several countries outside of the United States. Independent sales agents in Argentina, Australia, the European Economic Area, the European Union, Latin America, Kuwait, Mexico and Saudi Arabia sell our products. Sales generated in the United States represented greater than 95% of our net sales in 2019.

Research and Development

Our research and development team has extensive experience in developing regenerative medicine products and works to design products that are intended to improve patient outcomes, simplify techniques, shorten procedures, reduce hospitalization and rehabilitation times, and, as a result, reduce costs. We have recruited and retained staff with significant experience and skills, gained through both industry

experience and training at leading colleges and universities with regenerative medicine graduate programs. In addition to our internal staff, our external network of development laboratories, testing laboratories and physicians aids us in our research and development process.

Manufacturing and Suppliers

We manufacture our orthopedic/spinal repair and soft tissue reconstruction products in our Richmond, California facility. We manufacture CanGaroo and our cardiovascular products in our Roswell, Georgia facility and use Cook Biotech as our sole porcine tissue supplier for these products. We have significant expansion capabilities in our in-house manufacturing facilities. Cook Biotech has previously successfully expanded and, we believe, is well-positioned to support future expansion. However, they are our sole source, and we cannot guarantee that an interruption in supply will not occur. If necessary, we could engage an alternate supplier or set-up, validate and gain regulatory authorization to manufacture these products in our own facilities, although it would require significant time, expense and regulatory clearance.

We have robust internal compliance processes to maintain the high quality and reliability of our products. We use annual internal audits, combined with external audits by regulatory agencies and commercial partners to monitor our quality control practices. Our Roswell, Georgia and Richmond, California facilities are registered with the FDA as medical device and human cell and tissue manufacturing establishments, respectively. We are also accredited by the American Association of Tissue Banks, or AATB, and are licensed with several states per their tissue bank regulations.

We use third-party suppliers to support our internal manufacturing processes. We select our suppliers through a rigorous process to ensure high quality and reliability with the capacity to support our expanding production levels. Only raw material from approved suppliers is used in the manufacture of our products. To confirm quality and identify any risks, our approved suppliers are audited annually. To date, we have not experienced any significant difficulty locating and obtaining the suppliers or materials necessary to fulfill our production requirements.

Manufacture of all of our products is dependent on the availability of sufficient quantities of source tissue, which is the primary component of our products. Source tissue includes donated human tissue and porcine tissue. We acquire donated human tissue directly through tissue procurement firms engaged by us. Cook Biotech, our sole porcine tissue supplier, is registered with the FDA and ISO 13485 certified. Our processing of these tissues is, and our supplier sources are required to be, compliant with applicable FDA current Good Tissue Practice, or cGTP, regulations, AATB standards, international standards and U.S. Department of Agriculture, or USDA, requirements.

Intellectual Property

We rely on a combination of patents, trademarks, confidentiality agreements and security procedures to protect our proprietary products, preservation technology, trade secrets and know-how. We believe that our patents, trade secrets, trademarks and technology licensing rights provide us with important competitive advantages. We have also obtained additional rights through license agreements for additional products and technologies. As of June 30, 2020, we owned approximately 22 U.S. patents and seven U.S. patent applications and one foreign patent (in Australia) and five foreign patent applications (in Thailand, Hong Kong and India, as well as applications with the European Patent Office and the World Intellectual Property Organization), and we in-licensed three U.S. and four foreign patents (in Australia, Canada, Japan and Europe) and two U.S. and two foreign patent applications (in China, as well as an application with the European Patent Office). Our owned patent portfolio includes 11 U.S. patents and two U.S. patent applications that relate to our technology for CanGaroo, including issued claims covering biological envelopes and pending claims covering their use. In addition, we own one patent that relates to our technology for SimpliDerm that claims a method of preparing an acellular dermal matrix. Excluding any patent term adjustment or patent term extension, our issued patents relating to our technology for CanGaroo are anticipated to expire in 2027 and our issued patent that relates to our technology for SimpliDerm is anticipated to expire in 2033. There can be no assurance that any patent applications pending will ultimately be issued as patents. We do not own or in-license any patents or patent applications covering our other products.

As with other medical device and regenerative medicine companies, our ability to maintain and solidify our proprietary and intellectual property position for our product candidates will depend on our success

in obtaining effective patent claims and maintaining and enforcing claims that are granted. However, our owned and licensed patents could be invalidated or narrowed or otherwise fail to adequately protect our proprietary and intellectual property position and our pending owned and licensed patent applications, and any patent applications that we may in the future file or license from third parties may not result in the issuance of patents.

In addition, the term of individual issued patents depends upon the legal term for patents in the countries in which they are obtained. In most countries in which we have filed, including the United States, the patent term is 20 years from the earliest filing date of a non-provisional patent application. The life of a patent, and the protection it affords, is therefore limited and once the patent life of our issued patents have expired, we may face competition, including from other competing technologies. The term of a patent that covers a drug or biological product may also be eligible for patent term extension when FDA approval is granted for a portion of the term effectively lost as a result of the FDA regulatory review period, subject to certain limitations and provided statutory and regulatory requirements are met. Any such patent term extension can be for no more than five years, only one patent per approved product can be extended, the extension cannot extend the total patent term beyond 14 years from approval, and only those claims covering the approved drug or biological product, a method for using it or a method for manufacturing it may be extended. We may not receive an extension if we fail to exercise due diligence during the testing phase or regulatory review process, fail to apply within applicable deadlines, fail to apply prior to expiration of relevant patents or otherwise fail to satisfy applicable requirements. Moreover, the length of the extension could be less than we request. In the future, we expect to apply for patent term extensions on certain issued patents covering our products, depending upon the length of the clinical trials for each product and other factors. There can be no assurance that we will benefit from any patent term extension or favorable adjustment to the term of any of our patents. As a result, our owned and licensed patent portfolio may not provide us with sufficient rights to exclude others from commercializing products similar or identical to ours. For more information, see “Risk Factors — Risks Related to Intellectual Property”.

As of June 30, 2020, we had 19 registered trademarks and one pending trademark application worldwide, including trademark registrations for “Aziyo,” “CanGaroo,” “ProxiCor,” “Tyke,” “VasCure,” “FiberCel,” “ViBone,” “OsteGro” and “SimpliDerm” in the United States, and trademark registrations for CanGaroo in the European Union and Japan. Our agreement with Medtronic grants them an exclusive license to use the “FiberCel” name and associated trademarks in the United States during the term of the agreement. The agreement also grants to Medtronic the exclusive right to purchase all worldwide rights (including registrations) to the “FiberCel” name and associated trademarks upon the expiration or termination of the agreement on the terms and subject to certain conditions set forth therein.

We have confidentiality agreements with our employees, consultants, independent sales agents and third-party vendors to maintain the confidentiality of our trade secrets and proprietary information. There can be no assurance that the obligations of our employees, consultants, independent sales agents and third-parties, with whom we have entered into confidentiality agreements, will effectively prevent disclosure of our confidential information or provide meaningful protection for our confidential information if there is unauthorized use or disclosure, or that our trade secrets or proprietary information will not be independently developed by our competitors. See “Risk Factors — Risks Related to Intellectual Property” for additional information regarding these and other risks related to our intellectual property portfolio and their potential effect on us.

License Agreement with Cook Biotech

On May 31, 2017, we entered into a license agreement, which we refer to as the Cook License Agreement, with Cook Biotech Incorporated, or Cook Biotech, under which Cook Biotech granted to us an exclusive worldwide sublicensable license under certain licensed patents to make, have made, use, offer for sale, sell and import CorMatrix ECM for Pericardial Closure, CorMatrix ECM for Cardiac Tissue Repair, CorMatrix ECM for Carotid Repair, CorMatrix ECM for Vascular Repair, TYKE Patch, Pledget and Intracardiac, and CanGaroo ECM Envelope (into which implantable cardiac pacemaker or defibrillator devices are to be inserted) in certain fields of use related to our business. Cook Biotech retained certain co-exclusive rights to the CorMatrix ECM for Vascular Repair. The Cook License Agreement was amended on December 21, 2017 to expand our field of use for SIS pouch devices to include other implantable

electronic cardiac stimulation devices, electronic neurostimulation devices for deep brain stimulation, spinal nerve and sacral nerve stimulation to relieve chronic pain and nerve stimulation to control bladder, digestive, abdomen and bowel movements, and also add additional payment requirements.

Under the Cook License Agreement, we agree to use commercially reasonable efforts to promote, solicit and expand the licensed products in our fields of use. We are subject to a minimum purchase requirement for the SIS ECM for the fields of use added in connection with the December 21, 2017 amendment, or the Subfields, and certain diligence obligations for commercial sales in the Subfields. The license requires that we order and pay for a minimum of at least $500,000 of SIS ECM per calendar year for use in the Subfields. Cook Biotech has the right to terminate the license granted to us in the Subfields or convert such license to a non-exclusive license, if we fail to comply with such minimum purchase requirement or diligence obligations. We have the first right, but not the obligation to initiate legal proceedings against any patent infringement in our fields of use by a third-party product that is the same as one of the licensed products.

Under the Cook License Agreement and SIS Material Supply Agreement, Cook Biotech is the exclusive supplier of the SIS ECM used in the licensed products. Under certain circumstances we will have the right to manufacture the SIS ECM used in the licensed products, provided that in such cases we are required to pay Cook Biotech a low single digit royalty on net sales of the licensed products that include the SIS ECM material manufactured by us and that are covered by a valid enforceable claim of a licensed patent.

As consideration for the license, we paid Cook Biotech a $200,000 license fee in 2018 and a $100,000 license fee in 2019, and are responsible for a yearly license fee of $100,000 until 2026. Upon a change in control transaction, which includes an acquisition of 50% or more of our then outstanding capital stock, we will be responsible to pay Cook Biotech the total amount of all license fees that have not yet been paid within a specified period after the consummation of such change in control transaction.

The Cook License Agreement continues in effect until the date of expiration of the last to expire of the licensed patents, including any renewals or extensions. The expiration date for the last to expire of the licensed patents is currently expected to be 2031 (excluding any patent term adjustments or extensions). Either party may terminate the Cook License Agreement for any material breach by the other party uncured within a specified period. In addition, the Cook License Agreement terminates automatically if we no longer possess the rights to the licensed products sold by CorMatrix related to the CorMatrix Acquisition. Cook Biotech has the right to terminate the Cook License Agreement in its entirety, or convert the exclusive license of any field of use to a non-exclusive license if we fail to make any license fee when due.

Regulatory Matters

Government Regulation

Our products and our operations are subject to extensive regulation by the FDA and other federal and state authorities in the United States, as well as comparable authorities in any foreign jurisdictions in which we market our products. In the United States, our products are subject to regulation as medical devices under the Federal Food, Drug, and Cosmetic Act, or FDCA, or as biological products or HCT/Ps under the Public Health Service Act, or PHSA, each as implemented and enforced by the FDA. The FDA and other United States and foreign governmental agencies regulate, among other things, the development, design, nonclinical and clinical research, manufacturing, safety, efficacy, labeling, packaging, storage, installation, servicing, recordkeeping, premarket clearance or approval, import, export, adverse event reporting, advertising, promotion, marketing and distribution, and import and export of medical devices and biological products to ensure that such products distributed domestically are safe and effective for their intended uses and otherwise meet the requirements of the FDCA or PHSA.

FDA Premarket Clearance and Approval Requirements

Unless an exemption applies, each medical device commercially distributed in the United States requires either FDA clearance of a 510(k) premarket notification, or approval of a premarket approval, or PMA, application. Under the FDCA, medical devices are classified into one of three classes — Class I, Class II or Class III — depending on the degree of risk associated with each medical device and the extent of manufacturer and regulatory control needed to ensure its safety and effectiveness. Class I includes devices

with the lowest risk to the patient and are those for which safety and effectiveness can be assured by adherence to the FDA's General Controls for medical devices, which include compliance with the applicable portions of the Quality System Regulation, or QSR, facility registration and product listing, reporting of adverse medical events, and truthful and non-misleading labeling, advertising, and promotional materials. Class II devices are subject to the FDA's General Controls, and special controls as deemed necessary by the FDA to ensure the safety and effectiveness of the device. These special controls can include performance standards, post-market surveillance, patient registries and FDA guidance documents.

While most Class I devices are exempt from the 510(k) premarket notification requirement, manufacturers of most Class II devices are required to submit to the FDA a premarket notification under Section 510(k) of the FDCA requesting permission to commercially distribute the device. The FDA's permission to commercially distribute a device subject to a 510(k) premarket notification is generally known as 510(k) clearance. Devices deemed by the FDA to pose the greatest risks, such as life sustaining, life supporting or some implantable devices, or devices that have a new intended use, or use advanced technology that is not substantially equivalent to that of a legally marketed device, are placed in Class III, requiring approval of a PMA. Some pre-amendment devices are unclassified, but are subject to FDA's premarket notification and clearance process in order to be commercially distributed.

510(k) Clearance Marketing Pathway

Certain of our ECM products are subject to premarket notification and clearance under section 510(k) of the FDCA. To obtain 510(k) clearance, a product sponsor must submit to the FDA a premarket notification submission demonstrating that the proposed device is "substantially equivalent" to a predicate device already on the market. A predicate device is a legally marketed device that is not subject to premarket approval, i.e., a device that was legally marketed prior to May 28, 1976 and for which a PMA is not required, a device that has been reclassified from Class III to Class II or I, or a device that was found substantially equivalent through the 510(k) process. The FDA's 510(k) clearance process usually takes from three to twelve months, but often takes longer. The FDA may require additional information, including clinical data, to make a determination regarding substantial equivalence. In addition, FDA collects user fees for certain medical device submissions and annual fees and for medical device establishments. If the FDA agrees that the device is substantially equivalent to a predicate device currently on the market, it will grant 510(k) clearance to commercially market the device. If the FDA determines that the device is "not substantially equivalent" to a previously cleared device, the device is automatically designated as a Class III device. The device sponsor must then fulfill more rigorous PMA requirements, or can request a risk-based classification determination for the device in accordance with the "*de novo*" process, which is a route to market for novel medical devices that are low to moderate risk and are not substantially equivalent to a predicate device.

After a device receives 510(k) marketing clearance, any modification that could significantly affect its safety or effectiveness, or that would constitute a major change or modification in its intended use, will require a new 510(k) clearance or, depending on the modification, PMA approval or *de novo* reclassification. The FDA requires each manufacturer to determine whether the proposed change requires submission of a 510(k), *de novo* request or a PMA in the first instance, but the FDA can review any such decision and disagree with a manufacturer's determination. If the FDA disagrees with a manufacturer's determination, the FDA can require the manufacturer to cease marketing and/or request the recall of the modified device until 510(k) marketing clearance or until PMA approval is obtained or a *de novo* request is granted. Also, in these circumstances, the manufacturer may be subject to significant regulatory fines or penalties.

Over the last several years, the FDA has proposed reforms to its 510(k) clearance process, and such proposals could include increased requirements for clinical data and a longer review period, or could make it more difficult for manufacturers to utilize the 510(k) clearance process for their products. For example, in November 2018, FDA officials announced forthcoming steps that the FDA intends to take to modernize the premarket notification pathway under Section 510(k) of the FDCA. Among other things, the FDA announced that it planned to develop proposals to drive manufacturers utilizing the 510(k) pathway toward the use of newer predicates. These proposals included plans to potentially sunset certain older devices that were used as predicates under the 510(k) clearance pathway, and to potentially publish a list of devices that have been cleared on the basis of demonstrated substantial equivalence to predicate devices that are more than 10 years old. In May 2019, the FDA solicited public feedback on these

proposals. The FDA requested public feedback on whether it should consider certain actions that might require new authority, such as whether to sunset certain older devices that were used as predicates under the 510(k) clearance pathway. These proposals have not yet been finalized or adopted, and the FDA may work with Congress to implement such proposals through legislation.

More recently, in September 2019, the FDA finalized guidance describing an optional "safety and performance based" premarket review pathway for manufacturers of "certain, well-understood device types" to demonstrate substantial equivalence under the 510(k) clearance pathway by showing that such device meets objective safety and performance criteria established by the FDA, thereby obviating the need for manufacturers to compare the safety and performance of their medical devices to specific predicate devices in the clearance process. The FDA intends to develop and maintain a list of device types appropriate for the "safety and performance based" pathway and will continue to develop product-specific guidance documents that identify the performance criteria for each such device type, as well as the testing methods recommended in the guidance documents, where feasible.

PMA Approval Pathway

Class III devices require PMA approval before they can be marketed, although some pre-amendment Class III devices for which FDA has not yet required a PMA are cleared through the 510(k) process. The PMA process is more demanding than the 510(k) premarket notification process. In a PMA, the manufacturer must demonstrate that the device is safe and effective, and the PMA must be supported by extensive data, including data from pre-clinical studies and human clinical trials. The PMA must also contain a full description of the device and its components, a full description of the methods, facilities, and controls used for manufacturing, and proposed labeling. Following receipt of a PMA, the FDA determines whether the application is sufficiently complete to permit a substantive review. If FDA accepts the application for review, it has 180 days under the FDCA to complete its review of a PMA, although in practice, the FDA's review often takes significantly longer, and can take up to several years. An advisory panel of experts from outside the FDA may be convened to review and evaluate the application and provide recommendations to the FDA as to the approvability of the device. The FDA may or may not accept the panel's recommendation. In addition, the FDA will generally conduct a pre-approval inspection of the applicant or its third-party manufacturers' or suppliers' manufacturing facility or facilities to ensure compliance with the QSR.

The FDA will approve the new device for commercial distribution if it determines that the data and information in the PMA constitute valid scientific evidence and that there is reasonable assurance that the device is safe and effective for its intended use(s). The FDA may approve a PMA with post-approval conditions intended to ensure the safety and effectiveness of the device, including, among other things, restrictions on labeling, promotion, sale and distribution, and collection of long-term follow-up data from patients in the clinical study that supported PMA approval or requirements to conduct additional clinical studies post-approval. The FDA may condition PMA approval on some form of post-market surveillance when deemed necessary to protect the public health or to provide additional safety and efficacy data for the device in a larger population or for a longer period of use. In such cases, the manufacturer might be required to follow certain patient groups for a number of years and to make periodic reports to the FDA on the clinical status of those patients. Failure to comply with the conditions of approval can result in material adverse enforcement action, including withdrawal of the approval.

Certain changes to an approved device, such as changes in manufacturing facilities, methods, or quality control procedures, or changes in the design performance specifications, which affect the safety or effectiveness of the device, require submission of a PMA supplement. PMA supplements often require submission of the same type of information as a PMA, except that the supplement is limited to information needed to support any changes from the device covered by the original PMA and may not require as extensive clinical data or the convening of an advisory panel. Certain other changes to an approved device require the submission of a new PMA, such as when the design change causes a different intended use, mode of operation, and technical basis of operation, or when the design change is so significant that a new generation of the device will be developed, and the data that were submitted with the original PMA are not applicable for the change in demonstrating a reasonable assurance of safety and effectiveness.

None of our products are currently marketed pursuant to a PMA, though we may decide to seek a PMA for our SimpliDerm product for use in breast reconstruction indications.

Clinical Trials

Clinical trials are almost always required to support a PMA and are sometimes required to support a 510(k) submission. All clinical investigations of devices to determine safety and effectiveness must be conducted in accordance with the FDA's IDE regulations which govern investigational device labeling, prohibit promotion of the investigational device, and specify an array of recordkeeping, reporting and monitoring responsibilities of study sponsors and study investigators. If the device presents a "significant risk," to human health, as defined by the FDA, the FDA requires the device sponsor to submit an IDE application to the FDA, which must become effective prior to commencing human clinical trials. If the device under evaluation does not present a significant risk to human health, then the device sponsor is not required to submit an IDE application to the FDA before initiating human clinical trials, but must still comply with abbreviated IDE requirements when conducting such trials. A significant risk device is one that presents a potential for serious risk to the health, safety or welfare of a patient and either is implanted, used in supporting or sustaining human life, substantially important in diagnosing, curing, mitigating or treating disease or otherwise preventing impairment of human health, or otherwise presents a potential for serious risk to a subject. An IDE application must be supported by appropriate data, such as animal and laboratory test results, showing that it is safe to test the device in humans and that the testing protocol is scientifically sound. The IDE will automatically become effective 30 days after receipt by the FDA unless the FDA notifies the company that the investigation may not begin. If the FDA determines that there are deficiencies or other concerns with an IDE for which it requires modification, the FDA may permit a clinical trial to proceed under a conditional approval.

Regardless of the degree of risk presented by the medical device, clinical studies must be approved by, and conducted under the oversight of, an IRB for each clinical site. The IRB is responsible for the initial and continuing review of the IDE, and may pose additional requirements for the conduct of the study. If an IDE application is approved by the FDA and one or more IRBs, human clinical trials may begin at a specific number of investigational sites with a specific number of patients, as approved by the FDA. If the device presents a non-significant risk to the patient, a sponsor may begin the clinical trial after obtaining approval for the trial by one or more IRBs without separate approval from the FDA, but must still follow abbreviated IDE requirements, such as monitoring the investigation, ensuring that the investigators obtain informed consent, and labeling and record-keeping requirements. Acceptance of an IDE application for review does not guarantee that the FDA will allow the IDE to become effective and, if it does become effective, the FDA may or may not determine that the data derived from the trials support the safety and effectiveness of the device or warrant the continuation of clinical trials. An IDE supplement must be submitted to, and approved by, the FDA before a sponsor or investigator may make a change to the investigational plan that may affect its scientific soundness, study plan or the rights, safety or welfare of human subjects.

During a study, the sponsor is required to comply with the applicable FDA requirements, including, for example, trial monitoring, selecting clinical investigators and providing them with the investigational plan, ensuring IRB review, adverse event reporting, record keeping and prohibitions on the promotion of investigational devices or on making safety or effectiveness claims for them. The clinical investigators in the clinical study are also subject to FDA's regulations and must obtain patient informed consent, rigorously follow the investigational plan and study protocol, control the disposition of the investigational device, and comply with all reporting and recordkeeping requirements. Additionally, after a trial begins, we, the FDA or the IRB could suspend or terminate a clinical trial at any time for various reasons, including a belief that the risks to study subjects outweigh the anticipated benefits.

Post-market Regulation

After a device is cleared or approved for marketing, numerous and pervasive regulatory requirements continue to apply. These include:

- establishment registration and device listing with the FDA;
- QSR requirements, which require manufacturers, including third-party manufacturers, to follow stringent design, testing, control, documentation and other quality assurance procedures during all aspects of the design and manufacturing process;

- labeling regulations and FDA prohibitions against the promotion of investigational products, or the promotion of "off-label" uses of cleared or approved products;
- requirements related to promotional activities;
- clearance or approval of product modifications to 510(k)-cleared devices that could significantly affect safety or effectiveness or that would constitute a major change in intended use of one of our cleared devices, or approval of certain modifications to PMA-approved devices;
- medical device reporting regulations, which require that a manufacturer report to the FDA if a device it markets may have caused or contributed to a death or serious injury, or has malfunctioned and the device or a similar device that it markets would be likely to cause or contribute to a death or serious injury, if the malfunction were to recur;
- correction, removal and recall reporting regulations, which require that manufacturers report to the FDA field corrections and product recalls or removals if undertaken to reduce a risk to health posed by the device or to remedy a violation of the FDCA that may present a risk to health;
- the FDA's recall authority, whereby the agency can order device manufacturers to recall from the market a product that is in violation of governing laws and regulations; and
- post-market surveillance activities and regulations, which apply when deemed by the FDA to be necessary to protect the public health or to provide additional safety and effectiveness data for the device.

The FDA has broad regulatory compliance and enforcement powers. If the FDA determines that we failed to comply with applicable regulatory requirements, it can take a variety of compliance or enforcement actions, which may result in any of the following sanctions:

- warning letters, untitled letters, fines, injunctions, consent decrees and civil penalties;
- recalls, withdrawals, or administrative detention or seizure of our products;
- operating restrictions or partial suspension or total shutdown of production;
- refusing or delaying requests for 510(k) marketing clearance or PMA approvals of new products or modified products;
- withdrawing 510(k) clearances or PMA approvals that have already been granted;
- refusal to grant export approvals for our products; or
- criminal prosecution.

FDA Regulation of HCT/Ps

Certain of our products, including certain of our spinal and orthopedic products are regulated by the FDA as HCT/Ps, which are regulated under Section 361 of the PHSA, which among other things, authorizes the FDA to issue regulations to prevent the introduction, transmission or spread of communicable disease. HCT/Ps regulated as "361" HCT/Ps are subject to requirements relating to registering facilities and listing products with the FDA, screening and testing for tissue donor eligibility, and Good Tissue Practice when processing, storing, labeling and distributing HCT/Ps, including required labeling information, stringent record keeping and adverse event reporting, among other applicable requirements and laws. Section 361 HCT/Ps do not require 510(k) clearance, PMA approval, Biologics License Application, or BLA, submissions, or other premarket authorization from the FDA to be legally marketed in the United States. However, to be regulated as a Section 361 HCT/P, the product must, among other things, be "minimally manipulated," which for structural tissue products, means that the manufacturing processes do not alter the original relevant characteristics of the tissue relating to the tissue's utility for reconstruction, repair, or replacement. For cells or nonstructural tissue products, "minimal manipulation" means that the manufacturing processes do not alter the relevant biological characteristics of cells or tissues. A Section 361 HCT/P must also be intended for "homologous use," which refers to use in the repair, reconstruction, replacement, or supplementation of a recipient's cells or tissues with an HCT/P that performs the same basic function or functions in the recipient as in the donor. The HCT/P must also either have no systemic effect and not be dependent upon the metabolic activity of living cells for its primary

function or, if it has a systemic effect, be intended for autologous use, for allogeneic use in a first-degree or second-degree blood relative, or for reproductive use. We believe that our products currently marketed as HCT/Ps generally fulfill the relevant criteria for regulation as Section 361 HCT/Ps, and, therefore, have not sought or obtained 510(k) clearance, PMA approval, or BLA licensure for these products. However, if the FDA were to disagree with our determination, the FDA could then require that we obtain 510(k) clearance or other licensures or approvals and require that we cease marketing such products unless and until we receive clearance, licensure, or approval.

International Approval Requirements

Sales of medical devices and shipments of human tissues outside the United States are subject to international regulatory requirements that vary widely from country to country. Approval of a product by comparable regulatory authorities of other countries must be obtained and compliance with applicable regulations for tissues must be met prior to commercial distribution of the products or human tissues in those countries. The time required to obtain these approvals may be longer or shorter than that required for FDA approval. Countries, in which we distribute products and tissue, may perform inspections of our facilities to ensure compliance with local country regulations.

Commercialization of medical devices in the European Economic Area, or EEA (comprised of the 27 E.U. Member States plus Iceland, Liechtenstein and Norway, and the United Kingdom, until the end of the transition period on 31 December provided for in the Withdrawal Agreement between the European Union and the United Kingdom), is regulated by the European Union. The European Union requires that all medical devices placed on the market in the EEA must meet the relevant essential requirements laid down in Annex I of Directive 93/42/EEC, or the Medical Devices Directive, and of Directive 90/385/EEC, or the Active Implantable Medical Devices Directive. The most fundamental essential requirement is that a medical device must be designed and manufactured in such a way that it will not compromise the clinical condition or safety of patients, or the safety and health of users and others. In addition, the device must achieve the performances intended by the manufacturer and be designed, manufactured, and packaged in a suitable manner. To demonstrate compliance with the essential requirements laid down in Annex I to the Medical Devices Directive, medical device manufacturers must undergo a conformity assessment procedure, which varies according to the type of medical device and its classification. Except for low-risk medical devices (Class I non-sterile, non-measuring devices), where the manufacturer can self-declare the conformity of its products with the essential requirements, a conformity assessment procedure requires the intervention of a so-called Notified Body. Notified bodies are often separate entities and are authorized or licensed to perform such assessments by government authorities. The Notified Body would typically audit and examine a product's technical dossiers and the manufacturers' quality system. If satisfied that the relevant product conforms to the relevant essential requirements, the Notified Body issues a certificate of conformity, which the manufacturer uses as a basis for its own declaration of conformity. The manufacturer may then apply the CE Mark to the device, which allows the device to be placed on the market throughout the EEA. Once the product has been placed on the market in the EEA, the manufacturer must comply with requirements for reporting incidents and field safety corrective actions associated with the medical device.

Lloyd's Register Quality Assurance Inc., The Research Quality Assurance, G-Med and DEKRA (our E.U. Notified Body) perform periodic on-site inspections to review independently our compliance with systems and regulatory requirements.

A number of countries outside of the EEA accept the CE Mark in lieu of marketing submissions, as an addendum to that country's application process. On March 29, 2017, the United Kingdom triggered Article 50 of the Treaty on European Union by notifying the European Council of its intention to withdraw from the European Union and the United Kingdom left the European Union on January 31, 2020. Negotiations have commenced to determine the future terms of the United Kingdom's relationship with the European Union, including the terms of trade between the United Kingdom and the European Union. The effects of Brexit will depend on any agreements the United Kingdom makes to retain access to E.U. markets, either during a transitional period or more permanently. Brexit could lead to legal uncertainty and potentially divergent national laws and regulations as the United Kingdom determines which E.U. laws to replace or replicate. There is uncertainty as to the manner of the withdrawal, timing of regulatory changes and depending on the outcome, they may have a material and adverse impact to our business.

In April 2017, the European Parliament passed the Medical Devices Regulation (Regulation 2017/745), which repeals and replaces the E.U. Medical Devices Directive and the Active Implantable Medical Devices Directive. Unlike directives, which must be implemented into the national laws of the EEA member States, the regulations would be directly applicable, i.e., without the need for adoption of EEA member State laws implementing them, in all EEA member States and are intended to eliminate current differences in the regulation of medical devices among EEA member States. The Medical Devices Regulation, among other things, is intended to establish a uniform, transparent, predictable and sustainable regulatory framework across the EEA for medical devices and ensure a high level of safety and health while supporting innovation. The Medical Devices Regulation was meant to become applicable three years after publication (in May 2020). However, on April 23, 2020, to take the pressure off EEA national authorities, notified bodies, manufacturers and other parties so they can focus fully on urgent priorities related to the COVID 19 pandemic, the European Council and Parliament adopted Regulation 2020/561, postponing the date of application of the Medical Devices Regulation by one year (to May 2021). Once applicable, the Medical Devices Regulation will among other things:

- strengthen the rules on placing devices on the market and reinforce surveillance once they are available;
- establish explicit provisions on manufacturers' responsibilities for the follow-up of the quality, performance and safety of devices placed on the market;
- improve the traceability of medical devices throughout the supply chain to the end-user or patient through a unique identification number;
- set up a central database to provide patients, healthcare professionals and the public with comprehensive information on products available in the European Union; and
- strengthen rules for the assessment of certain high-risk devices, such as implants, which may have to undergo an additional check by experts before they are placed on the market.

Government Advocacy

We engage in public policy advocacy with policymakers and continue to work to demonstrate that our therapeutic products provide value to patients and to those who pay for healthcare. We advocate with government policymakers to encourage a long-term approach to sustainable healthcare financing that ensures access to innovative medicines and does not disproportionately target FDA-regulated medical devices and biologics as a source of budget savings. In markets with historically low rates of healthcare spending, we encourage those governments to increase their investments and adopt market reforms in order to improve their citizens' access to appropriate healthcare.

Regulations Governing Fraud and Abuse

Within the United States, our products and our customers are subject to extensive regulation by a wide range of federal and state agencies that govern business practices in the medical device industry. These laws include federal and state anti-kickback, false claims, physician payment transparency, anti-corruption, and other fraud and abuse statutes and regulations. Internationally, other governments also impose regulations in connection with their healthcare reimbursement programs and the delivery of healthcare items and services.

In the United States, federal healthcare fraud and abuse laws generally apply to our activities because procedures using our products are covered under federal healthcare programs including Medicare and Medicaid. The Anti-Kickback Statute is particularly relevant because of its broad applicability. Specifically, the Anti-Kickback Statute prohibits persons from knowingly and willfully soliciting, offering, receiving, or providing remuneration, directly or indirectly, in exchange for, or to induce, either the referral of an individual, or the furnishing, arranging for or recommending a good or service for which payment may be made in whole or part under federal healthcare programs, such as the Medicare and Medicaid programs. Statutory exceptions and regulatory safe harbors protect certain interactions if specific requirements are met. Failure to meet all of the requirements of a particular applicable statutory exception or regulatory safe harbor, however, does not make the conduct per se illegal under the U.S. federal Anti-Kickback Statute. Instead, the legality of the arrangement will be evaluated on a case by case basis based on a

cumulative review of all its facts and circumstances. Further, a person or entity does not need to have actual knowledge of the Anti-Kickback Statute or specific intent in order to violate it to have committed a violation.

Another development affecting the healthcare industry is the increased use of the federal Civil False Claims Act and, in particular, actions brought pursuant to the False Claims Act's "whistleblower" or "qui tam" provisions. The False Claims Act imposes liability on any person or entity that, among other things, knowingly presents, or causes to be presented, a false or fraudulent claim for payment by a federal healthcare program. In addition, the government may assert that a claim, including items or services resulting from a violation of the federal Anti-Kickback Statute, constitutes a false or fraudulent claim for purposes of the federal False Claims Act or federal civil money penalties statute. The qui tam provisions of the False Claims Act allow a private individual to bring actions on behalf of the federal government, alleging that the defendant has submitted a false claim to the federal government, and to share in any monetary recovery. In recent years, the number of suits brought against healthcare providers by private individuals has increased dramatically. In addition, insurance companies may also bring a private cause of action for treble damages against a manufacturer for a pattern of causing false claims to be filed under the federal Racketeer Influenced and Corrupt Organizations Act, or RICO.

The federal Health Insurance Portability and Accountability Act of 1996, as amended by the Health Information Technology for Economic and Clinical Health Act, or HIPAA, among other things, created two new federal crimes: healthcare fraud and false statements relating to healthcare matters. The HIPAA healthcare fraud statute prohibits, among other things, knowingly and willfully executing, or attempting to execute, a scheme to defraud any healthcare benefit program, including private payors. A violation of this statute is a felony and may result in fines, imprisonment, and/or exclusion from government sponsored programs. The HIPAA false statements statute prohibits, among other things, knowingly and willfully falsifying, concealing or covering up a material fact or making any materially false, fictitious or fraudulent statement or representation in connection with the delivery of, or payment for, healthcare benefits, items or services. Similar to the federal Anti-Kickback Statute, a person or entity does not need to have actual knowledge of the Anti-Kickback Statute or specific intent in order to violate it to have committed a violation.

The federal Physician Payment Sunshine Act requires, among other things, manufacturers of drugs, devices, biologicals and medical supplies for which payment is available under Medicare, Medicaid or the Children's Health Insurance Program (with certain exceptions) to report annually to the government information related to payments or other transfers of value made to physicians (defined to include doctors, dentists, optometrists, podiatrists and chiropractors) and teaching hospitals, as well as ownership and investment interests held by physicians and their immediate family members. Effective January 1, 2022, these reporting obligations will extend to include payments and transfers of value made to certain nonphysician providers such as physician assistants and nurse practitioners.

Similar state and local laws and regulations may also restrict business practices in the medical device and pharmaceutical industries, such as state anti-kickback and false claims laws, which may apply to business practices, including but not limited to, research, distribution, sales and marketing arrangements and claims involving healthcare items or services reimbursed by non-governmental third-party payors, including private insurers, or by patients themselves; state laws that require pharmaceutical companies to comply with the industry's voluntary compliance guidelines and the relevant compliance guidance promulgated by the federal government, or otherwise restrict payments that may be made to healthcare providers and other potential referral sources; state laws and regulations that require drug manufacturers to file reports relating to pricing and marketing information; and state and local laws which require tracking gifts and other remuneration and transfer of value provided to physicians, other healthcare providers and entities.

Violations of fraud and abuse laws, including federal and state anti-kickback and false claims laws, may be punishable by criminal and civil sanctions, including fines and civil monetary penalties, the possibility of exclusion from federal healthcare programs (including Medicare and Medicaid), disgorgement and corporate integrity agreements, which impose, among other things, rigorous operational and monitoring requirements on companies. Similar sanctions and penalties, as well as imprisonment, also can be imposed upon executive officers and employees of such companies.

Anti-Bribery Laws

Compliance with complex foreign and United States laws and regulations that apply to our international operations increases our cost of doing business in international jurisdictions and could expose us or our employees to fines and penalties in the United States and abroad. These numerous and sometimes conflicting laws and regulations include the United States Foreign Corrupt Practices Act of 1977, or FCPA. The FCPA prohibits United States companies, companies whose securities are listed for trading in the United States and other entities, and their officers, directors, employees, shareholders acting on their behalf and agents from offering, promising, authorizing or making payments to foreign officials for the purpose of influencing official decisions or obtaining or retaining business abroad or other benefits or otherwise obtaining favorable treatment. The FCPA also requires companies to maintain records that fairly and accurately reflect transactions and maintain a system of internal accounting controls sufficient to assure management's control, authority and responsibility over our assets. In many countries, hospitals are government-owned and healthcare professionals employed by such hospitals, with whom we regularly interact, may meet the definition of a foreign official for purposes of the FCPA. Additionally, recently enacted U.S. legislation increases the monetary reward available to whistleblowers who report violations of federal securities laws, including the FCPA, which may result in increased scrutiny and allegations of violations of these laws and regulations. We maintain and update our policies and procedures and internal controls designed to provide reasonable assurance that we, our employees, partners and other intermediaries comply with the anti-corruption laws to which we are subject. However, there can be no assurance that such policies or procedures or internal controls will work effectively at all times or protect us against liability under these or other laws for actions taken by our employees, partners or other intermediaries with respect to our business. Violations of these laws and regulations could result in fines, criminal sanctions against us, our officers, or our employees, prohibitions on the conduct of our business, financial condition, results of operations, cash flows and damage to our reputation. In addition, investigations of any potential, actual or alleged violations of such laws or policies related to us, including any such investigation by U.S. or non-U.S. authorities, could harm our business.

Laws and Regulations Governing Data Privacy and Security

Numerous state, federal and foreign laws, including consumer protection laws and regulations, govern the collection, dissemination, use, access to, confidentiality and security of personal information, including health-related information. In the United States, numerous federal and state laws and regulations, including state data breach notification laws, state health information privacy laws, and federal and state consumer protection laws and regulations (e.g., Section 5 of the FTC Act), govern the collection, use, disclosure and protection of health-related and other personal information could apply to our operations or the operations of our partners. We may also be subject to U.S. federal rules, regulations and guidance concerning data security for medical devices, including guidance from the FDA. State laws may be more stringent, broader in scope or offer greater individual rights with respect to protected health information, or PHI, than HIPAA, and state laws may differ from each other, which may complicate compliance efforts. Entities that are found to be in violation of HIPAA, as the result of a breach of unsecured PHI, a complaint about privacy practices, or an audit by HHS, may be subject to significant civil, criminal, and administrative fines and penalties and/or additional reporting and oversight obligations if required to enter into a resolution agreement and corrective action plan with HHS to settle allegations of HIPAA non-compliance.

California recently enacted the California Consumer Privacy Act, or the CCPA, which creates new individual privacy rights for California consumers, as defined in the law, and places increased privacy and security obligations on entities handling certain personal information of consumers or households. The CCPA requires covered companies to provide new disclosures to consumers about such companies' data collection, use and sharing practices, provide such consumers new ways to opt-out of certain sales or transfers of personal information, and provide consumers with additional causes of action. The CCPA went into effect on January 1, 2020, and as of July 1, 2020, the California Attorney General may bring enforcement actions for violations. Although there are limited exemptions for certain health-related information, including certain clinical trial data, as currently written, the CCPA may impact our business activities and exemplifies the vulnerability of our business to the evolving regulatory environment related to health-related and other personal information. Additionally, a new California ballot initiative, the California Privacy Rights Act, appears to have garnered enough signatures to be included on the

November 2020 ballot in California, and if voted into law by California residents, would impose additional data protection obligations on companies doing business in California, including additional consumer rights processes and opt outs for certain uses of sensitive data. It would also create a new California data protection agency specifically tasked to enforce the law, which would likely result in increased regulatory scrutiny of California businesses in the areas of data protection and security. Similar laws have been proposed in other states and at the federal level, and if passed, such laws may have potentially conflicting requirements that would make compliance challenging.

E.U. member states, Switzerland, and other countries have also adopted data protection laws and regulations, which impose significant compliance obligations. For instance, the collection and use of personal health data in the EEA is governed by the provisions of the General Data Protection Regulation, or GDPR. The GDPR became effective on May 25, 2018, repealing its predecessor directive and increasing responsibility and liability of medical device companies in relation to the processing of personal data of individuals within the EEA. The GDPR imposes strict obligations and restrictions on the ability to collect, analyze, and transfer personal data, including health data from clinical trials and adverse event reporting. In particular, these obligations and restrictions concern the consent of the individuals to whom the personal data relates, the information provided to the individuals, the transfer of personal data out of the EEA, security breach notifications, security and confidentiality of the personal data, and the imposition of substantial potential fines for breaches of the data protection obligations. Data protection authorities from the different E.U. and EEA member states may interpret the GDPR and national laws differently and impose additional requirements, which add to the complexity of processing personal data in the E.U. and the EEA Guidance on implementation and compliance practices are often updated or otherwise. In addition, the United Kingdom leaving the European Union could also lead to further legislative and regulatory changes. It remains unclear how the United Kingdom data protection laws or regulations will develop in the medium to longer term and how data transfer to the United Kingdom from the European Union and the EEA will be regulated, especially following the United Kingdom’s departure from the European Union on January 31, 2020. However, the United Kingdom has transposed the GDPR into domestic law with the Data Protection Act 2018, which remains in force following the United Kingdom’s departure from the European Union. Compliance with these and any other applicable privacy and data security laws and regulations is a rigorous and time-intensive process, and we may be required to put in place additional mechanisms ensuring compliance with the new data protection rules. If we fail to comply with any such laws or regulations, we may face significant fines and penalties that could adversely affect our business, financial condition and results of operations.

Coverage and Reimbursement

Market acceptance and sales of our products to our customers, who primarily consist of hospitals, government facilities, and ambulatory surgery centers, will depend on the availability of payor coverage and the adequacy of reimbursement, for the procedures using our products, by government insurance programs and other third-party payors. Payor coverage and reimbursement for procedures using medical devices in the United States and international markets vary significantly by country.

In the United States, our currently approved products are commonly treated as general supplies utilized in surgical procedures and if covered by third-party payors, are paid for as part of the procedure. Outside of the United States, there are many reimbursement programs through private payors as well as government programs. In some countries, government reimbursement is the predominant program available to patients and hospitals. Our commercial success depends in part on the extent to which governmental authorities, private health insurers and other third-party payors provide coverage for and establish adequate reimbursement levels for the procedures during which our products are used. Failure by physicians, hospitals, ambulatory surgery centers and other users of our products to obtain sufficient coverage and reimbursement from third-party payors for procedures in which our products are used, or adverse changes in government and private third-party payors’ coverage and reimbursement policies.

Based on our experience to date, third-party payors generally reimburse for the surgical procedures in which our products are used only if the patient meets the established medical necessity criteria for surgery. Some payors are moving toward a managed care system and control their healthcare costs by limiting authorizations for surgical procedures, including elective procedures using our devices. Although no uniform policy of coverage and reimbursement among payors in the United States exists and coverage and

reimbursement for procedures can differ significantly from payor to payor, reimbursement decisions by particular third-party payors may depend upon a number of factors, including the payor's determination that use of a product is:

- a covered benefit under its health plan;
- appropriate and medically necessary for the specific indication;
- cost effective; and
- neither experimental nor investigational.

Third-party payors are increasingly auditing and challenging the prices charged for medical products and services with concern for upcoding, miscoding, using inappropriate modifiers, or billing for inappropriate care settings. Some third-party payors must approve coverage for new or innovative devices or procedures before they will reimburse healthcare providers who use the products or therapies. Even though a new product may have been cleared for commercial distribution by the FDA, we may find limited demand for the product unless and until reimbursement approval has been obtained from governmental and private third-party payors.

The Centers for Medicare & Medicaid Services, or CMS, is responsible for administering the Medicare program and sets coverage and reimbursement policies for the Medicare program in the United States. CMS, in partnership with state governments, also administers the Medicaid program and Children's Health Insurance Program, or CHIP. CMS policies may alter coverage and payment related to our product portfolio in the future. These changes may occur as the result of national coverage determinations issued by CMS or as the result of local coverage determinations by contractors under contract with CMS to review and make coverage and payment decisions. Medicaid programs are funded by both federal and state governments, and may vary from state to state and from year to year and will likely play an even larger role in healthcare funding pursuant to the Affordable Care Act.

A key component in ensuring whether the appropriate payment amount is received for physician and other services, including those procedures using our products, is the existence of a Current Procedural Terminology, or CPT, code, to describe the procedure in which the product is used. To receive payment, healthcare practitioners must submit claims to insurers using these codes for payment for medical services. CPT codes are assigned, maintained and annually updated by the American Medical Association and its CPT Editorial Board. If the CPT codes that apply to the procedures performed using our products are changed or deleted, reimbursement for performances of these procedures may be adversely affected.

In the United States, some insured individuals enroll in managed care programs, which monitor and often require pre-approval of the services that a member will receive. Some managed care programs pay their providers on a per capita (patient) basis, which puts the providers at financial risk for the services provided to their patients by paying these providers a predetermined payment per member per month and, consequently, may limit the willingness of these providers to use our products.

We believe the overall escalating cost of medical products and services being paid for by the government and private health insurance has led to, and will continue to lead to, increased pressures on the healthcare and medical device industry to reduce the costs of products and services. All third-party reimbursement programs are developing increasingly sophisticated methods of controlling healthcare costs through prospective reimbursement and capitation programs, group purchasing, redesign of benefits, requiring second opinions prior to major surgery, careful review of bills, encouragement of healthier lifestyles and other preventative services and exploration of more cost-effective methods of delivering healthcare.

In addition to uncertainties surrounding coverage policies, there are periodic changes to reimbursement levels. Third-party payors regularly update reimbursement amounts and also from time to time revise the methodologies used to determine reimbursement amounts. This includes routine updates to payments to physicians, hospitals and ambulatory surgery centers for procedures during which our products are used. These updates could directly impact the demand for our products.

In international markets, reimbursement and healthcare payment systems vary significantly by country, and many countries have instituted price ceilings on specific product lines and procedures. There can be no assurance that procedures using our products will be covered for a specific indication, that our products

will be considered cost-effective by third party payors, that an adequate level of reimbursement will be available or that the third-party payors' reimbursement policies will not adversely affect our ability to sell our products profitably. Local, product specific reimbursement law is increasingly being applied as an overlay to medical device regulation, which has provided an additional layer of clearance requirement. Specifically, Australia now requires clinical data for clearance and reimbursement be in the form of prospective, multi-center studies, a high bar not previously applied. In addition, in France, certain innovative devices have been identified as needing to provide clinical evidence to support a "mark-specific" reimbursement. It is our intent to complete the requisite clinical studies and obtain coverage and reimbursement approval in countries where it makes economic sense to do so.

Healthcare Reform

In the United States and certain foreign jurisdictions, there have been, and we expect there will continue to be, a number of legislative and regulatory changes to the healthcare system. In March 2010, the ACA was signed into law and substantially changed the way healthcare is financed by both governmental and private insurers in the United States. The ACA contains a number of provisions, including those governing enrollment in federal healthcare programs, reimbursement adjustments, and fraud and abuse changes. Additionally, the ACA, among other things, included incentives to programs that increase the federal government's comparative effectiveness research, and implemented payment system reforms, including a national pilot program on payment bundling to encourage hospitals, physicians, and other providers, to improve the coordination, quality, and efficiency of certain healthcare services through bundled payment models. Since its enactment, there have been judicial and Congressional challenges to certain aspects of the ACA, and we expect there will be additional challenges and amendments to the ACA in the future.

Other legislative changes have been proposed and adopted in the United States since the ACA was enacted, including aggregate reductions of Medicare payments to providers of 2% per fiscal year and reduced payments to several types of Medicare providers. The CARES Act, which was signed into law on March 27, 2020, suspended the reductions from May 1, 2020, through December 31, 2020, and extended the sequester by one additional year, through 2030. Moreover, there has recently been heightened governmental scrutiny, including increasing legislative and enforcement interest, over the manner in which manufacturers set prices for their marketed products, which has resulted in several Congressional inquiries and proposed and enacted legislation designed, among other things, to bring more transparency to product pricing, review the relationship between pricing and manufacturer patient programs, and reform government program reimbursement methodologies for products. Individual states in the United States have also become increasingly active in implementing regulations designed to control product pricing, including price or patient reimbursement constraints, discounts, restrictions on certain product access, and marketing cost disclosure and transparency measures and, in some cases, mechanisms to encourage importation from other countries. Furthermore, there has been increased interest by third party payors and governmental authorities in reference pricing systems and publication of discounts and list prices.

Employees

As of June 30, 2020, we had 151 employees, more than 95% of whom were full-time employees. None of our employees are represented by a collective bargaining agreement, and we have never experienced a work stoppage. We believe our employee relations are good.

Properties

Our principal executive office is located in Silver Spring, Maryland, where we lease approximately 5,052 square feet of office and laboratory space under a lease that expires in May 2021. We also occupy approximately 12,888 square feet of manufacturing and office space in Roswell, Georgia under a lease that expires in July 2023, and approximately 36,173 square feet of manufacturing, laboratory and office space in Richmond, California under a lease that expires in November 2025. We believe that our facilities are sufficient to meet our current needs and that suitable additional space will be available as and when needed.

Legal Proceedings

We are not currently a party to any material legal proceedings.

MANAGEMENT

Executive Officers and Directors

The following table sets forth the name, age and position of each of our executive officers and directors as of the date of this prospectus.

Name	Age	Position
Executive Officers		
Ronald Lloyd	59	President, Chief Executive Officer and Director
Matthew Ferguson	52	Chief Financial Officer
Thomas Englese	46	Chief Commercial Officer
Jerome Riebman, M.D.	66	Chief Medical Officer
Darryl Roberts, Ph.D.	59	Executive Vice President, Operations and Product Development
Non-Employee Directors		
Kevin Rakin[2]	60	Chairman
Maybelle Jordan[2][3]	54	Director
Brigid A. Makes[1][3]	65	Director
C. Randal Mills, Ph.D[1][2]	48	Director
W. Matthew Zuga[1][3]	55	Director

(1) Member of the audit committee.

(2) Member of the compensation committee.

(3) Member of the nominating and corporate governance committee.

Executive Officers

Ronald Lloyd has served as our President and Chief Executive Officer and as a member of our board of directors since June 2018. Prior to joining Aziyo, Mr. Lloyd served as Executive Vice President and President of Hospital Therapies of Mallinckrodt Pharmaceuticals, a publicly traded global pharmaceuticals company, from January 2016 to May 2018, where Mr. Lloyd reorganized the hospital business structure and completed four business development transactions. Mr. Lloyd also served as President of Immunology at Baxter, a publicly traded healthcare company, from April 2003 to December 2015, where Mr. Lloyd developed and implemented strategies to build the plasma business, the U.S. bioscience business and the regenerative medicine business. Mr. Lloyd holds a Master of Science in Industrial Administration from Carnegie Mellon University and a B.A. in Management Science from Westminster College. We believe Mr. Lloyd's extensive management and leadership experience in pharmaceutical and healthcare companies, make him well qualified to serve as a member of our board of directors.

Matthew Ferguson has served as our Chief Financial Officer since September 2020. Prior to joining us, Mr. Ferguson served as Chief Financial Officer for Bossa Nova Robotics, a privately held robotics company serving major retailors, from September 2018 to July 2020. From January 2011 to August 2018, Mr. Ferguson held various management positions, including Chief Financial Officer, Chief Business Officer and Co-President, at Avinger, Inc., a publicly traded cardiovascular medical device company. From 2009 to 2010, Mr. Ferguson served as Chief Financial Officer at Tethys Bioscience, a provider of molecular diagnostic tests for cardiometabolic conditions. From 2008 to 2009, Mr. Ferguson served as the Chief Financial Officer at Proteolix, a biotechnology company developing treatments for cancer and autoimmune diseases. Mr. Ferguson also served as the Chief Financial Officer and Vice President of Finance and Business Development at FoxHollow Technologies, a publicly traded medical device company, from 2002 through its merger with ev3 in 2007. Mr. Ferguson holds an M.B.A. from the University of California at Berkeley, an M.S. in Mechanical Engineering from the University of Pennsylvania and a B.S. in Civil Engineering from Stanford University.

Thomas Englese has served as our Chief Commercial Officer since July 2019. Prior to joining Aziyo, Mr. Englese served as General Manager of North America Hospital Therapies for Mallinckrodt

Pharmaceuticals, a publicly traded pharmaceutical company, from April 2015 to July 2019, where Mr. Englese was responsible for the overall profit and loss management. Mr. Englese also served as Vice President Customer Operations from October 2008 to March 2015 for Ikaria, Inc., which was acquired by Mallinckrodt Pharmaceuticals in 2015, and was a member of the Business Development and Transaction team. From 2002 to 2008, Mr. Englese served as Senior Director of Business Operations at Baxter, a publicly traded healthcare company. Mr. Englese holds an M.B.A. from Pennsylvania State University and a B.S. in Marketing from Villanova University.

Jerome Riebman, M.D. has served as our Chief Medical Officer since January 2020. Prior to joining Aziyo, Dr. Riebman served as lead to the U.S. Medical Heart Failure Program and the New Product Development team for Amgen Pharmaceuticals, Inc., a biotechnology company, from 2018 to 2020 and Director of External Relations and Advocacy for Amgen Pharmaceuticals in 2018. Dr. Riebman also served as Lead Medical Director of Cardiovascular for Novartis Pharmaceuticals Corporation, a pharmaceutical and healthcare company, from 2014 to 2018, where Dr. Riebman developed and marketed Heart Failure products in the Cardiovascular Therapeutic Area and developed and managed various studies for a heart failure clinical trials program. In 2003, Dr. Riebman co-founded Bay Innovation Group, LLC, an emerging medical device incubator, where he currently serves as Director of Scientific and Medical Affairs. He is also Board certified in Surgery and Thoracic Surgery. Dr. Riebman holds an M.D. from Temple University School of Medicine and a B.A. and an M.A. in Biology from Temple University.

Darryl Roberts, Ph.D. has served as our Executive Vice President and General Manager of the Musculoskeletal Product division from May 2016 to June 2020 and as our Executive Vice President, Operations and Product Development since July 2020. Prior to joining Aziyo, from 2013 to 2015 Dr. Roberts was Senior Vice President of Operations at TELA Bio, Inc., a biotechnology company, when the company gained regulatory clearance for a novel sterilization technique for tissue matrix. From 2007 to 2013, Dr. Roberts was a senior management team member for LifeCell Corp., a publicly traded company that developed and marketed tissue repair products, which was purchased by Kinetic Concepts, Inc. Dr. Roberts' prior experience also includes various roles at Johnson & Johnson, where he was involved in the development and launch of several pharmaceutical and medical device products. Dr. Roberts holds a Ph.D. and a B.S. in Chemistry from the University of Alabama.

Non-Employee Directors

Kevin Rakin has served as our chairman and a member of our board of directors since November 2015. Mr. Rakin is Co-founder of HighCape Partners, an investment fund and affiliate of Aziyo, and has been a general partner in HighCape Partners since 2013. Additionally, Mr. Rakin serves as Chief Executive Officer of HighCape Capital Acquisition Corp., a publicly traded affiliate of HighCape Partners, since June 2020. Since 2014, Mr. Rakin has also been a member of the board of directors of Oramed Pharmaceuticals Inc., a publicly traded pharmaceutical company, where Mr. Rakin serves on the Audit and Compensation Committee. Mr. Rakin has also served, and continues to serve, on the board of directors of several private companies, including Convexity Scientific Inc. since 2017, Nyxoah S.A., a publicly traded medical device company, since 2016 and Cybrexa, Inc. since 2016. Prior to and during the last five years, Mr. Rakin has served on the board of directors of various private and publicly traded biomedical and pharmaceutical companies, including Histogenics Corp., where Mr. Rakin served on the Audit and Compensation Committee, TELA Bio, Inc., Cheetah Medical, Inc. and Collagen Matrix, Inc. Mr. Rakin holds an M.B.A. from Columbia University and B.Com and B.Com (Hons) degrees from the University of Cape Town, South Africa. We believe Mr. Rakin's extensive knowledge and experience in finance and leadership in healthcare and life sciences companies, including in the public company context, make him well qualified to serve as a member of our board of directors.

Maybelle Jordan has served as a member of our board of directors since September 2020. Ms. Jordan has served as Vice President of Business Development of Biomerix Corporation, a biomaterials company focused on scaffold technology in the medical technology industry, since 2011, and as Chief Operating Officer for Biomerix from 2003 to 2011. Ms. Jordan also co-founded and served as President and CEO of MTrap Inc., a clinical-stage biomaterials company developing a cancer therapeutic device for treatment of advanced ovarian cancer, from 2015 to 2019. Ms. Jordan holds an M.B.A. from Harvard University and a B.S. in Biology from Yale University. We believe Ms. Jordan's extensive management and leadership experience with companies in the medical technology and life sciences industries make her well qualified to serve as a member of our board of directors.

Brigid A. Makes has served as a member of our board of directors since September 2020. Ms. Makes has served as an independent consultant for medical device and healthcare companies since July 2017, specifically advising on finance, accounting and funding responsibilities. From September 2011 to July 2017, Ms. Makes served as Senior Vice President and Chief Financial Officer of Miramar Labs, Inc., a biotechnology company focused on aesthetics and dermatology. From 2006 to 2011, Ms. Makes served as Senior Vice President and Chief Financial Officer of AGA Medical Corp, a medical device company developing interventional devices for the minimally invasive treatment of structural heart defects and peripheral vascular disorders. Prior to joining AGA, Ms. Makes held various positions at Nektar Therapeutics Inc. from 1999 to 2006, including serving as Chief Financial Officer. Since December 2019, Ms. Makes has also been a member of the board of directors of Mind Medicine (MindMed) Inc., a publicly traded neuro-pharmaceutical company, where Ms. Makes serves on the Audit Committee, the Compensation Committee and the Nominating/Governance Committee. Ms. Makes holds an M.B.A. from Bentley University and a Bachelor of Commerce degree in Finance & International Business from McGill University. We believe Ms. Makes' extensive management and leadership experience with biotechnology companies and knowledge and experience in finance make her well qualified to serve as a member of our board of directors.

C. Randal Mills, Ph.D. has served as a member of our board of directors since November 2015. Dr. Mills serves as Chief Executive Officer and is a member of the board of trustees of Sanford Burnham Prebys Medical Discovery Institute, a non-profit medical research institute. Dr. Mills served as Chief Executive Officer of the National Marrow Donor Program, a nonprofit international organization that provides bone marrow for transplantation, from July 2017 to February 2020. From May 2014 to July 2017, Dr. Mills served as Chief Executive Officer of the California Institute for Regenerative Medicine, which was created to fund stem cell research in California. Dr. Mills also served as Chief Executive Officer of Osiris Therapeutics, Inc., a publicly traded regenerative medicine company, from June 2004 to December 2013. Prior to and during the last five years, Dr. Mills has served on the board of directors of various non-profit organizations, including Be The Match Foundation from July 2017 to February 2020 and TBI (now KeraLink), from August 2007 to December 2019 and of the Alliance for Regenerative Medicine, an international community of organizations focused on regenerative medicine, from January 2014 to January 2016. Dr. Mills holds a Ph.D. in Pharmaceutical Science and a B.S. in Microbiology from the University of Florida. We believe Dr. Mills’s extensive management and leadership experience in medical and healthcare organizations, including in the regenerative medicine context, make him well qualified to serve as a member of our board of directors.

W. Matthew Zuga has served as a member of our board of directors since November 2015. Since October 2013, Mr. Zuga has been a Co-founder and partner of HighCape Partners, an investment fund and affiliate of Aziyo. Additionally, Mr. Zuga serves as Chief Financial Officer and Chief Operating Officer of HighCape Capital Acquisition Corp., a publicly traded affiliate of HighCape Partners, since June 2020. From August 2012 to September 2013, Mr. Zuga was a managing director of SyngentaVentures Pte Ltd, an investment vehicle of Syngenta Corp. He was also the founder and managing member of Red Abbey, an investment company, from January 2004 to August 2012. Prior to Red Abbey, Mr. Zuga was a managing director and the head of life sciences investment banking at Legg Mason from 1999 to 2003. He is currently on the board of directors of AgriMetis, LLC, Alba Therapeutics Corporation, MF Fire, Inc. and Virtue Labs LLC. Mr. Zuga holds an M.B.A. from the Kenan-Flagler Business School at the University of North Carolina at Chapel Hill and a B.S. in Business Administration/Finance from Ohio State University. We believe Mr. Zuga’s extensive experience in the life sciences industry, his network of contacts in the industry and his background in investing and investment banking make him well qualified to serve as a member of our board of directors.

Board Composition and Election of Directors

Director Independence

In connection with this offering, our board of directors has undertaken a review of the independence of our directors and considered whether any director has a relationship with us that could compromise that director’s ability to exercise independent judgment in carrying out that director’s responsibilities. Our board of directors has affirmatively determined that Maybelle Jordan, Brigid A. Makes and C. Randal Mills, representing three of our six directors, do not have a relationship that would interfere with the

exercise of independent judgment in carrying out the responsibilities of a director and that each of these directors is "independent" as that term is defined under the rules of The Nasdaq Stock Market LLC, or Nasdaq. Applicable Nasdaq rules require a majority of a listed company's board of directors to be comprised of independent directors within one year of the date of listing. We intend to rely on a phase-in period under these rules applicable to newly public companies, which will permit fewer than a majority of our board of directors to be independent on the listing date of our Class A common stock, provided we satisfy such requirement within one year of the date of listing. Accordingly, we intend to have a majority of our board of directors consist of independent directors within one year of the date our Class A common stock is listed on The Nasdaq Global Market. There are no family relationships among any of our directors or executive officers.

Classified Board of Directors

In accordance with our Post-IPO Certificate of Incorporation, our board of directors will be divided into three classes with staggered, three-year terms. At each annual meeting of stockholders, the successors to directors whose terms then expire will be elected to serve from the time of election and qualification until the third annual meeting following election. Effective upon the closing of this offering, our directors will be divided among the three classes as follows:

- the Class I directors will be Maybelle Jordan and W. Matthew Zuga, and their terms will expire at our first annual meeting of stockholders following this offering;
- the Class II directors will be Brigid A. Makes and C. Randal Mills, and their terms will expire at our second annual meeting of stockholders following this offering; and
- the Class III directors will be Ronald Lloyd and Kevin Rakin, and their terms will expire at the third annual meeting of stockholders following this offering.

Our Post-IPO Certificate of Incorporation will provide that the authorized number of directors may be changed only by resolution of the board of directors. Any additional directorships resulting from an increase in the number of directors will be distributed among the three classes so that, as nearly as possible, each class will consist of one-third of the directors. The division of our board of directors into three classes with staggered three-year terms may delay or prevent a change of our management or a change in control of our company. Our directors may be removed only for cause by the affirmative vote of the holders of at least two-thirds of our outstanding voting stock entitled to vote in the election of directors. See "Description of Capital Stock — Anti-Takeover Effects of Delaware Law and Our Post-IPO Certificate of Incorporation and Post-IPO Bylaws" for a discussion of these and other anti-takeover provisions found in our Post-IPO Certificate of Incorporation and Post-IPO Bylaws, which will be in effect upon the closing of this offering.

Board Leadership Structure

Our board of directors is currently chaired by Kevin Rakin. Our corporate governance guidelines, which will be in effect upon the effectiveness of the registration statement of which this prospectus forms a part, provide that, if the chairperson of the board is a member of management or does not otherwise qualify as independent, the independent directors of the board may elect among themselves a lead independent director. C. Randal Mills currently serves as our lead independent director. The lead independent director's responsibilities include, but are not limited to: presiding over all meetings of the board of directors at which the chairman is not present, including any executive sessions of the independent directors; approving board meeting schedules and agendas; and acting as the liaison between the independent directors on the one hand and the chief executive officer and chairman of the board on the other. Our corporate governance guidelines further provide the flexibility for our board of directors to modify our leadership structure in the future as it deems appropriate.

Role of the Board in Risk Oversight

One of the key functions of our board of directors is informed oversight of our risk management process. Our board of directors does not have a standing risk management committee, but rather administers this oversight function directly through our board of directors as a whole, as well as through various standing committees of our board of directors that address risks inherent in their respective areas of oversight. In particular, our board of directors is responsible for monitoring and assessing our strategic risk exposure, including, without limitation, credit, liquidity and operations risks. Our audit committee is

also responsible for overseeing management of our financial risks, cybersecurity risks and other material risks and discussing our policies regarding risk assessment and risk management, including guidelines and policies to govern the process by which our exposure to risk is handled. Our audit committee also monitors compliance with our Code of Business Conduct and Ethics, including legal and regulatory violations. Our nominating and corporate governance committee manages risks associated with director independence and our corporate governance guidelines and policies. Our compensation committee oversees the management of risks relating to our executive compensation plans and arrangement and whether any of our compensation policies or programs has the potential to encourage excessive risk-taking. While each committee is responsible for evaluating certain risks and overseeing the management of such risks, our entire board of directors is regularly informed through committee reports about such risks.

Board Committees

Our board of directors directs the management of our business and affairs, as provided by Delaware law, and conducts its business through meetings of the board of directors and its standing committees. Our board of directors has established three standing committees — audit, compensation and nominating and corporate governance — each of which operates under a charter that has been approved by our board of directors. Upon the listing of our Class A common stock on The Nasdaq Global Market, each committee's charter will be available under the Corporate Governance section of our website at *www.aziyo.com*. The reference to our website address does not constitute incorporation by reference of the information contained on or available through our website, and you should not consider such information to be a part of this prospectus.

Audit Committee

The audit committee's responsibilities will include, among other things:

- appointing, approving the compensation of, and assessing and overseeing the independence of our registered public accounting firm, and pre-approving all audit services to be provided;
- overseeing the work of our registered public accounting firm, including through the receipt and consideration of reports and other communications required from such firm;
- reviewing and discussing with management and the registered public accounting firm our annual and quarterly financial statements and related disclosures;
- recommending to our board of directors that the audited financial statements be included in each Annual Report on Form 10-K;
- coordinating our board of directors' oversight of our internal control over financial reporting, disclosure controls and procedures and code of business conduct and ethics;
- discussing our risk management policies;
- establishing procedures for complaints regarding accounting, internal accounting controls or auditing matters or employee concerns regarding questionable accounting or auditing matters;
- meeting independently with our internal auditing staff, if any, registered public accounting firm and management;
- reviewing and approving or ratifying any related person transactions and reviewing related policies and procedures;
- overseeing our investment policies or guidelines; and
- preparing the audit committee report required by SEC rules.

Effective immediately prior to the effectiveness of the registration statement of which this prospectus forms a part, the members of our audit committee will be Brigid A. Makes, C. Randal Mills and W. Matthew Zuga. Brigid A. Makes will serve as the chairperson of the committee. Our board of directors has determined that all members of our audit committee meet the requirements for financial literacy under the applicable listing rules of Nasdaq, or the Nasdaq rules. We intend to rely on the phase-in rules of Rule 10A-3 under the Exchange Act and the Nasdaq rules with respect to the requirement that the audit committee be composed entirely of members of our board of directors who satisfy the standards of independence established for independent directors under the Nasdaq rules and the additional independence standards applicable to audit committee members established pursuant to Rule 10A-3 under the Exchange Act, as determined by our board of directors. Our board of directors has determined that Brigid A. Makes

and C. Randal Mills meet the independence requirements of Rule 10A-3 under the Exchange Act and the applicable Nasdaq rules, and W. Matthew Zuga will serve on our audit committee for a period of up to one year following the completion of this offering in accordance with the phase-in provisions of such rules. Our board of directors has determined that Brigid A. Makes is an "audit committee financial expert" as defined by applicable SEC rules and has the requisite financial sophistication as defined under the applicable Nasdaq rules.

We believe that the composition and functioning of our audit committee complies with all applicable requirements of the Sarbanes-Oxley Act, and all applicable SEC and Nasdaq rules and regulations. We intend to comply with future requirements to the extent they become applicable to us.

Compensation Committee

The compensation committee's responsibilities will include, among other things:

- reviewing and approving, or recommending for approval by the board of directors, the compensation of our Chief Executive Officer and our other executive officers;
- overseeing and administering our cash and equity incentive plans;
- reviewing and making recommendations to our board of directors with respect to director compensation;
- reviewing and discussing annually with management any required "Compensation Discussion and Analysis" for inclusion in our proxy statement;
- preparing and approving any required compensation committee report required by SEC rules, and.
- retaining, approving compensation of, and overseeing compensation consultants, legal counsel and other advisors as deemed necessary or appropriate to carry out the compensation committee's responsibilities.

Effective immediately prior to the effectiveness of the registration statement of which this prospectus forms a part, the members of our compensation committee will be C. Randal Mills, Kevin Rakin and Maybelle Jordan. C. Randal Mills will serve as the chairperson of the committee. We intend to rely on the phase-in rules of Nasdaq with respect to the requirement that the compensation committee be composed entirely of members of our board of directors who satisfy the standards of independence established for independent directors under the Nasdaq rules, as determined by our board of directors. Our board of directors has determined that each of C. Randal Mills and Maybelle Jordan is independent under the applicable Nasdaq rules, including the Nasdaq rules specific to membership on the compensation committee, and Kevin Rakin will serve on our audit committee for a period of up to one year following the completion of this offering in accordance with the phase-in provisions of such rules. Our board of directors has determined that each of Maybelle Jordan, C. Randal Mills and Kevin Rakin is a "non-employee director" as defined in Rule 16b-3 promulgated under the Exchange Act.

We believe that the composition and functioning of our compensation committee complies with all applicable requirements of the Sarbanes-Oxley Act, and all applicable SEC and Nasdaq rules and regulations. We intend to comply with future requirements to the extent they become applicable to us.

Nominating and Corporate Governance Committee

The nominating and corporate governance committee's responsibilities will include, among other things:

- identifying individuals qualified to become board members;
- recommending to our board of directors the persons to be nominated for election as directors at our annual meeting, recommending to our board of directors persons to be appointed to fill board vacancies and to serve and to serve on each board committee;
- developing and recommending to our board of directors corporate governance guidelines, and reviewing and recommending to our board of directors proposed changes to our corporate governance guidelines from time to time;
- periodically reviewing the board of directors' leadership structure and recommending any changes to the board of directors; and
- overseeing a periodic evaluation of our board of directors.

Effective immediately prior to the effectiveness of the registration statement of which this prospectus forms a part, the members of our nominating and corporate governance committee will be Brigid A. Makes, Maybelle Jordan and W. Matthew Zuga. Brigid A. Makes will serve as the chairperson of the committee. We intend to rely on the phase-in rules of Nasdaq with respect to the requirement that the nominating and corporate governance committee be composed entirely of members of our board of directors who satisfy the standards of independence established for independent directors under the Nasdaq rules, as determined by our board of directors. Our board of directors has determined that Brigid A. Makes and Maybelle Jordan are independent under the applicable Nasdaq rules, and W. Matthew Zuga will serve on our nominating and corporate governance committee for a period of up to one year following the completion of this offering in accordance with the phase-in provisions of such rules.

Compensation Committee Interlocks and Insider Participation

During the fiscal year ended December 31, 2019, those who served on our compensation committee (or equivalent thereof or otherwise participated in deliberations of our board of directors regarding executive officer compensation) were Kevin Rakin and C. Randal Mills, none of whom was during fiscal 2019 an officer, former officer or employee of the Company.

During the fiscal year ended December 31, 2019, none of our executive officers served as a director or a member of a compensation committee (or other committee serving an equivalent function) of any other entity, any of whose executive officers served on our board of directors or our compensation committee.

Code of Ethics and Code of Conduct

We have adopted a written code of business conduct and ethics, or the Code of Conduct, that applies to our directors, officers and employees, including our principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions. Upon the listing of our Class A common stock on The Nasdaq Global Market, our Code of Conduct will be available under the Corporate Governance section of our website at *www.aziyo.com*. In addition, we intend to post on our website all disclosures that are required by law or the Nasdaq rules concerning any amendments to, or waivers from, any provision of the Code of Conduct. The reference to our website address does not constitute incorporation by reference of the information contained on or available through our website, and you should not consider it to be a part of this prospectus.

EXECUTIVE AND DIRECTOR COMPENSATION

This section discusses the material components of the executive compensation program for our executive officers who are named in the "Summary Compensation Table" below. In 2019, our "named executive officers" and their positions were as follows:

- Ronald Lloyd, President & Chief Executive Officer;
- Thomas Englese, Chief Commercial Officer; and
- Darryl Roberts Ph.D., Executive Vice President, Operations and Product Development.

This discussion may contain forward-looking statements that are based on our current plans, considerations, expectations and determinations regarding future compensation programs. Actual compensation programs that we adopt following the completion of this offering may differ materially from the currently planned programs summarized in this discussion.

Mr. Englese commenced his employment with the Company on July 15, 2019.

Summary Compensation Table

Name and Principal Position	Year	Salary ($)	Option Awards ($)	Non-Equity Incentive Plan Compensation ($)	All Other Compensation ($)	Total
Ronald Lloyd President and Chief Executive Officer	2019	465,283	12,960	203,940	7,032	689,215
Thomas Englese Chief Commercial Officer	2019	175,962[(1)]	108,000	70,500	—	354,462
Darryl Roberts, Ph.D. Executive Vice President, Operations and Product Development	2019	301,154	8,400	77,400	4,200	391,154

(1) Mr. Englese commenced his employment with the Company on July 15, 2019.

Elements of the Company's Executive Compensation Program

For the year ended December 31, 2019, the compensation for each named executive officer generally consisted of a base salary, annual bonus, stock option awards, standard employee benefits and a retirement plan. These elements (and the amounts of compensation and benefits under each element) were selected because we believe they are necessary to help us attract and retain executive talent which is fundamental to our success. Below is a more detailed summary of the current executive compensation program as it relates to our named executive officers.

2019 Salaries

The named executive officers receive a base salary to compensate them for services rendered to the Company. The base salary payable to each named executive officer is intended to provide a fixed component of compensation reflecting the executive's skill set, experience, role and responsibilities. Each named executive officer's initial base salary was provided in his employment agreement (Mr. Lloyd) or offer letter (Mr. Englese and Dr. Roberts) as applicable. On January 1, 2019, Mr. Lloyd received a merit increase in annual base salary to $463,500 from $450,000.

2019 Bonuses

Mr. Lloyd is eligible to receive an annual bonus with a target amount of fifty percent (50%) of his annual base salary pursuant to the terms of his employment agreement with the Company, and Mr. Englese is eligible to receive an annual bonus with a target amount of forty percent (40%) of his annual base salary pursuant to the terms of his employment offer letter with the Company. At a February 13, 2019 meeting, our board of directors formalized the 2019 bonus program for employees at the director level and above

and established a bonus target for Dr. Roberts of thirty percent (30%) of his annual base salary. The annual cash bonuses are determined by our board of directors on a discretionary basis based on the Company's overall performance for the year as well as individual performance milestones achieved. The actual annual cash bonuses awarded to each named executive officer for 2019 performance are set forth above in the Summary Compensation Table in the column entitled "Non-Equity Incentive Plan Compensation."

Equity Compensation

We maintain an equity incentive plan, the Aziyo Biologics, Inc. 2015 Stock Option/Stock Issuance Plan, or the 2015 Plan. The 2015 Plan provides our employees (including the named executive officers), consultants, non-employee directors and other service providers and those of our subsidiaries the opportunity to participate in the equity appreciation of our business through the receipt of stock options to purchase shares of our Class A common stock. We believe that such stock options encourage a sense of proprietorship and stimulate interest in our development and financial success. The maximum number of shares of Class A common stock under the 2015 Plan is 422,256.

Pursuant to the 2015 Plan, we granted stock options to Mr. Lloyd on June 4, 2019, covering 2,580 shares of our Class A common stock, in connection with an award in with respect to Mr. Lloyd's annual cash bonus for fiscal year 2018, pursuant to which Mr. Lloyd elected to receive a portion of his annual cash bonus in shares of our Class A common stock, rather than cash. On September 5, 2019, we granted stock options to Mr. Englese on September 5, 2019, covering 21,498 shares of our Class A common stock, in connection with Mr. Englese's employment as Chief Commercial Officer. We also granted stock options to Dr. Roberts on February 13, 2019, covering 2,867 shares of our Class A common stock, in connection with an annual award in the ordinary course.

As of August 31, 2020, stock options covering an aggregate of 288,156 shares of our Class A common stock were outstanding under the 2015 Plan. It is anticipated that any unvested stock options granted pursuant to the 2015 Plan will remain outstanding and continue to vest in accordance with their terms upon and following the effectiveness of their offering. Following the effectiveness of this offering, we do not intend to make any new grants of awards under the 2015 Plan.

In connection with this offering, we intend to adopt a 2020 Incentive Award Plan, referred to below as the 2020 Plan, in order to facilitate the grant of cash and equity incentives to our directors, employees (including our named executive officers), and consultants of our company and certain of its affiliates and to enable our company and certain of its affiliates to obtain and retain services of these individuals, which is essential to our long-term success. We expect that the 2020 Plan will be effective on the date prior to the effective date of the registration statement of which this prospectus is a part, subject to approval of such plan by our board of directors and our current stockholders. For additional information about the 2020 Plan, see "2020 Incentive Award Plan" below.

Other Elements of Compensation

Retirement Plans

We currently maintain a 401(k) retirement savings plan for our employees, including our named executive officers, who satisfy certain eligibility requirements. Our named executive officers are eligible to participate in the 401(k) plan on the same terms as other full-time employees. The Code allows eligible employees to defer a portion of their compensation, within prescribed limits, on a pre-tax basis through contributions to the 401(k) plan. Currently, we match contributions made by participants in the 401(k) plan up to a specified percentage of the employee contributions, and these matching contributions are fully vested as of the date on which the contribution is made. We believe that providing a vehicle for tax-deferred retirement savings though our 401(k) plan, and making fully vested matching contributions, adds to the overall desirability of our executive compensation package and further incentivizes our employees, including our named executive officers, in accordance with our compensation policies.

Employee Benefits and Perquisites

Health/Welfare Plans. All of our full-time employees, including our named executive officers, are eligible to participate in our health and welfare plans, including:

- medical, dental and vision benefits;

- medical and dependent care flexible spending accounts;
- short-term and long-term disability insurance;
- commuter flexible spending account and
- life insurance.

We believe the perquisites described above are necessary and appropriate to provide a competitive compensation package to our named executive officers.

No Tax Gross-Ups

We do not make gross-up payments to cover our named executive officers' personal income taxes that may pertain to any of the compensation or perquisites paid or provided by our company.

Outstanding Equity Awards at Fiscal Year-End

The following table summarizes the number of shares of Class A common stock underlying outstanding equity incentive plan awards for each named executive officer as of December 31, 2019.

		Option Awards			
Name	Grant Date	Number of Securities Underlying Unexercised Options (#) Exercisable	Number of Securities Underlying Unexercised Options (#) Unexercisable	Option Exercise Price ($)	Option Expiration Date
Ronald Lloyd	6/1/2018[1]	57,319	95,531	5.58196	5/31/2025
	6/4/2019[2]	2,580	—	10.326626	6/3/2026
Thomas Englese	9/5/2019[3]	—	21,498	10.326626	9/4/2026
Darryl Roberts, Ph.D.	5/19/2016[4]	9,630	1,120	5.442411	5/18/2022
	1/11/2018[5]	2,329	1,255	5.442411	1/10/2025
	2/13/2019[6]	—	2,867	5.58196	2/12/2026

(1) 25% of the stock options vested upon the first anniversary of the grant date, and the remaining 75% vest in 12 equal quarterly installments thereafter, subject to continued service through each vesting date, provided that the vesting will accelerate upon the occurrence of a Corporate Transaction (as defined in the applicable stock option agreement) if Mr. Lloyd is terminated by the Company without Cause (as defined below in "Employment Agreements — Ronald Lloyd") or Mr. Lloyd resigns with Good Reason (as defined below in "Employment Agreements — Ronald Lloyd") within six months after such Corporate Transaction is consummated.

(2) 100% of the stock options were fully vested upon the grant date.

(3) 25% of the stock options vested upon the first anniversary of the grant date, and the remaining 75% vest in 12 equal quarterly installments thereafter, subject to continued service through each vesting date.

(4) 25% of the stock options vested upon the first anniversary of the grant date, and the remaining 75% vest in 36 equal monthly installments thereafter, subject to continued service through each vesting date.

(5) 20% of the stock options were vested as of the grant date, and the remaining 80% vest in 16 equal quarterly installments based on a vesting commencement date of September 30, 2017, subject to continued service through each vesting date.

(6) 25% of the stock options vested upon the first anniversary of the grant date, and the remaining 75% vest in 12 equal quarterly installments thereafter, subject to continued service through each vesting date.

Executive Compensation Arrangements

Employment Agreements

Ronald Lloyd

The Company entered into an employment agreement with Mr. Lloyd dated June 1, 2018 for his position as President and Chief Executive Officer with an initial base salary of $450,000, which we refer to as the Lloyd Employment Agreement. The Lloyd Employment Agreement provides that Mr. Lloyd's employment with the Company is at-will and may be terminated by the Company at any time and for any reason.

The Lloyd Employment Agreement provides that Mr. Lloyd shall be eligible to receive an annual target bonus of fifty percent (50%) of his base salary currently in effect, which shall be conditioned upon, among other things, Mr. Lloyd's performance and the performance of the Company. The actual bonus award payable to Mr. Lloyd shall be determined by our board of directors in its sole discretion and may be more

or less than the target amount. Upon Mr. Lloyd's commencement of employment as President and Chief Executive Officer, he was entitled to a $50,000 signing bonus, payable in July 2018, subject to his continued employment with the Company through such payment date, as well as relocation expenses in the amount of $15,000 and any associated taxes on such payments. Mr. Lloyd is also entitled to participate in the Company's health and welfare plans.

The Lloyd Employment Agreement also provided for Mr. Lloyd's initial stock option grant of 1,920,500 stock options. Our board of directors determined, in its sole discretion, to increase this stock option grant to 2,133,000. The Option shall vest according to the following schedule: 25% of the shares issuable upon exercise of the Option shall vest on the twelve (12) month anniversary of such grant date provided that Mr. Lloyd continues to be employed by the Company on such date and the remaining 75% of the shares issuable upon exercise of the Option shall vest in twelve (12) equal quarterly installments commencing at the end of the quarter following such twelve (12) month anniversary date provided that Mr. Lloyd continues to be employed by the Company at the end of each such quarter; provided that all of such shares shall vest if a Sale Transaction is consummated while Mr. Lloyd is employed by the Company and Mr. Lloyd's employment with the Company is terminated without Cause within six (6) months after such Sale Transaction is consummated or Mr. Lloyd resigns with Good Reason within six (6) months after such Sale Transaction is consummated.

If Mr. Lloyd's employment with the Company is terminated by the Company without Cause or Mr. Lloyd resigns from his employment with the Company for Good Reason, Mr. Lloyd shall be entitled to receive his base salary for the period beginning on such termination date and ending on the six (6) month anniversary of the termination date, in regular periodic installments in accordance with the Company's general payroll practices. Mr. Lloyd will be required to execute a release of claims in favor of the Company in order to receive his severance benefits. Pursuant to the Lloyd Employment Agreement, if a Sale Transaction is consummated and within six (6) months thereafter either Mr. Lloyd's employment with the Company is terminated by the Company without Cause or Mr. Lloyd resigns from his employment with the Company for Good Reason, Mr. Lloyd shall be entitled to receive his base salary for the period beginning on such termination date and ending on the twelve (12) month anniversary of the termination date, in regular periodic installments in accordance with the Company's general payroll practices.

"Cause" is defined in the Lloyd Employment Agreement as (A) Mr. Lloyd performing his duties, in the good faith opinion of our board of directors, in a grossly negligent or reckless manner or with willful malfeasance; (B) Mr. Lloyd exhibiting habitual drunkenness or engaging in substance abuse; (C) Mr. Lloyd committing any material violation of any state or federal law relating to the workplace environment (including, without limitation, laws relating to sexual harassment or age, sex or other prohibited discrimination) or any material violation of any Company policy; (D) Mr. Lloyd willfully failing or refusing to perform in the usual manner at the usual time those duties which he regularly and routinely performs in connection with the business of the Company or such other duties reasonably related to the capacity in which he is employed hereunder which may be assigned to him by our board of directors; (E) Mr. Lloyd performing any material action when specifically and reasonably instructed not to do so by the chairman or our board of directors; (F) Mr. Lloyd breaching the confidentiality, inventions and proprietary rights or restrictive covenant sections of the Lloyd Employment Agreement; (G) Mr. Lloyd committing any fraud or using or appropriating for his personal use or benefit any funds, properties or opportunities of the Company not authorized by our board of directors to be so used or appropriated; or (H) Mr. Lloyd being convicted of any felony or any other crime related to his employment or involving moral turpitude. The Company shall not be entitled to terminate Mr. Lloyd for Cause pursuant to cause (C), (D), (E) or (F) unless the Company provides written notice stating in reasonable detail the basis for termination and a fifteen (15) day opportunity to cure to Mr. Lloyd (unless (1) the Company reasonably determines that providing such opportunity to cure to Mr. Lloyd is reasonably likely to have a material adverse effect on its business, financial condition, results of operations, prospects or assets, (2) the facts and circumstances underlying such termination are not able to be cured or (3) the Company has previously provided Mr. Lloyd an opportunity to cure the applicable issue; in the case of (1), (2) or (3), the Company may terminate Mr. Lloyd without providing an opportunity to cure).

"Good Reason" is defined in the Lloyd Employment Agreement as: (A) Mr. Lloyd failing to be the Chief Executive Officer of the surviving company in a Sale Transaction (or, if there is a parent of the surviving company in a Sale Transaction, Mr. Lloyd failing to be the Chief Executive Officer of such parent); (B) a

material reduction in Mr. Lloyd's job responsibilities and duties for the Company that is not cured by the Company within fifteen (15) days after the Company's receipt of written notice from Mr. Lloyd of such event; (C) a material reduction in Mr. Lloyd's Base Salary; or (D) a requirement imposed by the Company on Mr. Lloyd that Mr. Lloyd's principal place of employment be anywhere other than within a 50 mile radius of the Company's current office location in Silver Spring, Maryland, except for required travel on Company business to an extent substantially consistent with Mr. Lloyd 's business travel obligations, that, in any such case, is not cured by the Company within fifteen (15) days after the Company's receipt of written notice from Mr. Lloyd of such event. "Sale Transaction" is defined in the Lloyd Employment Agreement as (A) any transaction or series of related transactions (including, without limitation, any reorganization, share exchange, consolidation or merger of the Company with or into any other entity but excluding any sale of capital stock by the Company for capital raising purposes) (x) in which the holders of the Company's outstanding capital stock immediately before the first such transaction do not, immediately after any other such transaction, retain stock or other equity interests representing at least sixty percent (60%) of the voting power of the surviving entity of such transaction or (y) in which at least sixty percent (60%) of the Company's outstanding capital stock is transferred (calculated on an as-converted to common stock basis); or (B) any sale, conveyance, exclusive license or other disposition of all or substantially all of the assets of the Company.

Pursuant to the Lloyd Employment Agreement, Mr. Lloyd is subject to confidentiality and assignment of intellectual property provisions, and certain restrictive covenants, including one-year post-employment non-competition and non-solicitation of employees and customer provisions.

In connection with the offering, Mr. Lloyd will enter into an amended and restated employment agreement, or the Amended and Restated Lloyd Employment Agreement.

The Amended and Restated Lloyd Employment Agreement provides that, Mr. Lloyd will be entitled to an annual base salary of $537,800 and that Mr. Lloyd shall be entitled to receive an annual target bonus of eighty percent (80%) of his base salary current in effect, which shall be conditioned upon, among other things, Mr. Lloyd's performance and the performance of the Company.

The Amended and Restated Lloyd Employment Agreement provides that, upon Mr. Lloyd's termination of employment by the Company without Cause (as defined in the Amended and Restated Lloyd Employment Agreement) and upon his resignation for Good Reason, subject to Mr. Lloyd's execution and non-revocation of a release of claims, Mr. Lloyd will be entitled to receive, in addition to any accrued amounts, (i) his annual base salary for a period of twelve months, (ii) one hundred percent (100%) of his target annual bonus for the year in which termination occurs and (iii) payment of the Company's share of the premiums for participation in the Company's health plans pursuant to COBRA for the twelve-month period following termination. If Mr. Lloyd is terminated in the period starting three months prior to a change in control and ending on the first anniversary of such change in control, Mr. Lloyd will instead be entitled to receive, in addition to any accrued amounts, (i) his annual base salary for a period of eighteen months, (ii) one hundred fifty percent (150%) of his target annual bonus for the year in which termination occurs, (iii) payment of the remainder of premiums for participation in the Company's health plan pursuant to COBRA for the eighteen-month period following termination and (iv) full acceleration of any outstanding equity awards.

As defined in the Amended and Restated Lloyd Employment Agreement, "Good Reason" shall mean the occurrence of any one or more of the following events without Mr. Lloyd's prior written consent, unless the Company fully corrects the circumstances constituting Good Reason (provided such circumstances are capable of correction): (i) a material reduction in Mr. Lloyd's job responsibilities and duties for the Company, (ii) a material reduction in Mr. Lloyd's annual base salary or (iii) a requirement imposed by the Company on Mr. Lloyd that Mr. Lloyd's principal place of employment be anywhere other than within a 50 mile radius of Mr. Lloyd's principal location, except for required on Company business to an extent substantially consistent with Mr. Lloyd's business travel obligation, that, in any such case, is not cured by the Company within fifteen days after the Company's receipt of written notice from Mr. Lloyd of such event. Notwithstanding the foregoing, Mr. Lloyd will not be deemed to have resigned for Good Reason unless (1) Mr. Lloyd provides the Company with written notice setting forth in reasonable detail the facts and circumstances claimed by Mr. Lloyd to constitute Good Reason within sixty (60) days after the date of the occurrence of any event that Mr. Lloyd knows or should reasonably have known to constitute

Good Reason, (2) the Company fails to cure such acts or omissions within thirty (30) days following its receipt of such notice, and (3) the effective date of Mr. Lloyd's termination for Good Reason occurs no later than sixty (60) days after the expiration of the Company's cure period.

Pursuant to the Amended and Restated Lloyd Employment Agreement, Mr. Lloyd is subject to confidentiality and assignment of intellectual property provisions, and certain restrictive covenants, including one-year post-employment non-solicitation of employees.

Letter Agreements

Thomas Englese

On June 25, 2019, the Company gave Mr. Englese an offer letter providing for his position as Chief Commercial Officer, which we refer to as the Englese Offer Letter. Mr. Englese's employment with the Company is at-will and either party may terminate Mr. Englese's employment at any time.

The Englese Offer Letter provides that Mr. Englese is entitled to an annual base salary of $375,000 and an annual target bonus of forty percent (40%) of his base salary currently in effect, which shall be conditioned upon, among other things, Mr. Lloyd's performance and the performance of the Company. Mr. Englese's actual 2019 bonus was pro-rated based on Mr. Englese's start date with the Company. The Englese Offer Letter also provided Mr. Englese with an initial grant of 300,000 stock options. Mr. Englese is entitled to participate in the Company's health and welfare plans.

Pursuant to the Englese Offer Letter, upon termination of Mr. Englese's employment by the Company with or without cause or by Mr. Englese for any reason, the Company will have no liability to Mr. Englese except to pay Mr. Englese any unpaid base salary due.

In connection with the offering, Mr. Englese will enter into an employment agreement, or the Englese Employment Agreement.

The Englese Employment Agreement provides that, Mr. Englese will be entitled to an annual base salary of $380,600 and that Mr. Englese shall be entitle to receive an annual target bonus of forty-five percent (45%) of his base salary current in effect, which shall be conditioned upon, among other things, Mr. Englese's performance and the performance of the Company.

The Englese Employment Agreement provides that, upon Mr. Englese's termination of employment by the company without Cause (as defined in the Englese Employment Agreement) and upon his resignation for Good Reason (as defined in the Englese Employment Agreement), subject to Mr. Englese's execution and non-revocation of a release of claims, Mr. Englese will be entitled to receive, in addition to any accrued amounts, (i) his annual base salary for a period of twelve months and (ii) payment of the company's share of the premiums for participation in the company's health plans pursuant to COBRA for the twelve-month period following termination. If Mr. Englese is terminated in the twelve months following a change in control, Mr. Englese will instead be entitled to receive, in addition to any accrued amounts, (i) his annual base salary for a period of twelve months, (ii) one hundred percent (100%) of his target annual bonus for the year in which termination occurs, (iii) payment of the remainder of premiums for participation in the company's health plan pursuant to COBRA for the twelve-month period following termination and (iv) full acceleration of any outstanding equity awards.

Pursuant to the Englese Employment Agreement, Mr. Englese is subject to confidentiality and assignment of intellectual property provisions, and certain restrictive covenants, including one-year post-employment non-competition and non-solicitation of employees and customer provisions.

Darryl Roberts, Ph.D.

On April 25, 2016, the Company gave Dr. Roberts an offer letter providing for his position as Senior Vice President, Operations and General Manager, which we refer to as the Roberts Offer Letter. On April 2, 2018, Dr. Roberts was promoted to his current role as Executive Vice President and General Manager, Musculoskeletal Products. The Company has since changed his position title to EVP, Operations and Product Development. Dr. Roberts employment with the Company is at-will and either party may terminate Dr. Roberts' employment at any time.

The Roberts Offer Letter provides that Dr. Roberts is entitled to an annual base salary of $270,000 and he is eligible for an annual performance-based bonus, determined in a manner consistent with the bonus

determinations for similarly-situated employees, at the discretion of management and approved by our board of directors. The Roberts Offer Letter also provided for Dr. Roberts' initial stock option grant of 150,000 stock options. Upon Dr. Roberts' commencement of employment as Senior Vice President, Operations and General Manager, he was entitled to relocation expenses in the amount of $100,000. Dr. Roberts is entitled to participate in the Company's health and welfare plans.

Pursuant to the Roberts Offer Letter, upon Dr. Roberts' termination of employment by the Company other than for Cause, Dr. Roberts shall be entitled to severance benefits, in an amount equal to twelve (12) weeks base pay, at the rate in effect at the time of his separation. Dr. Roberts will be required to execute a release of claims in favor of the Company in order to receive his severance benefits.

"Cause" is defined in the Roberts Offer Letter as: (A) Dr. Roberts performing his duties, in the good faith opinion of the chief executive officer, in a grossly negligent or reckless manner or with willful malfeasance; (B) Dr. Roberts exhibiting habitual drunkenness or engaging in substance abuse; (C) Dr. Roberts committing any material violation of any state or federal law relating to the workplace environment (including, without limitation, laws relating to sexual harassment or age, sex or other prohibited discrimination) or any material violation of any Company policy; (D) Dr. Roberts willfully failing or refusing to perform in the usual manner at the usual time those duties which he regularly and routinely performs in connection with the business of the Company or such other duties reasonably related to the capacity in which he is employed hereunder which may be assigned to him by the chief executive officer (E) Dr. Roberts performing any material action when specifically and reasonably instructed not to do so by the chief executive officer; (F) Dr. Roberts breaching any restrictive covenant agreement for which Dr. Roberts signed at the start of his employment; (G) Dr. Roberts committing any fraud or using or appropriating for his personal use or benefit any funds, properties or opportunities of the Company not authorized by the chief executive officer to be so used or appropriated; or (H) Dr. Roberts being convicted of any felony or any other crime related to his employment or involving moral turpitude. The Company shall not be entitled to terminate Dr. Roberts for Cause unless the Company provides written notice stating in reasonable detail the basis for termination and a fifteen (15) day opportunity to cure to Dr. Roberts (unless (1) the Company reasonably determines that providing such opportunity to cure to Dr. Roberts is reasonably likely to have a material adverse effect on its business, financial condition, results of operations, prospects or assets, (2) the facts and circumstances underlying such termination are not able to be cured or (3) the Company has previously provided Dr. Roberts an opportunity to cure the applicable issue; in the case of (1), (2) or (3), the Company may terminate Dr. Roberts without providing an opportunity to cure).

In connection with the offering, Dr. Roberts will enter into an employment agreement, or the Roberts Employment Agreement.

The Roberts Employment Agreement provides that, Dr. Roberts will be entitled to an annual base salary of $309,000 and that Dr. Roberts shall be entitle to receive an annual target bonus of forty-five percent (45%) of his base salary current in effect, which shall be conditioned upon, among other things, Dr. Roberts's performance and the performance of the Company.

The Roberts Employment Agreement provides that, upon Dr. Roberts's termination of employment by the company without Cause (as defined in the Roberts Employment Agreement) and upon his resignation for Good Reason (as defined in the Roberts Employment Agreement), subject to Dr. Roberts's execution and non-revocation of a release of claims, Dr. Roberts will be entitled to receive, in addition to any accrued amounts, (i) his annual base salary for a period of twelve months and (ii) payment of the company's share of the premiums for participation in the company's health plans pursuant to COBRA for the twelve-month period following termination. If Dr. Roberts is terminated in the twelve months following a change in control, Dr. Roberts will instead be entitled to receive, in addition to any accrued amounts, (i) his annual base salary for a period of twelve months, (ii) one hundred percent (100%) of his target annual bonus for the year in which termination occurs, (iii) payment of the remainder of premiums for participation in the company's health plan pursuant to COBRA for the twelve-month period following termination and (iv) full acceleration of any outstanding equity awards.

Pursuant to the Roberts Employment Agreement, Dr. Roberts is subject to confidentiality and assignment of intellectual property provisions, and certain restrictive covenants, including one-year post-employment non-competition and non-solicitation of employees and customer provisions.

Matthew Ferguson

In addition, the Company has hired Matthew Ferguson, who will serve as the Company's Chief Financial Officer, effective September 28, 2020. Mr. Ferguson will also enter into an employment agreement, effective upon the offering, or the Ferguson Employment Agreement.

The Ferguson Employment Agreement provides that, Mr. Ferguson will be entitled to an annual base salary of $350,000 and that Mr. Ferguson shall be entitled to receive an annual target bonus of forty-five percent (45%) of his base salary current in effect, which shall be conditioned upon, among other things, Mr. Ferguson's performance and the performance of the Company.

The Ferguson Employment Agreement provides that, upon Mr. Ferguson's termination of employment by the company without Cause (as defined in the Ferguson Employment Agreement) and upon his resignation for Good Reason (as defined in the Ferguson Employment Agreement), subject to Mr. Ferguson's execution and non-revocation of a release of claims, Mr. Ferguson will be entitled to receive, in addition to any accrued amounts, (i) his annual base salary for a period of twelve months and (ii) payment of the company's share of the premiums for participation in the company's health plans pursuant to COBRA for the twelve-month period following termination. If Mr. Ferguson is terminated in the twelve months following a change in control, Mr. Ferguson will instead be entitled to receive, in addition to any accrued amounts, (i) his annual base salary for a period of twelve months, (ii) one hundred percent (100%) of his target annual bonus for the year in which termination occurs, (iii) payment of the remainder of premiums for participation in the company's health plan pursuant to COBRA for the twelve-month period following termination and (iv) full acceleration of any outstanding equity awards.

The Ferguson Employment Agreement also provides for Mr. Ferguson's initial stock option grant of 81,800 stock options. The options will vest in four equal annual installments on each of the first four anniversaries of the grant date, provided that all of the options will vest in connection with a change in control while Mr. Ferguson is employed by the Company and Mr. Ferguson's employment with the Company is terminated without Cause or Mr. Ferguson resigns with Good Reason within twelve (12) months after such change in control is consummated.

Pursuant to the Ferguson Employment Agreement, Mr. Ferguson is subject to confidentiality and assignment of intellectual property provisions, and certain restrictive covenants, including one-year post-employment non-solicitation of employees.

Equity Incentive Plans

Aziyo Biologics, Inc. 2015 Stock Option/Stock Issuance Plan

We currently maintain the 2015 Plan, as described above. On and after the closing of this offering and following the effectiveness of the 2020 Plan, no further option grants will be made under the 2015 Plan.

2020 Incentive Award Plan

In connection with the offering, we plan to adopt the 2020 Plan under which we may grant cash and equity-based incentive awards to eligible service providers in order to attract, motivate and retain the talent for which we compete. The material terms of the 2020 Plan are summarized below.

Eligibility and Administration

Our employees, consultants and directors, and employees, consultants and directors of our parents and subsidiaries are eligible to receive awards under the 2020 Plan. The 2020 Plan is administered by our board of directors with respect to awards to non-employee directors and by the compensation committee with respect to other participants, each of which may delegate its duties and responsibilities to committees of our directors and/or officers (referred to collectively as the plan administrator below), subject to certain limitations that may be imposed under Section 16 of the Exchange Act, and/or stock exchange rules, as applicable. The plan administrator has the authority to make all determinations and interpretations under, prescribe all forms for use with, and adopt rules for the administration of, the 2020 Plan, subject to its express terms and conditions. The plan administrator will also set the terms and conditions of all awards under the 2020 Plan, including any vesting and vesting acceleration conditions.

Limitation on Awards and Shares Available

The maximum number of shares of our Class A common stock available for issuance under the 2020 Plan is equal to the sum of (i) 1,636,000 shares of our Class A common stock, (ii) any shares which as of the effective date are available for issuance under the Aziyo Biologics, Inc. 2015 Stock Option/Stock Issuance Plan, or the Prior Plan, (iii) an annual increase on the first day of each year beginning in 2021 and ending in and including 2030, equal to the lesser of (A) 4% of the outstanding shares of all classes of our common stock on the last day of the immediately preceding fiscal year and (B) such lesser amount as determined by our board of directors; provided, however, no more than 1,636,000 shares may be issued upon the exercise of incentive stock options, or ISOs. The share reserve formula under the 2020 Plan is intended to provide us with the continuing ability to grant equity awards to eligible employees, directors and consultants for the ten-year term of the 2020 Plan.

Awards granted under the 2020 Plan, or as of the 2020 Plan's effective date, any shares subject to an award under the Prior Plan, upon the assumption of, or in substitution for, outstanding equity awards previously granted by an entity in connection with a corporate transaction, such as a merger, combination, consolidation or acquisition of property or stock will not reduce the shares authorized for grant under the 2020 Plan. The maximum grant date fair value of awards granted to any non-employee director pursuant to the 2020 Plan during any calendar year is $750,000, increased to $1,000,000 in 2020 or in the fiscal year of the non-employee director's initial service.

Awards

The 2020 Plan provides for the grant of stock options, including ISOs, and nonqualified stock options, or NSOs, restricted stock, dividend equivalents, stock payments, restricted stock units, or RSUs, other incentive awards, SARs, and cash awards. Certain awards under the 2020 Plan may constitute or provide for a deferral of compensation, subject to Section 409A of the Code, which may impose additional requirements on the terms and conditions of such awards. All awards under the 2020 Plan will be set forth in award agreements, which will detail all terms and conditions of the awards, including any applicable vesting and payment terms and post-termination exercise limitations. Awards other than cash awards generally will be settled in shares of our Class A common stock, but the plan administrator may provide for cash settlement of any award. A brief description of each award type follows.

- *Stock Options.* Stock options provide for the purchase of shares of our Class A common stock in the future at an exercise price set on the grant date. ISOs, by contrast to NSOs, may provide tax deferral beyond exercise and favorable capital gains tax treatment to their holders if certain holding period and other requirements of the Code are satisfied. The exercise price of a stock option may not be less than 100% of the fair market value of the underlying share on the date of grant (or 110% in the case of ISOs granted to certain significant stockholders), except with respect to certain substitute options granted in connection with a corporate transaction. The term of a stock option may not be longer than ten years (or five years in the case of ISOs granted to certain significant stockholders).
- *SARs.* SARs entitle their holder, upon exercise, to receive from us an amount equal to the appreciation of the shares subject to the award between the grant date and the exercise date. The exercise price of a SAR may not be less than 100% of the fair market value of the underlying share on the date of grant (except with respect to certain substitute SARs granted in connection with a corporate transaction) and the term of a SAR may not be longer than ten years.
- *Restricted Stock and RSUs.* Restricted stock is an award of nontransferable shares of our Class A common stock that remain forfeitable unless and until specified conditions are met, and which may be subject to a purchase price. RSUs are contractual promises to deliver shares of our Class A common stock in the future, which may also remain forfeitable unless and until specified conditions are met. Delivery of the shares underlying RSUs may be deferred under the terms of the award or at the election of the participant, if the plan administrator permits such a deferral.
- *Stock Payments, Other Incentive Awards and Cash Awards.* Stock payments are awards of fully vested shares of our Class A common stock that may, but need not, be made in lieu of base salary, bonus, fees or other cash compensation otherwise payable to any individual who is eligible to receive awards. Other incentive awards are awards other than those enumerated in this

summary that are denominated in, linked to or derived from shares of our Class A common stock or value metrics related to our shares, and may remain forfeitable unless and until specified conditions are met. Cash awards are cash incentive bonuses subject to performance goals.

- *Dividend Equivalents.* Dividend equivalents represent the right to receive the equivalent value of dividends paid on shares of our Class A common stock and may be granted alone or in tandem with awards other than stock options or SARs. Dividend equivalents are credited as of dividend record dates during the period between the date an award is granted and the date such award vests, is exercised, is distributed or expires, as determined by the plan administrator.

Vesting

Vesting conditions determined by the plan administrator may apply to each award and may include continued service, performance and/or other conditions.

Certain Transactions

The plan administrator has broad discretion to take action under the 2020 Plan, as well as make adjustments to the terms and conditions of existing and future awards, to prevent the dilution or enlargement of intended benefits and facilitate necessary or desirable changes in the event of certain transactions and events affecting our Class A common stock, such as stock dividends, stock splits, mergers, acquisitions, consolidations and other corporate transactions. In addition, in the event of certain non-reciprocal transactions with our stockholders known as "equity restructurings," the plan administrator will make equitable adjustments to the 2020 Plan and outstanding awards. In the event of a "change in control" of the company (as defined in the 2020 Plan), to the extent that the surviving entity declines to continue, convert, assume or replace outstanding awards, then the plan administrator may provide that all such awards will terminate in exchange for cash or other consideration, or become fully vested and exercisable in connection with the transaction. Upon or in anticipation of a change in control, the plan administrator may cause any outstanding awards to terminate at a specified time in the future and give the participant the right to exercise such awards during a period of time determined by the plan administrator in its sole discretion. Individual award agreements may provide for additional accelerated vesting and payment provisions.

Foreign Participants

The plan administrator may modify award terms, establish subplans and/or adjust other terms and conditions of awards, subject to the share limits described above, in order to facilitate grants of awards subject to the laws and/or stock exchange rules of countries outside of the United States. The 2020 Plan will include an appendix for Israeli taxpayers pursuant to which tax-qualified options may be granted to eligible employees under Section 102 of the Israeli Income Tax Ordinance.

Claw-Back Provisions, Transferability, and Participant Payments

All awards will be subject to the provisions of any claw-back policy implemented by us to the extent set forth in such claw-back policy and/or in the applicable award agreement. With limited exceptions for estate planning, domestic relations orders, certain beneficiary designations and the laws of descent and distribution, awards under the 2020 Plan are generally non-transferable, and are exercisable only by the participant. With regard to tax withholding, exercise price and purchase price obligations arising in connection with awards under the 2020 Plan, the plan administrator may, in its discretion, accept cash or check, provide for net withholding of shares, allow shares of our Class A common stock that meet specified conditions to be repurchased, allow a "market sell order" or such other consideration as it deems suitable.

Plan Amendment and Termination

Our board of directors may amend or terminate the 2020 Plan at any time; however, except in connection with certain changes in our capital structure, stockholder approval will be required for any amendment that increases the number of shares available under the 2020 Plan. No award may be granted pursuant to the 2020 Plan after the tenth anniversary of the earlier of (i) the date on which our board of directors adopts the 2020 Plan and (ii) the date on which our stockholders approve the 2020 Plan.

2020 Employee Stock Purchase Plan

Effective the day prior to the first public trading date of our Class A common stock, we intend to adopt and ask our stockholders to approve the 2020 Employee Stock Purchase Plan, or the 2020 ESPP, the material terms of which are summarized below.

The 2020 ESPP is comprised of two distinct components in order to provide increased flexibility to grant options to purchase shares under the 2020 ESPP to U.S. and to non-U.S. employees. Specifically, the 2020 ESPP authorizes (1) the grant of options to U.S. employees that are intended to qualify for favorable U.S. federal tax treatment under Section 423 of the Code, or the Section 423 Component, and (2) the grant of options that are not intended to be tax-qualified under Section 423 of the Code to facilitate participation for employees located outside of the U.S. who do not benefit from favorable U.S. federal tax treatment and to provide flexibility to comply with non-U.S. law and other considerations, or the Non-Section 423 Component. Where permitted under local law and custom, we expect that the Non-Section 423 Component will generally be operated and administered on terms and conditions similar to the Section 423 Component.

Shares Available for Awards; Administration. A total of 143,150 shares of our Class A common stock will initially be reserved for issuance under the 2020 ESPP. In addition, the number of shares available for issuance under the 2020 ESPP will be annually increased on January 1 of each calendar year beginning in 2021 and ending in and including 2030, by an amount equal to the lesser of (A) 1% of the shares outstanding on the final day of the immediately preceding calendar year and (B) such smaller number of shares as is determined by our board of directors, provided that no more than 143,150 shares of our Class A common stock may be issued under the Section 423 Component. Our board of directors or a committee of our board of directors will administer and will have authority to interpret the terms of the 2020 ESPP and determine eligibility of participants. We expect that the compensation committee will be the initial administrator of the 2020 ESPP.

Eligibility. We expect that all of our employees will be eligible to participate in the 2020 ESPP. However, an employee may not be granted rights to purchase stock under our 2020 ESPP if the employee, immediately after the grant, would own (directly or through attribution) stock possessing 5% or more of the total combined voting power or value of all classes of our stock.

Grant of Rights. Stock will be offered under the 2020 ESPP during offering periods. The length of the offering periods under the 2020 ESPP will be determined by the plan administrator and may be up to twenty-seven months long. Employee payroll deductions will be used to purchase shares on each purchase date during an offering period. The purchase dates for each offering period will be the final trading day in the offering period. Offering periods under the 2020 ESPP will commence when determined by the plan administrator. The plan administrator may, in its discretion, modify the terms of future offering periods. In non-U.S. jurisdictions where participation in the 2020 ESPP through payroll deductions is prohibited, the plan administrator may provide that an eligible employee may elect to participate through contributions to the participant's account under the 2020 ESPP in a form acceptable to the 2020 ESPP administrator in lieu of or in addition to payroll deductions.

The 2020 ESPP permits participants to purchase Class A common stock through payroll deductions of up to a specified percentage of their eligible compensation. The plan administrator will establish a maximum number of shares that may be purchased by a participant during any offering period. In addition, no employee will be permitted to accrue the right to purchase stock under the Section 423 Component at a rate in excess of $25,000 worth of shares during any calendar year during which such a purchase right is outstanding (based on the fair market value per share of our Class A common stock as of the first day of the offering period).

On the first trading day of each offering period, each participant will automatically be granted an option to purchase shares of our Class A common stock. The option will expire at the end of the applicable offering period, and will be exercised at that time to the extent of the payroll deductions accumulated during the offering period. The purchase price of the shares, in the absence of a contrary designation, will be 85% of the lower of the fair market value of our Class A common stock on the first trading day of the offering period or on the purchase date. Participants may voluntarily end their participation in the 2020 ESPP at any time during a specified period prior to the end of the applicable offering period, and will be

paid their accrued payroll deductions that have not yet been used to purchase shares of Class A common stock. Participation ends automatically upon a participant's termination of employment.

A participant may not transfer rights granted under the 2020 ESPP other than by will or the laws of descent and distribution, and are generally exercisable only by the participant.

Certain Transactions. In the event of certain non-reciprocal transactions or events affecting our Class A common stock, the plan administrator will make equitable adjustments to the 2020 ESPP and outstanding rights. In the event of certain unusual or non-recurring events or transactions, including a change in control, the plan administrator may provide for (1) either the replacement of outstanding rights with other rights or property or termination of outstanding rights in exchange for cash, (2) the assumption or substitution of outstanding rights by the successor or survivor corporation or parent or subsidiary thereof, if any, (3) the adjustment in the number and type of shares of stock subject to outstanding rights, (4) the use of participants' accumulated payroll deductions to purchase stock on a new purchase date prior to the next scheduled purchase date and termination of any rights under ongoing offering periods or (5) the termination of all outstanding rights.

Plan Amendment. The plan administrator may amend, suspend or terminate the 2020 ESPP at any time. However, stockholder approval will be obtained for any amendment that increases the aggregate number or changes the type of shares that may be sold pursuant to rights under the 2020 ESPP or changes the corporations or classes of corporations whose employees are eligible to participate in the 2020 ESPP.

IPO Awards. In connection with the offering, the Company will grant its named executive officers each a stock option grant and a grant of restricted stock units, pursuant to the terms of the 2020 Plan and individual award agreements to be entered into with each named executive officer. Mr. Lloyd will receive 181,783 stock options and 100,425 restricted stock units. Mr. Englese will receive 33,488 stock options and 13,890 restricted stock units. Dr. Roberts will receive 50,083 stock options and 11,112 restricted stock units. Certain other members of our leadership team will receive grants as well. The options will be incentive stock options to the maximum extent permissible by law and will vest in four equal annual installments on each of the first four anniversaries of the grant date and the restricted stock units will vest in full on the third anniversary of the grant date, provided that for both the options and the restricted stock units, each named executive officer continues to be employed by the Company on such date. All restricted stock units will vest in connection with a change in control. All options will vest if the named executive officer's employment with the Company is terminated without Cause or the named executive officer resigns with Good Reason within twelve (12) months after such change in control is consummated, provided, that, for Mr. Lloyd, his options will also accelerate if he is terminated without Cause or he resigns for Good Reason in the three months prior to a change in control.

Director Compensation

None of our directors for fiscal year 2019 received any compensation for their services.

Non-Employee Director Compensation Policy

In connection with the consummation of this offering, we will implement a policy pursuant to which each non-employee director will receive an annual director fee of $40,000 as well as an additional annual fee of $30,000 for service as our chairman, $20,000 for service as the chair of our audit committee and an additional annual fee of $10,000 for service (other than as chair) on our audit committee, each earned on a quarterly basis. Each director will also receive an annual equity award with a grant date value of $81,000 which will vest in full on the date of our annual shareholder meeting immediately following the date of grant, subject to the nonemployee director continuing in service through such meeting date. The award is further subject to accelerated vesting upon a change in control (as defined in the 2020 Plan).

CERTAIN RELATIONSHIPS AND RELATED PARTY TRANSACTIONS

The following includes a summary of transactions since January 1, 2017 to which we have been a party in which the amount involved exceeded or will exceed $120,000, and in which any of our directors, executive officers or, to our knowledge, beneficial owners of more than 5% of our capital stock or any member of the immediate family of any of the foregoing persons had or will have a direct or indirect material interest, other than equity and other compensation, termination, change in control and other arrangements, which are described under "Executive and Director Compensation." We also describe below certain other transactions with our directors, executive officers and stockholders.

Preferred Stock Financings

In May 2017, we issued and sold to investors in a private placement 12 million shares of our Series A convertible preferred stock at a price per share of $1.00, for aggregate consideration of approximately $12.0 million. Between July 2018 and September 2020, we issued and sold to investors in additional private placements an aggregate of 18,539,427 million additional shares of our Series A convertible preferred stock at a price per share of $1.00, for aggregate consideration of approximately $18.5 million.

The following table sets forth the aggregate number of shares of our capital stock acquired by our directors, executive officers and beneficial owners of more than 5% of our capital stock in the financing transactions described above. Each share of our Series A convertible preferred stock will convert into 0.071659417 shares of Class A common stock upon the closing of this offering.

Participants	Shares of Series A Preferred Stock	Aggregate Purchase Price (in thousands)
5% or Greater Stockholders[1]		
Deerfield	14,134,536	$ 14,135[2]
HighCape Partners QP and affiliates[3]	15,508,977	$ 15,509[4]
Directors and Executive Officers		
Ronald Lloyd	111,788	$ 112

(1) Additional details regarding these stockholders and their equity holdings are provided in this prospectus under the caption "Principal Stockholders."

(2) A portion of the consideration paid for these shares was funded through the conversion of the aggregate principal amount of and accrued interest on the 2020 Bridge Notes held by Deerfield.

(3) Messrs. Kevin Rakin and W. Matthew Zuga, members of our board of directors, are associated with HighCape Partners QP and affiliated stockholders.

(4) A portion of the consideration paid for these shares was funded through the conversion of the aggregate principal amount of and accrued interest on the 2019 Bridge Notes (as defined below) and the 2020 Bridge Notes held by HighCape Partners QP and HighCape Partners. See "— Convertible Bridge Notes."

Exchange Agreement

In September 2020, we entered into an exchange agreement with Deerfield, pursuant to which we issued to Deerfield 18,384,536 shares of our Series A-1 convertible preferred stock in exchange for an equal number of shares of Series A convertible preferred stock. Each share of our Series A-1 convertible preferred stock will convert into 0.071659417 shares of Class B common stock upon the closing of this offering.

Convertible Bridge Notes

In November 2019, we entered into a bridge note purchase agreement pursuant to which we issued $750,000 in aggregate principal amount of convertible promissory notes, which we refer to as the 2019 Bridge Notes, to HighCape Partners QP and HighCape Partners. The 2019 Bridge Notes had a maturity date of October 16, 2024 and accrued interest at a rate of 5% per year. The aggregate principal amount of, and accrued interest on, the 2019 Bridge Notes automatically converted into shares of our Series A convertible preferred stock at a conversion price of $1.00 per share upon the closing of our Series A convertible preferred stock financing in December 2019, resulting in the issuance of 754,315 shares of Series A convertible preferred stock to HighCape Partners QP and HighCape Partners.

In April 2020, we entered into an additional bridge note purchase agreement pursuant to which we issued approximately $2.0 million in aggregate principal amount of convertible promissory notes, which we refer to as the 2020 Bridge Notes, to HighCape Partners QP (which purchased approximately $1.6 million in aggregate principal amount), HighCape Partners (which purchased $21,555 in aggregate principal amount) and Deerfield (which purchased approximately $0.4 million in aggregate principal amount). The 2020 Bridge Notes had a maturity date of on April 1, 2025 and accrued interest at a rate of 5% per year. The aggregate principal amount of, and accrued interest on, the 2020 Bridge Notes automatically converted into shares of our Series A convertible preferred stock at a conversion price of $1.00 per share upon the closing of our Series A convertible preferred stock financing in September 2020, resulting in the issuance of 1,632,393 shares of Series A convertible preferred stock to HighCape Partners QP, 21,981 shares of Series A convertible preferred stock to HighCape Partners and 385,053 shares of Series A convertible preferred stock to Deerfield.

Transactions with HighCape Partners QP and its Affiliates

Management Services Agreement

In January 2016, we entered into a management services agreement with HighCape Partners Management, L.P., or HighCape Management, an affiliate of HighCape Partners QP, pursuant to which HighCape Management agreed to provide certain strategic, operational and management consulting services to us in exchange for a one-time fee of $125,000 and an annual fee of $250,000. In addition, we agreed to reimburse HighCape Management for all reasonable out-of-pocket costs and expenses incurred in connection with its services under the management services agreement, and also agreed to indemnify HighCape Management and its affiliates from and against any and all actions, causes of action, claims, suits, losses, liabilities and damages, and costs and expenses, including without limitation reasonable attorneys' fees and disbursements, in each case, relating to or arising out of the services contemplated in the management services agreement or arising from or in connection with the performance of any such services under the management services agreement. The management services agreement has an indefinite term and will terminate automatically immediately prior to the consummation of any sale transaction, including our initial public offering.

Pursuant to the management services agreement, we incurred fees of $250,000 per year for each of the years ended December 31, 2017, 2018 and 2019, respectively, and fees of $125,000 for the six months ended June 30, 2020.

Advisory Fee

In connection with the CorMatrix Acquisition in May 2017, we agreed to pay HighCape Management a one-time advisory fee of $750,000. The advisory fee was payable upon the first to occur of any sale transaction (as defined in our certificate of incorporation, as currently in effect) and the closing of this offering. In September 2020, our obligation in respect of this fee was extinguished in connection with the issuance of 375,000 shares of Series A convertible preferred stock to HighCape Capital, L.P.

Common Stock Warrant

In March 2017, we issued a warrant (which we refer to throughout this prospectus as the Common Stock Warrant) to purchase up to an aggregate of 137,806 shares of our Class A common stock at an exercise price of $5.442411 per share to HighCape Partners QP as partial consideration for a $5.0 million letter of credit HighCape Partners QP provided as security to the lender under our then-existing revolving credit facility. The Common Stock Warrant provides that it is exercisable for a number of shares of our Class A common stock equal to the product of (x) 1,923,077 and (y) the quotient of (i) the lesser of 36 and the number of calendar months ended between the date it was issued and the date the letter of credit is terminated, and (ii) 36, provided that it will become exercisable for the maximum number of underlying shares in the event the letter of credit is partially or fully drawn upon. The letter of credit was terminated in May 2017 without being drawn upon and, as a result, the Common Stock Warrant became exercisable for 7,656 shares of our Class A common stock. Unless earlier exercised, the Common Stock Warrant will expire upon the closing of this offering.

Transactions with KeraLink and its Affiliates

Settlement Agreement

In August 2015, we entered into a contribution agreement with TBI (now KeraLink), or the Contribution Agreement, pursuant to which all of the assets and substantially all of the liabilities of its musculoskeletal division were subsequently contributed to us in exchange for 19,499,999 shares of our Series A convertible preferred stock (which were sold to HighCape Partners QP and its affiliates and Deerfield) and 465,786 shares of our Class A common stock. The Contribution Agreement provided for a guaranteed amount of working capital on our balance sheet following such transactions.

In April 2018, in order to resolve certain disputes we had with KeraLink related to the transactions described above, we entered into a settlement agreement and general release, or the Settlement Agreement, with KeraLink providing for, among other things, the settlement and release of certain potential claims between KeraLink and us in connection with such disputes. The Settlement Agreement provided for an initial cash payment to us of $0.09 million and the forgiveness of a $0.31 million intercompany balance owed by us to KeraLink as of the date of the Settlement Agreement. In addition, KeraLink agreed, upon the occurrence of certain liquidity events, to make certain payments to us in an aggregate amount of up to $0.55 million. Such liquidity events include (1) any sale, transfer or other disposition by KeraLink of shares of our common stock (upon which KeraLink agreed to pay us an amount of cash equal to the difference between the cash received by KeraLink from such sale, transfer or other disposition less its disposition costs); (2) the date that is 180 days after all shares of our common stock held by KeraLink are registered pursuant to a registration statement under the Securities Act, listed on a U.S. national securities exchange and not subject to any contractual transfer restrictions other than customary arrangements for a registered secondary sale of stock, provided that KeraLink has not yet made the Unregistered Maturity Payment (as defined below) (upon which KeraLink agreed to pay us an amount of cash equal to the lesser of (x) the difference between $0.55 million and all applicable payments previously made as of such date and (y) the fair market value of the shares of common stock owned by KeraLink as of such date, which amount is referred to as the Registered Maturity Payment); and (3) the date that is one year after the date on which we first advise KeraLink in writing that it is not an “affiliate” of ours under Rule 144 under the Securities Act, provided our common stock is registered under the Exchange Act and listed on a national securities exchange, and provided further, that KeraLink has not yet made the Registered Maturity Payment (upon which KeraLink agreed to pay us an amount of cash equal to the lesser of (x) the difference between $0.55 million and all applicable payments previously made as of such date and (y) the fair market value of the shares of common stock owned by KeraLink as of such date, which amount is referred to as the Unregistered Maturity Payment).

KeraLink has the right to pay any or all amounts that remain due under the Settlement Agreement by tendering shares of its common stock to us. In addition, as security for KeraLink’s payment and performance under the Settlement Agreement, KeraLink granted to us a lien on the 6,499,999 shares of common stock owned by KeraLink on the date of the Settlement Agreement.

Lease Agreement

In November 2015, we entered into a lease agreement with KeraLink with respect to our Richmond, California facility. In July 2017, the facility was sold to an unrelated third party that assumed KeraLink’s obligations under the lease agreement. We made aggregate payments of approximately $0.5 million and $0.06 million to KeraLink under the lease agreement during the years ended December 31, 2017 and 2018, respectively.

Investor Rights Agreement

We entered into a second amended and restated investors’ rights agreement, or the Investor Rights Agreement, in September 2020, with each holder of our Series A convertible preferred stock and Series A-1 preferred stock and certain other investors, including each holder of more than 5% of our capital stock, which entities are also related to certain of our directors. The agreement provides for certain registration rights relating to the registrable shares held by such holders. See “Description of Capital Stock — Registration Rights” for additional information.

Employment Agreements

We have entered into employment agreements with certain of our named executive officers. For more information regarding the agreements with our named executive officers, see "Executive and Director Compensation — Executive Compensation Arrangements — Employment Agreements."

Indemnification Agreements

We intend to enter into indemnification agreements with each of our directors and executive officers. These agreements, among other things, require us or will require us to indemnify each director (and in certain cases their related venture capital funds) and executive officer to the fullest extent permitted by Delaware law, including indemnification of expenses such as attorneys' fees, judgments, fines and settlement amounts incurred by the director or executive officer in any action or proceeding, including any action or proceeding by or in right of us, arising out of the person's services as a director or executive officer. For further information,

Stock Option Grants to Executive Officers and Directors

We have granted stock options to our executive officers and one of our directors as more fully described in the section entitled "Executive and Director Compensation."

Participation in This Offering

Certain of our existing stockholders, including entities affiliated with certain of our directors, have indicated an interest in purchasing an aggregate of approximately $20 million in shares of our common stock in this offering at the initial public offering price. However, because indications of interest are not binding agreements or commitments to purchase, the underwriters may determine to sell more, fewer or no shares in this offering to any or all of these stockholders, or any or all of these stockholders may determine to purchase more, fewer or no shares in this offering. The underwriters will receive the same underwriting discount on any shares purchased by these stockholders as they will on any other shares sold to the public in this offering. To the extent shares of common stock offered hereby are purchased by entities affiliated with Deerfield, such shares will be issued in the form of Class B common stock that will be convertible into an equivalent number of shares of our Class A common stock. The public offering price of and underwriting discount on such shares of Class B common stock will be identical to the shares of Class A common stock otherwise offered hereby.

Policies and Procedures for Related Person Transactions

Our board of directors has adopted a written related person transaction policy, to be effective immediately prior to the effectiveness of the registration statement of which this prospectus forms a part, setting forth the policies and procedures for the review and approval or ratification of related person transactions. This policy will provide that the audit committee approve or ratify, any transaction, arrangement or relationship, or any series of similar transactions, arrangements or relationships (subject to certain exceptions provided under Item 404 of Regulation S-K under the Securities Act), in which we were or our subsidiaries are to be a participant, where the amount involved exceeds $120,000 (or, for or so long as we qualify as a "smaller reporting company" as defined under the Exchange Act, where the amount exceeds the lesser of (1) $120,000 or (2) 1% of the average of our total assets at year end for the last two completed fiscal years) and a "related person" had, has or will have a direct or indirect material interest. In reviewing and approving or ratifying any such transactions, our audit committee is responsible for reviewing the relevant facts and circumstances, including, but not limited to, whether the transaction is on terms comparable to those that could be obtained in an arm's length dealing with an unrelated third party and the extent of the related person's interest in the transaction. It is our policy that no director participate in the approval or ratification of a related person transaction as to which he or she is a "related person" or otherwise has an interest. All of the transactions described in this section occurred prior to the effectiveness of this policy.

PRINCIPAL STOCKHOLDERS

The following table sets forth information with respect to the beneficial ownership of our common stock, as of August 31, 2020 by:

- each person or group of affiliated persons known by us to beneficially own more than 5% of our Class A common stock;
- each of our named executive officers;
- each of our directors; and
- all of our executive officers and directors as a group.

The number of shares beneficially owned by each stockholder is determined under rules issued by the Securities and Exchange Commission. Under these rules, beneficial ownership includes any shares as to which the individual or entity has sole or shared voting power or investment power, which includes the power to dispose of or to direct the disposition of such security. Except as indicated in the footnotes below, we believe, based on the information furnished to us, that the individuals and entities named in the table below have sole voting and investment power with respect to all shares of common stock beneficially owned by them, subject to any applicable community property laws.

Percentage ownership of our common stock before this offering is based on 4,885,855 shares of Class A common stock and 2,398,868 shares of Class B common stock outstanding as of August 31, 2020, after giving effect to (i) the automatic conversion of all outstanding shares of our Series A convertible preferred stock into an aggregate of 2,295,245 shares of our Class A common stock and of all outstanding shares of our Series A-1 convertible preferred stock into an aggregate of 1,317,425 shares of our Class B common stock, in each case, upon the closing of this offering, (ii) the issuance of an aggregate of 1,884,107 shares of our Class A common stock and 1,081,443 shares of our Class B common stock to the holders of our Series A convertible preferred stock and Series A-1 convertible preferred stock, respectively, in respect of a liquidation preference payable to such holders in kind immediately prior to the closing of this offering, (iii) the assumed net exercise of the Common Stock Warrant prior to the closing of this offering, which will result in the issuance of 5,204 shares of our Class A common stock, (iv) the assumed gross exercise, for an aggregate exercise price of approximately $0.4 million, of our Preferred Stock Warrants, which, assuming the automatic conversion of the shares of Series A preferred stock issued pursuant to such exercise into shares of Class A common stock, will result in the issuance of 29,021 shares of our Class A common stock in respect of such conversion and an additional 23,822 shares of Class A common stock in respect of the liquidation preference payable in kind to holders of our Series A preferred stock immediately prior to the closing of this offering, (v) the issuance and sale of an aggregate of (x) 5,039,427 shares of our Series A convertible preferred stock, including 2,039,427 shares of our Series A convertible preferred stock issued upon the conversion of approximately $2.0 million in aggregate principal amount of the 2020 Bridge Notes, together with accrued and unpaid interest thereon, and (y) 375,000 shares of our Series A convertible preferred stock to an affiliate of HighCape Partners in exchange for the extinguishment of our obligation to pay an advisory fee, in each case, in September 2020, and (vi) the filing and effectiveness of our current certificate of incorporation effecting a reclassification of our then outstanding common stock to Class A common stock and authorizing our Series A-1 convertible preferred stock and our Class B common stock and the issuance to Deerfield of 18,384,536 shares of Series A-1 convertible preferred stock in exchange for an equal number of shares of Series A convertible preferred stock pursuant to an exchange agreement, in each case, in September 2020, in the case of each of clauses (i) through (vi) above, as described elsewhere in this prospectus. Percentage ownership of our common stock after this offering is based on 7,827,031 shares of Class A common stock and 2,398,868 shares of Class B common stock outstanding as of August 31, 2020, after giving effect to further effect to our issuance of 2,941,176 shares of our Class A common stock in this offering. In computing the number of shares beneficially owned by an individual or entity and the percentage ownership of that person, shares of common stock subject to options held by such person that are currently exercisable or will become exercisable within 60 days of August 31, 2020 are considered outstanding, although these shares are not considered outstanding for purposes of computing the percentage ownership of any other person. Unless noted otherwise, the address of all listed stockholders is 12510 Prosperity Drive, Suite 370, Silver Spring, MD 20904.

Certain of our existing stockholders, including entities affiliated with certain of our directors, have indicated an interest in purchasing an aggregate of approximately $20 million in shares of our common stock in this offering at the initial public offering price. However, because indications of interest are not binding agreements or commitments to purchase, the underwriters may determine to sell more, fewer or no shares in this offering to any or all of these stockholders, or any or all of these stockholders may determine to purchase more, fewer or no shares in this offering. The underwriters will receive the same underwriting discount on any shares purchased by these stockholders as they will on any other shares sold to the public in this offering. The following table does not reflect any such potential purchases by these existing stockholders or their affiliated entities. If any shares are purchased by these stockholders, the number of shares of common stock beneficially owned after this offering and the percentage of common stock beneficially owned after this offering would increase from that set forth in the table below. To the extent shares of common stock offered hereby are purchased by entities affiliated with Deerfield, such shares will be issued in the form of Class B common stock that will be convertible into an equivalent number of shares of our Class A common stock. The public offering price of and underwriting discount on such shares of Class B common stock will be identical to the shares of Class A common stock otherwise offered hereby.

		Beneficial Ownership Prior to Offering		Beneficial Ownership After Offering	
Name of Beneficial Owner	Number of Shares of Class A Common Stock Owned[1]	Percentage of Class A Common Stock Owned	Percentage of Class A and Class B Common Stock Owned	Percentage of Class A Common Stock Owned	Percentage of Class A and Class B Common Stock Owned After Offering
5% or Greater Stockholders[2]					
HighCape Partners and affiliates[3]	4,067,655	83.17%	55.80%	51.97%	39.78%
KeraLink International, Inc.[4]	465,786	9.53%	6.39%	5.95%	4.55%
Named Executive Officers and Directors					
Ronald Lloyd[5]	96,567	1.94%	1.31%	1.22%	*
Thomas Englese[6]	5,374	*	*	*	*
Darryl Roberts, Ph.D.[7]	14,690	*	*	*	*
Kevin Rakin[3][8]	3,341,073	68.38%	45.86%	42.69%	32.67%
Maybelle Jordan	—	—	—	—	—
Brigid A. Makes	—	—	—	—	—
C. Randal Mills, Ph.D	—	—	—	—	—
W. Matthew Zuga[3]	4,067,655	83.25%	55.84%	51.97%	39.78%
All executive officers and directors as a group (10 individuals)[9]	4,216,131	86.25%	57.86%	54.27%	41.22%

* Less than 1%.

(1) None of the below holders own any Class B common stock.

(2) Deerfield is not included in this table as a 5% or greater stockholder because all of Deerfield's beneficial ownership interest is held in the form of our Class B common stock. As a holder of our Class B common stock, Deerfield will only have the right to convert each share of our Class B common stock into one share of Class A common stock at its election to the extent that as a result of such conversion, it would not beneficially own in excess of 4.9% of any class of our securities registered under the Exchange Act. Following the closing of this offering, after giving effect to the pro forma adjustments described above, Deerfield will beneficially own 2,398,868 shares of our Class B common stock, representing 23.46% of our total outstanding common stock, without giving effect to any additional shares of our Class B common stock that Deerfield may purchase in this offering.

(3) Consists of (i) 43,255 shares of Class A common stock held by HighCape Partners, L.P. (ii) 3,211,838 shares of Class A common stock and 5,204 shares of Class A common stock issuable upon net exercise of the Common Stock Warrant, in each case, held by HighCape Partners QP, L.P., (iii) 499,145 shares of Class A common stock held by HighCape Co-Investment Vehicle I, LLC, (iv) 259,282 shares of Class A common stock held by HighCape Co-Investment Vehicle II, LLC and (v) 48,931 shares of Class A common stock held by HighCape Capital, L.P. Kevin Rakin and W. Matthew Zuga, members of our board of directors, are the managing members of HighCape Partners GP, LLC, which in turn is the general partner of HighCape Partners GP, L.P., which in turn is the general partner of each of HighCape Partners, L.P. and HighCape Partners QP, L.P. Mr. Rakin and Mr. Zuga are the managing members of HighCape Capital, LLC, which in turn is the general partner of HighCape Capital, L.P. Each of Mr. Rakin, Mr. Zuga, HighCape Partners GP, LLC and HighCape Partners GP, L.P. may be deemed to beneficially own the

securities held by HighCape Partners, L.P. and HighCape Partners QP, L.P., and each of Mr. Rakin, Mr. Zuga and HighCape Capital, LLC may be deemed to beneficially own the securities held by HighCape Capital, L.P. In addition, Mr. Zuga is the managing member of each of HighCape Co-Investment Vehicle I, LLC and HighCape Co-Investment Vehicle II, LLC and may be deemed to beneficially own the securities held by such entities. The address of HighCape Partners, L.P., HighCape Capital, L.P., HighCape Partners QP, L.P., HighCape Co-Investment Vehicle I, LLC and HighCape Co-Investment Vehicle II, LLC is 452 5th Avenue, 21st Floor, New York, NY 10018.

(4) Investment decisions with respect to the shares of Class A common stock held of record by KeraLink are made by a nine-person board of directors consisting of Douglas J. Furlong, Ellen Koo, Mark Jensen, C. Thomas Vangsness, Jr., Roberto Pineda II, Sonya Hadrigan, Bryan M. Vossekuil, Christopher Helmrath and Pamela Hall. Decisions of KeraLink's board of directors are made by majority vote and, as a result, no director acting alone has the ability to exercise voting or investment power with regard to these shares. Such shares of Class A common stock are pledged as security for KeraLink's payment and performance obligations under the Settlement Agreement. See "Certain Relationships and Related Party Transactions — Transactions with KeraLink and its Affiliates — Settlement Agreement." The address of KeraLink is 300 East Lombard Street, Suite 1510, Baltimore, MD 21202.

(5) Consists of (i) 8,010 shares of Class A common stock and (ii) 88,557 options to purchase shares of Class A common stock that are or will be immediately exercisable within 60 days of August 31, 2020.

(6) Consists of options to purchase shares of Class A common stock that are or will be immediately exercisable within 60 days of August 31, 2020.

(7) Consists of options to purchase shares of Class A common stock that are or will be immediately exercisable within 60 days of August 31, 2020.

(8) Consists of (i) 3,309,228 shares of Class A common stock held by HighCape Partners, L.P., HighCape Partners QP, L.P. and HighCape Capital, L.P., and (ii) 31,845 shares of Class A common stock held by the Kevin L. Rakin Irrevocable Trust. Mr. Rakin disclaims beneficial ownership over the shares held by the Kevin L. Rakin Irrevocable Trust.

(9) Consists of (i) 4,107,510 shares of Class A common stock and (ii) 108,621 options to purchase shares of Class A common stock that are or will be immediately exercisable within 60 days of August 31, 2020.

DESCRIPTION OF CAPITAL STOCK

General

The following description summarizes some of the terms of our Post-IPO Certificate of Incorporation and Post-IPO Bylaws that will become effective upon the closing of this offering, the Investor Rights Agreement and the DGCL. Because it is only a summary, it does not contain all the information that may be important to you. For a complete description, you should refer to our Post-IPO Certificate of Incorporation, Post-IPO Bylaws and the Investor Rights Agreement, copies of which have been or will be filed as exhibits to the registration statement of which this prospectus is a part, as well as the relevant provisions of the DGCL. The description of our common stock and preferred stock reflects changes to our capital structure that will occur upon the closing of this offering.

Following the closing of this offering, our authorized capital stock will consist of 200,000,000 shares of Class A common stock, par value $0.001 per share, 20,000,000 shares of Class B common stock, par value $0.001 per share, and 10,000,000 shares of preferred stock, par value $0.001 per share.

As of August 31, 2020, there were 648,456 shares of our Class A common stock outstanding, no shares of our Class B common stock outstanding, 2,295,245 shares of our Class A common stock issuable upon the automatic conversion of all outstanding shares of our Series A convertible preferred stock in connection with this offering, 1,884,107 additional shares of our Class A common stock issuable in respect of a liquidation preference payable in kind to holders of our Series A convertible preferred stock in connection with this offering, 1,317,425 shares of Class B common stock issuable upon the automatic conversion of all outstanding shares of Series A-1 convertible preferred stock in connection with this offering and 1,081,443 additional shares of our Class B common stock issuable in respect of a liquidation preference payable in kind to holders of our Series A-1 convertible preferred stock in connection with this offering, after giving effect to the filing and effectiveness of our current certificate of incorporation effecting a reclassification of our then outstanding common stock to Class A common stock and authorizing our Series A-1 convertible preferred stock and our Class B common stock and the issuance to Deerfield of 18,384,536 shares of Series A-1 convertible preferred stock in exchange for an equal number of shares of Series A convertible preferred stock pursuant to an exchange agreement, in each case, in September 2020, held of record by 12 stockholders.

Class A Common Stock and Class B Common Stock

Holders of our Class A common stock are entitled to one vote for each share held on all matters submitted to a vote of stockholders and do not have cumulative voting rights. An election of directors by our stockholders shall be determined by a plurality of the votes cast by the stockholders entitled to vote on the election. Subject to the supermajority votes for some matters, other matters shall be decided by the affirmative vote of our stockholders having a majority in voting power of the votes cast by the stockholders present or represented and voting on such matter. Our Post-IPO Certificate of Incorporation and Post-IPO Bylaws also provide that our directors may be removed only for cause and only by the affirmative vote of the holders of at least two-thirds in voting power of the outstanding shares of capital stock entitled to vote thereon. In addition, the affirmative vote of the holders of at least two-thirds in voting power of the outstanding shares of capital stock entitled to vote thereon is required to amend or repeal, or to adopt any provision inconsistent with, several of the provisions of our Post-IPO Certificate of Incorporation. See below under "— Anti-Takeover Effects of Delaware Law and Our Post-IPO Certificate of Incorporation and Post-IPO Bylaws — Amendment of Charter Provisions."

Holders of our Class B common stock have identical rights to holders of our Class A common stock as set forth in the preceding paragraph, other than as follows: (i) except as otherwise expressly provided in our Post-IPO Certificate of Incorporation or as required by applicable law, on any matter that is submitted to a vote by our stockholders, while holders of our Class A common stock are entitled to one vote per share of Class A common stock, holders of our Class B common stock are not entitled to any votes per share of Class B common stock, including for the election of directors, and (ii) while holders of our Class A common stock have no conversion rights, holders of our Class B common stock shall have the right to convert each share of our Class B common stock into one share of Class A common stock at such holder's election, provided that as a result of such conversion, such holder would not beneficially own in excess of 4.9% of any class of our securities registered under the Exchange Act. Accordingly, the holders of a

majority of the outstanding shares of Class A common stock entitled to vote in any election of directors can elect all of the directors standing for election, if they so choose, other than any directors that holders of any preferred stock we may issue may be entitled to elect.

Holders of common stock are entitled to receive proportionately any dividends as may be declared by our board of directors, subject to any preferential dividend rights of any series of preferred stock that we may designate and issue in the future.

In the event of our liquidation or dissolution, the holders of common stock are entitled to receive proportionately our net assets available for distribution to stockholders after the payment of all debts and other liabilities and subject to the prior rights of any outstanding preferred stock. Holders of common stock have no preemptive, subscription, redemption or conversion rights. Our outstanding shares of common stock are, and the shares offered by us in this offering will be, when issued and paid for, validly issued, fully paid and nonassessable. The rights, preferences and privileges of holders of common stock are subject to and may be adversely affected by the rights of the holders of shares of any series of preferred stock that we may designate and issue in the future.

Preferred Stock

Under the terms of our Post-IPO Certificate of Incorporation, our board of directors is authorized to direct us to issue shares of preferred stock in one or more series without stockholder approval. Our board of directors has the discretion to determine the rights, preferences, privileges and restrictions, including voting rights, dividend rights, conversion rights, redemption privileges and liquidation preferences, of each series of preferred stock.

The purpose of authorizing our board of directors to issue preferred stock and determine its rights and preferences is to eliminate delays associated with a stockholder vote on specific issuances. The issuance of preferred stock, while providing flexibility in connection with possible acquisitions, future financings and other corporate purposes, could have the effect of making it more difficult for a third party to acquire, or could discourage a third party from seeking to acquire, a majority of our outstanding voting stock. Upon the closing of this offering, there will be no shares of preferred stock outstanding, and we have no present plans to issue any shares of preferred stock.

Warrants

As of August 31, 2020, we had a warrant to purchase up to 7,656 shares of our Class A common stock outstanding with an exercise price of $5.44 per share, which we refer to as the Common Stock Warrant, and warrants to purchase an aggregate of up to 405,000 shares of our Series A convertible preferred stock outstanding, each having an exercise price of $1.00 per share, which we refer to collectively as the Preferred Stock Warrants. These warrants may be exercised at any time and from time to time, in whole or in part. Unless earlier exercised, the Common Stock Warrant and the Preferred Stock Warrants will terminate upon the closing of this offering.

Options and Restricted Stock Units

As of August 31, 2020, options to purchase 288,156 shares of our Class A common stock were outstanding under our 2015 Plan, of which 172,605 were vested and exercisable as of that date. In addition, options to purchase 161,146 shares of our Class A common stock and restricted stock units covering 152,050 shares of our Class A common stock, in each case, will be granted in connection with this offering under our 2020 Plan, which will become effective in connection with this offering, to certain of our executive officers, employees and consultants, at an exercise price per share equal to the initial public offering price in this offering.

Registration Rights

Holders of 7,102,053 shares of our common stock (including shares of our Class A common stock issuable upon the conversion of our Series A convertible preferred stock and Class B Common Stock and shares of our Class B Common Stock issuable upon conversion of our Series A-1 convertible preferred stock) are entitled to certain rights with respect to the registration of their “registrable shares” for public resale under the Securities Act, pursuant to the Investor Rights Agreement, until such rights otherwise terminate pursuant to the terms of the Investor Rights Agreement. The registration of shares of common

stock as a result of the following rights being exercised would enable holders to trade these shares without restriction under the Securities Act when the applicable registration statement is declared effective.

Form S-1 Registration Rights

If at any time beginning six months after the effective date of this offering the holders of at least 75% of the registrable shares then outstanding (other than certain holders specifically excluded for purposes of this calculation), or the Required Holders, request in writing that we effect a registration of registrable shares, we will be required to give prompt written notice of such request to all other holders of registrable shares and to effect a registration on Form S-1 with respect to all registrable shares we are requested by such holders to register, subject to certain exceptions and limitations. We are obligated to effect at most two registrations in response to these demand registration rights. If the holders requesting registration intend to distribute their shares by means of an underwritten offering, we will be permitted to exclude certain registrable shares from registration on the good faith advice of the managing underwriter that marketing factors so require.

Piggyback Registration Rights

If at any time we propose to register any shares of our common stock under the Securities Act, subject to certain exceptions, the holders of registrable shares will be entitled to notice of the registration and to request that we include their registrable shares in such registration. If our proposed registration involves an underwritten offering, we will be permitted to exclude certain registrable shares from registration on the good faith advice of the managing underwriter that market factors so require.

Form S-3 Registration Rights

If, at any time after we become eligible under the Securities Act to register our shares on a registration statement on Form S-3, the Required Holders request that we effect a registration with respect to registrable shares having an aggregate price to the public in the offering of at least $2.5 million, we will be required to give prompt written notice of such request to all other holders of registrable shares and to use commercially reasonable efforts to effect, as expeditiously as possible, the registration on Form S-3 of all registrable shares we are requested by such holders to register.

Expenses and Indemnification

Ordinarily, other than underwriting discounts and commissions and any stock transfer taxes, we will be required to pay all registration expenses related to any registration effected pursuant to the exercise of these registration rights. Registration expenses are defined to include, among other things, all registration and filing fees, exchange listing fees, printing expenses, fees and disbursements of our counsel, reasonable fees and disbursements of one counsel for the selling security holders and blue sky fees and expenses. The Investor Rights Agreement also includes customary indemnification and procedural terms.

Termination of Registration Rights

The registration rights terminate upon the earlier of (i) three years after the effective date of the registration statement of which this prospectus is a part, (ii) the closing of a sale transaction, as defined in the Investor Rights Agreement or (iii) with respect to any holder of registrable shares, at such time after the date that is six months following the consummation of this offering as SEC Rule 144 or another similar exemption under the Securities Act is available for the public sale of all of such holder’s shares without limitation during a three-month period without registration, provided that we have taken all necessary action to enable such holder to have any legend restricting the transfer of such shares removed from the stock certificates representing all such shares.

Anti-Takeover Effects of Delaware Law and Our Post-IPO Certificate of Incorporation and Post-IPO Bylaws

Some provisions of Delaware law, our Post-IPO Certificate of Incorporation and our Post-IPO Bylaws could make the following transactions more difficult: an acquisition of us by means of a tender offer; an acquisition of us by means of a proxy contest or otherwise; or the removal of our incumbent officers and directors. It is possible that these provisions could make it more difficult to accomplish or could deter transactions that stockholders may otherwise consider to be in their best interest or in our best interests, including transactions which provide for payment of a premium over the market price for our shares.

These provisions, summarized below, are intended to discourage coercive takeover practices and inadequate takeover bids. These provisions are also designed to encourage persons seeking to acquire control of us to first negotiate with our board of directors. We believe that the benefits of the increased protection of our potential ability to negotiate with the proponent of an unfriendly or unsolicited proposal to acquire or restructure us outweigh the disadvantages of discouraging these proposals because negotiation of these proposals could result in an improvement of their terms.

Undesignated Preferred Stock

The ability of our board of directors, without action by the stockholders, to issue up to 10,000,000 shares of undesignated preferred stock with voting or other rights or preferences as designated by our board of directors could impede the success of any attempt to change control of us. These and other provisions may have the effect of deferring hostile takeovers or delaying changes in control or management of our company.

Stockholder Meetings

Our Post-IPO Bylaws provide that a special meeting of stockholders may be called only by our chairman of the board, chief executive officer or president (in the absence of a chief executive officer), or by a resolution adopted by a majority of our board of directors.

Requirements for Advance Notification of Stockholder Nominations and Proposals

Our Post-IPO Bylaws establish advance notice procedures with respect to stockholder proposals to be brought before a stockholder meeting and the nomination of candidates for election as directors, other than nominations made by or at the direction of the board of directors or a committee of the board of directors.

Elimination of Stockholder Action by Written Consent

Our Post-IPO Certificate of Incorporation eliminates the right of stockholders to act by written consent without a meeting.

Staggered Board

Our board of directors is divided into three classes. The directors in each class will serve for a three-year term, one class being elected each year by our stockholders. For more information on the classified board, see “Management — Board Composition and Election of Directors.” This system of electing and removing directors may tend to discourage a third party from making a tender offer or otherwise attempting to obtain control of us, because it generally makes it more difficult for stockholders to replace a majority of the directors.

Removal of Directors

Our Post-IPO Certificate of Incorporation provides that no member of our board of directors may be removed from office by our stockholders except for cause and, in addition to any other vote required by law, upon the approval of the holders of at least two-thirds in voting power of the outstanding shares of stock entitled to vote in the election of directors.

Stockholders Not Entitled to Cumulative Voting

Our Post-IPO Certificate of Incorporation does not permit stockholders to cumulate their votes in the election of directors. Accordingly, the holders of a majority of the outstanding shares of our Class A common stock entitled to vote in any election of directors can elect all of the directors standing for election, if they choose, other than any directors that holders of our preferred stock may be entitled to elect.

Delaware Anti-Takeover Statute

We are subject to Section 203 of the DGCL, which prohibits persons deemed to be “interested stockholders” from engaging in a “business combination” with a publicly held Delaware corporation for three years following the date these persons become interested stockholders unless the business combination is, or the transaction in which the person became an interested stockholder was, approved in a prescribed manner or another prescribed exception applies. Generally, an “interested stockholder” is a person who, together with affiliates and associates, owns, or within three years prior to the

determination of interested stockholder status did own, 15% or more of a corporation's voting stock. Generally, a "business combination" includes a merger, asset or stock sale, or other transaction resulting in a financial benefit to the interested stockholder. The existence of this provision may have an anti-takeover effect with respect to transactions not approved in advance by the board of directors.

Choice of Forum

Our Post-IPO Certificate of Incorporation provides that, unless we consent in writing to the selection of an alternative form, the Court of Chancery of the State of Delaware will be the sole and exclusive forum for: (1) any derivative action or proceeding brought on our behalf; (2) any action asserting a claim of breach of a fiduciary duty or other wrongdoing by any of our directors, officers, employees or agents to us or our stockholders; (3) any action asserting a claim against us arising pursuant to any provision of the DGCL or our certificate of incorporation or bylaws; (4) any action to interpret, apply, enforce or determine the validity of our certificate of incorporation or bylaws; or (5) any action asserting a claim governed by the internal affairs doctrine. Under our Post-IPO Certificate of Incorporation, this exclusive forum provision will not apply to claims which are vested in the exclusive jurisdiction of a court or forum other than the Court of Chancery of the State of Delaware, or for which the Court of Chancery of the State of Delaware does not have subject matter jurisdiction. For instance, the provision would not apply to actions arising under federal securities laws, including suits brought to enforce any liability or duty created by the Securities Act, Exchange Act, or the rules and regulations thereunder. Our Post-IPO Certificate of Incorporation further provides that, unless we consent in writing to the selection of an alternative forum, the federal district courts of the United States of America shall, to the fullest extent permitted by law, be the sole and exclusive forum for the resolution of any complaint asserting a cause of action arising under the Securities Act. Our Post-IPO Certificate of Incorporation also provides that any person or entity purchasing or otherwise acquiring any interest in shares of our capital stock will be deemed to have notice of and to have consented to this choice of forum provision. It is possible that a court of law could rule that the choice of forum provision contained in our Post-IPO Certificate of Incorporation is inapplicable or unenforceable if it is challenged in a proceeding or otherwise.

Amendment of Charter Provisions

The amendment of any of the above provisions, except for the provision making it possible for our board of directors to issue preferred stock and the provision prohibiting cumulative voting, would require approval by holders of at least two-thirds in voting power of the outstanding shares of stock entitled to vote thereon.

The provisions of Delaware law, our Post-IPO Certificate of Incorporation and our Post-IPO Bylaws could have the effect of discouraging others from attempting hostile takeovers and, as a consequence, they may also inhibit temporary fluctuations in the market price of our common stock that often result from actual or rumored hostile takeover attempts. These provisions may also have the effect of preventing changes in the composition of our board and management. It is possible that these provisions could make it more difficult to accomplish transactions that stockholders may otherwise deem to be in their best interests.

Transfer Agent and Registrar

The transfer agent and registrar for our common stock will be American Stock Transfer & Trust Company, LLC.

Stock Exchange Listing

We have applied to have our Class A common stock listed on The Nasdaq Global Market under the symbol "AZYO."

SHARES ELIGIBLE FOR FUTURE SALE

Immediately prior to this offering, there was no public market for our common stock. Future sales of substantial amounts of common stock in the public market, or the perception that such sales may occur, could adversely affect the market price of our common stock.

Upon the closing of this offering, based on the number of shares of our common stock outstanding as of August 31, 2020, we will have outstanding an aggregate of 7,827,031 shares of Class A common stock and 2,398,868 shares of Class B common stock, assuming (i) the issuance of 2,941,176 shares of Class A common stock offered by us in this offering, (ii) the automatic conversion of all outstanding shares of our Series A convertible preferred stock into 2,295,245 shares of our Class A common stock and of all outstanding shares of our Series A-1 convertible preferred stock into an aggregate of 1,317,425 shares of our Class B common stock, in each case, upon the closing of this offering, (iii) the issuance of an aggregate of 1,884,107 shares of our Class A common stock and 1,081,443 shares of our Class B common stock to the holders of our Series A convertible preferred stock and our Series A-1 convertible preferred stock, respectively, in respect of a liquidation preference payable to such holders in kind immediately prior to the closing of this offering, (iv) the assumed net exercise of the Common Stock Warrant prior to the closing of this offering, which will result in the issuance of 5,204 shares of our Class A common stock, (v) the assumed gross exercise, for an aggregate exercise price of approximately $0.4 million, of our Preferred Stock Warrants, which, assuming the automatic conversion of the shares of Series A preferred stock issued pursuant to such exercise into shares of Class A common stock, will result in the issuance of 29,021 shares of our Class A common stock in respect of such conversion and an additional 23,822 shares of Class A common stock in respect of the liquidation preference payable in kind to holders of our Series A preferred stock immediately prior to the closing of this offering, (vi) the issuance and sale of an aggregate of (x) 5,039,427 shares of our Series A convertible preferred stock, including 2,039,427 shares of our Series A convertible preferred stock issued upon the conversion of approximately $2.0 million in aggregate principal amount of the 2020 Bridge Notes, together with accrued and unpaid interest thereon, and (y) 375,000 shares of our Series A convertible preferred stock to an affiliate of HighCape Partners in exchange for the extinguishment of our obligation to pay an advisory fee, in each case, in September 2020, (vii) the filing and effectiveness of our current certificate of incorporation effecting a reclassification of our then outstanding common stock to Class A common stock and authorizing our Series A-1 convertible preferred stock and our Class B common stock and the issuance to Deerfield of 18,384,536 shares of Series A-1 convertible preferred stock in exchange for an equal number of shares of Series A convertible preferred stock pursuant to an exchange agreement, in each case, in September 2020, and (viii) no exercise of options or warrants after August 31, 2020, other than as described above. Of these shares, all shares sold in this offering will be freely tradable without restriction or further registration under the Securities Act, except for any shares purchased by our “affiliates,” as that term is defined in Rule 144 under the Securities Act, whose sales would be subject to the Rule 144 resale restrictions described below, other than the holding period requirement. As a holder of our Class B common stock, Deerfield will only have the right to convert each share of our Class B common stock into one share of Class A common stock at its election to the extent that as a result of such conversion, it would not beneficially own in excess of 4.9% of any class of our securities registered under the Exchange Act. As a result, Deerfield may not be deemed an “affiliate” for purposes of Rule 144 and, as a result, any securities it purchases in this offering may be freely tradable.

The remaining 4,885,855 shares of Class A common stock and 2,398,868 shares of Class B common stock will be “restricted securities,” as that term is defined in Rule 144 under the Securities Act. These restricted securities are eligible for public sale only if they are registered under the Securities Act or if they qualify for an exemption from registration under Rules 144 or 701 under the Securities Act, which are summarized below. We expect that substantially all of these shares will be subject to the 180-day lock-up period under the lock-up agreements described below. Upon expiration of the lock-up period, these shares will be available for sale in the public market, subject in some cases to applicable volume limitations under Rule 144. Because Deerfield may not be deemed an “affiliate” for purposes of Rule 144, up to 2,398,868 shares of Class B common stock that Deerfield will own upon conversion of its Series A-1 convertible preferred stock in connection with this offering may become freely tradable (subject to the provisions for the automatic conversion of such shares into Class A common stock upon transfer set forth in our restated certificate of incorporation) and not subject to volume limitations following the 180-day lock-up period.

In addition, of the 288,156 shares of our common stock that were subject to stock options outstanding as of August 31, 2020, options to purchase 172,605 shares of common stock were vested as of August 31, 2020. Upon the exercise of such options and warrants, these shares will be eligible for sale subject to the lock-up agreements described below and Rules 144 and 701 under the Securities Act.

Lock-Up Agreements

We and each of our directors and executive officers and holders of substantially all of our outstanding capital stock have agreed that, without the prior written consent of Piper Sandler & Co. and Cowen and Company, LLC, we and they will not, subject to certain exceptions, during the period ending 180 days after the date of this prospectus, offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, lend, or otherwise transfer or dispose of, directly or indirectly, any shares of our common stock or any securities convertible into or exercisable or exchangeable for common stock; or enter into any swap or other arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of our common stock, whether any transaction described above is to be settled by delivery of our common stock or such other securities, in cash or otherwise.

Upon the expiration of the applicable lock-up periods, substantially all of the shares subject to such lock-up restrictions will become eligible for sale, subject to the limitations discussed above. These lock-up restrictions may be waived at any time by Piper Sandler & Co. and Cowen and Company, LLC. For a further description of these lock-up agreements, please see “Underwriting.”

Rule 144

Affiliate Resales of Restricted Securities

In general, beginning 90 days after the effective date of the registration statement of which this prospectus is a part, a person who is an affiliate of ours, or who was an affiliate at any time during the 90 days before a sale, who has beneficially owned shares of our common stock for at least six months would be entitled to sell in “broker’s transactions” or certain “riskless principal transactions” or to market makers, a number of shares within any three-month period that does not exceed the greater of:

- 1% of the number of shares of our Class A common stock then outstanding, which will equal approximately 78,270 shares immediately after this offering; or
- the average weekly trading volume in our Class A common stock on The Nasdaq Global Market during the four calendar weeks preceding the filing of a notice on Form 144 with respect to such sale.

Affiliate resales under Rule 144 are also subject to the availability of current public information about us. In addition, if the number of shares being sold under Rule 144 by an affiliate during any three-month period exceeds 5,000 shares or has an aggregate sale price in excess of $50,000, the seller must file a notice on Form 144 with the Securities and Exchange Commission and Nasdaq concurrently with either the placing of a sale order with the broker or the execution directly with a market maker.

Non-Affiliate Resales of Restricted Securities

In general, beginning 90 days after the effective date of the registration statement of which this prospectus is a part, a person who is not an affiliate of ours at the time of sale, and has not been an affiliate at any time during the three months preceding a sale, and who has beneficially owned shares of our common stock for at least six months but less than a year, is entitled to sell such shares subject only to the availability of current public information about us. If such person has held our shares for at least one year, such person can resell under Rule 144(b)(1) without regard to any Rule 144 restrictions, including the 90-day public company requirement and the current public information requirement.

Non-affiliate resales are not subject to the manner of sale, volume limitation or notice filing provisions of Rule 144.

Rule 701

In general, under Rule 701, any of an issuer’s employees, directors, officers, consultants or advisors who purchases shares from the issuer in connection with a compensatory stock or option plan or other written

agreement before the effective date of a registration statement under the Securities Act is entitled to sell such shares 90 days after such effective date in reliance on Rule 144. An affiliate of the issuer can resell shares in reliance on Rule 144 without having to comply with the holding period requirement, and non-affiliates of the issuer can resell shares in reliance on Rule 144 without having to comply with the current public information and holding period requirements.

The SEC has indicated that Rule 701 will apply to typical stock options granted by an issuer before it becomes subject to the reporting requirements of the Exchange Act, along with the shares acquired upon exercise of such options, including exercises after an issuer becomes subject to the reporting requirements of the Exchange Act.

Equity Plans

We intend to file one or more registration statements on Form S-8 under the Securities Act to register all shares of common stock subject to outstanding stock options and common stock issued or issuable under our stock plans. We expect to file the registration statement covering shares offered pursuant to our stock plans shortly after the date of this prospectus, permitting the resale of such shares by non-affiliates in the public market without restriction under the Securities Act and the sale by affiliates in the public market, subject to compliance with the resale provisions of Rule 144.

Registration Rights

Upon the closing of this offering, the holders of 7,102,053 shares of common stock, which includes all of the shares of Class A common stock issuable upon the conversion of our Series A convertible preferred stock and Class B common stock and shares of Class B common stock issuable upon conversion of our Series A-1 convertible preferred stock, or their transferees will be entitled to various rights with respect to the registration of these shares under the Securities Act. Registration of these shares under the Securities Act would result in these shares becoming fully tradable without restriction under the Securities Act immediately upon the effectiveness of the registration, except for shares purchased by affiliates. See “Description of Capital Stock — Registration Rights” for additional information. Shares covered by a registration statement will be eligible for sale in the public market upon the expiration or release from the terms of the lock-up agreement.

MATERIAL U.S. FEDERAL INCOME TAX CONSEQUENCES TO NON-U.S. HOLDERS OF OUR CLASS A COMMON STOCK

The following discussion is a summary of the material U.S. federal income tax consequences to Non-U.S. Holders (as defined below) of the purchase, ownership and disposition of our Class A common stock issued pursuant to this offering, but does not purport to be a complete analysis of all potential tax effects. The effects of other U.S. federal tax laws, such as estate and gift tax laws, and any applicable state, local or non-U.S. tax laws are not discussed. This discussion is based on the U.S. Internal Revenue Code of 1986, as amended, or the Code, Treasury Regulations promulgated under the Code, judicial decisions, and published rulings and administrative pronouncements of the U.S. Internal Revenue Service, or the IRS, in each case in effect as of the date of this prospectus. These authorities may change or be subject to differing interpretations. Any such change or differing interpretation may be applied retroactively in a manner that could adversely affect a Non-U.S. Holder of our Class A common stock. We have not sought and will not seek any rulings from the IRS regarding the matters discussed below. There can be no assurance the IRS or a court will not take a contrary position to that discussed below regarding the tax consequences of the purchase, ownership and disposition of our Class A common stock.

This discussion is limited to Non-U.S. Holders that hold our Class A common stock as a "capital asset" within the meaning of Section 1221 of the Code (generally, property held for investment). This discussion does not address all U.S. federal income tax consequences relevant to a Non-U.S. Holder's particular circumstances, including the impact of the Medicare contribution tax on net investment income. In addition, it does not address consequences relevant to Non-U.S. Holders subject to special rules, including, without limitation:

- U.S. expatriates and former citizens or long-term residents of the United States;
- persons subject to the alternative minimum tax;
- persons holding our Class A common stock as part of a hedge, straddle or other risk reduction strategy or as part of a conversion transaction or other integrated investment;
- banks, insurance companies, and other financial institutions;
- brokers, dealers or traders in securities;
- "controlled foreign corporations," "passive foreign investment companies," and corporations that accumulate earnings to avoid U.S. federal income tax;
- partnerships or other entities or arrangements treated as partnerships for U.S. federal income tax purposes and other pass-through entities (and investors in such entities);
- tax-exempt organizations or governmental organizations;
- persons deemed to sell our Class A common stock under the constructive sale provisions of the Code;
- persons who hold or receive our Class A common stock pursuant to the exercise of any employee stock option or otherwise as compensation;
- tax-qualified retirement plans;
- "qualified foreign pension funds" as defined in Section 897(l)(2) of the Code and entities all of the interests of which are held by qualified foreign pension funds; and
- persons subject to special tax accounting rules as a result of any item of gross income with respect to the Class A common stock being taken into account in an applicable financial statement.

If an entity treated as a partnership for U.S. federal income tax purposes holds our Class A common stock, the tax treatment of a partner in the partnership will depend on the status of the partner, the activities of the partnership and certain determinations made at the partner level. Accordingly, partnerships holding our Class A common stock and the partners in such partnerships should consult their tax advisors regarding the U.S. federal income tax consequences to them.

THIS DISCUSSION IS FOR INFORMATIONAL PURPOSES ONLY AND IS NOT TAX ADVICE. INVESTORS SHOULD CONSULT THEIR TAX ADVISORS WITH RESPECT TO THE APPLICATION

OF THE U.S. FEDERAL INCOME TAX LAWS TO THEIR PARTICULAR SITUATIONS AS WELL AS ANY TAX CONSEQUENCES OF THE PURCHASE, OWNERSHIP AND DISPOSITION OF OUR CLASS A COMMON STOCK ARISING UNDER THE U.S. FEDERAL ESTATE OR GIFT TAX LAWS OR UNDER THE LAWS OF ANY STATE, LOCAL OR NON-U.S. TAXING JURISDICTION OR UNDER ANY APPLICABLE INCOME TAX TREATY.

Definition of a Non-U.S. Holder

For purposes of this discussion, a "Non-U.S. Holder" is any beneficial owner of our Class A common stock that is neither a "U.S. person" nor an entity treated as a partnership for U.S. federal income tax purposes. A U.S. person is any person that, for U.S. federal income tax purposes, is or is treated as any of the following:

- an individual who is a citizen or resident of the United States;
- a corporation created or organized under the laws of the United States, any state thereof, or the District of Columbia;
- an estate, the income of which is subject to U.S. federal income tax regardless of its source; or
- a trust that (1) is subject to the primary supervision of a U.S. court and the control of one or more "United States persons" (within the meaning of Section 7701(a)(30) of the Code), or (2) has a valid election in effect to be treated as a United States person for U.S. federal income tax purposes.

Distributions

As described in the section in this prospectus titled "Dividend Policy," we do not anticipate declaring or paying dividends to holders of our Class A common stock in the foreseeable future. However, if we do make distributions of cash or property on our Class A common stock, such distributions will constitute dividends for U.S. federal income tax purposes to the extent paid from our current or accumulated earnings and profits, as determined under U.S. federal income tax principles. Amounts not treated as dividends for U.S. federal income tax purposes will constitute a return of capital and first be applied against and reduce a Non-U.S. Holder's adjusted tax basis in its Class A common stock, but not below zero. Any excess will be treated as capital gain and will be treated as described below under "— Sale or Other Taxable Disposition."

Subject to the discussion below on effectively connected income, dividends paid to a Non-U.S. Holder of our Class A common stock will be subject to U.S. federal withholding tax at a rate of 30% of the gross amount of the dividends (or such lower rate specified by an applicable income tax treaty, provided the Non-U.S. Holder furnishes a valid IRS Form W-8BEN or W-8BEN-E (or other applicable documentation) certifying qualification for the lower treaty rate). A Non-U.S. Holder that does not timely furnish the required documentation, but that qualifies for a reduced treaty rate, may obtain a refund of any excess amounts withheld by timely filing an appropriate claim for refund with the IRS. Non-U.S. Holders should consult their tax advisors regarding their entitlement to benefits under any applicable income tax treaty.

If dividends paid to a Non-U.S. Holder are effectively connected with the Non-U.S. Holder's conduct of a trade or business within the United States (and, if required by an applicable income tax treaty, the Non-U.S. Holder maintains a permanent establishment in the United States to which such dividends are attributable), the Non-U.S. Holder will be exempt from the U.S. federal withholding tax described above. To claim the exemption, the Non-U.S. Holder must furnish to the applicable withholding agent a valid IRS Form W-8ECI, certifying that the dividends are effectively connected with the Non-U.S. Holder's conduct of a trade or business within the United States.

Any such effectively connected dividends will be subject to U.S. federal income tax on a net income basis at the regular graduated rates. A Non-U.S. Holder that is a corporation also may be subject to a branch profits tax at a rate of 30% (or such lower rate specified by an applicable income tax treaty) on such effectively connected dividends, as adjusted for certain items. Non-U.S. Holders should consult their tax advisors regarding any applicable tax treaties that may provide for different rules.

Sale or Other Taxable Disposition

Subject to the discussion below on information reporting, backup withholding and foreign accounts, a Non-U.S. Holder will not be subject to U.S. federal income tax on any gain realized upon the sale or other taxable disposition of our Class A common stock unless:

- the gain is effectively connected with the Non-U.S. Holder's conduct of a trade or business within the United States (and, if required by an applicable income tax treaty, the Non-U.S. Holder maintains a permanent establishment in the United States to which such gain is attributable);
- the Non-U.S. Holder is a nonresident alien individual present in the United States for 183 days or more during the taxable year of the disposition and certain other requirements are met; or
- our Class A common stock constitutes a U.S. real property interest, or USRPI, by reason of our status as a U.S. real property holding corporation, or USRPHC, for U.S. federal income tax purposes at any applicable time within the shorter of the five year period preceding the Non-U.S. Holder's disposition of, or the Non-U.S. Holder's holding period for, our Class A common stock.

Gain described in the first bullet point above generally will be subject to U.S. federal income tax on a net income basis at the regular graduated rates. A Non-U.S. Holder that is a corporation also may be subject to a branch profits tax at a rate of 30% (or such lower rate specified by an applicable income tax treaty) on such effectively connected gain, as adjusted for certain items.

Gain described in the second bullet point above will be subject to U.S. federal income tax at a rate of 30% (or such lower rate specified by an applicable income tax treaty), which may be offset by U.S. source capital losses of the Non-U.S. Holder (even though the individual is not considered a resident of the United States), provided the Non-U.S. Holder has timely filed U.S. federal income tax returns with respect to such losses.

With respect to the third bullet point above, we believe we currently are not, and do not anticipate becoming, a USRPHC. Because the determination of whether we are a USRPHC depends, however, on the fair market value of our USRPIs relative to the fair market value of our non-U.S. real property interests and our other business assets, there can be no assurance we currently are not a USRPHC or will not become one in the future. Even if we are or were to become a USRPHC, gain arising from the sale or other taxable disposition by a Non-U.S. Holder of our Class A common stock will not be subject to U.S. federal income tax if our Class A common stock is "regularly traded," as defined by applicable Treasury Regulations, on an established securities market, and such Non-U.S. Holder owned, actually and constructively, 5% or less of our Class A common stock throughout the shorter of the five-year period ending on the date of the sale or other taxable disposition or the Non-U.S. Holder's holding period.

Non-U.S. Holders should consult their tax advisors regarding potentially applicable income tax treaties that may provide for different rules.

Information Reporting and Backup Withholding

Payments of dividends on our Class A common stock will not be subject to backup withholding, provided the applicable withholding agent does not have actual knowledge or reason to know the holder is a United States person and the holder either certifies its non-U.S. status, such as by furnishing a valid IRS Form W-8BEN, W-8BEN-E or W-8ECI, or other applicable documentation, or otherwise establishes an exemption. However, information returns are required to be filed with the IRS in connection with any distributions on our Class A common stock paid to the Non-U.S. Holder, regardless of whether such distributions constitute dividends or whether any tax was actually withheld. In addition, proceeds of the sale or other taxable disposition of our Class A common stock within the United States or conducted through certain U.S.-related brokers generally will not be subject to backup withholding or information reporting, if the applicable withholding agent receives the certification described above and does not have actual knowledge or reason to know that such holder is a United States person, or the holder otherwise establishes an exemption. Proceeds of a disposition of our Class A common stock conducted through a non-U.S. office of a non-U.S. broker generally will not be subject to backup withholding or information reporting.

Copies of information returns that are filed with the IRS may also be made available under the provisions of an applicable treaty or agreement to the tax authorities of the country in which the Non-U.S. Holder resides or is established.

Backup withholding is not an additional tax. Any amounts withheld under the backup withholding rules may be allowed as a refund or a credit against a Non-U.S. Holder's U.S. federal income tax liability, provided the required information is timely furnished to the IRS.

Additional Withholding Tax on Payments Made to Foreign Accounts

Withholding taxes may be imposed under Sections 1471 to 1474 of the Code (such sections commonly referred to as the Foreign Account Tax Compliance Act, or FATCA) on certain types of payments made to non-U.S. financial institutions and certain other non-U.S. entities. Specifically, a 30% withholding tax may be imposed on dividends on, or gross proceeds from the sale or other disposition of, our Class A common stock paid to a "foreign financial institution" or a "non-financial foreign entity" (each as defined in the Code), unless (1) the foreign financial institution undertakes certain diligence and reporting obligations, (2) the non-financial foreign entity either certifies it does not have any "substantial United States owners" (as defined in the Code) or furnishes identifying information regarding each substantial United States owner, or (3) the foreign financial institution or non-financial foreign entity otherwise qualifies for an exemption from these rules. If the payee is a foreign financial institution and is subject to the diligence and reporting requirements in (1) above, it must enter into an agreement with the U.S. Department of the Treasury requiring, among other things, that it undertake to identify accounts held by certain "specified United States persons" or "United States-owned foreign entities" (each as defined in the Code), annually report certain information about such accounts, and withhold 30% on certain payments to non-compliant foreign financial institutions and certain other account holders. Foreign financial institutions located in jurisdictions that have an intergovernmental agreement with the United States governing FATCA may be subject to different rules.

Under the applicable Treasury Regulations and administrative guidance, withholding under FATCA generally applies to payments of dividends on our Class A common stock, and will apply to payments of gross proceeds from the sale or other disposition of such stock on or after January 1, 2019, although under proposed regulations (the preamble to which specifies that taxpayers are permitted to rely on such proposed regulations pending finalization), no withholding would apply with respect to payments of gross proceeds.

Prospective investors should consult their tax advisors regarding the potential application of withholding under FATCA to their investment in our Class A common stock.

UNDERWRITING

Subject to the terms and conditions set forth in the underwriting agreement among us and Piper Sandler & Co. and Cowen and Company, LLC, as the representatives of the underwriters named below and the joint book-running managers of this offering, we have agreed to sell to the underwriters, and each of the underwriters has agreed, severally and not jointly, to purchase from us, at the initial public offering price less the underwriting discounts and commissions set forth on the cover page of this prospectus, the number of shares of Class A common stock listed opposite its name below.

Underwriter	Number of Shares
Piper Sandler & Co.	
Cowen and Company, LLC	
Cantor Fitzgerald & Co.	
Truist Securities, Inc.	
Total	2,941,176

The underwriting agreement provides that the obligations of the several underwriters are subject to certain conditions precedent such as the receipt by the underwriters of officers' certificates and legal opinions and approval of certain legal matters by their counsel. The underwriting agreement provides that the underwriters will purchase all of the shares of Class A common stock if any of them are purchased. If an underwriter defaults, the underwriting agreement provides that the purchase commitments of the nondefaulting underwriters may be increased or the underwriting agreement may be terminated.

The underwriters have advised us that, following the completion of this offering, they currently intend to make a market in the Class A common stock as permitted by applicable laws and regulations. However, the underwriters are not obligated to do so, and the underwriters may discontinue any market-making activities at any time without notice in their sole discretion. Accordingly, no assurance can be given as to the liquidity of the trading market for the Class A common stock, that you will be able to sell any of the Class A common stock held by you at a particular time or that the prices that you receive when you sell will be favorable.

The underwriters are offering the shares of Class A common stock subject to their acceptance of the shares of Class A common stock from us and subject to prior sale. The underwriters reserve the right to withdraw, cancel or modify offers to the public and to reject orders in whole or in part. In addition, the underwriters have advised us that they do not intend to confirm sales to any account over which they exercise discretionary authority.

Option to Purchase Additional Shares

We have granted the underwriters an option to buy up to 441,176 additional shares of Class A common stock from us to cover over-allotments, if any. The underwriters have 30 days from the date of this prospectus to exercise this option to purchase additional shares. If any shares are purchased with this option to purchase additional shares, the underwriters will purchase shares in approximately the same proportion as shown in the table above. If any additional shares of Class A common stock are purchased, the underwriters will offer the additional shares on the same terms as those on which the shares are being offered.

Discounts, Commissions and Expenses

The underwriters have advised us that they propose to offer the shares of Class A common stock to the public at the initial public offering price set forth on the cover of this prospectus and to certain dealers, which may include the underwriters, at that price less a concession not in excess of $ per share of Class A common stock. After the offering, the initial public offering price and concession may be reduced by the representatives. No such reduction will change the amount of proceeds to be received by us as set forth on the cover of this prospectus.

The underwriting fee is equal to the public offering price per share less the amount paid by the underwriters to us per share. The following table shows the per share and total underwriting discount to be paid by

the underwriters in connection with this offering, assuming either no exercise or full exercise of the option to purchase additional shares:

	Per Share	Without Option	With Option
Public offering price	$	$	$
Underwriting discounts and commissions	$	$	$
Proceeds, before expenses, to us	$	$	$

We estimate that the total expenses of this offering, including registration, filing and listing fees, printing fees and legal and accounting expenses, but excluding the underwriting discounts and commissions, will be approximately $3.5 million. We have agreed to reimburse the underwriters for expenses of up to $35,000 relating to the clearance of this offering with the Financial Industry Regulatory Authority.

Indemnification of Underwriters

We have agreed to indemnify the underwriters against certain liabilities, including liabilities under the Securities Act, or to contribute to payments that the underwriters may be required to make in respect of those liabilities.

Determination of Offering Price

Prior to this offering, there has not been a public market for our Class A common stock. Consequently, the initial public offering price for our Class A common stock will be determined by negotiations between us and the representatives. Among the factors to be considered in these negotiations will be prevailing market conditions, our financial information, market valuations of other companies that we and the underwriters believe to be comparable to us, estimates of our business potential, the present state of our development and other factors deemed relevant.

We offer no assurances that the initial public offering price will correspond to the price at which the Class A common stock will trade in the public market subsequent to the offering or that an active trading market for the Class A common stock will develop and continue after the offering.

Listing

We have applied to have our Class A common stock listed on The Nasdaq Global Market under the symbol “AZYO.”

No Sales of Similar Securities

We have agreed that we will not (i) offer, pledge, announce the intention to sell, sell, contract to sell, sell any option or contract to purchase, purchase any option, grant any option, right or warrant to purchase, make any short sale or otherwise transfer or dispose of, directly or indirectly, or file with or confidentially submit to, the Securities and Exchange Commission a registration statement under the Securities Act, relating to any options or warrants to purchase shares of our common stock or any securities that are convertible into or exercisable or exchangeable for, or that represent the right to receive, our common stock or any such substantially similar securities, or publicly disclose the intention to make any offer, sale, pledge, disposition or filing or (B) enter into any swap or other agreement that transfers, in whole or in part, any of the economic consequences of ownership of our common stock or any such other securities, whether any such transaction described in clause (A) or (B) above is to be settled by delivery of common stock or such other securities, in cash or otherwise, in each case without the prior written consent of Piper Sandler & Co. and Cowen and Company, LLC for a period of 180 days after the date of this prospectus (other than the shares of our common stock to be sold in this offering), subject to certain exceptions, including in connection with the issuance of up to 7.5%, in the aggregate, of the shares of common stock outstanding immediately following the closing of this offering in acquisitions or other similar strategic transactions.

Our directors and executive officers and substantially all of the other holders of all our outstanding capital stock and other securities have agreed, subject to certain exceptions, that, without the prior written consent of Piper Sandler & Co. and Cowen and Company, LLC on behalf of the underwriters, they will not, or publicly disclose an intention to, during the period ending 180 days after the date of this prospectus (the “restricted period”):

- offer, pledge, announce the intention to sell, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, make any short sale or otherwise transfer or dispose of, directly or indirectly, any shares of our common stock or any securities convertible into, exercisable or exchangeable for or that represent the right to receive common stock whether now owned or hereafter acquired;
- enter into any swap or other agreement that transfers, in whole or in part, any of the economic consequences of ownership of the common stock or any such other securities;
- make any demand for or exercise any right with respect to, the registration of any shares of common stock or any security convertible into or exercisable or exchangeable for shares of common stock; or
- publicly disclose the intention to do any of the foregoing.

The restrictions described in the immediately preceding paragraph and contained in the lock-up agreements between the Underwriters and the lock-up parties do not apply, subject to various conditions and limitations, to certain transactions, including:

- transfers as a bona fide gift or gifts;
- transfers to an immediate family member or to any trust, partnership, limited liability company or other entity for the direct or indirect benefit of the lock-up party or the immediate family;
- if the lock-up party is a corporation, partnership, limited liability company, trust or other business entity, transfers (A) to a corporation, partnership, limited liability company, trust or other business entity that is a direct or indirect affiliate (as defined in Rule 405 promulgated under the Securities Act of 1933, as amended) of the lock-up party or (B) in distributions of the lock-up party's Securities to current or former limited or general partners, limited liability company members, stockholders or other equity holders of the lock-up party, or to the estate of any such partner, member, stockholder or other equity holder;
- if the lock-up party is a trust, transfers to the beneficiary of such trust or the estate of any such beneficiary;
- transfers by testate succession or intestate succession;
- transfers by operation of law, including pursuant to a qualified domestic relations order, or in connection with a divorce settlement or other order of a court or administrative or regulatory agency;
- transfers to a nominee or custodian of a person or entity to whom a disposition or transfer would be permissible under any of the foregoing clauses above;
- transfers pursuant to the Underwriting Agreement;
- the exercise or settlement of stock options, restricted stock units or other equity awards granted pursuant to the equity incentive plans, or the exercise of any warrant to purchase shares of common stock or any security convertible into or exercisable or exchangeable for common stock;
- transfers to us in connection with the vesting, settlement or exercise of restricted stock units, options, warrants or other rights to purchase shares of our common stock, including "net" or "cashless" exercise, including for the payment of exercise price and tax and remittance payments;
- transfers to us from an employee or other service provider upon death, disability or termination of employment or service, in each case, of such employee or service provider;
- transfers pursuant to a bona fide third-party tender offer, merger, consolidation or other similar transaction made to all holders of our common stock involving a change of control that has been approved by our board of directors;
- sales or transfers of shares acquired in this offering, or on the open market after this offering;
- the conversion of shares of convertible preferred stock or other securities convertible into or exercisable or exchangeable for shares of common stock into shares of common stock prior to or in connection with the consummation of this offering; or

- the establishment of a trading plan pursuant to Rule 10b5-1 of the Exchange Act.

Piper Sandler & Co. and Cowen and Company, LLC, in their sole discretion, may release the common stock and other securities subject to the lock-up agreements described above in whole or in part at any time.

Price Stabilization, Short Positions and Penalty Bids

The underwriters have advised us that, pursuant to Regulation M under the Exchange Act, certain persons participating in the offering may engage in short sale transactions, stabilizing transactions, syndicate covering transactions or the imposition of penalty bids in connection with this offering. These activities may have the effect of stabilizing or maintaining the market price of the common stock at a level above that which might otherwise prevail in the open market. Establishing short sales positions may involve either "covered" short sales or "naked" short sales.

"Covered" short sales are sales made in an amount not greater than the underwriters' option to purchase additional shares of our common stock in this offering. The underwriters may close out any covered short position by either exercising their option to purchase additional shares of our common stock or purchasing shares of our common stock in the open market. In determining the source of shares to close out the covered short position, the underwriters will consider, among other things, the price of shares available for purchase in the open market as compared to the price at which they may purchase shares through the option to purchase additional shares.

"Naked" short sales are sales in excess of the option to purchase additional shares of our common stock. The underwriters must close out any naked short position by purchasing shares in the open market. A naked short position is more likely to be created if the underwriters are concerned that there may be downward pressure on the price of the shares of our common stock in the open market after pricing that could adversely affect investors who purchase in this offering.

A stabilizing bid is a bid for the purchase of shares of common stock on behalf of the underwriters for the purpose of fixing or maintaining the price of the common stock. A syndicate covering transaction is the bid for or the purchase of shares of common stock on behalf of the underwriters to reduce a short position incurred by the underwriters in connection with the offering. Similar to other purchase transactions, the underwriters' purchases to cover the syndicate short sales may have the effect of raising or maintaining the market price of our common stock or preventing or retarding a decline in the market price of our common stock. As a result, the price of our common stock may be higher than the price that might otherwise exist in the open market. A penalty bid is an arrangement permitting the underwriters to reclaim the selling concession otherwise accruing to a syndicate member in connection with the offering if the shares of common stock originally sold by such syndicate member are purchased in a syndicate covering transaction and, therefore, have not been effectively placed by such syndicate member.

Neither we nor any of the underwriters make any representation or prediction as to the direction or magnitude of any effect that the transactions described above may have on the price of our common stock. The underwriters are not obligated to engage in these activities and, if commenced, any of the activities may be discontinued at any time.

Electronic Distribution

A prospectus in electronic format may be made available by e-mail or on the web sites or through online services maintained by one or more of the underwriters or their affiliates. In those cases, prospective investors may view offering terms online and may be allowed to place orders online. The underwriters may agree with us to allocate a specific number of shares of common stock for sale to online brokerage account holders. Any such allocation for online distributions will be made by the underwriters on the same basis as other allocations. Other than the prospectus in electronic format, the information on the underwriters' web sites and any information contained in any other web site maintained by any of the underwriters is not part of this prospectus, has not been approved and/or endorsed by us or the underwriters and should not be relied upon by investors.

Other Activities and Relationships

The underwriters and certain of their respective affiliates are full service financial institutions engaged in various activities, which may include securities trading, commercial and investment banking, financial

advisory, investment management, investment research, principal investment, hedging, financing and brokerage activities. The underwriters and certain of their respective affiliates have, from time to time, performed, and may in the future perform, various commercial and investment banking and financial advisory services for us and our affiliates, for which they received or will receive customary fees and expenses.

Selling Restrictions

General

Other than in the United States, no action has been taken by us or the underwriters that would permit a public offering of the securities offered by this prospectus in any jurisdiction where action for that purpose is required. The securities offered by this prospectus may not be offered or sold, directly or indirectly, nor may this prospectus or any other offering material or advertisements in connection with the offer and sale of any such securities be distributed or published in any jurisdiction, except under circumstances that will result in compliance with the applicable rules and regulations of that jurisdiction. Persons into whose possession this prospectus comes are advised to inform themselves about and to observe any restrictions relating to the offering and the distribution of this prospectus. This prospectus does not constitute an offer to sell or a solicitation of an offer to buy any securities offered by this prospectus in any jurisdiction in which such an offer or a solicitation is unlawful.

European Economic Area and United Kingdom

In relation to each Member State of the European Economic Area and the United Kingdom (each, a "Relevant State"), no shares have been offered or will be offered pursuant to the offering to the public in that Relevant State prior to the publication of a prospectus in relation to the shares which has been approved by the competent authority in that Relevant State or, where appropriate, approved in another Relevant State and notified to the competent authority in that Relevant State, all in accordance with the Prospectus Regulation, except that offers of shares may be made to the public in that Relevant State at any time under the following exemptions under the Prospectus Regulation:

(a) to any legal entity which is a qualified investor as defined under the Prospectus Regulation;

(b) to fewer than 150 natural or legal persons (other than qualified investors as defined under the Prospectus Regulation), subject to obtaining the prior consent of the underwriters; or

(c) in any other circumstances falling within Article 1(4) of the Prospectus Regulation,

provided that no such offer of shares shall require us or any underwriter to publish a prospectus pursuant to Article 3 of the Prospectus Regulation or supplement a prospectus pursuant to Article 23 of the Prospectus Regulation and each person who initially acquires any shares or to whom any offer is made will be deemed to have represented, acknowledged and agreed to and with each of the underwriters and us that it is a "qualified investor" within the meaning of Article 2(e) of the Prospectus Regulation. In the case of any shares being offered to a financial intermediary as that term is used in the Prospectus Regulation, each such financial intermediary will be deemed to have represented, acknowledged and agreed that the shares acquired by it in the offer have not been acquired on a non-discretionary basis on behalf of, nor have they been acquired with a view to their offer or resale to, persons in circumstances which may give rise to an offer of any shares to the public other than their offer or resale in a Relevant State to qualified investors as so defined or in circumstances in which the prior consent of the underwriters have been obtained to each such proposed offer or resale.

For the purposes of this provision, the expression an "offer to the public" in relation to shares in any Relevant State means the communication in any form and by any means of sufficient information on the terms of the offer and any shares to be offered so as to enable an investor to decide to purchase or subscribe for any shares, and the expression "Prospectus Regulation" means Regulation (EU) 2017/1129.

United Kingdom

In addition, in the United Kingdom, this document is being distributed only to, and is directed only at, and any offer subsequently made may only be directed at persons who are "qualified investors" (as defined in the Prospectus Regulation) (i) who have professional experience in matters relating to investments falling within Article 19(5) of the Financial Services and Markets Act 2000 (Financial Promotion) Order

2005, as amended (the "Order") and/or (ii) who are high net worth companies (or persons to whom it may otherwise be lawfully communicated) falling within Article 49(2)(a) to (d) of the Order (all such persons together being referred to as "relevant persons") or otherwise in circumstances which have not resulted and will not result in an offer to the public of the shares in the United Kingdom within the meaning of the Financial Services and Markets Act 2000. Any person in the United Kingdom that is not a relevant person should not act or rely on the information included in this document or use it as basis for taking any action. In the United Kingdom, any investment or investment activity that this document relates to may be made or taken exclusively by relevant persons.

Canada

The shares may be sold only to purchasers purchasing, or deemed to be purchasing, as principal that are accredited investors, as defined in National Instrument 45-106 Prospectus Exemptions or subsection 73.3(1) of the Securities Act (Ontario), and are permitted clients, as defined in National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations. Any resale of the shares must be made in accordance with an exemption from, or in a transaction not subject to, the prospectus requirements of applicable securities laws.

Securities legislation in certain provinces or territories of Canada may provide a purchaser with remedies for rescission or damages if this prospectus (including any amendment thereto) contains a misrepresentation, provided that the remedies for rescission or damages are exercised by the purchaser within the time limit prescribed by the securities legislation of the purchaser's province or territory. The purchaser should refer to any applicable provisions of the securities legislation of the purchaser's province or territory for particulars of these rights or consult with a legal advisor.

Pursuant to section 3A.3 of National Instrument 33-105 Underwriting Conflicts (NI 33-105), the underwriters are not required to comply with the disclosure requirements of NI 33-105 regarding underwriter conflicts of interest in connection with this offering.

Germany

Each person who is in possession of this prospectus is aware of the fact that no German securities prospectus (wertpapierprospekt) within the meaning of the German Securities Prospectus Act (Wertpapier-prospektgesetz, or the Act) of the Federal Republic of Germany has been or will be published with respect to the shares of our common stock. In particular, each underwriter has represented that it has not engaged and has agreed that it will not engage in a public offering in the Federal Republic of Germany within the meaning of the Act with respect to any of the shares of our common stock otherwise than in accordance with the Act and all other applicable legal and regulatory requirements

Hong Kong

The shares of common stock may not be offered or sold in Hong Kong by means of any document other than (i) in circumstances which do not constitute an offer to the public within the meaning of the Companies Ordinance (Cap. 32, Laws of Hong Kong), or (ii) to "professional investors" within the meaning of the Securities and Futures Ordinance (Cap. 571, Laws of Hong Kong) and any rules made thereunder, or (iii) in other circumstances which do not result in the document being a "prospectus" within the meaning of the Companies Ordinance (Cap. 32, Laws of Hong Kong) and no advertisement, invitation or document relating to the shares may be issued or may be in the possession of any person for the purpose of issue (in each case whether in Hong Kong or elsewhere), which is directed at, or the contents of which are likely to be accessed or read by, the public in Hong Kong (except if permitted to do so under the laws of Hong Kong) other than with respect to the shares of common stock which are or are intended to be disposed of only to persons outside Hong Kong or only to "professional investors" within the meaning of the Securities and Futures Ordinance (Cap. 571, Laws of Hong Kong) and any rules made thereunder.

Israel

In the State of Israel this prospectus shall not be regarded as an offer to the public to purchase shares of common stock under the Israeli Securities Law, 5728 — 1968, which requires a prospectus to be published and authorized by the Israel Securities Authority, if it complies with certain provisions of Section 15 of the Israeli Securities Law, 5728-1968, including, inter alia, if: (i) the offer is made, distributed or directed to not more than 35 investors, subject to certain conditions (the "Addressed Investors"); or (ii) the

offer is made, distributed or directed to certain qualified investors defined in the First Addendum of the Israeli Securities Law, 5728 — 1968, subject to certain conditions (the "Qualified Investors"). The Qualified Investors shall not be taken into account in the count of the Addressed Investors and may be offered to purchase securities in addition to the 35 Addressed Investors. The company has not and will not take any action that would require it to publish a prospectus in accordance with and subject to the Israeli Securities Law, 5728 — 1968. We have not and will not distribute this prospectus or make, distribute or direct an offer to subscribe for our common stock to any person within the State of Israel, other than to Qualified Investors and up to 35 Addressed Investors.

Qualified Investors may have to submit written evidence that they meet the definitions set out in of the First Addendum to the Israeli Securities Law, 5728 — 1968. In particular, we may request, as a condition to be offered common stock, that Qualified Investors will each represent, warrant and certify to us and/or to anyone acting on our behalf: (i) that it is an investor falling within one of the categories listed in the First Addendum to the Israeli Securities Law, 5728 — 1968; (ii) which of the categories listed in the First Addendum to the Israeli Securities Law, 5728 — 1968 regarding Qualified Investors is applicable to it; (iii) that it will abide by all provisions set forth in the Israeli Securities Law, 5728 — 1968 and the regulations promulgated thereunder in connection with the offer to be issued common stock; (iv) that the shares of common stock that it will be issued are, subject to exemptions available under the Israeli Securities Law, 5728 — 1968: (a) for its own account; (b) for investment purposes only; and (c) not issued with a view to resale within the State of Israel, other than in accordance with the provisions of the Israeli Securities Law, 5728 — 1968; and (v) that it is willing to provide further evidence of its Qualified Investor status. Addressed Investors may have to submit written evidence in respect of their identity and may have to sign and submit a declaration containing, inter alia, the Addressed Investor's name, address and passport number or Israeli identification number.

Singapore

Singapore SFA Product Classification — In connection with Section 309B of the SFA and the CMP Regulations 2018, unless otherwise specified before an offer of shares, we have determined, and hereby notify all relevant persons (as defined in Section 309A(1) of the SFA), that the shares are "prescribed capital markets products" (as defined in the CMP Regulations 2018) and Excluded Investment Products (as defined in MAS Notice SFA 04-N12: Notice on the Sale of Investment Products and MAS Notice FAA-N16: Notice on Recommendations on Investment Products). Each underwriter has acknowledged that this prospectus has not been registered as a prospectus with the Monetary Authority of Singapore. Accordingly, each underwriter has represented and agreed that it has not offered or sold any shares or caused the shares to be made the subject of an invitation for subscription or purchase and will not offer or sell any shares or cause the shares to be made the subject of an invitation for subscription or purchase, and has not circulated or distributed, nor will it circulate or distribute, this prospectus or any other document or material in connection with the offer or sale, or invitation for subscription or purchase, of the shares, whether directly or indirectly, to any person in Singapore other than:

(a) to an institutional investor (as defined in Section 4A of the Securities and Futures Act (Chapter 289) of Singapore, as modified or amended from time to time (the "SFA")) pursuant to Section 274 of the SFA;

(b) to a relevant person (as defined in Section 275(2) of the SFA) pursuant to Section 275(1) of the SFA and in accordance with the conditions specified in Section 275 of the SFA; or

(c) otherwise pursuant to, and in accordance with the conditions of, any other applicable provision of the SFA.

Where the shares are subscribed or purchased under Section 275 of the SFA by a relevant person which is:

(a) a corporation (which is not an accredited investor (as defined in Section 4A of the SFA)) the sole business of which is to hold investments and the entire share capital of which is owned by one or more individuals, each of whom is an accredited investor; or

(b) a trust (where the trustee is not an accredited investor) whose sole purpose is to hold investments and each beneficiary of the trust is an individual who is an accredited investor, securities or

securities-based derivatives contracts (each term as defined in Section 2(1) of the SFA) of that corporation or the beneficiaries' rights and interest (howsoever described) in that trust shall not be transferred within six months after that corporation or that trust has acquired the shares pursuant to an offer made under Section 275 of the SFA except:

(i) to an institutional investor or to a relevant person, or to any person arising from an offer referred to in Section 276(4)(i)(B) of the SFA;

(ii) where no consideration is or will be given for the transfer;

(iii) where the transfer is by operation of law;

(iv) as specified in Section 276(7) of the SFA; or

(v) as specified in Regulation 37A of the Securities and Futures (Offers of Investments) (Securities and Securities-based Derivatives Contracts) Regulations 2018.

Switzerland

The shares of common stock may not be publicly offered in Switzerland and will not be listed on the SIX Swiss Exchange (the "SIX") or on any other stock exchange or regulated trading facility in Switzerland. This document has been prepared without regard to the disclosure standards for issuance prospectuses under art. 652a or art. 1156 of the Swiss Code of Obligations or the disclosure standards for listing prospectuses under art. 27 ff. of the SIX Listing Rules or the listing rules of any other stock exchange or regulated trading facility in Switzerland. Neither this document nor any other offering or marketing material relating to the shares of common stock or the offering may be publicly distributed or otherwise made publicly available in Switzerland.

Neither this document nor any other offering or marketing material relating to the offering, or the shares of common stock have been or will be filed with or approved by any Swiss regulatory authority. In particular, this document will not be filed with, and the offer of the shares of common stock will not be supervised by, the Swiss Financial Market Supervisory Authority FINMA, and the offer of the shares of common stock has not been and will not be authorized under the Swiss Federal Act on Collective Investment Schemes ("CISA"). Accordingly, no public distribution, offering or advertising, as defined in CISA, its implementing ordinances and notices, and no distribution to any non-qualified investor, as defined in CISA, its implementing ordinances and notices, shall be undertaken in or from Switzerland, and the investor protection afforded to acquirers of interests in collective investment schemes under CISA does not extend to acquirers of the shares of common stock.

United Arab Emirates

This offering has not been approved or licensed by the Central Bank of the United Arab Emirates (the "UAE"), Securities and Commodities Authority of the UAE and/or any other relevant licensing authority in the UAE including any licensing authority incorporated under the laws and regulations of any of the free zones established and operating in the territory of the UAE, in particular the Dubai Financial Services Authority ("DFSA"), a regulatory authority of the Dubai International Financial Centre ("DIFC"). The offering does not constitute a public offer of securities in the UAE, DIFC and/or any other free zone in accordance with the Commercial Companies Law, Federal Law No 8 of 1984 (as amended), DFSA Offered Securities Rules and Nasdaq Dubai Listing Rules, accordingly, or otherwise. The shares of common stock may not be offered to the public in the UAE and/or any of the free zones.

The shares of common stock may be offered and issued only to a limited number of investors in the UAE or any of its free zones who qualify as sophisticated investors under the relevant laws and regulations of the UAE or the free zone concerned.

France

This prospectus (including any amendment, supplement or replacement thereto) is not being distributed in the context of a public offering in France within the meaning of Article L. 411-1 of the French Monetary and Financial Code (Code monétaire et financier).

This prospectus has not been and will not be submitted to the French Autorité des marchés financiers (the "AMF") for approval in France and accordingly may not and will not be distributed to the public in France.

Pursuant to Article 211-3 of the AMF General Regulation, French residents are hereby informed that:

1. the transaction does not require a prospectus to be submitted for approval to the AMF;
2. persons or entities referred to in Point 2°, Section II of Article L.411-2 of the Monetary and Financial Code may take part in the transaction solely for their own account, as provided in Articles D. 411-1, D. 734-1, D. 744-1, D. 754-1 and D. 764-1 of the Monetary and Financial Code; and
3. the financial instruments thus acquired cannot be distributed directly or indirectly to the public otherwise than in accordance with Articles L. 411-1, L. 411-2, L. 412-1 and L. 621-8 to L. 621-8-3 of the Monetary and Financial Code.

This prospectus is not to be further distributed or reproduced (in whole or in part) in France by the recipients of this prospectus. This prospectus has been distributed on the understanding that such recipients will only participate in the issue or sale of our common stock for their own account and undertake not to transfer, directly or indirectly, our common stock to the public in France, other than in compliance with all applicable laws and regulations and in particular with Articles L. 411-1 and L. 411-2 of the French Monetary and Financial Code.

LEGAL MATTERS

The validity of the shares of Class A common stock and Class B common stock offered hereby will be passed upon for us by Latham & Watkins LLP. Certain legal matters in connection with this offering will be passed upon for the underwriters by Davis Polk & Wardwell LLP, Menlo Park, California.

EXPERTS

The financial statements as of December 31, 2019 and 2018 and for the years then ended included in this prospectus have been so included in reliance on the report (which contains an explanatory paragraph relating to the Company's ability to continue as a going concern as described in Note 2 to the financial statements) of PricewaterhouseCoopers LLP, an independent registered public accounting firm, given on the authority of said firm as experts in auditing and accounting.

WHERE YOU CAN FIND MORE INFORMATION

We have filed with the SEC a registration statement on Form S-1 under the Securities Act with respect to the shares of Class A common stock offered hereby. This prospectus, which constitutes a part of the registration statement, does not contain all of the information set forth in the registration statement or the exhibits and schedules filed therewith. For further information about us and the Class A common stock offered hereby, we refer you to the registration statement and the exhibits and schedules filed thereto. Statements contained in this prospectus regarding the contents of any contract or any other document that is filed as an exhibit to the registration statement are not necessarily complete, and each such statement is qualified in all respects by reference to the full text of such contract or other document filed as an exhibit to the registration statement. The SEC maintains an Internet website that contains reports, proxy statements and other information about registrants, like us, that file electronically with the Securities and Exchange Commission. The address of that site is *www.sec.gov*.

Upon the effectiveness of the registration statement, we will become subject to the reporting requirements of the Exchange Act and, in accordance with the Exchange Act, will be required to file periodic reports, proxy statements, and other information with the SEC. Such periodic reports, proxy statements and other information can be accessed by visiting the SEC's Internet website at the address set forth above. We also intend to make this information available on the investor relations section of our website, which is located at *www.aziyo.com*. Information on, or accessible through, our website is not a part of this prospectus.

AZIYO BIOLOGICS, INC.

INDEX TO FINANCIAL STATEMENTS

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Board of Directors and Stockholders of Aziyo Biologics, Inc.

Opinion on the Financial Statements

We have audited the accompanying consolidated balance sheets of Aziyo Biologics, Inc. and its subsidiaries (the "Company") as of December 31, 2019 and 2018, and the related consolidated statements of operations, of changes in convertible preferred stock and stockholders' deficit and of cash flows for the years then ended, including the related notes (collectively referred to as the "consolidated financial statements"). In our opinion, the consolidated financial statements present fairly, in all material respects, the financial position of the Company as of December 31, 2019 and 2018, and the results of its operations and its cash flows for the years then ended in conformity with accounting principles generally accepted in the United States of America.

Substantial Doubt About the Company's Ability to Continue as a Going Concern

The accompanying consolidated financial statements have been prepared assuming that the Company will continue as a going concern. As discussed in Note 2 to the consolidated financial statements, the Company has incurred losses from operations since its inception and has an accumulated deficit that raise substantial doubt about its ability to continue as a going concern. Management's plans in regard to these matters are also described in Note 2. The consolidated financial statements do not include any adjustments that might result from the outcome of this uncertainty.

Basis for Opinion

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

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

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

/s/ PricewaterhouseCoopers LLP

Baltimore, Maryland
April 17, 2020, except for the effects of the reverse stock split discussed in Note 20 to the consolidated financial statements, as to which the date is September 30, 2020

We have served as the Company's auditor since 2015.

AZIYO BIOLOGICS, INC.

CONSOLIDATED BALANCE SHEETS
(In Thousands, Except for Share and Per Share Data)

	As of December 31,		As of	Pro Forma
	2018	2019	June 30, 2020	June 30, 2020
			(Unaudited)	(Unaudited)
Assets				
Current assets:				
Cash	$ 2,367	$ 2,482	$ 990	$ 990
Restricted cash	46	108	50	50
Accounts receivable, net	7,200	7,229	5,869	5,869
Inventory	7,459	7,190	9,619	9,619
Prepaid expenses and other current assets	1,063	1,437	1,202	1,202
Total current assets	18,135	18,446	17,730	17,730
Property and equipment, net	870	988	826	826
Intangible assets, net	28,660	25,262	23,563	23,563
Other assets	76	76	76	76
Total assets	**$ 47,741**	**$ 44,772**	**$ 42,195**	$ 42,195
Liabilities, Convertible Preferred Stock and Stockholders' Deficit				
Current liabilities:				
Accounts payable	$ 1,589	$ 2,492	$ 1,995	$ 1,995
Accrued expenses	4,643	3,978	4,786	4,786
Payables to tissue suppliers	1,264	2,485	2,424	2,424
Current portion of long-term debt	1,363	1,692	2,626	2,626
Current portion of revenue interest obligation	2,200	2,750	2,750	2,750
Revolving line of credit	1,638	4,227	5,897	5,897
Deferred revenue and other current liabilities	648	650	562	562
Total current liabilities	13,345	18,274	21,040	21,040
Long-term debt	16,456	19,612	23,435	23,435
Long-term revenue interest obligation	18,053	16,596	16,683	16,683
Deferred revenue and other long-term liabilities	1,633	705	614	614
Preferred stock warrant liability	249	247	247	—
Total liabilities	49,736	55,434	62,019	61,772
Commitments and contingencies (Note 17)				
Convertible preferred stock				
Series A Preferred stock, $0.001 par value, 42,000,000 and 45,500,000 shares authorized, as of December 31 2018 and 2019, respectively, 41,500,000 and 44,550,230 shares issued and outstanding, in 2018 and 2019, respectively, liquidation value of $41,500,000 and 44,550,230 in 2018 and 2019, respectively; 45,500,000 shares authorized, 45,000,000 shares issued and outstanding, and a liquidation value of $45,000,000 as of June 30, 2020 (unaudited); no shares issued and outstanding pro forma as of June 30, 2020 (unaudited)	41,411	44,449	44,899	—
Stockholders' deficit:				
Common stock, $0.001 par value, 4,299,565 and 4,514,543 shares authorized, as of December 31 2018 and 2019 respectively, and 645,143 and 648,277 issued and outstanding in 2018 and 2019, respectively; 4,514,543 shares authorized and 648,277 issued and outstanding as of June 30, 2020 (unaudited); 7,285,723 shares issued and outstanding pro forma as of June 30, 2020 (unaudited)	1	1	1	7
Additional paid-in capital	1,592	1,826	1,952	47,092
Accumulated deficit	(44,999)	(56,938)	(66,676)	(66,676)
Total stockholders' deficit	(43,406)	(55,111)	(64,723)	(19,577)
Total liabilities, convertible preferred stock and stockholders' deficit	**$ 47,741**	**$ 44,772**	**$ 42,195**	**$ 42,195**

The accompanying notes are an integral part of these financial statements.

AZIYO BIOLOGICS, INC.

CONSOLIDATED STATEMENTS OF OPERATIONS
(In Thousands, Except Share and Per Share Data)

	Year End December 31,		Six Months Ended June 30,	
	2018	2019	2019	2020
			(Unaudited)	
Net sales	$ 39,038	$ 42,901	$ 19,709	$ 18,442
Cost of goods sold	23,093	23,133	10,376	9,443
Gross Profit	15,945	19,768	9,333	8,999
Sales and marketing	13,165	16,161	7,157	8,297
General and administrative	8,520	9,616	4,293	5,699
Research and development	2,481	2,400	1,235	1,948
Loss from operations	(8,221)	(8,409)	(3,352)	(6,945)
Interest expense	5,519	5,381	2,686	2,783
Other (income) expense, net	(2,200)	(1,881)	—	—
Loss before provision for income taxes	(11,540)	(11,909)	(6,038)	(9,728)
Income tax expense	26	30	14	10
Net loss	**$ (11,566)**	**$ (11,939)**	**$ (6,052)**	**$ (9,738)**
Net loss per share attributable to common stockholders – basic and diluted	**$ (18.37)**	**$ (18.48)**	**$ (9.38)**	**$ (15.02)**
Weighted average common shares outstanding – basic and diluted	629,534	645,994	645,143	648,277
Pro forma net loss per share attributable to common stockholders – basic and diluted (unaudited)		(1.89)		(1.48)
Pro forma weighted average common shares outstanding – basic and diluted (unaudited)		6,309,291		6,577,529

The accompanying notes are an integral part of these financial statements.

AZIYO BIOLOGICS, INC.

CONSOLIDATED STATEMENTS OF CHANGES IN CONVERTIBLE PREFERRED STOCK AND STOCKHOLDERS' DEFICIT
(In Thousands, Except Share Amounts)

	Convertible Preferred Stock		Common Stock		Additional Paid-in Capital	Accumulated Deficit	Total Stockholders' Deficit
	Number of Shares	Amount	Number of Shares	Amount			
Balance, December 31, 2017	**31,500,000**	**$ 31,418**	**563,846**	**$ 1**	**$ 892**	**$ (33,433)**	**$ (32,540)**
Issuance of Convertible Preferred Stock, net of issuance costs of $8	10,000,000	9,993	—	—	—	—	—
Proceeds from stock option exercises			81,297	0	442		442
Stock-based compensation	—	—	—	—	258	—	258
Net loss	—	—	—	—	—	(11,566)	(11,566)
Balance, December 31, 2018	**41,500,000**	**$ 41,411**	**645,143**	**$ 1**	**$ 1,592**	**$ (44,999)**	**$ (43,406)**
Issuance of Convertible Preferred Stock, net of issuance costs of $12	3,050,230	3,038	—	—	—	—	—
Proceeds from stock option exercises			3,134	—	17		17
Stock-based compensation	—	—	—	—	217	—	217
Net loss	—	—	—	—	—	(11,939)	(11,939)
Balance, December 31, 2019	**44,550,230**	**$ 44,449**	**648,277**	**$ 1**	**$ 1,826**	**$ (56,938)**	**$ (55,111)**

	Convertible Preferred Stock		Common Stock		Additional Paid-in Capital	Accumulated Deficit	Total Stockholders' Deficit
	Number of Shares	Amount	Number of Shares	Amount			
Balance, December 31, 2018	**41,500,000**	**$ 41,411**	**645,143**	**$ 1**	**$ 1,592**	**$ (44,999)**	**$ (43,406)**
Stock-based compensation	—	—	—	—	115	—	115
Net loss	—	—	—	—	—	(6,052)	(6,052)
Balance, June 30, 2019 (Unaudited)	**41,500,000**	**$ 41,411**	**645,143**	**$ 1**	**$ 1,707**	**$ (51,051)**	**$ (49,343)**

	Convertible Preferred Stock		Common Stock		Additional Paid-in Capital	Accumulated Deficit	Total Stockholders' Deficit
	Number of Shares	Amount	Number of Shares	Amount			
Balance, December 31, 2019	**44,550,230**	**$ 44,449**	**648,277**	**$ 1**	**$ 1,826**	**$ (56,938)**	**$ (55,111)**
Issuance of Convertible Preferred Stock	449,770	450	—	—	—	—	—
Stock-based compensation	—	—	—	—	126	—	126
Net loss	—	—	—	—	—	(9,738)	(9,738)
Balance, June 30, 2020 (Unaudited)	**45,000,000**	**$ 44,899**	**648,277**	**$ 1**	**$ 1,952**	**$ (66,676)**	**$ (64,723)**

The accompanying notes are an integral part of these financial statements.

AZIYO BIOLOGICS, INC.

CONSOLIDATED STATEMENTS OF CASH FLOWS
(In Thousands)

	Year Ended December 31,		Six Months Ended June 30,	
	2018	2019	2019	2020
			(Unaudited)	
OPERATING ACTIVITIES:				
Net loss	$ (11,566)	$ (11,939)	$ (6,052)	$ (9,738)
Adjustments to reconcile net loss to net cash used in operating activities:				
Depreciation and amortization	3,819	3,856	1,919	1,949
Gain on early extinguishment of debt	(1,470)	—	—	—
Gain on revaluation of revenue interest obligation and other	(459)	(1,885)	—	—
Amortization of deferred financing costs	161	142	81	62
Interest expense recorded as additional revenue interest obligation	2,746	2,856	1,415	1,334
Interest expense recorded as Convertible Preferred Stock	—	4	—	—
Stock-based compensation	266	208	107	126
Changes in operating assets and liabilities:				
Accounts receivable	(1,611)	(30)	1,683	1,360
Inventory	1,099	269	116	(2,429)
Prepaid expenses and other	(247)	(373)	195	235
Accounts payable and accrued expenses	352	(627)	(1,270)	311
Obligations to tissue suppliers	(322)	1,221	(218)	(61)
Deferred revenue and other liabilities	1,785	(927)	(228)	(178)
Net cash used in operating activities	**(5,447)**	**(7,225)**	**(2,252)**	**(7,029)**
INVESTING ACTIVITIES:				
Expenditures for property, plant and equipment	(190)	(577)	(259)	(89)
Net cash used in investing activities	**(190)**	**(577)**	**(259)**	**(89)**
FINANCING ACTIVITIES:				
Net borrowings under revolving line of credit	(4,078)	2,588	856	1,670
Proceeds from issuance of Convertible Promissory Notes	—	750	—	2,000
Proceeds from Convertible Preferred Stock issuance, net	9,992	2,284	—	450
Proceeds from stock option exercises	442	17	—	—
Proceeds from long-term debt	3,000	3,500	—	2,995
Repayments of long-term debt	(1,379)	(112)	(112)	(300)
Payments on revenue interest obligation	(1,179)	(1,879)	(838)	(1,247)
Deferred financing costs	(52)	(43)	—	—
Proceeds from Surgalign Holdings transition services agreement, net	565	874	791	—
Net cash provided by financing activities	**7,311**	**7,979**	**697**	**5,568**
Net increase in cash and restricted cash	**1,674**	**177**	**(1,814)**	**(1,550)**
Cash and restricted cash, beginning of year	**739**	**2,413**	**2,413**	**2,590**
Cash and restricted cash, end of year	**$ 2,413**	**$ 2,590**	**$ 599**	**$ 1,040**
Supplemental Cash Flow and Non-Cash Financing Activities Disclosures:				
Cash paid for interest	$ 3,473	$ 4,399	$ 1,860	$ 2,457
Cash paid for taxes	$ 16	$ 25	$ 37	$ —
Conversion of Convertible Promissory Note to Convertible Preferred Stock	$ —	$ 750	$ —	$ —

The accompanying notes are an integral part of these financial statements.

AZIYO BIOLOGICS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

1. Organization and Description of Business

Aziyo Biologics, Inc. ("Aziyo" or the "Company") is a regenerative medicine company, with a focus on patients receiving implantable medical devices. The Company has developed a portfolio of regenerative products using both human and porcine tissue that are designed to be as close to natural biological material as possible. Aziyo's portfolio of core products span the implantable electronic devices/cardiovascular-related market, the orthopedic/spinal repair market and the soft tissue reconstruction market ("Core Products"). These products are primarily sold to healthcare providers or commercial partners. The Company also sells human tissue products under contract manufacturing arrangements ("Non-Core Products") with corporate customers.

2. Summary of Significant Accounting Policies

Basis of Presentation and Going Concern

The consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America ("GAAP").

The consolidated financial statements include the accounts of the Company and its wholly-owned subsidiaries. Intercompany accounts and transactions have been eliminated in consolidation. Certain amounts in prior periods have been reclassified to conform with current presentation.

In accordance with Accounting Standards Update ("ASU") 2014-15, *Disclosure of Uncertainties about an Entity's Ability to Continue as a Going Concern (Subtopic 205-40)*, the Company has evaluated whether there are conditions and events, considered in the aggregate, that raise substantial doubt about the Company's ability to continue as a going concern within one year after the date that the consolidated financial statements are issued. From its inception through December 31, 2019, the Company has funded its operations primarily with proceeds from the sale of convertible preferred stock and borrowings under long-term debt arrangements. The Company has incurred recurring losses since its inception, including net losses of $11.6 and $11.9 million for the years ended December 31, 2018 and 2019, respectively. As of December 31, 2019 the Company had an accumulated deficit of $56.9 million. The Company incurred net losses of $6.1 million and $9.7 million for the six months ended June 30, 2019 and 2020 (unaudited), respectively. As of June 30, 2020 the Company had an accumulated deficit of $66.7 million (unaudited). The Company expects to continue to generate operating losses for the foreseeable future.

The Company is seeking to complete an initial public offering ("IPO") of its common stock. Upon the closing of a qualified public offering, on specified terms, the Company's outstanding convertible preferred stock will automatically convert into shares of common stock (see Note 12). In the event the Company does not complete an IPO, the Company expects to seek additional funding through other capital sources.

The Company has reviewed all of the relevant conditions and events surrounding its ability to continue as a going concern including: historical losses, projected future results, including the effects of the global outbreak of the novel coronavirus (COVID-19), cash requirements for the upcoming year, availability under the current debt arrangements, net working capital position, total shareholders' deficit and future access to capital committed. The Company's ability to achieve profitability largely depends on its ability to increase sales of existing or new products.

Based on its current operating plans, the Company believes there is uncertainty as to whether its future cash flows along with its existing cash and cash equivalents will be sufficient to meet the Company's anticipated operating needs into 2021. Due to these factors, as of April 17, 2020, the issuance date of the consolidated financial statements for the year ended December 31, 2019, and as of August 14, 2020, the issuance date of the interim consolidated financial statements for the six months ended June 30, 2020 (unaudited), the Company has concluded that there is substantial doubt about Aziyo's ability to continue as going concern within one year after the issuance of these financial statements. The financial statements do not include any adjustments that might result from the outcome of this uncertainty.

If sales growth is not achieved and other means of cash generation are unsuccessful, the Company would plan to continue financing its operations with external debt or equity capital. However, the Company may not be able to raise additional funds on acceptable terms, or at all. The accompanying financial statements have been prepared assuming that the Company will continue as a going concern, which contemplates continuity of operations, realization of assets, and satisfaction of liabilities in the ordinary course of business.

In September 2020, the Company's Board of Directors and stockholders approved an amendment to the Company's amended and restated certificate of incorporation to effect a 1-for-13.9549 reverse stock split of the Company's common stock, which was effected on September 29, 2020. The par value of the common stock was not adjusted as a result of the reverse stock split. Accordingly, all common stock, stock options, and related per share amounts in these audited annual and unaudited interim financial statements have been retroactively adjusted for all periods presented to give effect to the reverse stock split.

Use of Estimates

The preparation of financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Estimates and assumptions relating to inventories, receivables, long-lived assets, the valuation of stock-based awards, the valuation of the preferred stock warrant liability and deferred income taxes are made at the end of each financial reporting period by management. Actual results could differ from those estimates.

Unaudited Interim Financial Informaiton

The accompanying consolidated balance sheet as of June 30, 2020, and the consolidated statements of operations, of convertible preferred stock and stockholders' deficit and of cash flows for the six months ended June 30, 2019 and 2020 are unaudited. The unaudited interim consolidated financial statements have been prepared on the same basis as the audited annual consolidated financial statements and, in the opinion of management, reflect all adjustments, which include only normal recurring adjustments, necessary for the fair statement of the Company's financial position as of June 30, 2020 and the results of its operations and its cash flows for the six months ended June 30, 2019 and 2020. The financial data and other information disclosed in these notes related to the six months ended June 30, 2019 and 2020 are also unaudited. The results for the six months ended June 30, 2020 are not necessarily indicative of results to be expected for the year ending December 31, 2020, any other interim periods, or any future year or period.

Unaudited Pro Forma Information

The accompanying unaudited pro forma consolidated balance sheet as of June 30, 2020 has been prepared to give effect, upon the completion of the proposed offering, to (i) the conversion of all outstanding shares of convertible preferred stock into 3,224,674 shares of common stock, (ii) the issuance of shares of common stock in respect of a liquidation preference payable to the holders of Convertible Preferred Stock in kind immediately prior to the closing of the IPO (as described in Note 12, "Preferred Stock — Conversion"), based on an assumed IPO price of $17.00 per share (the midpoint of the price range set forth on the cover page of this prospectus), (iii) the issuance of shares of common stock upon the assumed net exercise of a warrant to purchase shares of common stock outstanding as of June 30, 2020, which will expire if not exercised prior to the closing of the IPO, assuming the fair market value of the Company's common stock for purposes of such net exercise is equal to the assumed IPO price of $17.00 per share (the midpoint of the price range set forth on the cover page of this prospectus) and (iv) the issuance of shares of Convertible Preferred Stock upon the assumed gross exercise of warrants to purchase shares of Convertible Preferred Stock outstanding as of June 30, 2020 (as applicable), for aggregate consideration of approximately $0.4 million, which will expire if not exercised prior to the closing of the IPO and the settlement of the preferred stock warrant liabilities, based on an assumed IPO price of $17.00 per share (the midpoint of the price range set forth on the cover page of this prospectus) and an assumed closing date

of October 9, 2020 as if the proposed offering had occurred on June 30, 2020. In the accompanying consolidated statements of operations, the unaudited pro forma basic and diluted net loss per share attributable to common stockholders for the year ended December 31, 2019 and six months ended June 30, 2020 have been prepared to give effect, upon the completion of the proposed offering, to (i) the conversion of all outstanding shares of convertible preferred stock into 3,224,674 shares of common stock, (ii) the issuance of shares of common stock in respect of a liquidation preference payable to the holders of Convertible Preferred Stock in kind immediately prior to the closing of the IPO (as described in Note 12, “Preferred Stock — Conversion”), based on an assumed IPO price of $17.00 per share (the midpoint of the price range set forth on the cover page of this prospectus), (iii) the issuance of shares of common stock upon the assumed net exercise of a warrant to purchase shares of common stock outstanding as of December 31, 2019 or June 30, 2020 (as applicable), which will expire if not exercised prior to the closing of the IPO, assuming the fair market value of the Company’s common stock for purposes of such net exercise is equal to the assumed IPO price of $17.00 per share (the midpoint of the price range set forth on the cover page of this prospectus) and (iv) the issuance of shares of Convertible Preferred Stock upon the assumed gross exercise of warrants to purchase shares of Convertible Preferred Stock outstanding as of December 31, 2019 or June 30, 2020 (as applicable), for aggregate consideration of approximately $0.4 million, which will expire if not exercised prior to the closing of the IPO and the settlement of the preferred stock warrant liabilities, as described in Note 20, “Subsequent Events,” as if the proposed offering had occurred on the later of January 1, 2019 or the issuance date of the convertible preferred stock or the warrants.

Net Loss per Share Attributable to Common Stockholders

The Company calculates basic and diluted net loss per share attributable to common stockholders in conformity with the two-class method required for participating securities. The Convertible Preferred Stock is considered a participating security. The two-class method requires income (loss) available to common stockholders for the period to be allocated between common and participating securities based upon their respective rights to share in the earnings as if all income (loss) for the period had been distributed. Under the two-class method, the net loss attributable to common stockholders is not allocated to the Convertible Preferred Stock as the holders of the preferred stock do not have a contractual obligation to share in losses.

Basic net loss per share attributable to common stockholders is calculated by dividing the net loss attributable to common stockholders by the weighted-average shares outstanding during the period. For purposes of the diluted net income (loss) per share attributable to common stockholders’ calculation, Convertible Preferred Stock, stock options, and preferred and common stock warrants are considered to be common stock equivalents. All common stock equivalents have been excluded from the calculation of diluted net loss per share attributable to common stockholders, as their effect would be anti-dilutive for all periods presented. Therefore, basic and diluted net loss per share were the same for both periods presented.

Fair Value of Financial Instruments

Fair value is defined as the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. To increase the comparability of fair value measures, the following hierarchy prioritizes the inputs to valuation methodologies used to measure fair value:

Level 1 — Valuations based on quoted prices for identical assets and liabilities in active markets.

Level 2 — Valuations based on observable inputs other than quoted prices included in Level 1, such as quoted prices for similar assets and liabilities in active markets, quoted prices for identical or similar assets and liabilities in markets that are not active, or other inputs that are observable or can be corroborated by observable market data.

Level 3 — Valuations based on unobservable inputs reflecting the Company's assumptions, consistent with reasonably available assumptions made by other market participants. These valuations require significant judgment.

The estimated fair value of financial instruments disclosed in the financial statements has been determined by using available market information and appropriate valuation methodologies. The carrying value of all current assets and current liabilities approximates fair value because of their short-term nature.

Cash and Restricted Cash

The Company maintains its cash balances at banks and financial institutions. The balances are insured up to the legal limit. The Company maintains cash balances that may, at times, exceed this insured limit.

Under the provisions of the Revolving Credit Facility (see Note 8), the Company has a lockbox arrangement with the banking institution whereby daily lockbox receipts are contractually utilized to pay down outstanding balances on the Revolving Credit Facility debt. Lockbox receipts that have not yet been applied to the Revolving Credit Facility are classified as restricted cash in the accompanying consolidated balance sheets. The following table provides a reconciliation of cash and restricted cash included in the consolidated balance sheets to the amounts included in the statements of cash flows (in thousands).

	December 31,		June 30,
	2018	2019	2020
			(Unaudited)
Cash	$2,367	$2,482	$ 990
Restricted cash	46	108	50
Total cash and restricted cash shown in statements of cash flows	$2,413	$2,590	$ 1,040

Accounts Receivable and Allowances

Accounts receivable in the accompanying balance sheets are presented net of allowances for doubtful accounts and sales returns and other credits. The Company grants credit to customers in the normal course of business, but generally does not require collateral or any other security to support its receivables.

The Company evaluates the collectability of accounts receivable based on a combination of factors. In circumstances where a specific customer is unable to meet its financial obligations to the Company, a provision to the allowance for doubtful accounts is recorded to reduce the net recognized receivable to the amount that is reasonably expected to be collected. For all other customers, a provision to the allowance for doubtful accounts is recorded based on factors including the length of time the receivables are past due, the current business environment and the Company's historical experience. Provisions to the allowance for doubtful accounts are recorded to general and administrative expenses. Account balances are charged off against the allowance when it is probable that the receivable will not be recovered. The Company's allowance for doubtful accounts was approximately $0.1 million as of December 31, 2018 and 2019 and June 30, 2020 (unaudited).

Inventories

Inventories, consisting of purchased materials, direct labor and manufacturing overhead, are stated at the lower of cost or net realizable value, with cost determined generally using the average cost method. Inventory write-downs for unprocessed and certain processed donor tissue are recorded based on the estimated amount of inventory that will not pass the quality control process based on historical data. At each balance sheet date, the Company also evaluates inventories for excess quantities, obsolescence or shelf life expiration. This evaluation includes analysis of the Company's current and future strategic plans, historical sales levels by product, projections of future demand, the risk of technological or competitive obsolescence for products, general market conditions and a review of the shelf life expiration dates for products. To the extent that management determines there is excess or obsolete inventory or quantities with a shelf life that is too near its expiration for the Company to reasonably expect that it can sell those products prior to their expiration, the Company adjusts the carrying value to estimated net realizable value.

Property and Equipment

Property and equipment are stated at cost less accumulated depreciation. Depreciation is computed on the straight-line method over the following estimated useful lives of the assets:

Processing and research equipment	5 years
Office equipment and furniture	3 to 5 years
Computer hardware and software	3 to 4 years

Leasehold improvements are amortized on the straight-line method over the shorter of the lease term or the estimated useful life of the asset.

Repairs and maintenance costs are expensed as incurred.

Long-Lived Assets

Purchased intangible assets with finite lives are carried at acquired fair value, less accumulated amortization. Amortization is computed over the estimated useful lives of the respective assets.

The Company periodically evaluates the period of depreciation or amortization for long-lived assets to determine whether current circumstances warrant revised estimates of useful lives. The Company reviews its property and equipment and intangible assets for impairment whenever events or changes in circumstances indicate the carrying value of an asset may not be recoverable. Impairment exists when the carrying value of the company's asset exceeds the related estimated undiscounted future cash flows expected to be derived from the asset. If impairment exists, the carrying value of that asset is adjusted to its fair value. A discounted cash flow analysis is used to estimate an asset's fair value, using assumptions that market participants would apply. The results of impairment tests are subject to management's estimates and assumptions of projected cash flows and operating results. Changes in assumptions or market conditions could result in a change in estimated future cash flows and could result in a lower fair value and therefore an impairment, which could impact reported results. There were no impairment losses for the years ended December 31, 2018 and 2019 and the six months ended June 30, 2019 and 2020 (unaudited).

Preferred Stock Warrant Liability

Freestanding warrants related to Convertible Preferred Stock that are contingently redeemable are classified as a liability on the Company's accompanying consolidated balance sheets. The convertible preferred stock warrants are subject to remeasurement at each balance sheet date, and any change in fair value is recognized as a component of Other (income) expense. Preferred stock warrants are convertible into shares of Convertible Preferred Stock upon the closing of the sale of shares of common stock to the public. Each share of Convertible Preferred Stock will automatically be converted into shares of common stock at that time.

Revenue Recognition

On January 1, 2019, the Company adopted Financial Accounting Standards Board (FASB) Accounting Standards Codification (ASC) No. 606, "Revenue from Contracts with Customers", utilizing the modified retrospective method applied to contracts that were not completed. The adoption of the standard did not have a material impact on the timing and amounts of the Company's revenue as the Company did not have any material remaining performance obligations, or material costs to obtain or fulfill contracts with its customers as of January 1, 2019.

The Company's revenue is generated from contracts with customers in accordance with ASC 606. The core principle of ASC 606 is that the Company recognizes revenue to depict the transfer of promised goods or services to customers in an amount that reflects the consideration to which the Company expects to be entitled in exchange for those goods or services. The ASC 606 revenue recognition model consists of the following five steps: (1) identify the contracts with a customer, (2) identify the performance obligations

in the contract, (3) determine the transaction price, (4) allocate the transaction price to the performance obligations in the contract and (5) recognize revenue when (or as) the entity satisfies a performance obligation.

As noted above, the Company enters into contracts to primarily sell and distribute products to healthcare providers or commercial partners, or are produced and sold under contract manufacturing arrangements with corporate customers which are billed under ship and bill contract terms. Revenue is recognized when the Company has met its performance obligations pursuant to its contracts with its customers in an amount that the Company expects to be entitled to in exchange for the transfer of control of the products to the Company's customers. For all product sales, the Company has no further performance obligations and revenue is recognized at the point control transfers which occurs either when: i) the product is shipped via common carrier; or ii) the product is delivered to the customer or distributor, in accordance with the terms of the agreement.

A portion of the Company's product revenue is generated from consigned inventory maintained at hospitals and from inventory physically held by direct sales representatives. For these types of products sales, the Company retains control until the product has been used or implanted, at which time revenue is recognized.

The Company elected to account for shipping and handling activities as a fulfillment cost rather than a separate performance obligation. Amounts billed to customers for shipping and handling are included as part of the transaction price and recognized as revenue when control of the underlying products is transferred to the customer. The related shipping and freight charges incurred by the Company are included in sales and marketing costs. Shipping and handling costs were approximately $0.4 million for both the years ended December 31, 2018 and 2019. For the six months ended June 30, 2019 and 2020 (unaudited), shipping and handling costs were approximately $0.2 million and $0.1 million, respectively.

Contracts with customers state the final terms of the sale, including the description, quantity, and price of each implant distributed. The payment terms and conditions in the Company's contracts vary; however, as a common business practice, payment terms are typically due in full within 30 to 60 days of delivery. The Company, at times, extends volume discounts to customers.

The Company permits returns of its products in accordance with the terms of contractual agreements with customers. Allowances for returns are provided based upon analysis of the Company's historical patterns of returns matched against the revenues from which they originated. The Company records estimated returns as a reduction of revenue in the same period revenue is recognized.

Deferred Rent

The Company recognizes rent expense by the straight-line method over the lease term. Funds received from the lessor used to reimburse the Company for the cost of leasehold improvements are recorded as a deferred credit resulting from a lease incentive and are amortized over the lease term as a reduction of rent expense.

Stock-Based Compensation Plans

The Company accounts for its stock-based compensation plans in accordance with FASB Accounting Standards Codification ("ASC") 718, *Accounting for Stock Compensation*. FASB ASC 718 requires the measurement and recognition of compensation expense for all stock-based awards made to employees and directors, including employee stock options and restricted stock. Stock-based compensation cost is measured at the grant date, based on the calculated fair value of the award, and is recognized as an expense on a straight-line basis over the requisite service period of the entire award.

Research and Development Costs

Research and development costs, which include mainly salaries, outside services and supplies, are expensed as incurred.

Concentration of Credit risk

Financial instruments that potentially subject the Company to significant concentrations of credit risk consist primarily of cash. At December 31, 2019 and June 30, 2020 (unaudited), the Company maintains $2.4 million and $1.2 million, respectively, in bank deposit accounts that are in excess of the $0.25 million insurance provided by the Federal Deposit Insurance Corporation in one federally insured financial institution. The Company has not experienced any losses in such accounts.

Comprehensive Loss

Comprehensive income (loss) comprises net income (loss) and other changes in equity that are excluded from net income (loss). For the years ended December 31, 2018 and 2019 as well as the six months ended June 30, 2019 and 2020 (unaudited), the Company's net loss equaled its comprehensive loss and accordingly, no additional disclosure is presented.

Income Taxes

The Company uses the asset and liability method of accounting for income taxes. Deferred income taxes are recorded to reflect the tax consequences on future years for differences between the tax basis of assets and liabilities and their financial reporting amounts at each year-end based on enacted tax laws and statutory tax rates applicable to the periods in which the differences are expected to affect taxable income. Valuation allowances are established when necessary to reduce deferred tax assets to amounts that are more likely than not to be realized.

The Company is subject to income taxes in the federal and state jurisdictions. Tax regulations within each jurisdiction are subject to the interpretation of the related tax laws and regulations and require significant judgment to apply. In accordance with the authoritative guidance on accounting for uncertainty in income taxes, the Company recognizes tax liabilities for uncertain tax positions when it is more likely than not that a tax position will not be sustained upon examination and settlement with various taxing authorities. Liabilities for uncertain tax positions are measured based upon the largest amount of benefit that is more likely than not (greater than 50%) of being realized upon settlement. The Company's policy is to recognize interest and/or penalties related to income tax matters in income tax expense.

3. Recently Issued Accounting Standards

In November 2019, the FASB issued ASU 2019-10, "Financial Instruments — Credit Losses (Topic 326), Derivative and Hedging (Topic 815), and Leases (Topic 842), Effective Dates." The FASB deferred the effective dates of the new credit losses standard for all entities except SEC filers that are not smaller reporting companies (SRCs) to fiscal years beginning after December 15, 2022, including interim periods within those fiscal years. The Board also aligned the effective dates of ASU 2017-04 on goodwill impairment with the new effective dates of the credit losses standard. The FASB deferred the effective dates of its new standards on hedging and leases for entities that are not public business entities (PBEs) (and for leases, for entities that are not non-for-profit (NFP) entities that have issues, or are conduit bond obligors for, certain securities; and are not employee benefit plans (EBPs) that file or furnish financial statements with or to the SEC) to fiscal years beginning after December 15, 2020, and interim periods in the following year. The FASB is also reconsidering its philosophy on establishing effective dates for major standards for private companies, NFPs, EBPs and smaller public companies. The board has developed a two-bucket approach that would give these entities more time to implement major new standards. The Company is evaluating this standard to determine if adoption will have a material impact on the Company's consolidated financial statements.

In August 2018, the FASB issued ASU 2018-13, "Fair Value Measurement (Topic 820), Disclosure Framework — Changes to the Disclosure Requirements for Fair Value Measurement." The standard eliminates, adds, and modifies certain disclosure requirements for fair value measurements. Entities will no longer be required to disclose the amount of and reasons for transfers between Level 1 and Level 2 of the fair value hierarchy, but public companies will be required to disclose the range and weighted average used to develop significant unobservable inputs for Level 3 fair value measurements. The standard is

effective for annual reporting periods beginning after December 15, 2019. Adoption of this new standard in the first quarter of 2020 did not have a material impact on the Company's consolidated financial statements (unaudited).

In June 2018, the FASB issued ASU 2018-07, Compensation — Stock Compensation (Topic 718), Improvements to Nonemployee Share-Bared Payment Accounting to expand the scope of Topic 718 to include share-based payment transactions for acquiring goods and services from nonemployees. Entities will apply the requirements of Topic 718 to nonemployee awards except for specific guidance on inputs to an option pricing model and the attribution of cost. The standard is effective for annual reporting periods beginning after December 15, 2018. The Company adopted this standard on January 1, 2019 and such adoption did not have a material impact on the Company's financial statements.

In February 2016, the FASB issued ASU 2016-02, Leases. The standard requires that lessees recognize a right-of-use asset and a lease liability for virtually all of their leases (other than leases that meet the definition of a short-term lease). The liability will be equal to the present value of lease payments. The asset will be based on the liability subject to certain adjustments. For income statement purposes, the FASB retained a dual model, requiring leases to be classified as either operating or finance. Operating leases will result in straight-line expense (similar to current operating leases) while finance leases will result in a front-loaded expense pattern (similar to current capital leases). In November 2019, the FASB issued 2019-10 which extended the adoption of ASU 2016-02 for the Company to be effective periods ending after December 15, 2021. While early adoption is permitted, the company intends to adopt in accordance with the revised timeline provided by the FASB. The Company is evaluating this standard to determine if adoption will have a material impact on the Company's consolidated financial statements.

4. Stock-Based Compensation

The Board of Directors of the Company has adopted the 2015 Stock Option/Stock Issuance Plan (the "2015 Plan"). The 2015 Plan provides for the grant of incentive and nonqualified stock options and restricted stock to employees and directors of the Company, and consultants and advisors. The 2015 Plan allows for up to 422,256 shares of common stock to be issued with respect to awards granted.

The Company's policy is to grant stock options at an exercise price equal to 100% of the market value of a share of common stock at closing on the date of the grant. The Company's stock options generally have seven-year contractual terms and vest over a four-year period from the date of grant.

The Company uses the Black-Scholes model to value its stock option grants and expenses the related compensation cost using the straight-line method over the vesting period. The fair value of stock options is determined on the grant date using assumptions for the estimated fair value of the underlying common stock, expected term, expected volatility, dividend yield, and the risk-free interest rate. The Board of Directors determines the fair value of common stock considering the state of the business, input from management, third party valuations and other considerations. The Company uses the simplified method for estimating the expected term used to determine the fair value of options. The expected volatility is primarily based on the historical volatility of comparable companies in the industry whose share prices are publicly available. The Company uses a zero-dividend yield assumption as the Company has not paid dividends since inception nor does it anticipate paying dividends in the future. The risk-free interest rate approximates recent U.S. Treasury note auction results with a similar life to that of the option. The period expense is then determined based on the valuation of the options and an estimated forfeiture rate is used to reduce the expense recorded.

The following weighted-average assumptions were used to determine the fair value of options during the years ended December 31, 2018 and 2019:

	December 31,	
	2018	2019
Expected term (years)	5	5
Risk-free interest rate	2.7%	2.0%
Volatility factor	60%	56%
Dividend yield	—	—

There were no material changes to the above December 31, 2019 assumptions for purposes of option grants during the six months ended June 30, 2020 (unaudited).

Stock options outstanding, exercisable and vested or expected to vest as of December 31, 2019, are as follows:

	Number of Shares	Weighted-Average Exercise Price	Weighted-Average Remaining Contractual Term (years)	Aggregate Intrinsic Value (in thousands)
Outstanding, December 31, 2018	313,260	$5.44	5.6	$ —
Granted	37,693	$9.35	—	
Exercised	(3,135)	$5.44	—	
Forfeited	(66,746)	$5.44	—	
Outstanding, December 31, 2019	281,072	$6.00	5.2	$1,207
Vested or expected to vest, December 31, 2019	267,018	$5.44	5.2	$1,147
Exercisable, December 31, 2019	129,226	$5.72	4.6	$ 602

The weighted average grant date fair value of options granted during both the years ended December 31, 2018 and 2019 was $2.93 and $4.61, respectively. As of December 31, 2019, there were 791,969 stock options available for grant under the 2015 Plan.

The Company recognized approximately $0.3 million and $0.2 million in expense related to stock options for the years ended December 31, 2018 and 2019 which was primarily recorded as general and administrative expense. As of December 31, 2019, there was approximately $0.5 million of total unrecognized compensation expense related to unvested stock options. These costs are expected to be recognized over a weighted-average period of 1.7 years.

Stock options outstanding, exercisable and vested or expected to vest as of June 30, 2020 (unaudited), are as follows:

	Number of Shares	Weighted- Average Exercise Price	Weighted-Average Remaining Contractual Term (years)	Aggregate Intrinsic Value (in thousands)
Outstanding, December 31, 2019	281,072	$ 6.00	5.2	$ —
Granted	27,410	$10.33	—	
Exercised	—	$ —	—	
Forfeited	(1,881)	$ 5.44	—	
Outstanding, June 30, 2020	306,601	$ 6.42	4.9	$1,198
Vested or expected to vest, June 30, 2020	291,271	$ 6.42	4.9	$1,138
Exercisable, June 30, 2020	157,930	$ 5.58	4.3	$ 735

The weighted average grant date fair value of options granted during the six months ended June 30, 2020 (unaudited) was $12.00. The weighted average fair value assumptions did not materially change from December 31, 2019 to the time of the grants in January 2020 (unaudited). As of June 30, 2020 (unaudited), there were 382,500 stock options available for grant under the 2015 Plan.

The Company recognized approximately $0.1 million in expense related to stock options for the six months ended June 30, 2020 (unaudited), which was primarily recorded as general and administrative expense. As of June 30, 2020 (unaudited), there was approximately $0.5 million of total unrecognized compensation expense related to unvested stock options. These costs are expected to be recognized over a weighted-average period of 2 years.

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NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

5. Inventories

Inventories as of December 31, 2018 and 2019 and as of June 30, 2020 were comprised of the following (in thousands):

	December 31,		June 30, 2020
	2018	2019	(unaudited)
Raw materials	$ 651	$ 928	$ 856
Work in process	672	1,164	1,182
Finished goods	6,136	5,098	7,581
Total	$7,459	$7,190	$ 9,619

During the year ended December 31, 2019, the Company recorded an inventory writedown of approximately $1.0 million relating to quantities on-hand deemed to be excessive compared to near-term demand or whose remaining shelf-lives will limit salability. Such writedown largely resulted from the impact on future sales of an existing dermis product after the Company's launch in mid-2019 of a new dermis offering.

6. Property and Equipment

Property and equipment as of December 31, 2018 and 2019 and as of June 30, 2020 are as follows (in thousands):

	December 31,		June 30, 2020
	2018	2019	(unaudited)
Processing and research equipment	$ 2,729	$ 3,062	$ 3,082
Leasehold improvements	433	562	589
Office equipment and furniture	106	148	148
Computer hardware and software	1,037	1,111	1,151
	4,305	4,883	4,970
Less: accumulated depreciation and amortization	(3,435)	(3,895)	(4,144)
Property and equipment, net	$ 870	$ 988	$ 826

Depreciation expense on property and equipment totaled approximately $0.4 million and $0.5 million for the years ended December 31, 2018 and 2019, respectively, of which approximately $0.2 million and $0.3 million, respectively, are included within cost of goods sold in the accompanying Consolidated Statements of Operations. Depreciation expense on property and equipment totaled approximately $0.2 million and $0.3 million for the six months ended June 30, 2019 and 2020 (unaudited), respectively, of which approximately $0.1 million (unaudited) is included in each period within cost of goods sold in the accompanying Consolidated Statements of Operations.

7. Intangible Assets

On May 31, 2017, the Company completed an asset purchase agreement with CorMatrix Cardiovascular, Inc. ("CorMatrix) and acquired all CorMatrix commercial assets and related intellectual property. A substantial portion of the assets acquired consisted of intangible assets related to the acquired products and customer relationships. Management determined that the estimated acquisition-date fair values of the intangible assets related to acquired products and customer relationships were $29.3 million and $4.7 million, respectively.

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The components of identified intangible assets as of December 31, 2018 and 2019 are as follows (in thousands):

	December 31, 2018			December 31, 2019		
	Cost	Accumulated Amortization	Net	Cost	Accumulated Amortization	Net
Acquired products	$29,317	$(4,632)	$24,685	$29,317	$ (7,558)	$ 21,759
Customer relationships	4,723	(748)	3,975	4,723	(1,220)	3,503
Total	$34,040	$(5,380)	$28,660	$34,040	$ (8,778)	$ 25,262

The components of identified intangible assets as of June 30, 2020 are as follows (in thousands):

	June 30, 2020		
	Cost	(unaudited) Accumulated Amortization	Net
Acquired products	$29,317	$ (9,023)	$ 20,294
Customer relationships	4,723	(1,454)	3,269
Total	$34,040	$ (10,477)	$ 23,563

Acquired products and customer relationships are both amortized over a ten-year period. Amortization expense totaled approximately $3.4 million for both the years ended December 31, 2018 and 2019, which is included in cost of goods sold in the accompanying Consolidated Statements of Operations. Amortization expense totaled approximately $1.7 million for the six months ended June 30, 2019 and June 30, 2020 (unaudited), which is included in cost of goods sold in the accompany Consolidated Statements of Operations. Annual amortization expense is expected to be approximately $3.4 million during the years ended December 31, 2021, 2022, 2023, 2024 and 2025.

8. Long-Term Debt

On May 31, 2017, in connection with the Company's acquisition of CorMatrix described in Note 7, Aziyo entered into a $12 million term loan facility (the "Term Loan Facility") and an $8 million asset-backed revolving line of credit (the "the Revolving Credit Facility"), which the Company's borrowing capacity under the Revolving Credit Facility is limited by certain qualifying assets, with a financial institution (the "May 2017 Financing"). The Term Loan Facility was amended in December 2017, February 2018 and July 2019 (all amendments being considered modifications) such that an additional $1.5 million, $3 million, and $3.5 million, respectively were received by the Company bringing the total aggregate principal amount outstanding under the Term Loan Facility to $20 million. Borrowings under the Term Loan Facility, as amended, bear interest at a rate per annum equal to the sum of (x) the greater of (i) 2.25% and (ii) the applicable London Interbank Offered Rate for U.S. dollar deposits divided by 1.00 minus the maximum effective reserve percentage for Eurocurrency funding ("LIBOR") plus (y) 7.25% (a reduction from 7.75% per annum prior to the July 2019 amendment). The agreement governing the Term Loan Facility provides for interest only payments through January 2021 and interest and equal monthly principal payments from February 2021 through maturity in July 2024 (a deferral from principal repayments from January 2020 through December 2021 prior to July 2019 amendment). Both the Term Loan Facility and the Revolving Credit Facility include mandatory and optional prepayments. The agreement governing the Term Loan Facility also includes an exit fee of 6.5% of the aggregate principal amount and prepayment penalties of 2% to 4% if repaid prior to maturity. The Term Loan Facility also provides for a delay in the payment of principal if certain conditions are met including a qualified initial public offering and no continuing default or event of default. The weighted average interest rate on Term Loan Facility borrowings was 9.8% and 9.7%, respectively, for the years ended December 31, 2018 and 2019. Borrowings under the Revolving Credit Facility bear interest at a rate per annum equal to the sum of (x) the greater of (i) 2.25% and (ii) LIBOR plus (y) 4.95%. The agreement governing the Revolving Credit Facility includes an unused line fee in an amount equal to 0.5% per annum of the unused borrowing capacity and prepayment penalties of 2% to 4% on the $8 million borrowing capacity

if terminated by the Company prior to its expiration in July 2024. The weighted average interest rate on Revolving Credit Facility borrowings was 6.9% and 7.1%, respectively, for the years ended December 31, 2018 and 2019. Both debt instruments contain events of default, including, most significantly, a failure to timely pay interest or principal, insolvency, or an action by the Food and Drug Administration or such other material adverse event impacting the operations of Aziyo. The debt instruments also include a financial covenant based on cumulative minimum net product revenue, as defined, restrictions as to payment of dividends, and are secured by all assets of the Company. As of December 31, 2019, Aziyo was in compliance with this financial covenant.

In consummating the July 2019 Amendment to the Term Loan Facility, Aziyo paid origination fees of approximately $40,000 and accrued exit fees of $0.4 million.

In conjunction with the May 2017 Financing and the amendment thereto, the Company issued to the financial institution warrants to purchase 405,000 shares of Aziyo's Convertible Preferred Stock at $1.00 per share. The warrants are exercisable through the first to occur of (a) May 31, 2027 (in the case of warrants to purchase 360,000 shares of Convertible Preferred Stock) or December 14, 2027 (in the case of warrants to purchase 45,000 shares of Convertible Preferred Stock), and (b) the earlier of (i) a Sale Transaction (as defined in the Company's Certificate of Incorporation) or (ii) an initial public offering of the Company's common stock. The Company accounts for stock warrants in accordance with ASC Topic 815 Derivatives and Hedging — Contracts in Entity's Own Equity," as either derivative liabilities or as equity instruments depending on the specific terms of the warrant agreement. As described in Note 10, all of the Company's issued and outstanding Convertible Preferred Stock warrants are accounted for as a liability and are valued using the Black Scholes model. Upon issuance, the Company valued such warrants at $286,267. The recognition of these warrants served to reduce the recorded value of the associated Term Loan Facility borrowings. This resulting debt discount will be recognized as interest expense through the maturity of the Term Loan Facility.

During 2017, the Company restructured certain of its liabilities with tissue suppliers and entered into unsecured promissory notes with two separate tissue suppliers totaling $2.6 million and $2.1 million, respectively. Both notes bear interest at 5% and include quarterly interest-only payments in 2017 and quarterly interest and principal payments from March 31, 2018 through August 31, 2020. The notes are subordinated in payment to the Term Loan Facility and Revolving Credit Facility and in 2019, the Company's senior lender restricted payment of certain amounts due. In 2018, the Company negotiated a settlement with one of the tissue suppliers to whom a promissory note was held. Such settlement resulted in a payment by the Company of $1.3 million in full satisfaction of the promissory note balance and the related accrued interest, and yielded the recognition of a gain on early extinguishment of debt totaling approximately $1.5 million that is included within Other (income) expense in the accompanying Consolidated Statements of Operations.

On April 2, 2020 (unaudited), the Company issued convertible, subordinated promissory notes (the "Initial 2020 Bridge Notes") with a total principal of approximately $0.6 million. The Initial 2020 Bridge Notes have an interest rate of 5%, are repayable upon demand by the holders any time after April 1, 2025 and shall automatically be converted into the Company's shares of capital stock upon the closing of an issuance of the Company's shares of capital stock to one or more investors that results in gross cash proceeds to the Company of at least Three Million Dollars ($3 million). The number of securities to be issued in connection with the conversion of these notes shall equal (i) the sum of the outstanding principal amount of, and all accrued but unpaid interest on, these notes divided by (ii) the cash purchase price per security paid by the investors in the financing.

On April 21, 2020 (unaudited) and April 29, 2020 (unaudited), the Company issued additional convertible, subordinated promissory notes (the "Additional 2020 Bridge Notes" and, together with the Initial 2020 Bridge Notes, the "2020 Bridge Notes") with a total principal of approximately $1.4 million. The Additional 2020 Bridge Notes have an interest rate of 5%, are repayable upon demand by the holders any time after April 1, 2025 and shall automatically be converted into the Company's shares of capital stock upon the closing of an issuance of the Company's shares of capital stock to one or more investors that results

in gross cash proceeds to the Company of at least Three Million Dollars ($3 million). The number of securities to be issued in connection with the conversion of these notes shall equal (i) the sum of the outstanding principal amount of, and all accrued but unpaid interest on, these notes divided by (ii) the cash purchase price per security paid by the investors in the financing.

On May 7, 2020 (unaudited), Aziyo entered into a promissory note with Silicon Valley Bank that provided for the receipt by the Company of loan proceeds totaling approximately $3.0 million (unaudited) (the “PPP loan”) pursuant to the Paycheck Protection Program under the Coronavirus Aid, Relief and Economic Security Act (the “CARES Act”). The PPP Loan matures on May 7, 2022 and bears interest at a rate of 1.0% per annum (unaudited). Monthly amortized principal and interest payments are deferred for six months after the date of disbursement. The PPP Loan contains events of default and other provisions customary for a loan of this type. If the PPP Loan amount, or any portion thereof, is forgiven pursuant to the Paycheck Protection Program under the CARES Act, the amount so forgiven shall be applied to principal. The Company is not yet able to determine the amount that might be forgiven, and as such, has recorded the PPP loan as a liability until Aziyo is released as the primary obligor for all or a portion of the loan. The PPP loan has been recorded within long-term debt in the accompanying Consolidated Balance Sheets.

As of December 31, 2019, the contractual maturities of the long-term debt are as follows (in thousands):

Years ending December 31,	Term Loan Facility	Note to Tissue Supplier	Total
2020	$ —	$ 1,692	$ 1,692
2021	5,239	—	5,239
2022	5,714	—	5,714
2023	5,714	—	5,714
2024	3,333	—	3,333
Total	20,000	1,692	21,692
Debt Discount	(125)	—	(125)
Deferred Financing Costs	(263)	—	(263)
Total, net	19,612	1,692	21,304
Current Portion	—	(1,692)	(1,692)
Long-term Debt	$ 19,612	$ —	$ 19,612

The fair value of all debt instruments, which is based on inputs considered to be Level 2 under the fair value hierarchy, approximates the respective carrying values as of December 31, 2018 and 2019 and June 30, 2020 (unaudited).

The Company has a warrant outstanding to purchase up to 7,656 shares of common stock, at an exercise price of $5.44 per share, which had been issued in connection with a prior financing arrangement. This warrant is fully vested and is exercisable through the earliest to occur of (i) March 1, 2027, (ii) the consummation of a Sale Transaction (as defined in the Company’s Certificate of Incorporation), or (iii) the initial public offering of the Company’s common stock.

9. Revenue Interest Obligation

As described in Note 1, on May 31, 2017, the Company completed an asset purchase agreement with CorMatrix and acquired all CorMatrix commercial assets and related intellectual property. As part of this acquisition, the Company assumed a restructured, long-term obligation (the “Revenue Interest Obligation”) to Ligand Pharmaceuticals (“Ligand”) with an estimated present value on the acquisition date of $27.7 million. The terms of the Revenue Interest Obligation require Aziyo to pay Ligand, subject to certain annual minimums, 5% of future sales of the products Aziyo acquired from CorMatrix, including CanGaroo, ProxiCor, Tyke and Vascure, as well as products substantially similar to those products, such as the version of CanGaroo Aziyo is currently developing that is designed to have anti-infective properties.

Furthermore, a $5.0 million payment will be due to Ligand if cumulative sales of these products exceed $100.0 million and a second $5.0 million will be due if cumulative sales exceed $300.0 million during the ten-year term of the agreement which expires on May 31, 2027.

The future annual minimum payments on the Revenue Interest Obligation are as follows (in thousands):

Years Ending December 31,	Amount
2020	$ 2,750
2021	2,750
2022	2,750
2023	2,750
2024 and thereafter	9,396

The Company recorded the present value of the estimated total future payments under the Revenue Interest Obligation as a long-term obligation on the opening balance sheet, with the annual minimum payments serving to establish the short-term portion. Interest expense related to the Revenue Interest Obligation of approximately $2.7 million and $2.9 million was recorded for the years ended December 31, 2018 and 2019, respectively, and $1.4 million and $1.3 million for the six months ended June 30, 2019 and 2020, respectively (unaudited). See Note 10 for discussion of the value of this debt instrument.

10. Fair Value Measurements

The following table sets forth by level, within the fair value hierarchy, the liabilities that are measured at fair value on a recurring basis (in thousands):

	Fair Value Measurements at December 31, 2018 Using:			
	Level 1	Level 2	Level 3	Total
Liabilities:				
Preferred stock warrant liability	$—	$—	$ 249	$ 249
Revenue Interest Obligation*	—	—	20,253	20,253
Total	$—	$—	$20,502	$ 20,502

	Fair Value Measurements at December 31, 2019 Using:			
	Level 1	Level 2	Level 3	Total
Liabilities:				
Preferred stock warrant liability	$—	$—	$ 247	$ 247
Revenue Interest Obligation*	—	—	19,346	19,346
Total	$—	$—	$19,593	$ 19,593

	Fair Value Measurements at June 30, 2020 (unaudited) Using:			
	Level 1	Level 2	Level 3	Total
Liabilities:				
Preferred stock warrant liability	$—	$—	$ 247	$ 247
Revenue Interest Obligation*	—	—	19,433	19,433
Total	$—	$—	$19,680	$ 19,680

* Net Present Value; see discussion of value below

The preferred stock warrant liability in the tables above consisted of the fair value of warrants to purchase Convertible Preferred Stock (see Note 8) and was based on significant inputs not observable in the market, which represents a Level 3 measurement within the fair value hierarchy. The Company's valuation of the preferred stock warrants utilized the Black-Scholes option-pricing model, which

incorporates assumptions and estimates to value the preferred stock warrants. The Company assesses these assumptions and estimates at each reporting period as additional information impacting the assumptions becomes available. Changes in the fair value of the preferred stock warrants are recognized as Other (income) expense in the consolidated statements of operations.

The Company has estimated the value of the Revenue Interest Obligation, including contingent milestone payments and estimated sales-based payments, based on assumptions related to future sales of the acquired products. At each reporting period, the value of the Revenue Interest Obligation is re-measured based on current estimates of future payments, with changes to be recorded in the consolidated statements of operations using the catch-up method. In connection with the Company's estimations at December 31, 2018 and 2019, it was determined that the estimated future payments have decreased since the estimates made in the prior year. In both instances, such decrease was primarily the result of delays in certain regulatory approvals that will impact the timing and extent of future sales and thereby, will reduce expected future payments to Ligand. The change to estimated future payments yielded a reduction to the total Revenue Interest Obligation of approximately $0.5 million and $1.9 million at December 31, 2018 and 2019, respectively, with such amounts recognized as gains included in Other (income) expense in the accompanying Consolidated Statements of Operations. There was no change to the value of the Revenue Interest Obligation as of June 30, 2020 (unaudited) based on estimates of future payments at that date.

The following table provides a rollforward of the aggregate fair values of the preferred stock warrant liability and Revenue Interest Obligation categorized with Level 3 inputs for the years ended December 31, 2018 and 2019 is as follows (in thousands):

	Preferred Stock Warrant Liability	Revenue Interest Obligation
Balance as of January 1, 2018	$286	$ 19,161
Fair value adjustment to warrant liability	(37)	—
Payments on Revenue Interest Obligation	—	(1,179)
Interest accrued to Revenue Interest Obligation	—	2,746
Fair value adjustment to Revenue Interest Obligation	—	(475)
Balance as of December 31, 2018	$249	$ 20,253
Fair value adjustment to warrant liability	(2)	—
Payments on Revenue Interest Obligation	—	(1,879)
Interest accrued to Revenue Interest Obligation	—	2,856
Fair value adjustment to Revenue Interest Obligation	—	(1,884)
Balance as of December 31, 2019	$247	$ 19,346
Fair value adjustment to warrant liability	—	—
Payments on Revenue Interest Obligation	—	(1,247)
Interest accrued to Revenue Interest Obligation	—	1,334
Balance as of June 30, 2020 (unaudited)	$247	$ 19,433

There were no transfers among Level 1, Level 2, or Level 3 categories during any of the periods presented.

11. Income Taxes

The Company is subject to income taxes in the United States. Income taxes are accounted for under the asset and liability method. Deferred income tax assets and liabilities are calculated based on the difference between the financial statement carrying amounts of existing assets and liabilities and their respective tax bases using the enacted income tax rates expected to be in effect during the years in which the temporary differences are expected to reverse.

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The reconciliation of the U.S. federal statutory rate to the consolidated effective tax rate is as follows:

	Years Ended December 31,	
	2018	2019
Tax benefit at U.S. statutory rate	21.00%	21.00%
State income tax benefit, net of federal benefit	2.55%	2.18%
Nondeductible expenses	(0.29)%	(0.64)%
State Law Changes	0.77%	(1.36)%
Other	(0.77)%	(1.33)%
Change in valuation allowance	(23.49)%	(20.08)%
Income tax expense	(0.23)%	(0.23)%

Deferred income taxes reflect the net tax effects of temporary differences between the carrying amount of assets and liabilities for financial reporting purposes and the amounts used for income tax purposes as well as net operating loss carryforwards. As of December 31, 2018 and 2019, significant components of the Company's net deferred income taxes are as follows (in thousands):

	December 31,	
	2018	2019
Deferred tax assets:		
Tax goodwill	$ 4,366	$ 3,950
Net operating loss carryforwards	6,002	7,365
Inventory	740	744
Deferred revenue	—	275
Acquired intangibles	426	686
Revenue interest obligation	33	238
Interest expense	—	581
Other	555	702
Total assets	12,122	14,541
Deferred tax liabilities:		
Prepaid expenses	(114)	(134)
Total liabilities	(114)	(134)
Total net deferred tax asset	12,008	14,407
Valuation allowance	(12,008)	(14,407)
Net deferred tax asset, net of valuation allowance	$ —	$ —

The Company did not recognize any deferred benefit for income taxes for the years ended December 31, 2018 and 2019 and the six months ended June 30, 2019 and 2020 (unaudited), as the increases to the respective deferred tax assets of $2.7 million, $2.4 million, $1.4 million and $1.9 million, respectively, were offset by corresponding increases to the Company's deferred tax asset valuation allowance due to uncertainty of realizing the deferred tax assets.

The Company evaluates the need for deferred tax asset valuation allowances based on a more likely than not standard. The ability to realize deferred tax assets depends on the ability to generate sufficient taxable income within the carryback or carryforward periods provided for in the tax law for each applicable tax jurisdiction. Valuation allowances are established when necessary to reduce deferred tax assets to amounts that are more likely than not to be realized. Based on the uncertainty of future taxable income generation, as of December 31, 2018 and 2019 and as of June 30, 2020 (unaudited), the Company has provided valuation allowances against all deferred tax assets.

The Company regularly assesses the realizability of its deferred tax assets. Changes in historical earnings performance and future earnings projections, among other factors, may cause the Company to adjust its valuation allowance, which would impact the Company's income tax expense in the period the Company determines that these factors have changed.

The income tax expense for the years ended December 31, 2018 and 2019 and for the six months ended June 30, 2019 and 2020 (unaudited) relates to current amounts due on certain state tax obligations.

As of December 31, 2019, the Company had net operating loss carryforwards for federal income tax purposes of approximately $32.0 million, comprised of $17.6 million that will expire beginning in 2036 and $14.4 million that have no expiration date. The Company also had state net operating loss carryforwards of approximately $10.5 million that will expire beginning in 2030. Utilization of the net operating loss carryforwards may be subject to an annual limitation under Section 382 of the Internal Revenue Code of 1986, and corresponding provisions of state law, due to ownership changes that have occurred previously or that could occur in the future. These ownership changes may limit the amount of carryforwards that can be utilized annually to offset future taxable income. The Company has not conducted a study to assess whether a change of control has occurred or whether there have been multiple changes of control since inception due to the significant complexity and cost associated with such a study. If the Company has experienced a change of control, as defined by Section 382, at any time since inception, utilization of the net operating loss carryforwards would be subject to an annual limitation under Section 382. Any limitation may result in expiration of a portion of the net operating loss carryforwards before utilization.

As of December 31, 2019, the Company had no unrecognized tax benefits.

12. Preferred Stock

At inception, Aziyo was capitalized through the sale of 19.5 million shares of Series A Convertible Preferred Stock, par value $0.001 per share (the "Convertible Preferred Stock"). Since inception, the Company has issued an additional 25.1 million shares of Convertible Preferred Stock whose proceeds of $24.9 million were used for general corporate purposes and the purchase of CorMatrix. During the years ended December 31, 2018 and 2019 and the six months ended June 30, 2020 (unaudited), Convertible Preferred Stock offerings totaled approximately $10.0 million, $3.0 million and $0.45 million, respectively. The proceeds raised in the 2019 offering included the conversion of a $0.75 million Convertible Promissory Note (issued in November 2019) and the related accrued interest of approximately $4,000 into the Convertible Preferred Stock.

Dividends

The holders of Convertible Preferred Stock are entitled to receive noncumulative dividends as declared by the Board of Directors. The holders of Convertible Preferred Stock shall be entitled to receive dividends prior and in preference to any payment of any dividend on common stock. No dividends have been declared by the Board of Directors from inception through December 31, 2019.

Conversion

The Convertible Preferred Stock is convertible at the election of the holders into shares of the Company's common stock that would result in a conversion ratio of one share of common stock for every 13.9549 shares of Convertible Preferred Stock held. In addition to this voluntary conversion, each share of Convertible Preferred Stock will automatically be converted into shares of common stock upon (i) the written consent of the required holders (as defined) or (ii) the closing of the sale of shares of common stock to the public at a price of at least $69.77 per share (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the common stock), in an underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended, resulting in at least $30 million of gross proceeds to the Company. In case of an underwritten public offering, immediately prior to closing, the holders of Convertible Preferred

Stock are entitled to receive additional shares of Common Stock as determined by dividing the Convertible Preferred Stock Preference Amount, as defined below, by the price per Common Shares in the underwritten public offering.

Redemption and Balance Sheet Classification

The Convertible Preferred Stock does not have a mandatory redemption date. However, while it is not mandatorily redeemable, the Convertible Preferred Stock was reclassified into mezzanine equity because it will become redeemable at the option of the stockholders upon the occurrence of certain deemed liquidation events that are considered not solely within the Company's control. That is, unless a majority of the holders of the then outstanding preferred stock, on an as-if-converted to common stock basis, elect otherwise, deemed liquidation events include a sale of all or substantially all of Aziyo's assets or a sale of at least fifty percent (50%) of the issued and outstanding voting securities, capital stock, or other comparable equity or ownership interest in Aziyo.

Upon issuance of the Convertible Preferred Stock, the Company assessed the embedded conversion and liquidation features of the securities. The Company determined that the preferred stock did not require the Company to separately account for the liquidation features. The Company also concluded that no beneficial conversion feature existed upon the issuance date the preferred stock as of December 31, 2018 or 2019.

Voting

The holders of each share of Convertible Preferred Stock are entitled to vote, together with the holders of the common stock, on all matters submitted to stockholders for a vote. Each holder of Convertible Preferred Stock is entitled to the right to one vote for each share of common stock into which their shares would convert.

Liquidation

*In th*e event of a liquidation or winding up of the Company, either voluntary or involuntary, the holders of Convertible Preferred Stock shall be entitled to receive, prior and in preference to any distribution of any of the assets or funds of the Company to holders of Common Stock, for each share of Convertible Preferred stock, the sum of (i) $1.00 (as adjusted for any dividends, combinations, splits, recapitalizations and similar events with respect to such shares of Convertible Preferred Stock) and (ii) the amount of all declared but unpaid dividends on such share of Convertible Preferred Stock (such sum, the Convertible Preferred Stock Preference Amount). In the event that the assets and funds legally available for distribution to the stockholders of the Company are insufficient to pay such preference amount in respect of each share of Convertible Preferred stock as set forth above, then all funds or assets legally available for distribution to the holders of Convertible Preferred Stock shall be paid to such holders of Convertible Preferred Stock pro rata based on the dollar amount to which they are otherwise entitled.

After payment of the liquidation preference to the holders of the preferred stock, the remaining assets of the Company are available for distribution to the holders of common stock and preferred stock (based on common shares that would be received upon conversion) on a pro rata basis.

13. Retirement Plan

The Company has a defined contribution savings plan under section 401(k) of the Internal Revenue Code. The plan covers substantially all employees. The Company matches employee contributions made to the plan according to a specified formula. The Company's matching contributions totaled approximately $0.2 million for both the years ended December 31, 2018 and 2019 and $0.1 million for the six months ended June 30, 2019 and 2020 (unaudited).

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14. Net Loss Per Share Attributable to Common Stockholders

(in thousands, except share and per share data)	Year Ended December 31,		Six Months Ended June 30,	
	2018	2019	2019	2020
			(Unaudited)	
Numerator:				
Net loss	$ (11,566)	$ (11,939)	$ (6,052)	$ (9,738)
Denominator:				
Weighted average number of common shares, basic and diluted	629,534	645,994	645,143	648,277
Net loss per common share attributable to common stockholders, basic and diluted	$ (18.37)	$ (18.48)	$ (9.38)	$ (15.02)

The Company's potential dilutive securities have been excluded from the computation of diluted net loss per share as the effect would be anti-dilutive. Therefore, the weighted average number of common shares outstanding used to calculate both basic and diluted net loss per share attributable to common stockholders is the same. The Company excluded the following potential common shares, presented based on amounts outstanding at period end, from the computation of diluted net loss per share attributable to common stockholders:

	December 31,		June 30,	
	2018	2019	2019	2020
			(Unaudited)	
Convertible Preferred Stock	2,973,866	3,192,444	2,973,866	3,224,674
Options to purchase common stock	313,260	281,072	268,956	306,601
Common stock warrant	7,656	7,656	7,656	7,656
Preferred stock warrants	29,022	29,022	29,022	29,022
Convertible Promissory Notes	—	—	—	143,319
Total	3,323,804	3,510,194	3,297,500	3,711,272

15. Pro Forma Net Loss Per Share Attributable to Common Stockholders (Unaudited)

The unaudited pro forma basic and diluted net loss per share attributable to common stockholders for the year ended December 31, 2019 and the six months ended June 30, 2020 has been prepared to give effect to the occurrence of the following events in connection with the initial public offering of the Company's common stock (the "IPO"):

- the automatic conversion of all shares of Convertible Preferred Stock outstanding as of December 31, 2019 or June 30, 2020 (as applicable) (including the shares of Convertible Preferred Stock issuable upon the assumed net exercise of warrants to purchase Convertible Preferred Stock, as described below) into one share of common stock for every 13.9549 shares of Convertible Preferred Stock held.
- the issuance of shares of common stock in respect of a liquidation preference payable to the holders of Convertible Preferred Stock in kind immediately prior to the closing of the IPO (as described in Note 12, "Preferred Stock — Conversion"), based on an assumed IPO price of $17.00 per share (the midpoint of the price range set forth on the cover page of this prospectus);
- the issuance of shares of common stock upon the assumed net exercise of a warrant to purchase shares of common stock outstanding as of December 31, 2019 or June 30, 2020 (as applicable), which will expire if not exercised prior to the closing of the IPO, assuming the fair market value of the Company's common stock for purposes of such net exercise is equal to the assumed IPO price of $17.00 per share (the midpoint of the price range set forth on the cover page of this prospectus); and

- the issuance of shares of Convertible Preferred Stock upon the assumed net exercise of warrants to purchase shares of Convertible Preferred Stock outstanding as of December 31, 2019 or June 30, 2020 (as applicable), which will expire if not exercised prior to the closing of the IPO, assuming the fair market value of the Convertible Preferred Stock for purposes of such net exercise is $, based on an assumed IPO price for the common stock of $17.00 per share (the midpoint of the price range set forth on the cover page of this prospectus).

The Company has calculated unaudited pro forma basic and diluted net loss per share attributable to common stockholders giving effect to the impact of the foregoing events using the if-converted method, as though the conversion of the Convertible Preferred Stock and the assumed net exercise of the warrants to purchase common stock and Convertible Preferred Stock had occurred as of the beginning of the period or the original date of issuance, if later.

This calculation does not give effect to (i) any shares of common stock to be issued in the IPO, (ii) 3,000,000 shares of our Series A convertible preferred stock, (iii) 375,000 shares of our Series A convertible preferred stock to an affiliate of HighCape Partners in exchange for the extinguishment of our obligation to pay an advisory fee, in each case, in September 2020, or (iv) the shares of Convertible Preferred Stock issued upon the conversion of the outstanding principal amount of and accrued and unpaid interest on the 2020 Bridge Notes. See Note 20, “Subsequent Events.” All share and per share amounts set forth below have been adjusted to give retrospective effect to the one-for-13.9549 reverse stock split of the Company's common stock effected on September 29, 2020.

Unaudited pro forma net loss per share is computed as follows:

(in thousands, except share and per share amounts)	Year Ended December 31, 2019 (unaudited)	Six Months Ended June 30, 2020 (unaudited)
Numerator:		
Net loss	$ (11,939)	$ (9,738)
Add:		
Change in fair value of preferred stock warrant liability	(2)	—
Loss used in computing pro forma net loss per share calculation	$ (11,941)	$ (9,738)
Denominator:		
Weighted-average shares used to compute net loss per share attributable to common stockholders, basic and diluted	645,994	648,277
Pro forma adjustment to reflect automatic conversion of Convertible Preferred Stock (including the shares of Convertible Preferred Stock issuable upon the assumed net exercise of Convertible Preferred Stock warrants)	3,013,667	3,253,165
Pro forma adjustment to reflect issuance of common stock in respect of liquidation preference payable to holders of Convertible Preferred Stock	2,644,425	2,670,882
Pro forma adjustment to reflect issuance of common stock upon the assumed net exercise of warrant to purchase common stock	5,205	5,205
Weighted-average shares used in computing pro forma net loss per share	6,309,291	6,577,529
Pro forma net loss per share attributable to common stockholders, basic and diluted	$ (1.89)	$ (1.48)

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16. Distribution Agreements

ViBone Exclusivity Agreement

In August 2018, the Company entered into an agreement with Surgalign Holdings, Inc (formerly RTI Surgical, Inc.) ("Surgalign Holdings") for the exclusive distribution in the United States of the Company's ViBone® cellular bone product. Such agreement includes requirements that Surgalign Holdings purchase certain annual minimum quantities for years 2019 through 2021 and also included an upfront payment of $2 million for the exclusivity. Such upfront payment was recorded as deferred revenue and is being amortized into revenue through the 2021 minimum purchase period. During 2018 and 2019, Aziyo recognized approximately $0.2 million and $0.6 million, respectively, of the $2 million as revenue.

For the transition period, beginning with the commencement of the agreement and ending on December 31, 2018, Aziyo performed the billing and collections on behalf of Surgalign Holdings for certain existing ViBone customers. During this period, Aziyo also paid, on behalf of Surgalign Holdings, the related sales commissions to independent sales representatives. When Aziyo bills customers on Surgalign Holdings' behalf, a liability due to Surgalign Holdings is recorded which is offset by the related commissions paid or to be paid on such sales. As of December 31, 2018, the net amount due to Surgalign Holdings was approximately $0.3 million. Amounts collected from customers by Aziyo on the transition period billings less the related commission amounts paid is included as a net cash inflow from financing activities on the Consolidated Statement of Cash Flows. All revenue on sales under the ViBone exclusivity agreement is recognized at the contractual transfer price from Surgalign Holdings upon shipment of the goods to the customer.

CanGaroo Sales Agent Agreement

In January 2018, Aziyo began selling a private-labeled CanGaroo product to a domestic distribution entity. Due to unforeseen market conflicts, in April 2019, an amended agreement was reached between the parties such that the distributor arrangement would be transitioned to that of a commissioned sales agent. In connection with this sales agent agreement, it was agreed that Aziyo would buy back all private-labeled CanGaroo product that remained in the entity's inventory upon execution of the new agreement. As such, due to the nature of the event, Aziyo reversed all revenue associated with the units to be bought back and recorded a payable to this entity of approximately $1.2 million as of December 31, 2018, which is included in Accrued Expenses. As all sales of the private-labeled CanGaroo product as well as buyback accounting occurred during year ended December 31, 2018, no revenue associated with units bought back was recognized in the Consolidated Statements of Operations.

Significant Customers

The Company sells certain of its products under large contract manufacturing or distribution arrangements. The following table presents percentage of total revenues derived from the Company's largest customers:

	Year Ended December 31,	
	2018	2019
Percent of revenues derived from:		
Osiris Therapeutics, Inc.	21%	12%
Surgalign Holdings	4%	12%

	December 31,	
	2018	2019
Percent of accounts receivable derived from:		
Osiris Therapeutics, Inc.	17%	14%
Surgalign Holdings	22%	23%

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	Six Months Ended June 30,	
	2019	2020
	(unaudited)	
Percent of revenues derived from:		
Osiris Therapeutics, Inc.	10%	1%
Surgalign Holdings	15%	11%
Medtronic Sofamor Danek USA, Inc.	—%	15%

	June 30,	
	2019	2020
	(unaudited)	
Percent of accounts receivable derived from:		
Osiris Therapeutics, Inc.	11%	—%
Surgalign Holdings	24%	13%
Medtronic Sofamor Danek USA, Inc	1%	27%

17. Commitment and Contingencies

Operating Leases

The Company leases two production facilities and one administrative and research facility under non-cancelable operating lease arrangements that expire through July 2023. All leases contain renewal options and escalation clauses based upon increases in the lessors' operating expenses and other charges.

The Company records rent expense on a straight-line basis over the life of the lease and the difference between the average rent expense and cash payments for rent is recorded as deferred rent and is included in accrued liabilities on the balance sheet. Rent expense for the years ended December 31, 2018 and 2019 and for the six months ended June 30, 2019 and 2020 (unaudited) was approximately $1.0 million, $1.1 million, $0.5 million and $0.6 million, respectively, and is included as a component of either cost of goods sold or general and administrative expenses.

Future minimum lease commitments under non-cancelable operating leases as of December 31, 2019 are as follows (in thousands):

Years ending December 31,	
2020	$ 1,121
2021	1,080
2022	1,056
2023	948
2024	781
Thereafter	594
Total	$ 5,580

Cook Biotech License and Supply Agreements

Aziyo has entered into a license agreement with Cook Biotech ("Cook") for an exclusive, worldwide license to the porcine tissue for use in the Company's Cardiac Patch and CanGaroo products, subject to certain co-exclusive rights retained by Cook. The term of such license is through the date of the last to expire of the licensed Cook patents, which is anticipated to be July 2031. Along with this license agreement, Aziyo entered into a supply agreement whereby Cook would be the exclusive supplier to Aziyo of the licensed porcine tissue. Under certain limited circumstances, Aziyo has the right to manufacture the licensed product and pay Cook a royalty of 3% of sales of the Aziyo-manufactured tissue. The supply agreement expires on the same date as the related license agreement. No royalties were paid to

Cook during the years ended December 31, 2018 and 2019. Aziyo has also entered into an amendment to the Cook license agreement (the "Cook Amendment") in order to add fields of exclusive use. Specifically, the Cook Amendment provides for a worldwide exclusive license to the porcine tissue for use with neuromodulation devices in addition to cardiovascular devices. The Cook Amendment includes license fee payments of $0.1 million per year in each of the years 2020 through 2026. Such license payments would accelerate if a change in control, as defined, occurs within Aziyo. The Company, in its sole discretion, can terminate the license agreement at any time.

Legal Proceedings

From time to time, the Company may become involved in legal proceedings arising in the ordinary course of business. As of December 31, 2018 and 2019 and as of June 30, 2020 (unaudited), the Company was not a party to, or aware of, any material legal matters or claims.

18. Related Party Transactions

The Company has a management services agreement with an affiliate of HighCape through which strategic, operational and management consulting services are provided to the Company. Fees for such services are $0.25 million per year. During the years ended December 31, 2018 and 2019, the Company recorded expenses totaling $0.25 million for these services. For the six months ended June 30, 2019 and 2020 (unaudited), the Company recorded expenses totaling $0.13 million for these services. As of December 31, 2018 and 2019, approximately $0 and $10,000, respectively, was recorded as an accrued expense related to such management fees. As of June 30, 2020, approximately $0.1 million was recorded as an accrued expense related to such management fees (unaudited).

As consideration for the advisory services provided to Aziyo in connection with the CorMatrix acquisition, an agreement was executed between Aziyo and HighCape whereby upon consummation by Aziyo of a sale transaction, as defined in the Company's Certificate of Incorporation, or an initial public offering of the Company's common stock, Aziyo would be required to pay HighCape a fee totaling $0.75 million.

As part of the contribution of assets transacted from Tissue Banks International, now KeraLink International, to Aziyo upon formation of the Company, a provision existed which guaranteed a certain level of working capital, as defined, on the opening balance sheet of Aziyo. Such guarantee was largely settled in 2016; however, an additional $0.4 million was received by the Company related to such settlement in 2018 and recognized in Other (income) expense, net. As of December 31, 2018, all working capital guarantee matters had been finalized.

19. Segment Information

The Company operates as one segment, regenerative medicines. The segment is based on financial information that is utilized by the Company's Chief Operating Decision Maker ("CODM"), who is the Company's Chief Executive Officer, to assess performance and allocate resources.

For the years ended December 31, 2018 and 2019 as well as the six months ended June 30, 2019 and 2020, the Company's net sales disaggregated by the major sources were as follows (in thousands):

	Years Ended December 31,		Six Months Ended June 30,	
Sales by channel	2018	2019	2019	2020
			(unaudited)	
Direct	$ 18,617	$ 20,445	$ 8,813	$ 8,483
Indirect	20,421	22,456	10,896	9,959
Total sales	$ 39,038	$ 42,901	$ 19,709	$ 18,442

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NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

The Company's sales separated between Core Products and Non-Core Products (see Note 1) for the years ended December 31, 2018 and 2019 as well as for the six months ended June 30, 2019 and 2020 were as follows (in thousands):

	Years Ended December 31,		Six Months Ended June 30,	
Sales by product	2018	2019	2019	2020
			(unaudited)	
Orthopedic/Spinal Repair	$ 5,345	$ 11,045	$ 5,486	$ 7,307
CanGaroo	6,874	9,338	3,164	3,388
Cardiovascular	10,501	9,777	5,033	3,416
SimpliDerm	—	758	—	1,500
Core Products	$ 22,720	$ 30,918	$ 13,683	$ 15,611
Contract Manufacturing	$ 16,318	$ 11,983	$ 6,026	$ 2,831
Non-Core Products	16,318	11,983	6,026	2,831
Total sales	$ 39,038	$ 42,901	$ 19,709	$ 18,442

The Company's indirect sales channel are sales completed through its agreements with commercial partners and contract manufacturing agreements with other third parties. The direct sales channel are sales made directly to end customers (i.e. hospitals and other healthcare facilities) through the Company's internal sales organization.

During the years ended December 31, 2018 and 2019 and the six months ended June 30, 2019 and 2020 (unaudited), the Company did not have any international product sales to specific countries where such country-specific sales represented greater than 10% of total product sales, and the Company did not own any long-lived assets outside the United States.

20. Subsequent Events

In March 2020, the World Health Organization declared the novel strain of coronavirus ("COVID-19") a global pandemic and recommended containment and mitigation measures worldwide. The COVID-19 pandemic has continued to spread and various state and local governments have issued or extended "shelter-in-place" orders which have impacted and restricted various aspects of the Company's business. It is reasonably possible the Company's operations and results could be negatively affected by the impacts of COVID-19. The extent to which COVID-19 may impact the Company's results will depend on future developments, which are highly uncertain and cannot be predicted, including new information concerning the severity of COVID-19 and the actions taken to contain it or treat its impact, among others.

On April 2, 2020, the Company issued convertible, subordinated promissory notes (the "Initial 2020 Bridge Notes") with a total principal of approximately $0.6 million. The Initial 2020 Bridge Notes have an interest rate of 5%, are repayable upon demand by the holders any time after April 1, 2025 and shall automatically be converted into the Company's shares of capital stock upon the closing of an issuance of the Company's shares of capital stock to one or more investors that results in gross cash proceeds to the Company of at least Three Million Dollars ($3 million). The number of securities to be issued in connection with the conversion of these notes shall equal (i) the sum of the outstanding principal amount of, and all accrued but unpaid interest on, these notes divided by (ii) the cash purchase price per security paid by the investors in the financing.

The Company evaluated subsequent events, as defined by FASB ASC 855 *Subsequent Events*, through April 17, 2020, the date the financial statements were available to be issued, and identified no subsequent events, other than noted above, that require adjustment to, or disclosure of, in these financial statements.

In September 2020, the Company's Board of Directors and stockholders approved an amendment to the Company's amended and restated certificate of incorporation to effect a 1-for-13.9549 reverse stock split of the Company's common stock, which was effected on September 29, 2020. The par value of the

common stock was not adjusted as a result of the reverse stock split. Accordingly, all common stock, stock options, and related per share amounts in these audited annual and unaudited interim financial statements have been retroactively adjusted for all periods presented to give effect to the reverse stock split.

In addition, the amendment to the Company's amended and restated certificate of incorporation modified the rights of the holders of Convertible Preferred Stock with respect to conversion. Pursuant to the amended and restated certificate of incorporation, as amended by the amendment, each share of Convertible Preferred Stock will automatically be converted into shares of common stock upon (i) the date, time or event specified in a written consent of the required holders (as defined in the amended and restated certificate of incorporation) (provided, that the Series A-1 Convertible Preferred Stock shall not be converted pursuant to this clause (i) without the consent of a majority of the holders of the Series A-1 Preferred Stock, unless such date, time or event occurs within an Exchange Act Registration Period (as defined in the Company's amended and restated certificate of incorporation)), (ii) the closing of the sale of shares of common stock to the public at a price of at least $5.00 per share (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the common stock), in an underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended, resulting in at least $30 million of gross proceeds to the Company or (iii) the closing of the sale of shares of Class A Common Stock (and/or Class B Common Stock, if applicable) to the public in an underwritten offering pursuant to the Company's registration statement on Form S-1 (Reg. No. 333-248788) (provided, in the case of each of clauses (ii) and (iii), that the Series A-1 Convertible Preferred Stock shall not be converted unless such closing occurs during an Exchange Act Registration Period).

Subsequent Events (Unaudited)

In connection with the inclusion of these financial statements in the Company's registration statement on Form S-1, the Company assessed subsequent events for the purpose of disclosure only.

On April 21, 2020 and April 29, 2020, the Company issued additional convertible, subordinated promissory notes (the "Additional 2020 Bridge Notes" and, together with the Initial 2020 Bridge Notes, the "2020 Bridge Notes") with a total principal of approximately $1.4 million. The Additional 2020 Bridge Notes have an interest rate of 5%, are repayable upon demand by the holders any time after April 1, 2025 and shall automatically be converted into the Company's shares of capital stock upon the closing of an issuance of the Company's shares of capital stock to one or more investors that results in gross cash proceeds to the Company of at least Three Million Dollars ($3 million). The number of securities to be issued in connection with the conversion of these notes shall equal (i) the sum of the outstanding principal amount of, and all accrued but unpaid interest on, these notes divided by (ii) the cash purchase price per security paid by the investors in the financing.

On May 7, 2020, Aziyo entered into a promissory note with Silicon Valley Bank that provided for the receipt by the Company of loan proceeds totaling approximately $3.0 million (the "PPP Loan") pursuant to the Paycheck Protection Program under the Coronavirus Aid, Relief and Economic Security Act (the "CARES Act"). The PPP Loan matures on May 7, 2022 and bears interest at a rate of 1.0% per annum. Monthly amortized principal and interest payments are deferred for six months after the date of disbursement. The PPP Loan contains events of default and other provisions customary for a loan of this type. If the PPP Loan amount, or any portion thereof, is forgiven pursuant to the Paycheck Protection Program under the CARES Act, the amount so forgiven shall be applied to principal. The Company is not yet able to determine the amount that might be forgiven, and as such, has recorded the PPP Loan as a liability until Aziyo is released as the primary obligor for all or a portion of the loan. The PPP Loan has been recorded within long-term debt in the accompanying Consolidated Balance Sheets.

On September 11, 2020, the Company completed the sale of 3,000,000 shares of Convertible Preferred Stock for net proceeds of approximately $3.0 million. Additionally, in connection with this sale, the 2020 Bridge Notes and the Additional 2020 Bridge Notes totaling $2.0 million, along with accrued interest, converted into Convertible Preferred Stock, bringing the total shares of Convertible Preferred Stock issued in connection with this overall transaction to approximately 5 million.

On September 14, 2020, the Company filed an amended and restated certificate of incorporation, which effected a recapitalization of the Company's then outstanding common stock to Class A common stock and authorized an additional new class of common stock (Class B common stock) and a new series of convertible preferred stock (Series A-1 convertible preferred stock). Also on September 14, 2020, the Company entered into an agreement with Deerfield Private Design Fund III, L.P. ("Deerfield"), pursuant to which the Company issued to Deerfield 18,384,536 shares of Series A-1 convertible preferred stock in exchange for an equal number of shares of Series A convertible preferred stock.

The Company continues to closely monitor the impact of the COVID-19 pandemic on its business. Since the World Health Organization declared COVID-19 a global pandemic in March 2020, the number of procedures performed using the Company's products has decreased significantly, as governmental authorities in the United States have recommended, and in certain cases required, that elective, specialty and other non-emergency procedures and appointments be suspended or canceled in order to avoid patient exposure to medical environments and the risk of potential infection with COVID-19, and to focus limited resources and personnel capacity on the treatment of COVID-19 patients. As a result, a significant number of procedures using the Company's products have been postponed or cancelled, which has negatively impacted sales of the Company's products. These measures and challenges will likely continue for the duration of the pandemic, which is uncertain, and may continue to reduce net sales and negatively impact the Company's business, financial condition and results of operations while the pandemic continues. Even after the pandemic ultimately subsides, the Company expects there will be a substantial backlog of patients seeking procedures and appointments for a variety of medical conditions. This limited capacity of providers, hospitals and other healthcare facilities could have a significant adverse effect on the Company's business, financial condition and results of operations following the end of the pandemic.

2,941,176 Shares

AZIYO BIOLOGICS, INC.

Class A Common Stock

PROSPECTUS

Through and including , 2020 (the 25th day after the date of this prospectus), all dealers effecting transactions in the Class A common stock, whether or not participating in this offering, may be required to deliver a prospectus. This delivery requirement is in addition to a dealer's obligation to deliver a prospectus when acting as an underwriter and with respect to an unsold allotment or subscription.

Piper Sandler **Cowen**

Cantor **Truist Securities**

, 2020

PART II

INFORMATION NOT REQUIRED IN PROSPECTUS

Item 13. Other Expenses of Issuance and Distribution.

The following table indicates the expenses to be incurred in connection with the offering described in this registration statement, other than underwriting discounts and commissions, all of which will be paid by us. All amounts are estimated except the Securities and Exchange Commission registration fee, the Financial Industry Regulatory Authority, Inc., or FINRA, filing fee and the Nasdaq listing fee.

	Amount
Securities and Exchange Commission registration fee	$ 7,903
FINRA filing fee	9,633
Initial listing fee	150,000
Accountants' fees and expenses	1,000,000
Legal fees and expenses	2,000,000
Blue Sky fees and expenses	15,000
Transfer Agent's fees and expenses	4,500
Printing and engraving expenses	200,000
Miscellaneous	112,964
Total expenses	$ 3,500,000

* To be filed by amendment.

Item 14. Indemnification of Directors and Officers.

Section 102 of the General Corporation Law of the State of Delaware permits a corporation to eliminate the personal liability of directors of a corporation to the corporation or its stockholders for monetary damages for a breach of fiduciary duty as a director, except where the director breached his duty of loyalty, failed to act in good faith, engaged in intentional misconduct or knowingly violated a law, authorized the payment of a dividend or approved a stock repurchase in violation of Delaware corporate law or obtained an improper personal benefit. Our restated certificate of incorporation provides that no director of the Registrant shall be personally liable to it or its stockholders for monetary damages for any breach of fiduciary duty as a director, notwithstanding any provision of law imposing such liability, except to the extent that the General Corporation Law of the State of Delaware prohibits the elimination or limitation of liability of directors for breaches of fiduciary duty.

Section 145 of the General Corporation Law of the State of Delaware provides that a corporation has the power to indemnify a director, officer, employee, or agent of the corporation, or a person serving at the request of the corporation for another corporation, partnership, joint venture, trust or other enterprise in related capacities against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by the person in connection with an action, suit or proceeding to which he was or is a party or is threatened to be made a party to any threatened, ending or completed action, suit or proceeding by reason of such position, if such person acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the corporation, and, in any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful, except that, in the case of actions brought by or in the right of the corporation, no indemnification shall be made with respect to any claim, issue or matter as to which such person shall have been adjudged to be liable to the corporation unless and only to the extent that the Court of Chancery or other adjudicating court determines that, despite the adjudication of liability but in view of all of the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery or such other court shall deem proper.

Our restated certificate of incorporation provides that we will indemnify each person who was or is a party or threatened to be made a party to any threatened, pending or completed action, suit or proceeding (other than an action by or in the right of us) by reason of the fact that he or she is or was, or has

agreed to become, a director or officer, or is or was serving, or has agreed to serve, at our request as a director, officer, partner, employee or trustee of, or in a similar capacity with, another corporation, partnership, joint venture, trust or other enterprise (all such persons being referred to as an "Indemnitee"), or by reason of any action alleged to have been taken or omitted in such capacity, against all expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred in connection with such action, suit or proceeding and any appeal therefrom, if such Indemnitee acted in good faith and in a manner he or she reasonably believed to be in, or not opposed to, our best interests, and, with respect to any criminal action or proceeding, he or she had no reasonable cause to believe his or her conduct was unlawful. Our restated certificate of incorporation provides that we will indemnify any Indemnitee who was or is a party to an action or suit by or in the right of us to procure a judgment in our favor by reason of the fact that the Indemnitee is or was, or has agreed to become, a director or officer, or is or was serving, or has agreed to serve, at our request as a director, officer, partner, employee or trustee of, or in a similar capacity with, another corporation, partnership, joint venture, trust or other enterprise, or by reason of any action alleged to have been taken or omitted in such capacity, against all expenses (including attorneys' fees) and, to the extent permitted by law, amounts paid in settlement actually and reasonably incurred in connection with such action, suit or proceeding, and any appeal therefrom, if the Indemnitee acted in good faith and in a manner he or she reasonably believed to be in, or not opposed to, our best interests, except that no indemnification shall be made with respect to any claim, issue or matter as to which such person shall have been adjudged to be liable to us, unless a court determines that, despite such adjudication but in view of all of the circumstances, he or she is entitled to indemnification of such expenses. Notwithstanding the foregoing, to the extent that any Indemnitee has been successful, on the merits or otherwise, he or she will be indemnified by us against all expenses (including attorneys' fees) actually and reasonably incurred in connection therewith. Expenses must be advanced to an Indemnitee under certain circumstances.

We have entered into indemnification agreements with each of our directors and officers. These indemnification agreements may require us, among other things, to indemnify our directors and officers for some expenses, including attorneys' fees, judgments, fines and settlement amounts incurred by a director or officer in any action or proceeding arising out of his or her service as one of our directors or officers, or any of our subsidiaries or any other company or enterprise to which the person provides services at our request.

We maintain a general liability insurance policy that covers certain liabilities of directors and officers of our corporation arising out of claims based on acts or omissions in their capacities as directors or officers.

In any underwriting agreement we enter into in connection with the sale of common stock being registered hereby, the underwriters will agree to indemnify, under certain conditions, us, our directors, our officers and persons who control us within the meaning of the Securities Act of 1933, as amended, or the Securities Act, against certain liabilities.

Item 15. Recent Sales of Unregistered Securities.

Set forth below is information regarding shares of capital stock issued by us within the past three years. Also included is the consideration received by us for such shares and information relating to the section of the Securities Act, or rule of the Securities and Exchange Commission, under which exemption from registration was claimed.

(a) Issuance of Capital Stock.

In May 2017, we issued an aggregate of 98,060 shares of Class A common stock to CorMatrix Cardiovascular, Inc., or CorMatrix, as partial consideration for our acquisition of all of the commercial assets and related intellectual property of CorMatrix, pursuant to Section 4(a)(2) of the Securities Act and Rule 506 as a transaction not involving a public offering.

Between May 2017 and September 2020, we issued an aggregate of 30,539,427 shares of Series A convertible preferred stock at a price per share of $1.00, for aggregate consideration of $30.5 million to accredited investors pursuant to Section 4(a)(2) of the Securities Act and Rule 506 as a transaction not involving a public offering. The aggregate consideration consisted of approximately $27.7 million in cash proceeds and the conversion of approximately $0.8 million in aggregate principal amount of convertible promissory notes we issued in November 2019 and approximately $2.0 million in aggregate

principal amount of convertible promissory notes we issued in April 2020 (each as described below), together with accrued interest thereon.

In September 2020, we issued 375,000 shares of Series A convertible preferred stock to HighCape Capital, L.P. in exchange for the extinguishment of our obligation to pay an advisory fee, pursuant to Section 4(a)(2) of the Securities Act as a transaction not involving a public offering.

In September 2020, we issued to Deerfield 18,384,536 shares of our Series A-1 convertible preferred stock in exchange for an equal number of shares of Series A convertible preferred stock, pursuant to Section 4(a)(2) of the Securities Act as a transaction not involving a public offering.

(b) Equity Grants.

Since January 1, 2017, we granted stock options to purchase an aggregate of 308,875 shares of our Class A common stock, with a weighted average exercise price of $6.43 per share, to employees and consultants in connection with services provided to the registrant by such parties.

Since January 1, 2017, we issued an aggregate of 84,833 shares of our Class A common stock to employees and consultants upon their exercise of stock options, for aggregate cash consideration of approximately $0.5 million.

The issuances of the securities described in the preceding paragraphs were deemed to be exempt from registration under either Rule 701 promulgated under the Securities Act, in that such issuances were under written compensatory benefit plans and contracts relating to compensation, or pursuant to Section 4(a)(2) of the Securities Act as a transaction not involving a public offering.

(c) Warrants.

In March 2017, we issued a warrant to purchase up to an aggregate of 137,806 shares of our Class A common stock at an exercise price of $5.44 per share to HighCape Partners QP, L.P., or HighCape Partners QP, pursuant to Section 4(a)(2) of the Securities Act as a transaction not involving a public offering. The warrant was issued as partial consideration for a $5.0 million letter of credit HighCape Partners QP provided as security to the lender under our then-existing revolving credit facility. Upon the termination of such letter of credit in May 2017, the warrant became exercisable for 7,655 shares of our Class A common stock.

Between May 2017 and December 2017, we issued warrants to purchase up to an aggregate of 405,000 shares of Series A convertible preferred stock at an exercise price of $1.00 per share to accredited investors pursuant to Section 4(a)(2) of the Securities Act as a transaction not involving a public offering.

(d) Convertible Promissory Notes.

In November 2019, we issued $0.75 million in aggregate principal amount of convertible promissory notes to an accredited investor pursuant to Section 4(a)(2) of the Securities Act as a transaction not involving a public offering. Upon the closing of our Series A convertible preferred stock financing in December 2019, these convertible promissory notes, together with the accrued interest thereon, converted into an aggregate of 754,315 shares of our Series A convertible preferred stock.

In April 2020, we issued approximately $2.0 million in aggregate principal amount of convertible promissory notes to accredited investors pursuant to Section 4(a)(2) of the Securities Act as a transaction not involving a public offering. Upon the closing of our Series A convertible preferred stock financing in September 2020, these convertible promissory notes, together with the accrued interest thereon, converted into an aggregate of 2,039,427 shares of our Series A convertible preferred stock.

Item 16. Exhibits and Financial Statement Schedules.

(a) Exhibits.

Exhibit Number	Description of Exhibit
1.1	Form of Underwriting Agreement
3.1	Certificate of Incorporation of the Registrant, as amended (currently in effect)
3.2*	Bylaws of the Registrant (currently in effect)
3.3	Form of Restated Certificate of Incorporation of the Registrant (to be effective upon the closing of this offering)
3.4	Form of Amended and Restated Bylaws of the Registrant (to be effective upon the closing of this offering)
4.1*	Second Amended and Restated Investor Rights Agreement, dated as of September 14, 2020, among the Registrant and the investors named therein
4.2*	Specimen stock certificate evidencing the shares of Class A common stock
4.3	Specimen stock certificate evidencing the shares of Class B common stock
4.4*	Warrant to Purchase Shares of Common Stock, dated as of March 27, 2017, issued by the Registrant to HighCape Partners QP, L.P.
4.5*	Warrant to Purchase Shares of Series A Convertible Preferred Stock, dated as of May 31, 2017, issued by the Registrant to Flexpoint MCLS Holdings LLC
4.6*	Warrant to Purchase Shares of Series A Convertible Preferred Stock, dated as of May 31, 2017, issued by the Registrant to MidCap Funding XXVII Trust
4.7*	Warrant to Purchase Shares of Series A Convertible Preferred Stock, dated as of December 14, 2017, issued by the Registrant to Flexpoint MCLS Holdings LLC
4.8*	Warrant to Purchase Shares of Series A Convertible Preferred Stock, dated as of December 14, 2017, issued by the Registrant to MidCap Funding XXVIII Trust
5.1	Opinion of Latham & Watkins LLP
10.1#*	2015 Stock Option/Stock Issuance Plan, as amended, and form of option agreements thereunder
10.2#	Aziyo Biologics, Inc. 2020 Incentive Award Plan and form of award agreements thereunder
10.3#	Aziyo Biologics, Inc. Non-Employee Director Compensation Program
10.4#	Aziyo Biologics, Inc. 2020 Employee Stock Purchase Plan
10.5#*	Employment Agreement, by and between the Registrant and Ronald Lloyd, dated as of June 1, 2018 (previously filed as Exhibit 10.4)
10.6#	Amended and Restated Employment Agreement, by and between the Registrant and Ronald Lloyd, dated as of September 30, 2020
10.7#*	Letter Agreement, by and between the Registrant and Thomas Englese, dated as of June 25, 2019 (previously filed as Exhibit 10.5)
10.8#	Employment Agreement, by and between the Registrant and Thomas Englese, dated as of September 30, 2020
10.9#*	Letter Agreement, by and between the Registrant and Darryl Roberts, dated as of April 2, 2018 (previously filed as Exhibit 10.6)
10.10#	Employment Agreement, by and between the Registrant and Darryl Roberts, dated as of September 30, 2020
10.11#	Employment Agreement, by and between the Registrant and Matthew Ferguson, dated as of September 30, 2020
10.12	Form of Indemnification Agreement for Directors and Officers

Exhibit Number	Description of Exhibit
10.13	Amended and Restated Credit and Security Agreement (Term Loan), dated as of July 15, 2019, by and among the Registrant and Aziyo Med, LLC, as Borrowers, Midcap Financial Trust, as Agent and as a Lender, and the additional Lenders from time to time party thereto, as amended
10.14	Amended and Restated Credit and Security Agreement (Revolving Loan), dated as of July 15, 2019, by and among the Registrant and Aziyo Med, LLC, as Borrowers, Midcap Funding IV Trust, as Agent and as a Lender, and the additional Lenders from time to time party thereto, as amended
10.15*	Note Purchase Agreement, dated as of April 2, 2020, by and between the Registrant and each of the persons and entities set forth on Schedule A thereto (previously filed as Exhibit 10.12)
10.16*	Amendment to Note Purchase Agreement, dated as of April 29, 2020, by and between the Registrant and each of the persons and entities signatory thereto (previously filed as Exhibit 10.13)
10.17*	U.S. Small Business Administration Paycheck Protection Program Note, dated as of May 7, 2020, by and between the Registrant and Silicon Valley Bank (previously filed as Exhibit 10.14)
10.18*	Royalty Agreement, dated as of May 31, 2017, by and between Aziyo Med, LLC and Ligand Pharmaceuticals Incorporated (previously filed as Exhibit 10.15)
10.19*	License Agreement, dated as of May 31, 2017, by and between Cook Biotech Incorporated and Aziyo Med, LLC (previously filed as Exhibit 10.16)
10.20*	December 2017 Amendment to License Agreement, dated as of December 21, 2017, by and between Cook Biotech Incorporated and Aziyo Med, LLC (previously filed as Exhibit 10.17)
10.21*	Letter Agreement, dated as of May 31, 2017, by and between HighCape Partners Management, L.P. and the Registrant (previously filed as Exhibit 10.18)
10.22*	Settlement Agreement and General Release, by and between the Registrant and KeraLink International Inc. (formerly named Tissue Banks International, Inc.), dated as of April 6, 2018 (previously filed as Exhibit 10.19)
21.1*	Subsidiaries of the Registrant
23.1	Consent of PricewaterhouseCoopers LLP
23.2	Consent of Latham & Watkins LLP (included in Exhibit 5.1)
24.1*	Power of Attorney (included on signature page)

* Previously filed.

\# Indicates management contract or compensatory plan.

(b) Financial Statement Schedules. Schedules not listed above have been omitted because the information required to be set forth therein is not applicable or is shown in the consolidated financial statements or notes thereto.

Item 17. Undertakings.

The undersigned registrant hereby undertakes to provide to the underwriter, at the closing specified in the underwriting agreement, certificates in such denominations and registered in such names as required by the underwriter to permit prompt delivery to each purchaser.

Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

The undersigned hereby undertakes that:

(1) For purposes of determining any liability under the Securities Act, the information omitted from the form of prospectus filed as part of this registration statement in reliance upon Rule 430A and contained in a form of prospectus filed by the registrant pursuant to Rule 424(b)(1) or (4) or 497(h) under the Securities Act shall be deemed to be part of this registration statement as of the time it was declared effective.

(2) For the purpose of determining any liability under the Securities Act, each post-effective amendment that contains a form of prospectus shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

SIGNATURES

Pursuant to the requirements of the Securities Act, the registrant has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Silver Spring, Maryland on this 30th day of September, 2020.

AZIYO BIOLOGICS, INC.

By: /s/ Ronald Lloyd
Ronald Lloyd
President and Chief Executive Officer

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed by the following persons in the capacities held on the dates indicated.

Signature	Title	Date
/s/ Ronald Lloyd Ronald Lloyd	President, Chief Executive Officer and Director (principal executive officer)	September 30, 2020
/s/ Matthew Ferguson Matthew Ferguson	Chief Financial Officer (principal financial officer and principal accounting officer)	September 30, 2020
* Kevin Rakin	Chairman of the Board of Directors	September 30, 2020
* Maybelle Jordan	Director	September 30, 2020
* Brigid A. Makes	Director	September 30, 2020
* C. Randal Mills, Ph.D.	Director	September 30, 2020
* W. Matthew Zuga	Director	September 30, 2020

*By: /s/ Ronald Lloyd
Ronald Lloyd
Attorney-in-Fact

Exhibit 1.1

[·] Shares[1]

Aziyo Biologics, Inc.

Common Stock

UNDERWRITING AGREEMENT

[·], 2020

PIPER SANDLER & CO.
COWEN AND COMPANY, LLC
As Representatives of the several
Underwriters named in Schedule I hereto
c/o Piper Sandler & Co.
800 Nicollet Mall, Suite 800
Minneapolis, Minnesota 55402

c/o Cowen and Company, LLC
599 Lexington Avenue
New York, New York 10022

Ladies and Gentlemen:

Aziyo Biologics, Inc., a Delaware corporation (the ***"Company"***), proposes to issue and sell to the several Underwriters named in Schedule I hereto (the ***"Underwriters"***) an aggregate of **[·]** shares (the ***"Firm Shares"***) of either Class A common stock, $0.001 par value per share (the ***"Class A common stock"***), of the Company or, to the extent shares are purchased by entities affiliated with Deerfield Private Design Fund III, L.P., Class B common stock, $0.001 par value per share (the "***Class B common stock***" and, together with the Class A common stock, the "***Common Stock***"), of the Company. The Firm Shares consist of **[·]** authorized but unissued shares of Common Stock to be issued and sold by the Company. The Company has also granted to the several Underwriters an option to purchase up to **[·]** additional shares of Common Stock, on the terms and for the purposes set forth in Section 3 hereof (the ***"Option Shares"***). The Firm Shares and any Option Shares purchased pursuant to this Underwriting Agreement (this "***Agreement***") are herein collectively called the ***"Securities."***

The Company hereby confirms its agreement with respect to the sale of the Securities to the several Underwriters, for whom Piper Sandler & Co. and Cowen and Company, LLC are acting as representatives (the ***"Representatives"***).

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[1] Plus an option to purchase up to **[·]** additional shares to cover over-allotments.

1. ***Registration Statement and Prospectus***. A registration statement on Form S-1 (File No. 333-148788 with respect to the Securities, including a preliminary form of prospectus, has been prepared by the Company in conformity with the requirements of the Securities Act of 1933, as amended (the ***"Act"***), and the rules and regulations (***"Rules and Regulations"***) of the Securities and Exchange Commission (the ***"Commission"***) thereunder and has been filed with the Commission. Such registration statement, including the amendments, exhibits and schedules thereto, as of the time it became effective, including the Rule 430A Information (as defined below), is referred to herein as the ***"Registration Statement"***. The Company will prepare and file a prospectus pursuant to Rule 424(b) of the Rules and Regulations that discloses the information previously omitted from the prospectus in the Registration Statement in reliance upon Rule 430A of the Rules and Regulations, which information will be deemed retroactively to be a part of the Registration Statement in accordance with Rule 430A of the Rules and Regulations (***"Rule 430A Information"***). If the Company has elected to rely upon Rule 462(b) of the Rules and Regulations to increase the size of the offering registered under the Act, the Company will prepare and file with the Commission a registration statement with respect to such increase pursuant to Rule 462(b) of the Rules and Regulations (such registration statement, including the contents of the Registration Statement incorporated by reference therein is the ***"Rule 462(b) Registration Statement"***). References herein to the ***"Registration Statement"*** will be deemed to include any such Rule 462(b) Registration Statement at and after the time of filing of the Rule 462(b) Registration Statement. ***"Preliminary Prospectus"*** means any prospectus included in the Registration Statement prior to the effective time of the Registration Statement, any prospectus filed with the Commission pursuant to Rule 424(a) under the Rules and Regulations and each prospectus that omits Rule 430A Information used after the effective time of the Registration Statement. ***"Prospectus"*** means the prospectus that discloses the public offering price and other final terms of the Securities and the offering and otherwise satisfies Section 10(a) of the Act. All references in this Agreement to the Registration Statement, any Preliminary Prospectus, the Prospectus or any amendment or supplement to any of the foregoing, is deemed to include the copy filed with the Commission pursuant to its Electronic Data Gathering, Analysis and Retrieval System or any successor system thereto (***"EDGAR"***).

2. ***Representations and Warranties of the Company***.

(a) *Representations and Warranties of the Company*. The Company represents and warrants to, and agrees with, the several Underwriters as follows:

(i) *Registration Statement and Prospectuses*. The Registration Statement and any post-effective amendment thereto has become effective under the Act. No stop order suspending the effectiveness of the Registration Statement or any post-effective amendment thereto has been issued, and no proceeding for that purpose has been initiated or, to the Company's knowledge, threatened by the Commission. No order preventing or suspending the use of any Preliminary Prospectus or the Prospectus (or any supplement thereto) has been issued by the Commission and no proceeding for that purpose has been initiated or, to the Company's knowledge, threatened by the Commission. As of the time each part of the Registration Statement (or any post-effective amendment thereto) became or becomes effective, such part conformed or will conform in all material respects to the requirements of the Act and the Rules and Regulations. Upon the filing or first use within the meaning of the Rules and Regulations, each Preliminary Prospectus and the Prospectus (or any supplement to either) conformed or will conform in all material respects to the requirements of the Act and the Rules and Regulations.

(ii) *Accurate Disclosure*. Each Preliminary Prospectus, at the time of filing thereof or the time of first use within the meaning of the Rules and Regulations, did not contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading. Neither the Registration Statement nor any amendment thereto, at the effective time of each part thereof, at the First Closing Date (as defined below) or at the Second Closing Date (as defined below), contained, contains or will contain an untrue statement of a material fact or omitted, omits or will omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading. As of the Time of Sale (as defined below), neither (A) the Time of Sale Disclosure Package (as defined below) nor (B) any issuer free writing prospectus (as defined below), when considered together with the Time of Sale Disclosure Package, included an untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading. Neither the Prospectus nor any supplement thereto, as of its issue date, at the time of any filing with the Commission pursuant to Rule 424(b) of the Rules and Regulations, at the First Closing Date or at the Second Closing Date, as applicable, included, includes or will include an untrue statement of a material fact or omitted, omits or will omit to state a material fact necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading. The representations and warranties in this Section 2(a)(ii) shall not apply to statements in or omissions from any Preliminary Prospectus, the Registration Statement (or any amendment thereto), the Time of Sale Disclosure Package or the Prospectus (or any supplement thereto) made in reliance upon, and in conformity with, written information furnished to the Company by you, or by any Underwriter through you, specifically for use in the preparation of such document, it being understood and agreed that the only such information furnished by any Underwriter consists of the information described as such in Section 6(e).

Each reference to an ***"issuer free writing prospectus"*** herein means an issuer free writing prospectus as defined in Rule 433 of the Rules and Regulations.

"Time of Sale Disclosure Package" means the Preliminary Prospectus dated [·], 2020, any free writing prospectus set forth on Schedule III hereto and the information on Schedule IV hereto, all considered together.

Each reference to a ***"free writing prospectus"*** herein means a free writing prospectus as defined in Rule 405 of the Rules and Regulations.

"Time of Sale" means [·]:00 [a/p]m (Eastern time) on the date of this Agreement.

(iii) *Issuer Free Writing Prospectuses*.

(A) Each issuer free writing prospectus, as of its issue date and at all subsequent times through the completion of the public offer and sale of the Securities or until any earlier date that the Company notified or notifies the Representatives as described in Section 4(a)(iii)(B), did not, does not and will not include any information that conflicted, conflicts or will conflict with the information contained in the Registration Statement, any Preliminary Prospectus or the Prospectus. The foregoing sentence does not apply to statements in or omissions from any issuer free writing prospectus based upon and in conformity with written information furnished to the Company by you or by any Underwriter through you specifically for use therein; it being understood and agreed that the only such information furnished by any Underwriter consists of the information described as such in Section 6(e).

(B) At the time of filing the Registration Statement and any post-effective amendment thereto, and at the date hereof, the Company was not, is not and will not be (as applicable) an "ineligible issuer," as defined in Rule 405 of the Rules and Regulations, without taking account of any determination by the Commission pursuant to Rule 405 of the Rules and Regulations that it is not necessary that the Company be considered an ineligible issuer.

(C) Each issuer free writing prospectus satisfied, as of its issue date and at all subsequent times through the completion of the public offer and sale of the Securities, all other conditions to use thereof as set forth in Rules 164 and 433 under the Act.

(iv) *Emerging Growth Company*. From the time of initial confidential submission of the Registration Statement to the Commission (or, if earlier, the first date on which the Company engaged directly or through any person authorized to act on its behalf in any Testing-the-Waters Communication (as defined below)) through the date hereof, the Company has been and is an "emerging growth company," as defined in Section 2(a) of the Act (an ***"Emerging Growth Company"***).

(v) *Testing-the-Waters Materials*. The Company (i) has not alone engaged in any Testing-the-Waters Communications, other than Testing-the-Waters Communications with the prior consent of the Representatives with entities that are qualified institutional buyers within the meaning of Rule 144A under the Act or institutions that are accredited investors within the meaning of Rule 501 under the Act and (ii) has not authorized anyone other than the Representatives to engage in Testing-the-Waters Communications. The Company reconfirms that the Representatives have been authorized to act on its behalf in undertaking Testing-the-Waters Communications. The Company has not distributed any Written Testing-the-Waters Communications (as defined below) other than those listed on Schedule V hereto. ***"Testing-the-Waters Communication"*** means any oral or written communication with potential investors undertaken in reliance on either Section 5(d) of, or Rule 163B under, the Act. ***"Written Testing-the-Waters Communication"*** means any Testing-the-Waters Communication that is a written communication within the meaning of Rule 405 under the Act. Any individual Written Testing-the-Waters Communication complied in all material respects with the requirements of the Act, and when taken together with the Time of Sale Disclosure Package as of the Time of Sale, did not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(vi) *No Other Offering Materials*. The Company has not distributed and will not distribute any prospectus or other offering material in connection with the offering and sale of the Securities other than any Preliminary Prospectus, the Time of Sale Disclosure Package or the Prospectus or other materials permitted by the Act to be distributed by the Company; *provided, however,* that, except as set forth on Schedule III hereto, the Company has not made and will not make any offer relating to the Securities that would constitute a free writing prospectus, except in accordance with the provisions of Section 4(a)(xiii) of this Agreement and, except as set forth on Schedule V, the Company has not made and will not make any communication relating to the Securities that would constitute a Testing-the-Waters Communication, except in accordance with the provisions of Section 2(a)(v) of this Agreement.

(vii) *Financial Statements*. The financial statements of the Company, together with the related notes, set forth in the Registration Statement, the Time of Sale Disclosure Package and the Prospectus comply in all material respects with the requirements of the Act and fairly present the financial condition of the Company and its consolidated subsidiaries as of the dates indicated and the results of operations and changes in cash flows for the periods therein specified in conformity with generally accepted accounting principles in the United States ("***GAAP***") consistently applied throughout the periods involved except for any normal year-end adjustments in the Company's quarterly financial statements, and except as otherwise stated in the notes thereto; the supporting schedules (if any) included in the Registration Statement present fairly the information required to be stated therein; all non-GAAP financial information, if any, included in the Registration Statement, the Time of Sale Disclosure Package and the Prospectus complies in all material respects with the requirements of Regulation G and Item 10 of Regulation S-K under the Act; and, except as disclosed in the Time of Sale Disclosure Package and the Prospectus, there are no material off-balance sheet arrangements (as defined in Regulation S-K under the Act, Item 303(a)(4)(ii)) or any other relationships with unconsolidated entities or other persons, that are reasonably likely to have a material current or, to the Company's knowledge, material future effect on the Company's financial condition, results of operations, liquidity, capital expenditures, capital resources or significant components of revenue or expenses. No other financial statements or schedules are required to be included in the Registration Statement, the Time of Sale Disclosure Package or the Prospectus. PricewaterhouseCoopers LLP, which has expressed its opinion with respect to the financial statements and the schedules (if any) filed as a part of the Registration Statement and included in the Registration Statement, the Time of Sale Disclosure Package and the Prospectus, is (x) an independent public accounting firm within the meaning of the Act and the Rules and Regulations, (y) a registered public accounting firm (as defined in Section 2(a)(12) of the Sarbanes-Oxley Act of 2002 (the ***"Sarbanes-Oxley Act"***)) and (z) not in violation of the auditor independence requirements of the Sarbanes-Oxley Act.

(viii) *Absence of Certain Events*. Except as contemplated in the Time of Sale Disclosure Package and in the Prospectus, subsequent to the respective dates as of which information is given in the Time of Sale Disclosure Package, (i) neither the Company nor its subsidiary has incurred any material liabilities or obligations, direct or contingent, or entered into any material transactions, or declared or paid any dividends or made any distribution of any kind with respect to its capital stock, and (ii) there has not been any change in the capital stock (other than a change in the number of outstanding shares of Common Stock due to the exercise, settlement or forfeiture of outstanding options, the exercise of warrants or the conversion of convertible securities), or any material change in the short-term or long-term debt (other than as a result of the conversion of convertible securities), or any issuance of options, warrants, convertible securities or other rights to purchase the capital stock of the Company or its subsidiary, or any Material Adverse Effect. "***Material Adverse Effect***" shall mean any material adverse change, or any development involving a prospective material adverse change, in or affecting (i) the business, earnings, assets, liabilities, prospects, properties, condition (financial or otherwise), operations, management, financial position, stockholders' equity or results of operations of the Company and its subsidiary, taken as a whole, or (ii) the ability of the Company to perform its obligations under this Agreement, including the issuance and sale of the Securities.

(ix) *Organization and Good Standing*. Each of the Company and its subsidiary has been duly organized and is validly existing as a corporation or limited liability company, as the case may be, in good standing under the laws of the state of Delaware. Each of the Company and its subsidiary has full corporate or limited liability company power and authority to own its properties and conduct its business as currently being carried on and as described in the Registration Statement, the Time of Sale Disclosure Package and Prospectus, and is duly qualified to do business as a foreign corporation or other organization in good standing (to the extent the concept of good standing is applicable in such jurisdiction) in each jurisdiction in which it owns or leases real property or in which the conduct of its business makes such qualification necessary and in which the failure to so qualify would reasonably be expected to have a Material Adverse Effect.

(x) *Absence of Proceedings*. Except as set forth in the Time of Sale Disclosure Package and in the Prospectus, there is not pending or, to the knowledge of the Company, threatened or contemplated, any action, suit or proceeding (a) to which the Company or its subsidiary is a party or (b) which has as the subject thereof any officer or director of the Company or any subsidiary, any employee benefit plan sponsored by the Company or any subsidiary or any property or assets owned or leased by the Company or any subsidiary before or by any court or Governmental Authority (as defined below), or any arbitrator, which, individually or in the aggregate, would reasonably be expected to result in any Material Adverse Effect or which are otherwise material in the context of the sale of the Securities. There are no current or, to the knowledge of the Company, pending, legal, governmental or regulatory actions, suits or proceedings (x) to which the Company or its subsidiary is subject or (y) which has as the subject thereof any officer or director of the Company or its subsidiary, any employee plan sponsored by the Company or its subsidiary or any property or assets owned or leased by the Company or its subsidiary, that are required to be described in the Registration Statement, the Time of Sale Disclosure Package and the Prospectus by the Act or by the Rules and Regulations and that have not been so described.

(xi) *Authorization; No Conflicts; Authority*. This Agreement has been duly authorized, executed and delivered by the Company, and constitutes a valid, legal and binding obligation of the Company, enforceable in accordance with its terms, except as rights to indemnity hereunder may be limited by federal or state securities laws and except as such enforceability may be limited by bankruptcy, insolvency, reorganization or similar laws affecting the rights of creditors generally and subject to general principles of equity. The execution, delivery and performance of this Agreement and the consummation of the transactions herein contemplated will not (A) conflict with or result in a breach or violation of any of the terms or provisions of, or constitute a default under, or result in the creation or imposition of any lien, charge or encumbrance upon any property or assets of the Company or its subsidiary pursuant to any indenture, mortgage, deed of trust, loan agreement or other agreement or instrument to which the Company or its subsidiary is a party or by which the Company or its subsidiary is bound or to which any of the property or assets of the Company or its subsidiary is subject, (B) result in any violation of the provisions of the Company's charter or bylaws or (C) result in the violation of any law or statute or any judgment, order, rule, regulation or decree of any court or arbitrator or federal, state, local or foreign governmental agency or regulatory authority having jurisdiction over the Company or its subsidiary or any of their properties or assets (each, a ***"Governmental Authority"***), except in the case of clauses (A) and (C) as would not reasonably be expected to result in a Material Adverse Effect. No consent, approval, authorization or order of, or registration or filing with any Governmental Authority is required for the execution, delivery and performance of this Agreement or for the consummation of the transactions contemplated hereby, including the issuance or sale of the Securities by the Company, except such as (x) may be required under the Act, the rules of the Financial Industry Regulatory Authority (*"**FINRA**"*) or state securities or blue sky laws (or similar laws of any jurisdiction outside the United States), or (y) have already been obtained or waived, or will be obtained or waived prior to the First Closing Date; and the Company has full power and authority to enter into this Agreement and to consummate the transactions contemplated hereby, including the authorization, issuance and sale of the Securities as contemplated by this Agreement.

(xii) *Capitalization; the Securities; Registration Rights*. All of the issued and outstanding shares of capital stock of the Company, including the outstanding shares of Common Stock, are duly authorized and validly issued, fully paid and nonassessable, have been issued in compliance with all applicable federal and state and foreign securities laws, and were not issued in violation of or subject to any preemptive rights or other similar rights to subscribe for or purchase securities that have not been waived in writing or complied with, and the holders thereof are not subject to personal liability by reason of being such holders; the Securities which may be sold hereunder by the Company have been duly authorized and, when issued, delivered and paid for in accordance with the terms of this Agreement, will have been validly issued and will be fully paid and nonassessable, and the holders thereof will not be subject to personal liability by reason of being such holders; and the capital stock of the Company, including the Common Stock, conforms in all material respects to the description thereof in the Registration Statement, in the Time of Sale Disclosure Package and in the Prospectus. Except as otherwise stated in the Registration Statement, in the Time of Sale Disclosure Package and in the Prospectus, (A) there are no preemptive rights or other rights to subscribe for or to purchase, or any restriction upon the voting or transfer of, any shares of Common Stock pursuant to the Company's charter, bylaws or any agreement or other instrument to which the Company or its subsidiary is a party or by which the Company or its subsidiary is bound that will remain in effect following the First Closing Date, (B) neither the filing of the Registration Statement nor the offering or sale of the Securities as contemplated by this Agreement gives rise to any rights for or relating to the registration of any shares of Common Stock or other securities of the Company (collectively ***"Registration Rights"***) that have not been validly waived and (C) any person to whom the Company has granted Registration Rights has agreed not to exercise or has otherwise waived such rights until after expiration of the Lock-Up Period (as defined below). All of the issued and outstanding shares of capital stock of the Company's subsidiary have been duly and validly authorized and issued and are fully paid and nonassessable, and, except as otherwise described in the Registration Statement, in the Time of Sale Disclosure Package and in the Prospectus, the Company owns of record and beneficially, free and clear of any security interests, claims, liens, proxies, equities or other encumbrances, all of the issued and outstanding shares of such stock. As of the First Closing Date, the Company will have an authorized capitalization as set forth in the Registration Statement, in the Time of Sale Disclosure Package and in the Prospectus under the caption "Capitalization."

(xiii) *Stock Options*. Except as described in the Registration Statement, in the Time of Sale Disclosure Package and in the Prospectus, there are no options, warrants, agreements, contracts or other rights in existence to purchase or acquire from the Company or any subsidiary of the Company any shares of the capital stock of the Company or any subsidiary of the Company. The description of the Company's stock option, stock bonus and other stock plans or arrangements (the ***"Company Stock Plans"***), and the options (the ***"Options"***) or other rights granted thereunder, set forth in the Time of Sale Disclosure Package and the Prospectus accurately and fairly presents in all material respects the information required to be shown with respect to such plans, arrangements, options and rights. Each grant of an Option (A) was duly authorized no later than the date on which the grant of such Option was by its terms to be effective by all necessary corporate action, including, as applicable, approval by the board of directors of the Company (or a duly constituted and authorized committee thereof) and any required stockholder approval by the necessary number of votes or written consents, and the award agreement governing such grant (if any) was duly executed and delivered by each party thereto and (B) was made in accordance with the terms of the applicable Company Stock Plan, and all applicable laws and regulatory rules or requirements, including all applicable federal securities laws.

(xiv) *Compliance with Laws*. Except in each case as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, (i) each of the Company and its subsidiary holds, and is operating in compliance with, all franchises, grants, authorizations, approvals, clearances, exemptions, registrations, licenses, permits, easements, consents, certificates and orders of any Governmental Authority or self-regulatory body required for the conduct of its business; (ii) all such franchises, grants, authorizations, approvals, clearances, exemptions, registrations, licenses, permits, easements, consents, certifications and orders are valid and in full force and effect; and (iii) neither the Company nor its subsidiary has received notice of any revocation or modification of any such franchise, grant, authorization, license, permit, easement, consent, certification or order or has reason to believe that any such franchise, grant, authorization, license, permit, easement, consent, certification or order will not be renewed in the ordinary course; and the Company and its subsidiary are in compliance in all material respects with all applicable federal, state, local and foreign laws, regulations, orders and decrees.

(xv) *Ownership of Assets*. The Company and its subsidiary have good and marketable title to all property (whether real or personal) described in the Registration Statement, in the Time of Sale Disclosure Package and in the Prospectus as being owned by them, in each case free and clear of all liens, claims, security interests, other encumbrances or defects except such as would not reasonably be expected to result in an Material Adverse Effect or as are described in the Registration Statement, in the Time of Sale Disclosure Package and in the Prospectus. The property held under lease by the Company and its subsidiary is held by them under valid, subsisting and enforceable leases with only such exceptions with respect to any particular lease as do not interfere in any material respect with the conduct of the business of the Company or its subsidiary.

(xvi) *Intellectual Property*. The Company and its subsidiary own or possess all rights (which, to the Company's knowledge, are adequate, valid and enforceable) to use all patents, trademarks, service marks, trade names, copyrights, licenses, inventions, trade secrets, domain names, technology, software, know-how and all other intellectual property and proprietary rights in the United States and foreign jurisdictions (including all registrations and applications for registration of, and all goodwill associated with, the foregoing) (collectively, "***Intellectual Property***") used in, or necessary for, the conduct of the Company's and its subsidiary's business as now conducted or as proposed to be conducted, as described in the Registration Statement, the Time of Sale Disclosure Package and the Prospectus to be conducted. Furthermore, (A) to the knowledge of the Company, the Intellectual Property owned by or exclusively licensed to the Company and its subsidiary has not been infringed, misappropriated or otherwise violated by any third parties; (B) there is no pending or, to the knowledge of the Company, threatened, action, suit, proceeding or claim by others challenging the Company's or its subsidiary's ownership of, or rights in or to, any such Intellectual Property, and the Company is not aware of any facts which would form a reasonable basis for any such claim; (C) the Intellectual Property owned by the Company and its subsidiary, and to the knowledge of the Company, the Intellectual Property exclusively licensed to the Company and its subsidiary, has not been adjudged invalid or unenforceable, in whole or in part, and, other than in connection with proceedings with the relevant patent, trademark, or similar intellectual property offices in relevant jurisdictions (including the United States Patent and Trademark Office) in the ordinary course of prosecuting, maintaining, obtaining, or registering patent rights, trademark rights, copyrights, or other Intellectual Property of the Company or its subsidiary, there is no pending or, to the knowledge of the Company, threatened action, suit, proceeding or claim by others challenging the validity, enforceability or scope of any such Intellectual Property, and the Company is not aware of any facts which would form a reasonable basis for any such claim; (D) there is no pending or, to the knowledge of the Company, threatened action, suit, proceeding or claim by others that the Company or its subsidiary infringes, misappropriates or otherwise violates any valid and enforceable Intellectual Property or other proprietary rights of any third parties, neither the Company or its subsidiary has received any written notice of any such claim, the Company is not aware of any other fact which would form a reasonable basis for any such claim and the Company and its subsidiary have not infringed, misappropriated or otherwise violated the Intellectual Property of any third party; (E) to the Company's knowledge, no employee of the Company or its subsidiary is in or has ever been in violation of any term of any employment contract, patent disclosure agreement, invention assignment agreement, non-competition agreement, non-solicitation agreement, non-disclosure agreement or any restrictive covenant, in each case to or with a former employer where the basis of such violation relates to such employee's employment with the Company or its subsidiary or actions undertaken by the employee while employed with the Company or its subsidiary and which would form a reasonable basis for claims by such former employers that the Company or its subsidiary infringes, misappropriates or otherwise violates any of their valid and enforceable Intellectual Property; (F) there is no prior art or public or commercial activity of which the Company is aware that may render any patent owned by or exclusively licensed to the Company or its subsidiary invalid or that would preclude the issuance of any patent on any patent application owned by or exclusively licensed to the Company or its subsidiary, which has not been disclosed to the U.S. Patent and Trademark Office or the relevant foreign patent authority, as the case may be; (G) to the Company's knowledge, all issued patents owned by or exclusively licensed to the Company or its subsidiary are valid and enforceable and the Company is unaware of any facts that would preclude the issuance of a valid and enforceable patent on any pending patent application owned by or exclusively licensed to the Company or its subsidiary; (H) the Company and its subsidiary have taken reasonable steps necessary to secure the interests of the Company and its subsidiary in all Intellectual Property purported to be owned by the Company or its subsidiary from all employees, consultants, agents or contractors that developed (in whole or in part) such Intellectual Property; (I) the Company and its subsidiary have taken reasonable steps in accordance with normal industry practice to maintain the confidentiality of all Intellectual Property of the Company and its subsidiary the value of which to the Company or its subsidiary is contingent upon maintaining the confidentiality thereof and, to the Company's knowledge, no such Intellectual Property has been disclosed other than to employees, representatives, partners, legal or financial advisors and agents of the Company or its subsidiary all of whom are bound by written confidentiality agreement; and (J) to the Company's knowledge, no government funding, facilities or resources of a university, college, other educational institution or research center was used in the development of any Intellectual Property that is owned or purported to be owned by the Company that would confer upon any governmental agency or body, university, college, other educational institution or research center any claim or right in or to any such Intellectual Property.

(xvii) *Health Care Authorizations*. The Company and its subsidiary possess, or qualify for applicable exemptions to, such valid and current registrations, listings, approvals, clearances, licenses, certificates, authorizations, accreditations, provider or supplier numbers, or permits and supplements or amendments thereto issued or required by the appropriate state, federal or foreign regulatory agencies or bodies necessary to conduct their business as presently conducted ("***Permits***"), including, without limitation, all such Permits required by the United States Food and Drug Administration (the "***FDA***"), the United States Department of Health and Human Services ("***HHS***"), the United States Centers for Medicare & Medicaid Services ("***CMS***"), the European Medicines Agency ("***EMA***"), Health Canada or any other comparable state, federal or foreign agencies or bodies to which it is subject (the "***Regulatory Agencies***"), and the Company has not received any notice of proceedings relating to the revocation or modification of, or non-compliance with, any such Permit, except where the failure to possess, or revocation, modification or non-compliance with such Permits would not, whether individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect.

(xviii) *Clinical Trials*. The studies, tests and preclinical and clinical trials conducted by or on behalf of, or sponsored by, the Company or its subsidiary, or in which the Company or its subsidiary have participated, that are described in the Registration Statement, the Time of Sale Disclosure Package or the Prospectus, or the results of which are referred to in the Registration Statement, the Time of Sale Disclosure Package or the Prospectus, were and, if still pending, are being conducted in all material respects in accordance with standard medical and scientific research standards and all applicable statutes, rules and regulations of the applicable Regulatory Agencies and current Good Clinical Practices and Good Laboratory Practices; the descriptions in the Registration Statement, the Time of Sale Disclosure Statement and the Prospectus of the results of such studies and tests are accurate and complete in all material respects and fairly present the data derived from such trials; the Company has no knowledge of any studies, tests or trials not described in the Time of Sale Disclosure Package and the Prospectus the results of which reasonably call into question in any material respect the results of the studies, tests and trials described in the Registration Statement, the Time of Sale Disclosure Package or Prospectus; and neither the Company nor its subsidiary has received any written notices from any Regulatory Agency or any institutional review board requiring or threatening the termination, suspension or material modification of any studies, tests or preclinical or clinical trials conducted by or on behalf of, or sponsored by, the Company or in which the Company has participated, and, to the Company's knowledge, there are no reasonable grounds for the same.

(xix) *Compliance with Health Care Laws*. Except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, since August 1, 2017, the Company, its subsidiary and, to the Company's knowledge, their respective directors, employees and agents (while acting in such capacity) have been in compliance with all local, state, federal and foreign administrative healthcare laws, rules and regulations which are applicable to the Company and its subsidiary, including, but not limited to, the federal Anti-Kickback Statute (42 U.S.C. Section 1320a-7b(b)), the Anti-Inducement Law (42 U.S.C. Section 1320a-7a(a)(5)), the civil False Claims Act (31 U.S.C. Section 3729 et seq.), the administrative False Claims Law (42 U.S.C. Section 1320a-7b(a)), the Physician Payments Sunshine Act (42 U.S.C. Section 1320a-7h), the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. Section 1320d et seq.) as amended by the Health Information Technology for Economic and Clinical Health Act (42 U.S.C. Section 17921 et seq.) ("***HIPAA***"), all criminal laws relating to healthcare fraud and abuse, including but not limited to 18 U.S.C. sections 286 and 287, the healthcare fraud criminal provision under HIPAA, the exclusion laws (42 U.S.C. Section 1320a-7), the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 301 et seq.), the Public Health Service Act (42 U.S.C. Section 201 et seq.), Medicare (Title XVIII of the Social Security Act), Medicaid (Title XIX of the Social Security Act), the regulations promulgated pursuant to such laws (collectively, "***Health Care Laws***"). The Company has not received any written notification, correspondence or communication, including written notification of any pending or threatened claim, suit, proceeding, hearing, enforcement, investigation, arbitration or other action from any governmental authority, including, without limitation, the FDA, the EMA, Health Canada, the U.S. Federal Trade Commission, CMS, HHS's Office of Inspector General, the U.S. Department of Justice and state Attorneys General or similar agencies of potential or actual non-compliance by, or liability of, the Company under any Health Care Laws, except, with respect to any of the foregoing, such as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. The statements with respect to Health Care Laws and the Company's compliance therewith included in the Preliminary Prospectus, in the Time of Sale Disclosure Package and in the Prospectus fairly summarize the matters therein described.

(xx) *No Shutdowns or Prohibitions*. Except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, since August 1, 2017, neither the Company nor its subsidiary has had any product manufacturing site (whether Company-owned or that of a third party manufacturer for the Company's products) subject to a governmental authority (including FDA) shutdown or import or export prohibition, nor received any FDA Form 483 or other governmental authority notice of inspectional observations, "warning letters," "untitled letters," requests to make changes to the Company's products, processes or operations, or similar correspondence or notice from the FDA or other governmental authority alleging or asserting material noncompliance with any applicable Health Care Laws. To the Company's knowledge, neither the FDA nor any other governmental authority is considering such action, except for such actions, which if determined adversely to the Company or its subsidiary, would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(xxi) *No Safety Notices*. Except as disclosed in the Registration Statement, the Time of Sale Disclosure Package and the Prospectus, and except in each case as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, (i) there have been no recalls, field notifications, field corrections, market withdrawals or replacements, warnings, "dear doctor" letters, investigator notices, safety alerts or other notice of action relating to an alleged lack of safety, efficacy, or regulatory compliance of the Company's or its subsidiary's products ("***Safety Notices***") and (ii) to the Company's knowledge, there are no facts that would be reasonably likely to result in (x) a Safety Notice with respect to the Company's or its subsidiary's products or services, (y) a change in labeling of any the Company's or its subsidiary's respective products or services, or (z) a termination or suspension of marketing or testing of any the Company's or its subsidiary's respective products or services.

(xxii) *No Violations or Defaults*. Neither the Company nor its subsidiary is (A) in violation of its respective charter, bylaws or operating agreement, as applicable, or (B) in breach of or otherwise in default, and no event has occurred which, with notice or lapse of time or both, would constitute such a default, in the performance of any obligation, agreement or condition contained in any bond, debenture, note, indenture, loan agreement or any other material contract, lease or other instrument to which it is subject or by which it is bound, or to which any of the property or assets of the Company or its subsidiary is subject except, in the case of this clause (B), as would not reasonably be expected to have a Material Adverse Effect.

(xxiii) *Taxes*. The Company and its subsidiary have timely filed all federal, state, local and foreign income and franchise tax returns required to be filed and are not in default in the payment of any taxes which were payable pursuant to said returns or any assessments with respect thereto (other than any which the Company or its subsidiary is contesting in good faith), except where the failure to pay such taxes or file such tax returns would not reasonably be expected to have a Material Adverse Effect. To the knowledge of the Company, there is no pending dispute with any taxing authority relating to any of such returns, and the Company has no knowledge of any proposed liability for any tax to be imposed upon the properties or assets of the Company or its subsidiary for which there is not an adequate reserve reflected in the Company's financial statements included in the Registration Statement, the Time of Sale Disclosure Package and the Prospectus.

(xxiv) *Exchange Listing and Exchange Act Registration*. The Securities have been approved for listing on the Nasdaq Global Market upon official notice of issuance and, on the date the Registration Statement became effective, the Company's Registration Statement on Form 8-A or other applicable form under the Securities Exchange Act of 1934, as amended (the ***"Exchange Act"***), became effective. Except as previously disclosed to counsel for the Underwriters or as set forth in the Time of Sale Disclosure Package and the Prospectus, there are no affiliations with members of FINRA among the Company's officers or directors or, to the knowledge of the Company, any five percent or greater stockholders of the Company or any beneficial owner of the Company's unregistered equity securities that were acquired during the 180-day period immediately preceding the initial filing date of the Registration Statement.

(xxv) *Ownership of Other Entities*. Other than the subsidiary of the Company listed in Exhibit 21 to the Registration Statement, the Company does not, directly or indirectly, own any capital stock or other equity or ownership or proprietary interest in any corporation, partnership, association, trust or other entity.

(xxvi) *Internal Controls*. The Company and its subsidiary, taken as a whole, maintain a system of "internal control over financial reporting" (as defined in Rule 13a-15(f) of the Exchange Act) designed to provide reasonable assurances that (i) transactions are executed in accordance with management's general or specific authorization; (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with GAAP and to maintain accountability for assets; (iii) access to assets is permitted only in accordance with management's general or specific authorization; and (iv) the recorded accountability for assets is compared with existing assets at reasonable intervals and appropriate action is taken with respect to any differences. Except as disclosed in the Registration Statement, in the Time of Sale Disclosure Package and in the Prospectus, the Company's internal control over financial reporting is effective and none of the Company, its board of directors and audit committee is aware of any "significant deficiencies" or "material weaknesses" (each as defined by the Public Company Accounting Oversight Board) in its internal control over financial reporting, or any fraud, whether or not material, that involves management or other employees of the Company and its subsidiary who have a significant role in the Company's internal controls; and since the end of the latest audited fiscal year, there has been no change in the Company's internal control over financial reporting (whether or not remediated) that has materially and adversely affected, or is reasonably likely to materially and adversely affect, the Company's internal control over financial reporting. The Company's board of directors has, subject to the exceptions, cure periods and the phase in periods specified in the applicable stock exchange rules ("***Exchange Rules***"), validly appointed an audit committee to oversee internal accounting controls whose composition satisfies the applicable requirements of the Exchange Rules and the Company's board of directors and/or the audit committee has adopted a charter for such committee that satisfies the requirements of the Exchange Rules in all material respects.

(xxvii) *No Brokers or Finders*. Other than as contemplated by this Agreement, the Company has not incurred and will not incur any liability for any finder's or broker's fee or agent's commission in connection with the execution and delivery of this Agreement or the consummation of the transactions contemplated hereby.

(xxviii) *Insurance*. The Company and its subsidiary carry, or are covered by, insurance from reputable insurers in such amounts and covering such risks as the Company reasonably believes to be adequate for the conduct of its business and the value of its properties and the properties of its subsidiary and as is customary for companies engaged in similar businesses in similar industries; all policies of insurance and any fidelity or surety bonds insuring the Company or its subsidiary or its business, assets, employees, officers and directors are in full force and effect; the Company and its subsidiary are in compliance with the terms of such policies and instruments in all material respects; there are no claims by the Company or its subsidiary under any such policy or instrument as to which any insurance company is denying liability or defending under a reservation of rights clause; neither the Company nor its subsidiary has been refused any insurance coverage sought or applied for; and neither the Company nor its subsidiary has reason to believe that it will not be able to renew its existing insurance coverage as and when such coverage expires or to obtain similar coverage from similar insurers as may be necessary to continue its business at a cost that would not result in a Material Adverse Effect.

(xxix) *Investment Company Act*. The Company is not, and after giving effect to the offering and sale of the Securities in accordance with this Agreement and the application of proceeds as described in the Prospectus under the caption "Use of Proceeds," will not be, required to be registered as an "investment company" within the meaning of the Investment Company Act of 1940, as amended.

(xxx) *Sarbanes-Oxley Act*. The Company is in compliance with all applicable provisions of the Sarbanes-Oxley Act and the rules and regulations of the Commission thereunder.

(xxxi) *Disclosure Controls*. The Company maintains an effective system of "disclosure controls and procedures" (as defined in Rule 13a-15(e) of the Exchange Act) that complies with the requirements of the Exchange Act applicable to the Company and that has been designed to ensure that information required to be disclosed by the Company in reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the Commission's rules and forms, including controls and procedures designed to ensure that such information is accumulated and communicated to the Company's management as appropriate to allow timely decisions regarding required disclosure. The Company and its subsidiary have carried out evaluations of the effectiveness of their disclosure controls and procedures to the extent required by Rule 13a-15 of the Exchange Act.

(xxxii) *Anti-Bribery and Anti-Money Laundering Laws*. Each of the Company, its subsidiary, its affiliates and any of their respective officers or directors or, to the Company's knowledge, agents or employees, has not violated, its participation in the offering will not violate, and the Company and its subsidiary have instituted and maintain policies and procedures designed to ensure continued compliance with, each of the following laws: (A) applicable anti-bribery laws, including but not limited to, any applicable law, rule, or regulation of any locality, including but not limited to any law, rule, or regulation promulgated to implement the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, signed December 17, 1997, including the U.S. Foreign Corrupt Practices Act of 1977, as amended, the U.K. Bribery Act 2010, or any other applicable law, rule or regulation of similar purposes and scope or (B) applicable anti-money laundering laws, including but not limited to, applicable federal, state, international, foreign or other laws, regulations or government guidance regarding anti-money laundering, including, without limitation, Title 18 US. Code section 1956 and 1957, the Patriot Act, the Bank Secrecy Act, and international anti-money laundering principles or procedures by an intergovernmental group or organization, such as the Financial Action Task Force on Money Laundering, of which the United States is a member and with which designation the United States representative to the group or organization continues to concur, all as amended, and any applicable Executive order, directive, or regulation pursuant to the authority of any of the foregoing, or any applicable orders or licenses issued thereunder.

(xxxiii) *OFAC*.

(A) Neither the Company nor its subsidiary, nor any of their directors or officers or, to the Company's knowledge, employees, nor, to the Company's knowledge, any agent, controlled affiliate or representative of the Company or its subsidiary, is an individual or entity that is, or is owned or controlled by an individual or entity that is:

(1) the subject of any sanctions administered or enforced by the U.S. Department of Treasury's Office of Foreign Assets Control, the United Nations Security Council, the European Union, Her Majesty's Treasury, or other relevant sanctions authority (collectively, ***"Sanctions"***), nor

(2) located, organized or resident in a country or territory that is the subject of Sanctions (including, without limitation, Crimea, Cuba, Iran, North Korea and Syria).

(B) Neither the Company nor its subsidiary will, directly or indirectly, use the proceeds of the offering, or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other individual or entity:

(1) to fund or facilitate any activities or business of or with any individual or entity or in any country or territory that, at the time of such funding or facilitation, is the subject of Sanctions; or

(2) in any other manner that will result in a violation of Sanctions by any individual or entity (including any individual or entity participating in the offering, whether as underwriter, advisor, investor or otherwise).

(C) For the past five years, neither the Company nor its subsidiary has knowingly engaged in, and is not now knowingly engaged in, any dealings or transactions with any individual or entity, or in any country or territory, that at the time of the dealing or transaction is or was the subject of Sanctions.

(xxxiv) *Compliance with Environmental Laws*. Except as disclosed in the Time of Sale Disclosure Package and the Prospectus, neither the Company nor its subsidiary is in violation of any statute, any rule, regulation, decision or order of any Governmental Authority or any court, domestic or foreign, relating to the use, disposal or release of hazardous or toxic substances or relating to the protection or restoration of the environment or human exposure to hazardous or toxic substances (collectively, ***"Environmental Laws"***), owns or operates any real property contaminated with any substance that is subject to any Environmental Laws, is liable for any off-site disposal or contamination pursuant to any Environmental Laws, or is subject to any claim relating to any Environmental Laws, which violation, contamination, liability or claim would individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect; and the Company is not aware of any pending investigation which might lead to such a claim. Neither the Company nor its subsidiary anticipates incurring any material capital expenditures relating to compliance with Environmental Laws.

(xxxv) *Compliance with Occupational Laws*. The Company and its subsidiary (A) are in compliance, in all material respects, with any and all applicable foreign, federal, state and local laws, rules, regulations, treaties, statutes and codes promulgated by any and all Governmental Authorities (including pursuant to the Occupational Health and Safety Act) relating to the protection of human health and safety in the workplace (***"Occupational Laws"***); (B) have received all material permits, licenses or other approvals required of it under applicable Occupational Laws to conduct its business as currently conducted; and (C) are in compliance, in all material respects, with all terms and conditions of such permit, license or approval. No action, proceeding, revocation proceeding, writ, injunction or claim is pending or, to the Company's knowledge, threatened against the Company or its subsidiary relating to Occupational Laws, and the Company does not have knowledge of any facts, circumstances or developments relating to its operations or cost accounting practices that would reasonably be expected to form the basis for or give rise to such actions, suits, investigations or proceedings.

(xxxvi) *ERISA and Employee Benefits Matters*. (A) To the knowledge of the Company, no "prohibited transaction" as defined under Section 406 of ERISA or Section 4975 of the Code and not exempt under ERISA Section 408 and the regulations and published interpretations thereunder has occurred with respect to any Employee Benefit Plan. At no time has the Company or any ERISA Affiliate maintained, sponsored, participated in, contributed to or has or had any liability or obligation in respect of any Employee Benefit Plan subject to Part 3 of Subtitle B of Title I of ERISA, Title IV of ERISA, or Section 412 of the Code or any "multiemployer plan" as defined in Section 3(37) of ERISA or any multiple employer plan for which the Company or any ERISA Affiliate has incurred or would reasonably be expected to incur liability under Section 4063 or 4064 of ERISA. No Employee Benefit Plan provides or promises, or at any time provided or promised, retiree health, life insurance, or other retiree welfare benefits except as may be required by the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended, or similar state law. Each Employee Benefit Plan is and has been operated in material compliance with its terms and all applicable laws, including but not limited to ERISA and the Code and, to the knowledge of the Company, no event has occurred (including a "reportable event" as such term is defined in Section 4043 of ERISA) and no condition exists that would reasonably be expected to subject the Company or any ERISA Affiliate to any material tax, fine, lien, penalty or liability imposed by ERISA, the Code or other applicable law. Each Employee Benefit Plan intended to be qualified under Code Section 401(a) is so qualified and has a favorable determination or opinion letter from the Internal Revenue Service upon which it can rely, and any such determination or opinion letter remains in effect and has not been revoked; to the knowledge of the Company, nothing has occurred since the date of any such determination or opinion letter that is reasonably likely to adversely affect such qualification; (B) the Company does not have any obligations under any collective bargaining agreement with any union and no organization efforts are underway with respect to Company employees. As used in this Agreement, ***"Code"*** means the Internal Revenue Code of 1986, as amended; ***"Employee Benefit Plan"*** means any "employee benefit plan" within the meaning of Section 3(3) of ERISA, including, without limitation, all stock purchase, stock option, stock-based severance, severance, employment, change-in-control, medical, disability, fringe benefit, bonus, incentive, deferred compensation, employee loan and all other employee benefit plans, agreements, programs, policies or other arrangements, whether or not subject to ERISA, under which (x) any current or former employee, director or independent contractor of the Company or its subsidiary has any present or future right to benefits and which are contributed to, sponsored by or maintained by the Company or its subsidiary or (y) the Company or its subsidiary has had or has any present or future obligation or liability; ***"ERISA"*** means the Employee Retirement Income Security Act of 1974, as amended; and ***"ERISA Affiliate"*** means any member of the company's controlled group as defined in Code Section 414(b), (c), (m) or (o).

(xxxvii) *Business Arrangements*. Except as disclosed in the Registration Statement, the Time of Sale Disclosure Package and the Prospectus or as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, neither the Company nor its subsidiary has granted rights to develop, manufacture, produce, assemble, distribute, license, market or sell its products to any other person and is not bound by any agreement that affects the exclusive right of the Company or such subsidiary to develop, manufacture, produce, assemble, distribute, license, market or sell its products.

(xxxviii) *Labor Matters*. No labor problem or dispute with the employees of the Company or its subsidiary exists or, to the knowledge of the Company, is threatened or imminent, and the Company is not aware of any existing or imminent labor disturbance by the employees of any of its or its subsidiary's principal suppliers, contractors or customers, that would reasonably be expected to result in a Material Adverse Effect.

(xxxix) *Restrictions on Subsidiary Payments to the Company*. No subsidiary of the Company is currently prohibited, directly or indirectly, from paying any dividends to the Company, from making any other distribution on such subsidiary's capital stock, from repaying to the Company any loans or advances to such subsidiary from the Company or from transferring any of such subsidiary's property or assets to the Company or any other subsidiary of the Company, except as described in or contemplated by the Time of Sale Disclosure Package and the Prospectus.

(xl) *Disclosure of Legal Matters*. There are no statutes, regulations, legal or governmental proceedings or contracts or other documents required to be described in the Time of Sale Disclosure Package or in the Prospectus or included as exhibits to the Registration Statement that are not described or included as required.

(xli) *Statistical Information*. Any third-party statistical and market-related data included in the Registration Statement, the Time of Sale Disclosure Package and the Prospectus are based on or derived from sources that the Company believes to be reliable and accurate in all material respects.

(xlii) *Forward-looking Statements*. No forward-looking statement (within the meaning of Section 27A of the Act and Section 21E of the Exchange Act) contained in the Registration Statement, the Time of Sale Disclosure Package or the Prospectus has been made or reaffirmed without a reasonable basis or has been disclosed other than in good faith.

(xliii) *FinCEN Matters*. To the Company's knowledge, all of the beneficial ownership information provided to the Underwriters or to counsel for the Underwriters by the Company or its counsel in compliance with the control and beneficial ownership certification requirements of the Financial Crimes Enforcement Network within the U.S. Department of the Treasury (***"FinCEN"***) is true, complete, and correct in all material respects.

(xliv) *Cybersecurity.* Except in each case as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, (i) the Company and its subsidiary's information technology assets and equipment, computers, systems, networks, hardware, software, websites, applications, and databases (including all data of their respective employees, vendors, customers, members and any other third party data maintained by or on behalf of the Company and its subsidiary) (collectively, "***IT Systems***") are adequate for, and operate and perform in all respects as required in connection with the operation of the business of the Company and its subsidiary as currently conducted, free and clear of all material bugs, errors, defects, Trojan horses, time bombs, malware and other corruptants; and (ii) the Company and its subsidiary have implemented and maintained commercially reasonable physical, technical and administrative controls, policies, procedures, and safeguards to maintain and protect their material confidential information and the integrity, continuous operation, redundancy and security of all IT Systems and data, including "Personal Data," used in connection with their businesses. "***Personal Data***" means (i) a natural person's name, street address, telephone number, e-mail address, photograph, social security number or tax identification number, driver's license number, passport number, credit card number, bank information, or customer or account number; (ii) any information which would qualify as "personally identifying information" under the Federal Trade Commission Act, as amended; (iii) "personal data" as defined by GDPR (as defined below); (iv) any information which would qualify as "protected health information" under HIPAA; and (v) any other piece of information that allows the identification of such natural person, or his or her family, or permits the collection or analysis of any data related to an identified person's health or sexual orientation. To the knowledge of the Company, there have been no breaches, violations, outages or unauthorized uses of or accesses to same, except for those that have been remedied without material cost or liability or the duty to notify any other person, nor any incidents under internal review or investigations relating to the same.

(xlv) *Compliance with Data Privacy Laws*. The Company and its subsidiary are, and since August 1, 2017 have been, in material compliance with applicable state and federal data privacy and security laws and regulations, including, to the extent applicable, HIPAA, the European Union General Data Protection Regulation ("***GDPR***") (EU 2016/679) and the California Consumer Privacy Act (collectively, the "***Privacy Laws***"). To ensure compliance with the Privacy Laws, the Company and its subsidiary have in place, comply in all material respects with, and take commercially reasonable steps reasonably designed to ensure compliance in all material respects with their policies and procedures relating to data privacy and security and the collection, storage, use, disclosure, handling, and analysis of Personal Data (the "***Policies***"). The Company and its subsidiary have made all disclosures to users or customers required by applicable laws and regulatory rules or requirements, except where the failure to do so would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. The Company further confirms that neither it nor any subsidiary: (i) has received written notice of any actual or potential liability under or relating to, or actual or potential violation of, any of the Privacy Laws, and has no knowledge of any event or condition that would reasonably be expected to result in any such notice; (ii) is currently conducting or paying for, in whole or in part, any investigation, remediation, or other corrective action pursuant to any violation of any Privacy Law; or (iii) is a party to any order, decree, or agreement that imposes any obligation or liability by any Governmental Authority under any Privacy Law.

(b) *Effect of Certificates*. Any certificate signed by any officer of the Company and delivered to you or to counsel for the Underwriters shall be deemed a representation and warranty by the Company to each Underwriter as to the matters covered thereby.

3. ***Purchase, Sale and Delivery of Securities***.

(a) *Firm Shares*. On the basis of the representations, warranties and agreements herein contained, but subject to the terms and conditions herein set forth, the Company agrees to issue and sell **[·]** Firm Shares to the several Underwriters, and each Underwriter agrees, severally and not jointly, to purchase from the Company the number of Firm Shares set forth opposite the name of such Underwriter in Schedule I hereto. The purchase price for each Firm Share shall be $**[·]** per share. The obligation of each Underwriter to the Company shall be to purchase from the Company that number of Firm Shares (to be adjusted by the Representatives to avoid fractional shares) which represents the same proportion of the number of Firm Shares to be sold by the Company pursuant to this Agreement as the number of Firm Shares set forth opposite the name of such Underwriter in Schedule I hereto represents to the total number of Firm Shares to be purchased by all Underwriters pursuant to this Agreement. In making this Agreement, each Underwriter is contracting severally and not jointly; except as provided in paragraph (d) of this Section 3 and in Section 8 hereof, the agreement of each Underwriter is to purchase only the respective number of Firm Shares specified in Schedule I hereto.

(b) *Option Shares*. On the basis of the representations, warranties and agreements herein contained, but subject to the terms and conditions herein set forth, the Company, with respect to **[·]** Option Shares, hereby grants to the several Underwriters an option to purchase all or any portion of the Option Shares at the same purchase price as the Firm Shares, for use solely in covering any over-allotments made by the Underwriters in the sale and distribution of the Firm Shares. The option granted hereunder may be exercised in whole or in part at any time (but not more than once) within 30 days after the effective date of this Agreement upon notice (confirmed in writing) by the Representatives to the Company setting forth the aggregate number of Option Shares as to which the several Underwriters are exercising the option and the date and time, as determined by you, when the Option Shares are to be delivered, but in no event earlier than the First Closing Date (as defined below) nor earlier than the second business day or later than the tenth business day after the date on which the option shall have been exercised. If the option is exercised, the number of Option Shares to be purchased by each Underwriter shall be the same percentage of the total number of Option Shares to be purchased by the several Underwriters as the number of Firm Shares to be purchased by such Underwriter is of the total number of Firm Shares to be purchased by the several Underwriters, as adjusted by the Representatives in such manner as the Representatives deem advisable to avoid fractional shares. No Option Shares shall be sold and delivered unless the Firm Shares previously have been, or simultaneously are, sold and delivered.

(c) *Payment and Delivery*.

(i) The Securities to be purchased by each Underwriter hereunder, in book-entry form in such authorized denominations and registered in such names as Piper Sandler & Co. may request upon at least forty-eight hours' prior notice to the Company, shall be delivered by or on behalf of the Company to Piper Sandler & Co., through the facilities of the Depository Trust Company (***"DTC"***), for the account of such Underwriter, with any transfer taxes payable in connection with the transfer of the Securities to the Underwriters duly paid, against payment by or on behalf of such Underwriter of the purchase price therefor by wire transfer of Federal (same-day) funds to the account specified by the Company to Piper Sandler & Co. at least forty-eight hours in advance. The time and date of such delivery and payment shall be, with respect to the Firm Shares, 9:30 a.m., New York City time, on **[·]**, 2020 or such other time and date as Piper Sandler & Co. and the Company may agree upon in writing, and, with respect to the Option Shares, 9:30 a.m., New York City time, on the date specified by the Representatives in each written notice given by the Representatives of the Underwriters' election to purchase such Option Shares, or such other time and date as Piper Sandler & Co. and the Company may agree upon in writing. Such time and date for delivery of the Firm Shares is herein called the ***"First Closing Date"***, each such time and date for delivery of the Option Shares, if not the First Closing Date, is herein called a ***"Second Closing Date"***, and each such time and date for delivery is herein called a ***"Closing"***.

(ii) The documents to be delivered at each Closing by or on behalf of the parties hereto pursuant to Section 5 hereof, including the cross receipt for the Securities and any additional documents requested by the Underwriters pursuant to Section 5(k) hereof, will be delivered at the offices of Davis Polk & Wardwell LLP, 1600 El Camino Real, Menlo Park, California 94025 (the ***"Closing Location"***), and the Securities will be delivered to Piper Sandler & Co., through the facilities of the DTC, for the account of such Underwriter, all at such Closing. A meeting will be held at the Closing Location at **[·]** [a.m./p.m.], New York City time, on the New York Business Day next preceding such Closing, at which meeting the final drafts of the documents to be delivered pursuant to the preceding sentence will be available for review by the parties hereto. For the purposes of this Section 3, ***"New York Business Day"*** shall mean each Monday, Tuesday, Wednesday, Thursday and Friday which is not a day on which banking institutions in New York City are generally authorized or obligated by law or executive order to close.

(d) *Purchase by Representatives on Behalf of Underwriters*. It is understood that you, individually and not as Representatives of the several Underwriters, may (but shall not be obligated to) make payment to the Company, on behalf of any Underwriter for the Securities to be purchased by such Underwriter. Any such payment by you shall not relieve any such Underwriter of any of its obligations hereunder. Nothing herein contained shall constitute any of the Underwriters an unincorporated association or partner with the Company.

4. ***Covenants***.

(a) *Covenants of the Company*. The Company covenants and agrees with the several Underwriters as follows:

(i) *Required Filings*. The Company will prepare and file a Prospectus with the Commission containing the Rule 430A Information omitted from the Preliminary Prospectus within the time period required by, and otherwise in accordance with the provisions of, Rules 424(b) and 430A of the Rules and Regulations. If the Company has elected to rely upon Rule 462(b) of the Rules and Regulations to increase the size of the offering registered under the Act and the Rule 462(b) Registration Statement has not yet been filed and become effective, the Company will prepare and file the Rule 462 Registration Statement with the Commission within the time period required by, and otherwise in accordance with the provisions of, Rule 462(b) and the Act. The Company will prepare and file with the Commission, promptly upon your request, any amendments or supplements to the Registration Statement or Prospectus that, in your opinion, may be necessary or advisable in connection with the distribution of the Securities by the Underwriters; and the Company will furnish the Representatives and counsel for the Underwriters a copy of any proposed amendment or supplement to the Registration Statement or Prospectus and will not file any amendment or supplement to the Registration Statement or Prospectus to which you shall reasonably object by notice to the Company after having been furnished a copy a reasonable time prior to the filing.

(ii) *Notification of Certain Commission Actions*. The Company will advise you, promptly after it shall receive notice or obtain knowledge thereof, of the issuance by the Commission of any stop order suspending the effectiveness of the Registration Statement, or any post-effective amendment thereto or preventing or suspending the use of any Preliminary Prospectus, the Time of Sale Disclosure Package, the Prospectus or any issuer free writing prospectus, of the suspension of the qualification of the Securities for offering or sale in any jurisdiction, or of the initiation or threatening of any proceeding for any such purpose; and the Company will promptly use its reasonable best efforts to prevent the issuance of any stop order or to obtain its withdrawal if such a stop order should be issued.

(iii) *Continued Compliance with Securities Laws*.

(A) Within the time during which a prospectus (assuming the absence of Rule 172 of the Rules and Regulations) relating to the Securities is required to be delivered under the Act by any Underwriter or dealer, the Company will comply with all requirements imposed upon it by the Act, as now and hereafter amended, and by the Rules and Regulations, as from time to time in force, so far as necessary to permit the continuance of sales of or dealings in the Securities as contemplated by the provisions hereof, the Time of Sale Disclosure Package and the Prospectus. If during such period any event occurs as a result of which the Prospectus (or if the Prospectus is not yet available to prospective purchasers, the Time of Sale Disclosure Package) would include an untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in the light of the circumstances then existing, not misleading, or if during such period it is necessary to amend the Registration Statement or supplement the Prospectus (or if the Prospectus is not yet available to prospective investors, the Time of Sale Disclosure Package) to comply with the Act, the Company promptly will (x) notify you of such untrue statement or omission, (y) amend the Registration Statement or supplement the Prospectus (or, if the Prospectus is not yet available to prospective purchasers, the Time of Sale Disclosure Package) (at the expense of the Company) so as to correct such statement or omission or effect such compliance and (z) notify you when any amendment to the Registration Statement is filed or becomes effective or when any supplement to the Prospectus (or, if the Prospectus is not yet available to prospective purchasers, the Time of Sale Disclosure Package) is filed.

(B) If at any time following issuance of an issuer free writing prospectus or Written Testing-the-Waters Communication there occurred or occurs an event or development as a result of which such issuer free writing prospectus or Written Testing-the-Waters Communication conflicted or would conflict with the information contained in the Registration Statement, any Preliminary Prospectus or the Prospectus relating to the Securities or included or would include an untrue statement of a material fact or omitted or would omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances prevailing at that subsequent time, not misleading, the Company (x) has promptly notified or promptly will notify the Representatives of such conflict, untrue statement or omission, (y) has promptly amended or will promptly amend or supplement, at its own expense, such issuer free writing prospectus or Written Testing-the-Waters Communication to eliminate or correct such conflict, untrue statement or omission and (z) has notified or promptly will notify you when such amendment or supplement was or is filed with the Commission to the extent required to be filed by the Rules and Regulations.

(iv) *Blue Sky Qualifications*. The Company shall take or cause to be taken all necessary action to qualify the Securities for sale under the securities laws of such domestic United States or foreign jurisdictions as you reasonably designate and to continue such qualifications in effect so long as required for the distribution of the Securities, except that the Company shall not be required in connection therewith to qualify as a foreign corporation (where not otherwise required) or to execute a general consent to service of process in any jurisdiction (where not otherwise required).

(v) *Provision of Documents*. The Company will furnish, at its own expense, to the Underwriters and counsel for the Underwriters copies of the Registration Statement, and to the Underwriters and any dealer each Preliminary Prospectus, the Time of Sale Disclosure Package, the Prospectus, any issuer free writing prospectus and all amendments and supplements to such documents, in each case as soon as available and in such quantities as you may from time to time reasonably request.

(vi) *Rule 158*. The Company will make generally available to its security holders as soon as practicable, but in no event later than 15 months after the end of the Company's current fiscal quarter, an earnings statement (which need not be audited) covering a 12-month period beginning after the effective date of the Registration Statement (which, for purposes of this paragraph, will be deemed to be the effective date of the Rule 462(b) Registration Statement, if applicable) that shall satisfy the provisions of Section 11(a) of the Act and Rule 158 of the Rules and Regulations.

(vii) *Payment and Reimbursement of Expenses*. The Company, whether or not the transactions contemplated hereunder are consummated or this Agreement is terminated, will pay or cause to be paid (A) all expenses (including transfer taxes allocated to the respective transferees) incurred in connection with the delivery to the Underwriters of the Securities, (B) all expenses and fees (including, without limitation, fees and expenses of the Company's accountants and counsel but, except as otherwise provided below, not including fees of the Underwriters' counsel) in connection with the preparation, printing, filing, delivery, and shipping of the Registration Statement (including the financial statements therein and all amendments, schedules, and exhibits thereto), the Securities, each Preliminary Prospectus, the Time of Sale Disclosure Package, the Prospectus, any issuer free writing prospectus and any amendment thereof or supplement thereto, and the printing, delivery, and shipping of this Agreement and other underwriting documents, including Blue Sky Memoranda (covering the states and other applicable jurisdictions), (C) all filing fees and fees and disbursements of the Underwriters' counsel incurred in connection with the qualification of the Securities for offering and sale by the Underwriters or by dealers under the securities or blue sky laws of the states and other jurisdictions which you shall designate, (D) the fees and expenses of any transfer agent or registrar, (E) the filing fees and fees and disbursements of Underwriters' counsel incident to any required review and approval by FINRA of the terms of the sale of the Securities (*provided*, that the amount payable by the Company with respect to the fees and disbursements of counsel for the Underwriters pursuant to this clause (E) and the foregoing clause (C) will not exceed $35,000 in the aggregate (excluding filing fees)), (F) listing fees, if any, (G) the cost and expenses of the Company relating to investor presentations or any "road show" undertaken in connection with marketing of the Securities, including, without limitation, expenses associated with the preparation or dissemination of any electronic road show, expenses associated with the production of road show slides and graphics, fees and expenses of any consultants engaged in connection with the road show presentations with the prior approval of the Company, and (if applicable) travel and lodging expenses of the representatives and officers of the Company and any such consultants (it being understood that the Underwriters will pay or cause to be paid any travel and lodging expenses of their representatives) (provided, however, that the Underwriters and the Company shall each pay 50% of the cost of chartering any aircraft to be used in connection with the road show by the Company and the Underwriters), (H) all other costs and expenses of the Company incident to the performance of its obligations hereunder that are not otherwise specifically provided for herein. If (i) this Agreement is terminated by the Representatives pursuant to Section 9(a)(i)-(iii) hereof, or (ii) the sale of the Securities provided for herein is not consummated by reason of any failure, refusal or inability on the part of the Company to perform any agreement on its part to be performed, or because any other condition of the Underwriters' obligations hereunder required to be fulfilled by the Company is not fulfilled (other than, in each case, by reason of a termination of this Agreement by the Underwriters upon the occurrence of any of the events described in Section 9(a)(iv) through 9(a)(vi) hereof), the Company will reimburse the several Underwriters for all reasonable out-of-pocket accountable disbursements (including but not limited to the reasonable fees and disbursements of counsel, printing expenses, travel expenses, postage, facsimile and telephone charges) incurred by the Underwriters in connection with their investigation, preparing to market and marketing the Securities or in contemplation of performing their obligations hereunder (*provided* that, in the event this Agreement is terminated pursuant to Section 8(b) hereof, the Company will be under no obligation to reimburse any Underwriter that failed to take up and pay for the amount of Firm Shares agreed by such Underwriter to be purchased hereunder). It is understood, however, that except as explicitly set forth in this Section 4(a)(vii), the Underwriters will pay all of their own costs and expenses.

(viii) *Use of Proceeds*. The Company will apply the net proceeds from the sale of the Securities to be sold by it hereunder for the purposes set forth in the Time of Sale Disclosure Package and in the Prospectus and will file such reports with the Commission with respect to the sale of the Securities and the application of the proceeds therefrom as may be required in accordance with Rule 463 of the Rules and Regulations.

(ix) *Company Lock Up*. The Company will not, without the prior written consent of Piper Sandler & Co. and Cowen and Company, LLC, from the date of execution of this Agreement and continuing to and including the date 180 days after the date of the Prospectus (the ***"Lock-Up Period"***), (A) offer, pledge, announce the intention to sell, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant, to purchase, make any short sale or otherwise transfer or dispose of, directly or indirectly, or file with or confidentially submit to the Commission a registration statement under the Act relating to, any securities of the Company that are substantially similar to the Securities, including but not limited to any options or warrants to purchase shares of Common Stock or any securities that are convertible into or exercisable or exchangeable for, or that represent the right to receive, Common Stock or any such substantially similar securities, or publicly disclose the intention to make any offer, sale, pledge, disposition or filing or (B) enter into any swap or other agreement that transfers, in whole or in part, any of the economic consequences of ownership of the Common Stock or any such other securities, whether any such transaction described in clause (A) or (B) above is to be settled by delivery of Common Stock or such other securities, in cash or otherwise, *provided* that the foregoing restrictions will not apply to (i) the Securities to be sold hereunder; (ii) the issuance of shares of Common Stock and the granting of stock options, restricted stock units and/or other equity awards pursuant to equity incentive plans, non-employee director compensation plans or other equity compensation plans existing on the date of this Agreement and described in the Registration Statement, Time of Sale Prospectus and the Prospectus, *provided* that the recipients of any such shares of Common Stock or of any stock options, restricted stock units or other equity awards that vest within the Lock-Up Period execute a lock-up agreement substantially in the form of Exhibit A hereto; (iii) the issuance of shares of Common Stock (1) upon the conversion of the Company's Series A convertible preferred stock and Series A-1 convertible preferred stock into shares of Common Stock in connection with the closing of the offering of the Securities, (2) to holders of the Company's Series A convertible preferred stock and Series A-1 convertible preferred stock in respect of the liquidation preference payable to such holders in kind in connection with the closing of the offering of the Securities as described in the Time of Sale Disclosure Package and the Prospectus, or (3) upon the exercise of an option or warrant, or the conversion, exercise or exchange of any other securities convertible into or exercisable or exchangeable for shares of Common Stock, which option, warrant or other convertible, exercisable or exchangeable securities are outstanding as of the date of this Agreement; (iv) facilitating the establishment of a trading plan pursuant to Rule 10b5-1 under the Exchange Act for the transfer of shares of Common Stock, *provided* that (x) such plan does not provide for the transfer of Common Stock during the Lock-Up Period and (y) to the extent a public announcement or filing under the Exchange Act is required of or voluntarily made by or on behalf of the Company regarding the establishment of such plan, such announcement or filing shall include a statement to the effect that no transfer of Common Stock may be made under such plan during the Lock-Up Period; (v) the filing of a registration statement on Form S-8 or any successor form thereto with respect to the registration of securities to be offered under any equity incentive plan, non-employee director compensation plan or other equity compensation plan of the Company described in in the Registration Statement, the Time of Sale Prospectus and the Prospectus, or any such plan assumed under the circumstances contemplated by the following clause (vi)(1); and (vi) the sale or issuance of, or entry into an agreement providing for the sale or issuance of, Common Stock, or securities convertible into or exercisable or exchangeable for, Common Stock in connection with (1) the acquisition of the securities, business, technology, property or other assets of another person or entity, or pursuant to any employee benefit or other equity compensation plan (or any obligations thereunder) assumed in connection with any such acquisition, (2) joint ventures, (3) commercial relationships or (4) other strategic transactions, *provided* that (x) the aggregate number of shares of Common Stock, or securities convertible into or exercisable or exchangeable for, Common Stock that the Company may sell or issue or agree to sell or issue pursuant to this clause (vi) shall not exceed 7.5% of the total number of shares of Common Stock outstanding as of the Closing Date immediately following the issuance and sale of the Shares pursuant to this Agreement, and (y) each recipient of Common Stock, or securities convertible into or exercisable or exchangeable for, Common Stock pursuant to this clause (vi) shall execute a lock-up agreement substantially in the form of Exhibit A hereto.

(x) *Stockholder Lock-Ups*. The Company has caused to be delivered to you prior to the date of this Agreement a letter, in the form of Exhibit A hereto (the ***"Lock-Up Agreement"***), from each individual or entity listed on Schedule II hereto. The Company will enforce the terms of each Lock-Up Agreement and issue stop-transfer instructions to its transfer agent and registrar for the Common Stock with respect to any transaction or contemplated transaction that would constitute a breach of or default under the applicable Lock-Up Agreement. If the Representatives, in their sole discretion, agree to release or waive the restrictions of any Lock-Up Agreement between an officer or director of the Company and the Representatives and provide the Company with notice of the impending release or waiver at least three business days before the effective date of such release or waiver, the Company agrees to announce the impending release or waiver by means of a press release substantially in the form of Exhibit B hereto, issued through a major news service, at least two business days before the effective date of the release or waiver.

(xi) *No Market Stabilization or Manipulation*. The Company has not taken and will not take, directly or indirectly, any action designed to or which would reasonably be expected to cause or result in, or which has constituted, the stabilization or manipulation of the price of any security of the Company to facilitate the sale or resale of the Securities, and has not effected any sales of Common Stock which are required to be disclosed in response to Item 701 of Regulation S-K under the Act which have not been so disclosed in the Registration Statement.

(xii) *SEC Reports*. The Company will file on a timely basis with the Commission such periodic and special reports as required by the Rules and Regulations.

(xiii) *Free Writing Prospectuses*. The Company represents and agrees that, unless it obtains the prior written consent of the Representatives, and each Underwriter severally represents and agrees that, unless it obtains the prior written consent of the Company and the Representatives, it has not made and will not make any offer relating to the Securities that would constitute an issuer free writing prospectus or that would otherwise constitute a free writing prospectus required to be filed with the Commission; provided that the prior written consent of the parties hereto shall be deemed to have been given in respect of the free writing prospectuses included in Schedule III hereto. Any such free writing prospectus consented to by the Company and the Representatives is hereinafter referred to as a ***"Permitted Free Writing Prospectus."*** The Company represents that it has treated or agrees that it will treat each Permitted Free Writing Prospectus as an issuer free writing prospectus, and has complied and will comply with the requirements of Rules 164 and 433 of the Rules and Regulations applicable to any Permitted Free Writing Prospectus. The Company represents that it has satisfied and agrees that it will satisfy the conditions in Rule 433 to avoid a requirement to file with the Commission any electronic road show. Each Underwriter severally represents and agrees that, (A) unless it obtains the prior written consent of the Company and Piper Sandler & Co., it has not distributed, and will not distribute any Written Testing-the-Waters Communication other than those listed on Schedule V hereto, and (B) any Testing-the-Waters Communication undertaken by it was with entities that are qualified institutional buyers with the meaning of Rule 144A under the Act or institutions that are accredited investors within the meaning of Rule 501 under the Act.

(xiv) *Emerging Growth Company*. The Company will promptly notify the Representatives if the Company ceases to be an Emerging Growth Company at any time prior to the later of (A) completion of the distribution of Securities within the meaning of the Act and (B) completion of the Lock-Up Period.

5. ***Conditions of Underwriters' Obligations***. The obligations of the several Underwriters hereunder are subject to the accuracy, as of the date hereof and at each of the First Closing Date and the Second Closing Date (each, a "***Closing Date***") (as if made at such Closing Date), of and compliance with all representations, warranties and agreements of the Company contained herein, to the performance by the Company of its obligations hereunder and to the following additional conditions:

(a) *Required Filings; Absence of Certain Commission Actions*. All filings required by Rules 424, 430A and 433 of the Rules and Regulations shall have been timely made (without reliance on Rule 424(b)(8) or Rule 164(b)); no stop order suspending the effectiveness of the Registration Statement or any part thereof or any amendment thereof, nor suspending or preventing the use of the Time of Sale Disclosure Package, the Prospectus or any issuer free writing prospectus shall have been issued; no proceedings for the issuance of such an order shall have been initiated or threatened; and any request of the Commission for additional information (to be included in the Registration Statement, the Time of Sale Disclosure Package, the Prospectus, any issuer free writing prospectus or otherwise) shall have been complied with to your satisfaction.

(b) *Continued Compliance with Securities Laws*. No Underwriter shall have advised the Company that (i) the Registration Statement or any amendment thereof or supplement thereto contains an untrue statement of a material fact which, in your opinion, is material or omits to state a material fact which, in your opinion, is required to be stated therein or necessary to make the statements therein not misleading, or (ii) the Time of Sale Disclosure Package or the Prospectus, or any amendment thereof or supplement thereto, or any issuer free writing prospectus contains an untrue statement of fact which, in your opinion, is material, or omits to state a fact which, in your opinion, is material and is required to be stated therein, or necessary to make the statements therein, in light of the circumstances under which they are made, not misleading.

(c) *Absence of Certain Events*. Except as contemplated in the Time of Sale Disclosure Package and in the Prospectus, subsequent to the respective dates as of which information is given in the Time of Sale Disclosure Package and the Prospectus, (i) neither the Company nor its subsidiary shall have incurred any material liabilities or obligations, direct or contingent, or entered into any material transactions, or declared or paid any dividends or made any distribution of any kind with respect to its capital stock, and (ii) there shall not have been any change in the capital stock (other than a change in the number of outstanding shares of Common Stock due to the exercise, settlement or forfeiture of outstanding options, the exercise of warrants or the conversion of convertible securities), or any material change in the short-term or long-term debt of the Company (other than as a result of the conversion of convertible securities), or any issuance of options, warrants, convertible securities or other rights to purchase the capital stock of the Company or its subsidiary, or any Material Adverse Effect(whether or not arising in the ordinary course of business), that, in your judgment, makes it impractical or inadvisable to offer or deliver the Securities on the terms and in the manner contemplated in the Time of Sale Disclosure Package and in the Prospectus.

(d) *No Downgrade*. On or after the Time of Sale (i) no downgrading shall have occurred in the rating accorded the Company's debt securities or preferred stock by any "nationally recognized statistical organization," as that term is defined by the Commission for purposes of Rule 436(g)(2) under the Act, and (ii) no such organization shall have publicly announced that it has under surveillance or review, with possible negative implications, its rating of any of the Company's debt securities or preferred stock.

(e) *Opinion and Negative Assurance Letter of Company Counsel*. On each Closing Date, there shall have been furnished to you, as Representatives of the several Underwriters, the opinion and negative assurance letter of Latham & Watkins LLP, counsel for the Company, dated such Closing Date and addressed to you, in form and substance reasonably satisfactory to you.

(f) *Opinion of Intellectual Property Counsel*. On each Closing Date, there shall have been furnished to you, as Representatives of the several Underwriters, the opinion of Pepper Hamilton LLP, intellectual property counsel for the Company, dated such Closing Date and addressed to you, in form and substance reasonably satisfactory to you.

(g) *Opinion and Negative Assurance Letter of Underwriters' Counsel*. On each Closing Date, there shall have been furnished to you, as Representatives of the several Underwriters, such opinion or opinions from Davis Polk & Wardwell LLP, counsel for the several Underwriters, dated such Closing Date and addressed to you, with respect to the formation of the Company, the validity of the Securities, the Registration Statement, the Time of Sale Disclosure Package or the Prospectus and other related matters as you reasonably may request, and such counsel shall have received such papers and information as they request to enable them to pass upon such matters.

(h) *Comfort Letter*. On the date hereof, on the effective date of any post-effective amendment to the Registration Statement filed after the date hereof and on each Closing Date you, as Representatives of the several Underwriters, shall have received a letter of PricewaterhouseCoopers LLP, dated such date and addressed to you, in form and substance satisfactory to you.

(i) *Officers' Certificate*. On each Closing Date, there shall have been furnished to you, as Representatives of the Underwriters, a certificate, dated such Closing Date and addressed to you, signed by the chief executive officer and by the chief financial officer of the Company, to the effect that:

(i) The representations and warranties of the Company in this Agreement are true and correct as if made at and as of such Closing Date, and the Company has complied with all the agreements and satisfied all the conditions on its part to be performed or satisfied at or prior to such Closing Date;

(ii) There have been no material adverse change or any development that would reasonably be expected to result in a material adverse change of a type described in clause (i) of the last sentence of Section 2(a)(viii), whether or not arising in the ordinary course of business; and

(iii) No stop order or other order suspending the effectiveness of the Registration Statement or any part thereof or any amendment thereof or the qualification of the Securities for offering or sale, nor suspending or preventing the use of the Time of Sale Disclosure Package, the Prospectus or any issuer free writing prospectus, has been issued, and no proceeding for that purpose has been instituted or, to the best of their knowledge, is contemplated by the Commission or any state or regulatory body.

(j) *Lock-Up Agreement*. The Underwriters shall have received all of the Lock-Up Agreements referenced in Section 4 and the Lock-Up Agreements shall remain in full force and effect.

(k) *Other Documents*. The Company shall have furnished to you and counsel for the Underwriters such additional documents, certificates and evidence as you or they may have reasonably requested.

(l) *FINRA No Objections*. FINRA shall have raised no objection to the fairness and reasonableness of the underwriting terms and arrangements.

(m) *Exchange Listing*. The Securities to be delivered on such Closing Date will have been approved for listing on the Nasdaq Global Market, subject to official notice of issuance.

(n) *CFO Certificate*. On the date of this Agreement and on each Closing Date, as the case may be, the Company shall have furnished to the Representatives a certificate, dated the respective dates of delivery thereof and addressed to the Underwriters, of its chief financial officer with respect to certain financial data contained in the Time of Sale Disclosure Package and the Prospectus, providing "management comfort" with respect to such information, in form and substance reasonably satisfactory to the Representatives.

All such opinions, certificates, letters and other documents will be in compliance with the provisions hereof only if they are reasonably satisfactory in form and substance to you and counsel for the Underwriters. The Company will furnish you with such conformed copies of such opinions, certificates, letters and other documents as you shall reasonably request.

6. ***Indemnification and Contribution***.

(a) *Indemnification by the Company*. The Company agrees to indemnify and hold harmless each Underwriter, its affiliates, directors and officers and each person, if any, who controls such Underwriter within the meaning of Section 15 of the Act or Section 20 of the Exchange Act, from and against any losses, claims, damages or liabilities (including, without limitation, legal fees and other expenses incurred in connection with investigating or defending against such loss, claim, damage, liability or action as such expenses are incurred), joint or several, to which such Underwriter may become subject, under the Act or otherwise (including in settlement of any litigation if such settlement is effected with the written consent of the Company), insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon: (i) an untrue statement or alleged untrue statement of a material fact contained in the Registration Statement, including the 430A Information and any other information deemed to be a part of the Registration Statement at the time of effectiveness and at any subsequent time pursuant to the Rules and Regulations, if applicable, any Preliminary Prospectus, the Time of Sale Disclosure Package, the Prospectus, or any amendment or supplement thereto, any issuer free writing prospectus, any issuer information that the Company has filed or is required to file pursuant to Rule 433(d) of the Rules and Regulations, or any Written Testing-the-Waters Communication, or any road show as defined in Rule 433(h) under the Act (a ***"road show"***), (ii) the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein (in the case of any Preliminary Prospectus, the Time of Sale Disclosure Package, the Prospectus, or any amendment or supplement thereto, any issuer free writing prospectus, any issuer information that the Company has filed or is required to file pursuant to Rule 433(d) of the Rules and Regulations, any Written Testing-the-Waters Communication or any road show, in the light of the circumstances under which such statements were made) not misleading, or (iii) any investigation or proceeding by any governmental authority, commenced or threatened (whether or not any Underwriter is a target of or party to such investigation or proceeding); *provided, however,* that the Company will not be liable in any such case to the extent that any such loss, claim, damage, liability or action arises out of or is based upon an untrue statement or alleged untrue statement or omission or alleged omission made in reliance upon and in conformity with written information furnished to the Company by you, or by any Underwriter through you, specifically for use in the preparation thereof; it being understood and agreed that the only information furnished by an Underwriter consists of the information described as such in Section 6(e).

(b) *Indemnification by the Underwriters*. Each Underwriter will, severally and not jointly, indemnify and hold harmless the Company, its affiliates, directors and officers and each person, if any, who controls the Company within the meaning of Section 15 of the Act and Section 20 of the Exchange Act, from and against any losses, claims, damages or liabilities (including, without limitation, legal fees and other expenses incurred in connection with investigating or defending against such loss, claim, damage, liability or action as such expenses are incurred) to which the Company may become subject, under the Act or otherwise (including in settlement of any litigation, if such settlement is effected with the written consent of such Underwriter), insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon (i) an untrue statement or alleged untrue statement of a material fact contained in the Registration Statement, including the 430A Information and any other information deemed to be a part of the Registration Statement at the time of effectiveness and at any subsequent time pursuant to the Rules and Regulations, if applicable, any Preliminary Prospectus, the Time of Sale Disclosure Package, the Prospectus, or any amendment or supplement thereto, any issuer free writing prospectus, any issuer information that the Company has filed or is required to file pursuant to Rule 433(d) of the Rules and Regulations, or any Written Testing-the-Waters Communication, or any road show, or (ii) the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein (in the case of any Preliminary Prospectus, the Time of Sale Disclosure Package, the Prospectus, or any amendment or supplement thereto, any issuer free writing prospectus, any issuer information that the Company has filed or is required to file pursuant to Rule 433(d) of the Rules and Regulations, any Written Testing-the-Waters Communication or any road show, in the light of the circumstances under which such statements were made) not misleading, in each case to the extent, but only to the extent, that such untrue statement or alleged untrue statement or omission or alleged omission was made in conformity with written information furnished to the Company by you, or by such Underwriter through you, specifically for use in the preparation thereof (it being understood and agreed that the only information furnished by an Underwriter consists of the information described as such in Section 6(e)), and will reimburse the Company for any legal or other expenses reasonably incurred by the Company in connection with investigating or defending against any such loss, claim, damage, liability or action as such expenses are incurred.

(c) *Notice and Procedures*. Promptly after receipt by an indemnified party under paragraph (a) or (b) above of notice of the commencement of any action, such indemnified party shall, if a claim in respect thereof is to be made against the indemnifying party under such paragraph, notify the indemnifying party in writing of the commencement thereof; but the omission so to notify the indemnifying party shall not relieve the indemnifying party from any liability that it may have to any indemnified party except to the extent such indemnifying party has been materially prejudiced by such failure (through the forfeiture of substantive rights or defenses). In case any such action shall be brought against any indemnified party, and it shall notify the indemnifying party of the commencement thereof, the indemnifying party shall be entitled to participate in, and, to the extent that it shall wish, jointly with any other indemnifying party similarly notified, to assume the defense thereof, with counsel reasonably satisfactory to such indemnified party, and after notice from the indemnifying party to such indemnified party of the indemnifying party's election so to assume the defense thereof, the indemnifying party shall not be liable to such indemnified party under such paragraph for any legal or other expenses subsequently incurred by such indemnified party in connection with the defense thereof other than reasonable costs of investigation; provided, however, that if, in the sole judgment of the Representatives, it is advisable for the Underwriters to be represented as a group by separate counsel, the Representatives shall have the right to employ a single counsel (in addition to local counsel) to represent the Representatives and all Underwriters who may be subject to liability arising from any claim in respect of which indemnity may be sought by the Underwriters under paragraph (a) of this Section 6, in which event the reasonable fees and expenses of such separate counsel shall be borne by the indemnifying party or parties and reimbursed to the Underwriters as incurred. An indemnifying party shall not be obligated under any settlement agreement relating to any action under this Section 6 to which it has not agreed in writing. In addition, no indemnifying party shall, without the prior written consent of the indemnified party (which consent shall not be unreasonably withheld or delayed) effect any settlement of any pending or threatened proceeding unless such settlement includes an unconditional release of such indemnified party for all liability on claims that are the subject matter of such proceeding and does not include a statement as to, or an admission of, fault, culpability or a failure to act by or on behalf of an indemnified party. Notwithstanding the foregoing, if at any time an indemnified party shall have requested an indemnifying party to reimburse the indemnified party for fees and expenses of counsel pursuant to this Section 6(c), such indemnifying party agrees that it shall be liable for any settlement effected without its written consent if (i) such settlement is entered into more than 45 days after receipt by such indemnifying party of the aforesaid request and (ii) such indemnifying party shall not have reimbursed such indemnified party in accordance with such request prior to the date of such settlement.

(d) *Contribution; Limitations on Liability; Non-Exclusive Remedy.* If the indemnification provided for in this Section 6 is unavailable or insufficient to hold harmless an indemnified party under paragraph (a) or (b) above, then each indemnifying party shall contribute to the amount paid or payable by such indemnified party as a result of the losses, claims, damages or liabilities referred to in paragraph (a) or (b) above, (i) in such proportion as is appropriate to reflect the relative benefits received by the Company on the one hand and the Underwriters on the other from the offering of the Securities or (ii) if the allocation provided by clause (i) above is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause (i) above but also the relative fault of the Company on the one hand and the Underwriters on the other in connection with the statements or omissions that resulted in such losses, claims, damages or liabilities, as well as any other relevant equitable considerations. The relative benefits received by the Company on the one hand and the Underwriters on the other shall be deemed to be in the same proportion as the total net proceeds from the offering (before deducting expenses) received by the Company and the total underwriting discounts and commissions received by the Underwriters bear to the aggregate public offering price of the Securities, in each case as set forth in the table on the cover page of the Prospectus. The relative fault shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the Company, or the Underwriters and the parties' relevant intent, knowledge, access to information and opportunity to correct or prevent such untrue statement or omission. The Company and the Underwriters agree that it would not be just and equitable if contributions pursuant to this paragraph (d) were to be determined by pro rata allocation (even if the Underwriters were treated as one entity for such purpose) or by any other method of allocation which does not take account of the equitable considerations referred to in the first sentence of this paragraph (d). The amount paid by an indemnified party as a result of the losses, claims, damages or liabilities referred to in the first sentence of this paragraph (d) shall be deemed to include any legal or other expenses reasonably incurred by such indemnified party in connection with investigating or defending against any action or claim which is the subject of this paragraph (d). Notwithstanding the provisions of this paragraph (d), no Underwriter shall be required to contribute any amount in excess of the amount by which the total underwriting discounts and commissions received by such Underwriter with respect to the Securities exceeds the amount of any damages that such Underwriter has otherwise been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation. The Underwriters' obligations in this paragraph (d) to contribute are several in proportion to their respective underwriting obligations and not joint. The remedies provided for in this Section 6 are not exclusive and shall not limit any rights or remedies that might otherwise be available to any indemnified party at law or in equity.

(e) *Information Provided by the Underwriters*. The Underwriters severally confirm and the Company acknowledges that the statements with respect to the public offering of the Securities by the Underwriters set forth in the sixteenth, seventeenth, eighteenth and nineteenth paragraphs under the caption "Underwriting" relating to price stabilization, short positions and penalty bids, and the concession figures appearing in the sixth paragraph under the caption “Underwriting” in the Time of Sale Disclosure Package and in the Prospectus are correct and constitute the only information concerning such Underwriters furnished in writing to the Company by or on behalf of the Underwriters specifically for inclusion in the Registration Statement, any Preliminary Prospectus, the Time of Sale Disclosure Package, the Prospectus or any issuer free writing prospectus.

7. ***Representations and Agreements to Survive Delivery***. All representations, warranties, and agreements of the Company herein or in certificates delivered pursuant hereto, and the agreements of the several Underwriters and the Company contained in Section 6 hereof, shall remain operative and in full force and effect regardless of any investigation made by or on behalf of any Underwriter or any controlling person thereof, or the Company or any of its officers, directors, or controlling persons, and shall survive delivery of, and payment for, the Securities to and by the Underwriters hereunder and any termination of this Agreement.

8. ***Substitution of Underwriters***.

(a) *Obligation to Purchase Under Certain Circumstances*. If any Underwriter or Underwriters shall fail to take up and pay for the amount of Firm Shares agreed by such Underwriter or Underwriters to be purchased hereunder, upon tender of such Firm Shares in accordance with the terms hereof, and the amount of Firm Shares not purchased does not aggregate more than 10% of the total amount of Firm Shares set forth in Schedule I hereto, the remaining Underwriters shall be obligated to take up and pay for (in proportion to their respective underwriting obligations hereunder as set forth in Schedule I hereto except as may otherwise be determined by you) the Firm Shares that the withdrawing or defaulting Underwriters agreed but failed to purchase.

(b) *Termination Under Certain Circumstances*. If any Underwriter or Underwriters shall fail to take up and pay for the amount of Firm Shares agreed by such Underwriter or Underwriters to be purchased hereunder, upon tender of such Firm Shares in accordance with the terms hereof, and the amount of Firm Shares not purchased aggregates more than 10% of the total amount of Firm Shares set forth in Schedule I hereto, and arrangements satisfactory to you for the purchase of such Firm Shares by other persons are not made within 36 hours thereafter, this Agreement shall terminate. In the event of any such termination the Company shall not be under any liability to any Underwriter (except to the extent provided in Section 4(a)(vii) and Section 6 hereof) nor shall any Underwriter (other than an Underwriter who shall have failed, otherwise than for some reason permitted under this Agreement, to purchase the amount of Firm Shares agreed by such Underwriter to be purchased hereunder) be under any liability to the Company (except to the extent provided in Section 6 hereof).

(c) *Postponement of Closing*. If Firm Shares to which a default relates are to be purchased by the non-defaulting Underwriters or by any other party or parties, the Representatives or the Company shall have the right to postpone the First Closing Date for not more than seven business days in order that the necessary changes in the Registration Statement, in the Time of Sale Disclosure Package, in the Prospectus or in any other documents, as well as any other arrangements, may be effected. As used herein, the term "Underwriter" includes any person substituted for an Underwriter under this Section 8.

(d) *No Relief from Liability*. No action taken pursuant to this Section shall relieve any defaulting Underwriter from liability, if any, in respect of such default.

9. ***Termination***.

(a) *Right to Terminate*. You, as Representatives of the several Underwriters, shall have the right to terminate this Agreement by giving notice as hereinafter specified at any time at or prior to the First Closing Date, and the option referred to in Section 3(b), if exercised, may be cancelled at any time prior to the Second Closing Date, if (i) the Company shall have failed, refused or been unable, at or prior to such Closing Date, to perform any agreement on its part to be performed hereunder, (ii) any other condition of the Underwriters' obligations hereunder is not fulfilled, (iii) trading on the Nasdaq Stock Market or New York Stock Exchange shall have been wholly suspended, (iv) minimum or maximum prices for trading shall have been fixed, or maximum ranges for prices for securities shall have been required, on the Nasdaq Stock Market or New York Stock Exchange, by such Exchange or by order of the Commission or any other Governmental Authority, (v) a banking moratorium shall have been declared by U.S. federal or New York state authorities, or (vi) there shall have occurred any outbreak or escalation of hostilities or any change in financial markets or any calamity or crisis that, in your judgment, is material and adverse and makes it impractical or inadvisable to proceed with the completion of the sale of and payment for the Securities. Any such termination shall be without liability of any party to any other party except that the provisions of Section 4(a)(vii) and Section 6 hereof shall at all times be effective.

(b) *Notice of Termination*. If you elect to terminate this Agreement as provided in this Section, the Company shall be notified promptly by you by telephone, confirmed by letter.

10. ***Default by the Company***.

(a) *Default by the Company*. If the Company shall fail at the First Closing Date to sell and deliver the number of Securities which it is obligated to sell hereunder, then this Agreement shall terminate without any liability on the part of any Underwriter or, except as provided in Section 4(a)(vii) and Section 6 hereof, any non-defaulting party.

(b) *No Relief from Liability*. No action taken pursuant to this Section shall relieve the Company from liability, if any, in respect of such default.

Notices. Except as otherwise provided herein, all communications hereunder shall be in writing and, if to the Underwriters, shall be mailed via overnight delivery service or hand delivered via courier, to the Representatives c/o Piper Sandler & Co., 800 Nicollet Mall, Minneapolis, Minnesota 55402, to the attention of Equity Capital Markets and Cowen and Company, LLC, 599 Lexington Avenue, New York, New York 10022, Attention: Head of Equity Capital Markets, Fax: 646-562-1249 with a copy to the General Counsel, Fax: 646-562-1130; and (ii) if to the Company, shall be mailed or delivered to it at 12510 Prosperity Drive, Suite 370, Silver Spring, Maryland 20904 Attention: Jeffrey Hamet, with a copy to Latham & Watkins LLP, 200 Clarendon Street, Boston, Massachusetts 02116, Attention: Wesley C. Holmes, or in each case to such other address as the person to be notified may have requested in writing. Any party to this Agreement may change such address for notices by sending to the parties to this Agreement written notice of a new address for such purpose.

11. ***Persons Entitled to Benefit of Agreement***. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns and the controlling persons, officers and directors referred to in Section 6. Nothing in this Agreement is intended or shall be construed to give to any other person, firm or corporation any legal or equitable remedy or claim under or in respect of this Agreement or any provision herein contained. The term “successors and assigns” as herein used shall not include any purchaser, as such purchaser, of any of the Securities from any of the several Underwriters.

12. ***Absence of Fiduciary Relationship***. The Company acknowledges and agrees that: (a) the Representatives have been retained solely to act as underwriters in connection with the sale of the Securities and that no fiduciary, advisory or agency relationship between the Company and the Representatives have been created in respect of any of the transactions contemplated by this Agreement, irrespective of whether the Representatives have advised or are advising the Company on other matters; (b) the price and other terms of the Securities set forth in this Agreement were established by the Company following discussions and arms-length negotiations with the Representatives and the Company is capable of evaluating and understanding and understands and accepts the terms, risks and conditions of the transactions contemplated by this Agreement; (c) it has been advised that the Representatives and their affiliates are engaged in a broad range of transactions which may involve interests that differ from those of the Company and that the Representatives have no obligation to disclose such interest and transactions to the Company by virtue of any fiduciary, advisory or agency relationship; (d) it has been advised that the Representatives are acting, in respect of the transactions contemplated by this Agreement, solely for the benefit of the Representatives and the other Underwriters, and not on behalf of the Company; (e) it, he or she waives to the fullest extent permitted by law, any claims it may have against the Representatives for breach of fiduciary duty or alleged breach of fiduciary duty in respect of any of the transactions contemplated by this Agreement and agrees that the Representatives shall have no liability (whether direct or indirect) to the Company in respect of such a fiduciary duty claim on behalf of or in right of the Company, including stockholders, employees or creditors of the Company.

13. ***Recognition of the U.S. Special Resolution Regimes***.

(a) In the event that any Underwriter that is a Covered Entity becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer from such Underwriter of this Agreement, and any interest and obligation in or under this Agreement, will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if this Agreement, and any such interest and obligation, were governed by the laws of the United States or a state of the United States.

(b) In the event that any Underwriter that is a Covered Entity or a BHC Act Affiliate of such Underwriter becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under this Agreement that may be exercised against such Underwriter are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if this Agreement were governed by the laws of the United States or a state of the United States.

(c) As used in this section:

"***BHC Act Affiliate***" has the meaning assigned to the term "affiliate" in, and shall be interpreted in accordance with, 12 U.S.C. § 1841(k);

"***Covered Entity***" means any of the following: (i) a "covered entity" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b); (ii) a "covered bank" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or (iii) a "covered FSI" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b);

"***Default Right***" has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable; and

"***U.S. Special Resolution Regime***" means each of (i) the Federal Deposit Insurance Act and the regulations promulgated thereunder and (ii) Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act and the regulations promulgated thereunder.

14. ***Governing Law; Waiver of Jury Trial***. This Agreement and any transaction contemplated by this Agreement and any claim, controversy or dispute arising under or related thereto shall be governed by and construed in accordance with the laws of the State of New York without regard to principles of conflict of laws that would results in the application of any other law than the laws of the State of New York. The Company (on its behalf and, to the extent permitted by applicable law, on behalf of its stockholders and affiliates) and each of the Underwriters hereby irrevocably waives, to the fullest extent permitted by applicable law, any and all right to trial by jury in any legal proceeding arising out of or relating to this Agreement or the transactions contemplated hereby.

15. ***Counterparts***. This Agreement may be executed in one or more counterparts and, if executed in more than one counterpart, the executed counterparts shall each be deemed to be an original and all such counterparts shall together constitute one and the same instrument. Counterparts may be delivered via facsimile, electronic mail (including any electronic signature covered by the U.S. federal ESIGN Act of 2000, Uniform Electronic Transactions Act, the Electronic Signatures and Records Act or other applicable law, e.g., www.docusign.com) or other transmission method and any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes.

16. ***General Provisions.*** This Agreement constitutes the entire agreement of the parties to this Agreement and supersedes all prior written or oral and all contemporaneous oral agreements, understandings and negotiations with respect to the subject matter hereof. This Agreement may not be amended or modified unless in writing by all of the parties hereto, and no condition herein (express or implied) may be waived unless waived in writing by each party whom the condition is meant to benefit. The Section headings herein are for the convenience of the parties only and shall not affect the construction or interpretation of this Agreement.

[Signature Page Follows]

Please sign and return to the Company the enclosed duplicates of this Agreement whereupon this Agreement will become a binding agreement between the Company and the several Underwriters in accordance with its terms.

Very truly yours,

Aziyo Biologics, Inc.

By _____
Title _____

Confirmed as of the date first above mentioned, on behalf of themselves and the other several Underwriters named in Schedule I hereto.

Piper Sandler & Co.

By _____
Managing Director

Cowen and Company LLC

By _____
Managing Director

SCHEDULE I

Underwriter	Number of Firm Shares (1)
Piper Sandler & Co.	
Cowen and Company, LLC	
Cantor Fitzgerald & Co.	
Truist Securities, Inc.	
Total	

(1) The Underwriters may purchase up to an additional **[·]** Option Shares, to the extent the option described in Section 3(b) of the Agreement is exercised, in the proportions and in the manner described in the Agreement.

SCHEDULE II

List of Individuals and Entities Executing Lock-Up Agreements

[·]

SCHEDULE III

Certain Permitted Free Writing Prospectuses

[·]

SCHEDULE IV

Pricing Information

Number of Firm Shares Being Offered: [·]
Number of Option Shares Being Offered: [·]
Offering Price Per Share: $[·]
Underwriting Discounts and Commissions: [·]

SCHEDULE V

Written Testing-the-Waters Communications

[·]

EXHIBIT A

Form of Lock-Up Agreement

[See attached]

Lock-Up Agreement

, 2020

Piper Sandler & Co.
Cowen and Company, LLC
As representatives of the underwriters named
in Schedule II to the Underwriting Agreement
referred to below

c/o Piper Sandler & Co.
800 Nicollet Mall, Suite 800
Minneapolis, MN 55402

c/o Cowen and Company, LLC
599 Lexington Avenue
New York, New York 10022

Dear Sirs and Madams:

As an inducement to the underwriters (the ***"Underwriters"***) to execute an underwriting agreement (the ***"Underwriting Agreement"***) providing for a public offering (the ***"Offering"***) of common stock, par value $0.001 per share (the ***"Common Stock"***), of Aziyo Biologics, Inc. and any successor (by merger or otherwise) thereto (the ***"Company"***), the undersigned hereby agrees that without, in each case, the prior written consent of each of Piper Sandler & Co. and Cowen and Company, LLC (the "***Representatives***") during the period specified in the second succeeding paragraph (the ***"Lock-Up Period"***), the undersigned will not: (1) offer, pledge, announce the intention to sell, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, make any short sale or otherwise transfer or dispose of, directly or indirectly, any shares of Common Stock or any securities convertible into, exercisable or exchangeable for or that represent the right to receive Common Stock (including without limitation, Common Stock which may be deemed to be beneficially owned by the undersigned in accordance with the rules and regulations of the Securities and Exchange Commission and securities which may be issued upon the exercise of a stock option or warrant) whether now owned or hereafter acquired (the ***"Undersigned's Securities"***); (2) enter into any swap or other agreement that transfers, in whole or in part, any of the economic consequences of ownership of the Undersigned's Securities, whether any such transaction described in clause (1) or (2) above is to be settled by delivery of Common Stock or such other securities, in cash or otherwise; (3) make any demand for or exercise any right with respect to, the registration of any Common Stock or any security convertible into or exercisable or exchangeable for Common Stock; or (4) publicly disclose the intention to do any of the foregoing.

The undersigned agrees that the foregoing restrictions preclude the undersigned from engaging in any hedging or other transaction which is designed to or which reasonably could be expected to lead to or result in a sale or disposition of the Undersigned's Securities even if such securities would be disposed of by someone other than the undersigned. Such prohibited hedging or other transactions would include without limitation any short sale or any purchase, sale or grant of any right (including without limitation any put or call option) with respect to any of the Undersigned's Securities or with respect to any security that includes, relates to, or derives any significant part of its value from such securities.

The Lock-Up Period will commence on the date of this lock-up agreement (this "***Agreement***") and continue and include the date that is 180 days after the date of the final prospectus used to sell Common Stock in the Offering pursuant to the Underwriting Agreement, to which you are or expect to become parties.

If the undersigned is an officer or director of the Company, (i) each of the Representatives agrees that, at least three business days before the effective date of any release or waiver of the foregoing restrictions in connection with a transfer of shares of Common Stock, the Representatives will notify the Company of the impending release or waiver, and (ii) the Company has agreed (or expects to agree) in the Underwriting Agreement to announce the impending release or waiver by issuing a press release through a major news service at least two business days before the effective date of the release or waiver. Any release or waiver granted by the Representatives hereunder to any such officer or director shall only be effective two business days after the publication date of such press release. The provisions of this paragraph will not apply if both (a) the release or waiver is effected solely to permit a transfer not for consideration, and (b) the transferee has agreed in writing to be bound by the same terms described in this Agreement that are applicable to the transferor, to the extent and for the duration that such terms remain in effect at the time of the transfer.

Notwithstanding the foregoing, the undersigned may transfer or otherwise dispose of the Undersigned's Securities:

(i) as a *bona fide* gift or gifts;

(ii) to an immediate family member of the undersigned or to any trust, partnership, limited liability company or other entity for the direct or indirect benefit of the undersigned or the immediate family of the undersigned;

(iii) if the undersigned is a corporation, partnership, limited liability company, trust or other business entity (1) to a corporation, partnership, limited liability company, trust or other business entity that is a direct or indirect affiliate (as defined in Rule 405 promulgated under the Securities Act of 1933, as amended) of the undersigned or (2) in distributions of the Undersigned's Securities to current or former limited or general partners, limited liability company members, stockholders or other equity holders of the undersigned, or to the estate of any such partner, member, stockholder or other equity holder;

(iv) if the undersigned is a trust, to the beneficiary of such trust or the estate of any such beneficiary;

(v) by testate succession or intestate succession;

(vi) by operation of law, including pursuant to a qualified domestic relations order, or in connection with a divorce settlement or other order of a court or administrative or regulatory agency;

(vii) to a nominee or custodian of a person or entity to whom a disposition or transfer would be permissible under any of the foregoing clauses (i) through (vi) above; or

(viii) pursuant to the Underwriting Agreement;

provided, that (A) in the case of clauses (i)-(v) and (vii), such transfer shall not involve a disposition for value, (B) in the case of clauses (i)-(vii), each donee, devisee, transferee or distributee shall agree in writing with the Underwriters to be bound by the terms of this Agreement, and (C) in the case of clauses (i)-(iv) and (vii) no filing by any party under Section 16(a) of the Securities Exchange Act of 1934, as amended (the ***"Exchange Act"***), shall be required or shall be made voluntarily during the Lock-Up Period in connection with such transfer or distribution. For purposes of this Agreement, "immediate family" shall mean any relationship by blood, marriage, domestic partnership or adoption, not more remote than first cousin.

In addition, the foregoing restrictions shall not apply to:

(i) (a) the exercise or settlement, as the case may be, of stock options, restricted stock units or other equity awards granted pursuant to the Company's equity incentive plans described in the registration statement related to the Offering (the "***Registration Statement***"), or (b) the exercise of any warrant to purchase shares of Common Stock or any security convertible into or exercisable or exchangeable for Common Stock, which warrant is disclosed in the Registration Statement; *provided* that such restrictions shall apply to any of the Undersigned's Securities issued upon such exercise or settlement, and *provided further* that (x) no public filing, report or announcement shall be voluntarily made during the Lock-Up Period in connection with such exercise or settlement, and (y) if any filing under Section 16(a) of the Exchange Act, or any other public filing, report or announcement of such exercise or settlement shall, in the reasonable judgment of the undersigned, be legally required during the Lock-Up Period, such filing, report or announcement shall clearly indicate in the footnotes thereto the nature and circumstances of such transfer;

(ii) transfers of the Undersigned's Securities to the Company upon (a) a vesting event of any equity award granted under any equity incentive plan of the Company, or (b) the exercise or settlement, as applicable, of options, restricted stock units, other equity awards or warrants in accordance with clause (i) of this paragraph, in each case, on a "net" or "cashless" exercise basis and/or to cover tax withholding obligations in connection therewith; *provided* that such restrictions shall apply to any of the Undersigned's Securities issued upon such exercise or settlement, and *provided further* that (x) no public filing, report or announcement shall be voluntarily made during the Lock-Up Period in connection with such exercise or settlement, and (y) if any filing under Section 16(a) of the Exchange Act, or any other public filing, report or announcement of such exercise or settlement shall, in the reasonable judgment of the undersigned, be legally required during the Lock-Up Period, such filing, report or announcement shall clearly indicate in the footnotes thereto the nature and circumstances of such transfer;

(iii) transfers of the Undersigned's Securities to the Company in connection with the death or disability of the undersigned or the termination of the undersigned's employment or other service with the Company; *provided* that (x) no public filing, report or announcement shall be voluntarily made during the Lock-Up Period in connection with such transfer, and (y) if any filing under Section 16(a) of the Exchange Act, or any other public filing, report or announcement of such transfer shall, in the reasonable judgment of the undersigned, be legally required during the Lock-Up Period, such filing, report or announcement shall clearly indicate in the footnotes thereto the nature and circumstances of such transfer;

(iv) transfers of the Undersigned's Securities pursuant to a *bona fide* third party tender offer, merger, consolidation or other similar transaction that is approved by the board of directors of the Company and made to all holders of shares of Common Stock involving a change of control of the Company (for purposes hereof, "change of control" means the transfer (whether by tender offer, merger, consolidation or other similar transaction), in one transaction or a series of related transactions, to a person or group of affiliated persons, of shares of the Company's Common Stock if, after such transaction or transactions, such person or group of affiliated persons would hold more than 50% of the outstanding voting securities of the Company (or the surviving entity)); *provided* that in the event that such tender offer, merger, consolidation or other such transaction is not completed, the Undersigned's Securities shall remain subject to the restrictions contained in this Agreement;

(v) transfers or other dispositions of Common Stock purchased by the undersigned in the Offering (other than any issuer-directed Common Stock purchased by an executive officer or director of the Company) or in the open market following the Offering, *provided* that no filing under the Exchange Act shall be required or shall be voluntarily made during the Lock-Up Period in connection with subsequent sales of Common Stock purchased by the undersigned in the Offering or in the open market following the Offering;

(vi) the conversion of shares of the Company's convertible preferred stock or other securities convertible into or exercisable or exchangeable for shares of Common Stock into shares of Common Stock prior to or in connection with the consummation of the Offering; *provided* that any shares of Common Stock or other securities received upon such conversion shall be subject to the restrictions contained in this Agreement; or

(vii) the establishment of any contract, instruction or plan (a ***"Plan"***) that satisfies all of the applicable requirements of Rule 10b5-1(c)(1)(i)(B) under the Exchange Act; *provided* that (x) no sales or transfers of the Undersigned's Securities shall be made pursuant to such a Plan prior to the expiration of the Lock-Up Period, and (y) such a Plan may only be established if no public announcement of the establishment or existence thereof and no filing with the Securities and Exchange Commission or other regulatory authority in respect thereof or transactions thereunder or contemplated thereby, by the undersigned, the Company or any other person, shall be required, and no such announcement or filing is made voluntarily, by the undersigned, the Company or any other person, prior to the expiration of the Lock-Up Period unless, in any such case, such announcement or filing includes a statement to the effect that no transfer of Common Stock may be made under such plan during the Lock-Up Period.

The undersigned also agrees and consents to the entry of stop transfer instructions with the Company's transfer agent and registrar against the transfer of the Undersigned's Securities except in compliance with the foregoing restrictions. In furtherance of the foregoing, the Company and its transfer agent and registrar are hereby further authorized to decline to make any transfer of shares of Common Stock if such transfer would constitute a violation or breach of this Agreement.

The undersigned hereby represents and warrants that the undersigned has full power and authority to enter into this Agreement and that upon request, the undersigned will execute any additional documents reasonably necessary to ensure the validity or enforcement of this Agreement. All authority herein conferred or agreed to be conferred and any obligations of the undersigned shall be binding upon the successors, assigns, heirs or personal representatives of the undersigned.

The undersigned understands that this Agreement will automatically terminate and the undersigned shall be released from all obligations under this Agreement if (i) the Company, on the one hand, or the Representatives, on the other hand, notifies the other that it does not intend to proceed with the Offering, (ii) the Underwriting Agreement does not become effective, or the Underwriting Agreement (other than the provisions thereof which survive termination) shall terminate or be terminated prior to payment for and delivery of the Common Stock to be sold thereunder, or (iii) the Underwriting Agreement has not been executed by February 15, 2021.

The undersigned understands that the Underwriters are entering into the Underwriting Agreement and proceeding with the Offering in reliance upon this Agreement.

This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York.

[*Signature page follows*]

Very truly yours,

_____

Printed Name of Holder

By: _____

Signature

_____

Printed Name of Person Signing
(and indicate capacity of person
signing if signing as custodian,
trustee, or on behalf of an entity)

EXHIBIT B

Form of Company Press Release for Waivers or Releases of Officer/Director Lock-Up Agreements

Aziyo Biologics, Inc.

[Date]

Aziyo Biologics, Inc. (the "Company") announced today that Piper Sandler and Cowen and Company, LLC, as the representatives of the underwriters, are [waiving] [releasing] [a] lock-up restriction[s] with respect to an aggregate of [#] common shares held by certain [officers] [directors] of the Company. These [officers] [directors] entered into lock-up agreements with the representatives in connection with the Company's initial public offering.

This [waiver] [release] will take effect on **[date that is at least 2 business days following date of this press release].

This press release is not an offer for sale of the securities in the United States or in any other jurisdiction where such offer is prohibited, and such securities may not be offered or sold in the United States absent registration or an exemption from registration under the United States Securities Act of 1933, as amended.

CERTIFICATE OF AMENDMENT

TO

AMENDED AND RESTATED CERTIFICATE OF INCORPORATION

OF

AZIYO BIOLOGICS, INC.

Aziyo Biologics, Inc., a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware (the "Corporation"), DOES HEREBY CERTIFY:

FIRST: That the Board of Directors of the Corporation duly adopted resolutions at a meeting recommending and declaring advisable that the Amended and Restated Certificate of Incorporation of the Corporation be amended and that such amendments be submitted to the stockholders of the Corporation for their consideration, as follows:

RESOLVED, that Part A of Article IV of the Amended and Restated Certificate of Incorporation of the Corporation be amended and restated in its entirety to read as follows:

"Classes of Stock. Effective on the filing of this Certificate of Amendment to Amended and Restated Certificate of Incorporation with the Secretary of State of the State of Delaware (the "**Amendment Effective Time**"), a one-for-13.9549 reverse split of each class of the Corporation's Common Stock shall become effective, pursuant to which each 13.9549 shares of each class of Common Stock outstanding and held of record by each stockholder of the Corporation (including treasury shares) immediately prior to the Amendment Effective Time shall be reclassified and combined into one validly issued, fully-paid and nonassessable share of such class of Common Stock automatically and without any action by the holder thereof upon the Amendment Effective Time and shall represent one share of such class of Common Stock from and after the Amendment Effective Time (such reclassification and combination of shares, the "**Reverse Stock Split**"). The par value of each class of the Common Stock and each class of the Preferred Stock following the Reverse Stock Split shall remain at $0.001 per share. No fractional shares of Common Stock shall be issued as a result of the Reverse Stock Split and, in lieu thereof, upon surrender after the Amendment Effective Time of a certificate which formerly represented shares of any class of Common Stock that were issued and outstanding immediately prior to the Amendment Effective Time, any person who would otherwise be entitled to a fractional share of such class of Common Stock as a result of the Reverse Stock Split, following the Amendment Effective Time, shall be entitled to receive a cash payment equal to the fraction of which such holder would otherwise be entitled multiplied by the fair market value per share as determined in good faith by the Board of Directors.

Each stock certificate that, immediately prior to the Amendment Effective Time, represented shares of any class of Common Stock that were issued and outstanding immediately prior to the Amendment Effective Time shall, from and after the Amendment Effective Time, automatically and without the necessity of presenting the same for exchange, represent that number of whole shares of such class of Common Stock after the Amendment Effective Time into which the shares formerly represented by such certificate have been reclassified (as well as the right to receive cash in lieu of fractional shares of Common Stock after the Amendment Effective Time); provided, however, that each person of record holding a certificate that represented shares of any class of Common Stock that were issued and outstanding immediately prior to the Amendment Effective Time shall receive, upon surrender of such certificate, a new certificate evidencing and representing the number of whole shares of such class of Common Stock after the Amendment Effective Time into which the shares of such class of Common Stock formerly represented by such certificate shall have been reclassified; and provided further, however, that whether or not fractional shares would be issuable as a result of the Reverse Stock Split shall be determined on the basis of (i) the total number of shares of any class of Common Stock that were issued and outstanding immediately prior to the Amendment Effective Time formerly represented by certificates that the holder is at the time surrendering for a new certificate evidencing and representing the number of whole shares of such class of Common Stock after the Amendment Effective Time and (ii) the aggregate number of shares of such class of Common Stock after the Amendment Effective Time into which the shares of such class of Common Stock formerly represented by such certificates shall have been reclassified.

The Corporation is authorized to issue shares of Preferred Stock ("***Preferred Stock***") and Common Stock ("***Common Stock***"). The total number of shares that the Company is authorized to issue is 289,889,536. The total number of shares of Preferred Stock that the Corporation shall have authority to issue is 69,889,536, of which 51,505,000 are designated as Series A Preferred Stock (the "***Series A Preferred Stock***") and 18,384,536 are designated as Series A-1 Preferred Stock (the "***Series A-1 Preferred Stock***" and, together with the Series A Preferred Stock, the "***Series A/A-1 Preferred Stock***"). The total number of shares of Common Stock that the Corporation shall have authority to issue is 220,000,000, of which 200,000,000 are designated as Class A Common Stock (the "***Class A Common Stock***" and 20,000,000 are designated as Class B Common Stock (the "***Class B Common Stock***"). The Preferred Stock shall have a par value of $0.001 per share and the Common Stock shall have a par value of $0.001 per share."

RESOLVED, that the introductory text of Section 4 of Part B of Article IV of the Amended and Restated Certificate of Incorporation of the Corporation be amended and restated in its entirety to read as follows:

"Conversion. The holders of the Series A/A-1 Preferred Stock shall have conversion rights as follows:"

RESOLVED, that Subsection 4(b)(i) of Part B of Article IV of the Amended and Restated Certificate of Incorporation of the Corporation be amended and restated in its entirety to read as follows:

"*Initial Public Offering*. Each share of Series A Preferred Stock shall automatically be converted into shares of Class A Common Stock and each share of Series A-1 Preferred Stock shall automatically be converted into shares of Class B Common Stock (as set forth in Section (B)4(a)), in each case, upon: (x) the date and time, or the occurrence of an event, specified by written consent of the Required Holders for the conversion of all outstanding shares of Series A/A-1 Preferred Stock; *provided, however,* that without the consent of the holders of a majority of the then outstanding shares of Series A-1 Preferred Stock, the Series A-1 Preferred Stock shall not be converted pursuant to this clause (x) except during an Exchange Act Registration Period; (y) immediately prior to the closing of the sale of shares of Class A Common Stock to the public at a price of at least $5.00 per share (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Common Stock), in an underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended (the "*Securities Act*"), resulting in at least $30,000,000 of gross proceeds to the Corporation, *provided* that such closing occurs during an Exchange Act Registration Period; or (z) the closing of the sale of shares of Class A Common Stock (and/or Class B Common Stock, if applicable) to the public in an underwritten offering pursuant to the Corporation's Registration Statement on Form S-1 (Reg. No. 333-248788), *provided* that such closing occurs during an Exchange Act Registration Period (any such underwritten public offering described in clause (y) or (z), a "*Qualified IPO*"). Such conversions shall be automatic, without need for any further action by the holders of shares of Series A Preferred Stock or Series A-1 Preferred Stock and regardless of whether the certificates representing such shares are surrendered to the Corporation or its transfer agent; *provided, however,* that the Corporation shall not be obligated to issue certificates evidencing the shares of Common Stock issuable upon such conversions unless certificates evidencing such shares of Series A/A-1 Preferred Stock so converted are surrendered to the Corporation or the holder of record of such shares notifies the Corporation that such certificates have been lost, stolen or destroyed and such holder executes an agreement to indemnify the Corporation from any loss incurred by it in connection with such certificates, in each case in accordance with the procedures described in Section (B)4(c) below. Upon the conversion of Series A/A-1 Preferred Stock pursuant to this Section (B)4(b), the Corporation shall promptly send written notice thereof, by registered or certified mail, return receipt requested and postage prepaid, by hand delivery or by overnight delivery, to each holder of record of Series A/A-1 Preferred Stock at such holder's address then shown on the records of the Corporation, which notice shall state that certificates evidencing shares of Series A/A-1 Preferred Stock must be surrendered at the office of the Corporation (or of its transfer agent for the Common Stock, if applicable) in the manner described in Section (B)4(c) below."

SECOND: That in lieu of a meeting and vote of stockholders, the stockholders have given written consent to said amendments in accordance with the provisions of Section 228 of the General Corporation Law of the State of Delaware.

THIRD: That the aforesaid amendments were duly adopted in accordance with the applicable provisions of Section 242 of the General Corporation Law of the State of Delaware.

* * *

IN WITNESS WHEREOF, the Corporation has caused this Certificate of Amendment to be signed by Ronald Lloyd, the President and Chief Executive Officer of the Corporation, this 29th day of September, 2020.

AZIYO BIOLOGICS, INC.

By: /s/ Ronald Lloyd
Ronald Lloyd
President and Chief Executive Officer

AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION
OF
AZIYO BIOLOGICS, INC.
a Delaware Corporation

(Pursuant to Sections 242 and 245 of the
General Corporation Law of the State of Delaware)

Aziyo Biologics, Inc., a corporation organized and existing under and by virtue of the provisions of the General Corporation Law of the State of Delaware (the "***DGCL***"),

DOES HEREBY CERTIFY:

1. That the name of this corporation is Aziyo Biologics, Inc., and that this corporation was originally incorporated pursuant to the DGCL on August 6, 2015.

2. That the Board of Directors duly adopted resolutions proposing to amend and restate the Amended and Restated Certificate of Incorporation of this corporation, as amended, declaring said amendment and restatement to be advisable and in the best interests of this corporation and its stockholders, and authorizing the appropriate officers of this corporation to solicit the consent of the stockholders therefor, which resolution setting forth the proposed amendment and restatement is as follows:

RESOLVED, that the Amended and Restated Certificate of Incorporation of this corporation, as amended, be amended and restated in its entirety to read as follows:

ARTICLE I

The name of this corporation (the "***Corporation***") is Aziyo Biologics, Inc.

ARTICLE II

The address of the Corporation's registered office in the State of Delaware is 251 Little Falls Drive, in the City of Wilmington, County of New Castle, Delaware 19808. The Corporation's registered agent at such address is Corporation Service Company.

ARTICLE III

The nature of the business or purposes to be conducted or promoted by the Corporation is to engage in any lawful act or activity for which corporations may be organized under the DGCL.

ARTICLE IV

A. Classes of Stock. The Corporation is authorized to issue shares of Preferred Stock ("***Preferred Stock***") and Common Stock ("***Common Stock***"). The total number of shares that the Company is authorized to issue is 155,274,072. The total number of shares of Preferred Stock that the Corporation shall have authority to issue is 69,889,536, of which 51,505,000 are designated as Series A Preferred Stock (the "***Series A Preferred Stock"***) and 18,384,536 are designated as Series A-1 Preferred Stock (the "***Series A-1 Preferred Stock***" and, together with the Series A Preferred Stock, the "***Series A/A-1 Preferred Stock***"). The total number of shares of Common Stock that the Corporation shall have authority to issue is 85,384,536, of which 67,000,000 are designated as "Class A Common Stock" (the "***Class A Common Stock***" and 18,384,536 are designated as "Class B Common Stock" (the "***Class B Common Stock***"). The Preferred Stock shall have a par value of $0.001 per share and the Common Stock shall have a par value of $0.001 per share.

Immediately upon the effectiveness of this Amended and Restated Certificate of Incorporation (the "***Effective Time***"), each share of the Corporation's Common Stock issued and outstanding or held as treasury stock immediately prior to the Effective Time, shall, automatically and without further action by any stockholder, be reclassified as, and shall become, one share of Class A Common Stock. Any stock certificate that immediately prior to the Effective Time represented shares of the Corporation's Common Stock shall from and after the Effective Time be deemed to represent shares of Class A Common Stock, without the need for surrender or exchange thereof.

B. Rights Preferences and Restrictions of Preferred Stock. The rights, preferences, privileges, restrictions and other matters relating to the Preferred Stock are as follows:

1. Identical Rights.

(a) Except as otherwise provided in this Amended and Restated Certificate of Incorporation or required by applicable law, all shares of Series A/A-1 Preferred Stock shall have the same rights and powers, rank equally (including as to dividends and distributions, and upon any liquidation, dissolution or winding up of the Corporation), share ratably and be identical in all respects as to all matters.

(b) If the Corporation in any manner subdivides (by stock split or otherwise) or combines (by reverse stock split or otherwise) the outstanding shares of Series A Preferred Stock or Series A-1 Preferred Stock, then all outstanding shares of Series A/A-1 Preferred Stock will be subdivided or combined in the same proportion and manner.

2. Dividends.

(a) Any dividend or other distribution (other than dividends on shares of Common Stock payable solely in the form of shares of Common Stock) that is declared, paid or set aside by the Corporation shall be made in accordance with the preferences and priorities set forth in Section (B)3(a) and Section (B)3(b) as if such dividend or distribution were made in a liquidation of the Corporation.

(b) Without limiting the provisions of Section (B)2(a) of this Article IV, the Corporation shall not declare or pay any dividend or make any other distribution to the holders of Series A/A-1 Preferred Stock unless the same dividend or distribution with the same record date and payment date shall be declared and paid on all shares of Series A/A-1 Preferred Stock; *provided*, *however*, that any dividend or other distribution payable in additional shares of Series A/A-1 Preferred Stock or rights to acquire shares of Series A/A-1 Preferred Stock shall be payable on the Series A Preferred Stock in additional shares of Series A Preferred Stock or rights to acquire shares of Series A Preferred Stock and on the Series A-1 Preferred Stock in additional shares of Series A-1 Preferred Stock or rights to acquire shares of Series A-1 Preferred Stock, in each case, at the same rate and with the same record date and payment date.

3. Liquidation Preference.

(a) In the event of any liquidation, dissolution or winding up of the Corporation, either voluntary or involuntary (including, without limitation, upon any bankruptcy), the holders of Series A/A-1 Preferred Stock shall be entitled to receive, prior and in preference to any distribution of any of the assets or funds of the Corporation to holders of Common Stock, by reason of their ownership of such stock, for each share of Series A/A-1 Preferred Stock, the sum of (i) $1.00 (as adjusted for any stock dividends, combinations, splits, recapitalizations and similar events with respect to such shares of Series A Preferred Stock, the "***Original Series A/A-1 Issue Price***") and (ii) the amount of all declared but unpaid dividends on such share of Series A/A-1 Preferred Stock (such sum, the "***Series A/A-1 Preference Amount***"). In the event that the assets and funds legally available for distribution to the stockholders of the Corporation are insufficient to pay the Series A/A-1 Preference Amount in respect of each share of Series A/A-1 Preferred Stock as set forth above, then all funds or assets legally available for distribution to the holders of Series A/A-1 Preferred Stock shall be paid to such holders of Series A/A-1 Preferred Stock pro rata based on the dollar amount to which they are otherwise entitled under this Section (B)3(a).

(b) In the event of any liquidation, dissolution or winding up of the Corporation, either voluntary or involuntary (including, without limitation, upon any bankruptcy), after, and only after, full payment has been made to the holders of the Series A/A-1 Preferred Stock required by Section (B)3(a), the holders of Common Stock and the Series A/A-1 Preferred Stock shall be entitled to share ratably in all remaining assets and funds, if any, based upon the number of shares of Common Stock then held, with each share of Series A/A-1 Preferred Stock treated as the number of shares of Common Stock into which such share of Series A/A-1 Preferred Stock is then convertible.

(c) (i) For purposes of this Section (B)3, unless otherwise agreed to in writing by the holders of at least seventy-five percent (75%) of the then outstanding shares of Series A/A-1 Preferred Stock (the "***Required Holders***"), a liquidation, dissolution or winding up of the Corporation shall be deemed to be occasioned by, and to include: (A) any transaction or series of related transactions (including, without limitation, any reorganization, share exchange, consolidation or merger of the Corporation with or into any other entity but excluding any sale of capital stock by the Corporation for capital raising purposes) (x) in which the holders of the Corporation's outstanding capital stock immediately before the first such transaction do not, immediately after any other such transaction, retain stock or other equity interests representing at least fifty percent (50%) of the voting power of the surviving entity of such transaction or (y) in which at least fifty percent (50%) of the Corporation's outstanding capital stock is transferred (calculated on an as-converted to Common Stock basis); or (B) any sale, conveyance, exclusive license or other disposition of all or substantially all of the assets of the Corporation (any such transaction, a "***Sale Transaction***"). Unless otherwise agreed to in writing by the Required Holders, no stockholder of the Corporation shall enter into any transaction or series of related transactions resulting in a liquidation, dissolution or winding up of the Corporation pursuant to the terms hereof unless the terms of such transaction or transactions provide that the consideration to be paid to the stockholders of the Corporation is to be allocated in accordance with the preferences and priorities set forth in this Section (B)3.

(ii) In the event of any Sale Transaction, if the consideration received by the Corporation is other than cash, its value will be deemed its fair market value as determined by the Board of Directors of the Corporation (the "***Board***") in good faith. Any securities shall be valued as follows:

(A) Securities not subject to investment letter or other similar restrictions on free marketability covered by (B) below:

(1) If such securities are traded on a securities exchange, the value shall be deemed to be the average of the closing prices of the securities on such exchange over the fourteen-day period ending three (3) days prior to the closing; and

(2) If such securities are not traded on a securities exchange, the value shall be the fair market value thereof, as determined by the Board in good faith.

(B) The method of valuation of securities subject to investment letter or other restrictions on free marketability (other than restrictions arising solely by virtue of a stockholder's status as an affiliate or former affiliate) shall be to make an appropriate discount from the market value determined as above in (A)(1) or (2) to reflect the approximate fair market value thereof, as determined by the Board in good faith.

(iii) Notwithstanding any other provision set forth in this Section (B)3, in the event that any consideration payable to the Corporation or its stockholders in connection with any Sale Transaction is contingent upon the occurrence of any event or the passage of time (including, without limitation, any deferred purchase price payments, installment payments, payments made in respect of any promissory note issued in such transaction, payments from escrow, purchase price adjustment payments or payments in respect of "earnouts" or holdbacks) (the "***Contingent Consideration***"), such Contingent Consideration shall not be deemed received by the Corporation or its stockholders or available for distribution to such stockholders unless and until the contingencies related to such Contingent Consideration are satisfied and such Contingent Consideration is indefeasibly received by the Corporation or its stockholders in accordance with the terms of such Sale Transaction. The definitive agreement with respect to such Sale Transaction shall provide that (A) the portion of such consideration that is not Contingent Consideration (the "***Initial Consideration***") shall be allocated among the stockholders of the Corporation in accordance with Section (B)3 as if the Initial Consideration were the only consideration payable in connection with such Sale Transaction and (B) any Contingent Consideration which becomes payable to the stockholders of the Corporation upon the release from escrow or the satisfaction of the applicable contingencies shall be allocated among the stockholders of the Corporation in accordance with Section (B)3 after taking into account the previous payment of the Initial Consideration as part of the same transaction.

(d) For the avoidance of doubt, subject to Section (B)2(b), any cash, securities or other property paid or payable in respect of shares of Series A/A-1 Preferred Stock (upon the redemption thereof or otherwise) shall be paid pro rata, on an equal priority, *pari passu* basis, to the holders of each class or series of Series A/A-1 Preferred Stock, unless different treatment of the shares of any such class or series is approved by the affirmative vote of the holders of a majority of each class or series of Series A/A-1 Preferred Stock.

4. Conversion. The holders of the Series A Preferred Stock shall have conversion rights as follows:

(a) Right to Convert.

(i) Except as set forth in Section (B)4(a)(ii), each share of Series A/A-1 Preferred Stock shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share, at the office of the Corporation or any transfer agent for such stock, into fully paid and nonassessable shares of Class A Common Stock of the Corporation. The number of shares of Class A Common Stock into which each share of Series A/A-1 Preferred Stock may be converted shall be determined by dividing the Original Series A/A-1 Issue Price by the Series A/A-1 Conversion Price in effect on the date that the holder thereof elects to convert such share.

(ii) Notwithstanding anything to the contrary contained herein, during the period commencing immediately prior to the effectiveness of any registration of the Class A Common Stock under Section 12 of the Securities Exchange Act of 1934, as amended (the "***Exchange Act***"), and ending immediately following such time after such effectiveness as the Class A Common Stock is not deemed to constitute an "equity security" pursuant to Rule 13d-1(i) under the Exchange Act (an "***Exchange Act Registration Period***") or such earlier time as such Exchange Act Registration Period terminates in accordance with this paragraph, shares of Series A-1 Preferred Stock shall not be convertible into Class A Common Stock, but instead each share of Series A-1 Preferred Stock shall be convertible, at the option of the holder thereof, at the office of the Corporation or any transfer agent for such stock, into fully paid and nonassessable shares of Class B Common Stock of the Corporation. The number of shares of Class B Common Stock into which each share of Series A-1 Preferred Stock may be converted shall be determined by dividing the Original Series A/A-1 Issue Price by the Series A/A-1 Conversion Price in effect on the date that the holder thereof elects to convert such share. Notwithstanding anything to the contrary contained herein, any Exchange Act Registration Period shall automatically terminate upon the earliest to occur of (x) 5:00 p.m. (New York City time) on the third (3rd) Business Day following the commencement of the Exchange Act Registration Period, if the Company shall not prior to such time have entered into an underwriting agreement with respect to a proposed initial underwritten public offering of the Class A Common Stock, (y) the termination of an underwriting agreement entered into in connection with a proposed initial underwritten public offering of the Class A Common Stock, if such initial public offering shall not have been consummated prior to such termination, and (z) 5:00 p.m. (New York City time) on the tenth (10th) Business Day following the commencement of the Exchange Act Registration Period, if the Company shall not prior to such time have consummated a Qualified IPO (as defined below).

(iii) For an initial underwritten public offering of the Corporation's Class A Common Stock, (A) in addition to the shares of Class A Common Stock otherwise issuable upon conversion of the Series A Preferred Stock pursuant to this Section (B)4 there shall be issued immediately prior to the consummation of the public offering, and in any event prior to any conversion of the Series A Preferred Stock pursuant to Section (B)4(b)(i), to the holders of the Series A Preferred Stock, for each share of Series A Preferred Stock held, the number of shares of Class A Common Stock as is determined by dividing the Series A/A-1 Preference Amount by the price per share of Common Stock in such public offering; and (B) in addition to the shares of Class B Common Stock otherwise issuable upon conversion of the Series A-1 Preferred Stock pursuant to this Section (B)4, there shall be issued immediately prior to the consummation of the public offering, and in any event prior to the conversion of the Series A-1 Preferred Stock pursuant to Section (B)4(b)(i), to the holders of the Series A-1 Preferred Stock, for each share of Series A-1 Preferred Stock held, the number of shares of Class B Common Stock as is determined by dividing the Series A/A-1 Preference Amount by the price per share of Class A Common Stock in such public offering

(iv) The initial Series A/A-1 Conversion Price is the Original Series A/A-1 Issue Price. The Series A/A-1 Conversion Price is subject to adjustment as set forth in this Section (B)4.

(b) Automatic Conversion.

(i) *Initial Public Offering*. Each share of Series A Preferred Stock shall automatically be converted into shares of Class A Common Stock and each share of Series A-1 Preferred Stock shall automatically be converted into shares of Class B Common Stock (as set forth in Section (B)4(a)), in each case, upon: (y) the date and time, or the occurrence of an event, specified by written consent of the Required Holders for the conversion of all outstanding shares of Series A/A-1 Preferred Stock; *provided*, *however*, that without the consent of the holders of a majority of the then outstanding shares of Series A-1 Preferred Stock, the Series A-1 Preferred Stock shall not be converted pursuant to this clause (y) except during an Exchange Act Registration Period; or (z) immediately prior to the closing of the sale of shares of Class A Common Stock to the public at a price of at least $5.00 per share (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Common Stock), in an underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended (the "***Securities Act***"), resulting in at least $30,000,000 of gross proceeds to the Corporation (a "***Qualified IPO***"), *provided* that such closing occurs during an Exchange Act Registration Period. Such conversions shall be automatic, without need for any further action by the holders of shares of Series A Preferred Stock or Series A-1 Preferred Stock and regardless of whether the certificates representing such shares are surrendered to the Corporation or its transfer agent; *provided, however,* that the Corporation shall not be obligated to issue certificates evidencing the shares of Common Stock issuable upon such conversions unless certificates evidencing such shares of Series A/A-1 Preferred Stock so converted are surrendered to the Corporation or the holder of record of such shares notifies the Corporation that such certificates have been lost, stolen or destroyed and such holder executes an agreement to indemnify the Corporation from any loss incurred by it in connection with such certificates, in each case in accordance with the procedures described in Section (B)4(c) below. Upon the conversion of Series A/A-1 Preferred Stock pursuant to this Section (B)4(b), the Corporation shall promptly send written notice thereof, by registered or certified mail, return receipt requested and postage prepaid, by hand delivery or by overnight delivery, to each holder of record of Series A Preferred Stock at such holder's address then shown on the records of the Corporation, which notice shall state that certificates evidencing shares of Series A Preferred Stock must be surrendered at the office of the Corporation (or of its transfer agent for the Common Stock, if applicable) in the manner described in Section (B)4(c) below.

(ii) *Certain Transfers*. Upon a transfer of shares of Series A-1 Preferred Stock by a holder to a Person that is neither an Affiliate of a holder nor a Person whose beneficial ownership of Class A Common Stock would be aggregated with such holder's for purposes of Section 13(d) of the Exchange Act and the applicable regulations of the Commission (as defined below), each share of Series A-1 Preferred Stock so transferred shall automatically upon such transfer, without further action by the transferor or transferee thereof, convert into a share of Series A Preferred Stock.

(c) Mechanics of Conversion. Before any holder of Series A Preferred Stock or Series A-1 Preferred Stock shall be entitled to receive certificates representing shares of Class A Common Stock or Class B Common Stock, as applicable, into which such shares of Series A/A-1 Preferred Stock are converted pursuant to this Section (B)4, such holder shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Corporation or of any transfer agent for such Series A/A-1 Preferred Stock (or such holder notifies the Corporation that such certificates have been lost, stolen or destroyed and such holder executes an agreement to indemnify the Corporation from any loss incurred by it in connection with such certificates), and shall give written notice to the Corporation at such office of the name or names in which the certificate or certificates for shares of Common Stock are to be issued. The Corporation shall, as soon as practicable and in no event later than ten (10) days after the delivery of said certificates (i) issue and deliver to such holder of Series A/A-1 Preferred Stock, or to his, her or its nominees, a certificate or certificates for the number of full shares of Class A Common Stock issuable upon such conversion of Series A Preferred Stock or a certificate or certificates for the number of full shares of Class B Common Stock issuable upon such conversion of Series A-1 Preferred Stock, in each case, in accordance with the provisions hereof and a certificate for the number (if any) of the shares of Series A Preferred Stock or Series A-1 Preferred Stock, as applicable, represented by the surrendered certificate that were not converted into the applicable class of Common Stock and (ii) pay in cash such amount as provided in Section (B)4(f) in lieu of any fraction of a share of Common Stock otherwise issuable upon such conversion. The person or persons entitled to receive the shares of Class A Common Stock or Class B Common Stock issuable upon such conversion pursuant to this Section (B)4 shall be treated for all purposes as the record holder or holders of such shares of Class A Common Stock or Class B Common Stock as of the effective date of such conversion. If the conversion is pursuant to Section (B)4(a) in connection with an underwritten offering of securities registered pursuant to the Securities Act, the conversion may, at the option of any holder tendering Series A Preferred Stock or Series A-1 Preferred Stock for conversion, be conditioned upon the closing with the underwriters of the sale of securities pursuant to such offering, in which event the person(s) entitled to receive the Class A Common Stock or Class B Common Stock, as applicable, upon conversion of the Series A/A-1 Preferred Stock shall not be deemed to have converted such Series A/A-1 Preferred Stock until immediately prior to the closing of such sale of securities.

(d) Conversion Price Adjustments for Splits and Combinations. The Series A/A-1 Conversion Price shall be subject to adjustment from time to time as follows:

(i) In the event that the Corporation should at any time, or from time to time, after the date of this Amended and Restated Certificate of Incorporation, fix a record date for the effectuation of a split or subdivision of the outstanding shares of Common Stock or the determination of holders of Common Stock entitled to receive a dividend or other distribution payable in additional shares of Common Stock or other securities or rights convertible into, or entitling the holder thereof to receive directly or indirectly, additional shares of Common Stock ("***Common Stock Equivalents***") without payment of any consideration by such holder for the additional shares of Common Stock or Common Stock Equivalents (including the additional shares of Common Stock issuable upon conversion or exercise thereof), then, as of such record date (or the date of such dividend distribution, split or subdivision if no record date is fixed), the Series A/A-1 Conversion Price shall be appropriately decreased so that the number of shares of Common Stock issuable on conversion thereof shall be increased in proportion to such increase of the aggregate of shares of Common Stock outstanding and those issuable with respect to such Common Stock Equivalents.

(ii) If the number of shares of Common Stock outstanding at any time after the date of this Amended and Restated Certificate of Incorporation is decreased by a combination of the outstanding shares of Common Stock, then, following the record date of such combination, the Series A/A-1 Conversion Price shall be appropriately increased so that the number of shares of Common Stock issuable on conversion thereof shall be decreased in proportion to such decrease in outstanding shares.

(e) Reorganizations, Mergers or Consolidations. If, at any time, or from time to time, the Common Stock is converted into other securities, assets or property, whether pursuant to a reorganization, merger, consolidation, sale of all or substantially all of the Corporation's assets or otherwise (other than a subdivision or combination provided for elsewhere in this Section 4 or a Sale Transaction constituting a deemed liquidation of the Corporation pursuant to Section 3), provision shall be made so that the holders of the Series A/A-1 Preferred Stock shall thereafter be entitled to receive upon conversion of the Series A/A-1 Preferred Stock, the number of shares of stock or other securities, assets or property of the Corporation or otherwise to which a holder of Common Stock deliverable upon conversion would have been entitled in connection with such transaction.

(f) No Fractional Shares and Certificate as to Adjustments.

(i) No fractional shares shall be issued upon the conversion of any share or shares of the Series A/A-1 Preferred Stock and, in lieu of any fractional shares to which such holder would otherwise be entitled, the Corporation shall pay cash equal to such fraction multiplied by the then effective fair market value of such share, as determined by the Board in good faith. Whether or not fractional shares would be issuable upon such conversion shall be determined on the basis of (x) with respect to shares issuable upon the conversion of Series A Preferred Stock, the total number of shares of Series A Preferred Stock the holder is at the time converting into Class A Common Stock and the aggregate number of shares of Class A Common Stock issuable upon such conversion and (y) with respect to shares issuable upon the conversion of Series A-1 Preferred Stock, the total number of shares of Series A-1 Preferred Stock the holder is at the time converting into Class A Common Stock (or Class B Common Stock, as applicable) and the aggregate number of shares of Class A Common Stock (or Class B Common Stock, as applicable) issuable upon such conversion.

(ii) Upon the occurrence of each adjustment or readjustment of the Series A/A-1 Conversion Price pursuant to this Section (B)4, the Corporation, at its expense, shall promptly compute such adjustment or readjustment in accordance with the terms hereof and prepare and furnish to each holder of Series A/A-1 Preferred Stock a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, upon the written request at any time of any holder of Series A/A-1 Preferred Stock, furnish or cause to be furnished to such holder a like certificate setting forth (A) such adjustment and readjustment, (B) the Series A/A-1 Conversion Price at the time in effect and (C) the number of shares of Class A Common Stock and/or Class B Common Stock, as applicable, and the amount, if any, of other property which at the time would be received upon the conversion of a share of Series A/A-1 Preferred Stock.

(g) Notices of Record Date. In the event of any taking by the Corporation of a record of the holders of any class of securities for the purpose of determining the holders thereof who are entitled to receive any dividend or other distribution, any right to subscribe for, purchase or otherwise acquire any shares of stock of any class or any other securities or property, or to receive any other right, the Corporation shall mail to each holder of Series A/A-1 Preferred Stock, at least 10 days prior to the date specified therein, a notice specifying the date on which any such record is to be taken for the purpose of such dividend, distribution or right, and the amount and character of such dividend, distribution or right.

(h) Reservation of Stock Issuable Upon Conversion. The Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock, (i) solely for the purpose of effecting the conversion of the shares of the Series A/A-1 Preferred Stock, such number of its shares of Class A Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of Series A/A-1 Preferred Stock and (ii) solely for the purpose of effecting the conversion of the shares of the Series A-1 Preferred Stock, such number of its shares of Class B Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of Series A-1 Preferred Stock; and if at any time the number of authorized but unissued shares of Class A Common Stock and/or Class B Common Stock, as applicable, shall not be sufficient to effect the conversion of all of the then outstanding shares of Series A Preferred Stock and all of the then outstanding Series A-1 Preferred Stock, in addition to such other remedies as shall be available to the holder of Series A Preferred Stock and/or Series A-1 Preferred Stock, the Corporation will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Class A Common Stock and/or Class B Common Stock, as applicable, to such number of shares as shall be sufficient for such purpose, including, without limitation, engaging in best efforts to obtain the requisite shareholder approval of any necessary amendment to this Amended and Restated Certificate of Incorporation.

(i) Notices. Any notice required by the provisions of this Section (B)4 to be given to the holders of shares of Series A Preferred Stock or Series A-1 Preferred Stock shall be deposited in the United States mail, postage prepaid, and addressed to each holder of record at his address appearing on the books of the Corporation, or given by electronic communication in compliance with the provisions of the DGCL, and shall be deemed sent upon such mailing or electronic transmission.

(j) Issue Taxes. The Corporation shall pay any and all issue and other taxes that may be payable in respect of any issue or delivery of shares of Common Stock upon conversion of any shares of Series A/A-1 Preferred Stock; *provided*, *however*, that the Corporation shall not be obligated to pay any transfer taxes resulting from any transfer requested by any holder in connection with any such conversion.

5. Voting Rights.

(a) In addition to any special class or series voting rights provided herein, under the DGCL or otherwise, the holder of each share of Series A/A-1 Preferred Stock shall have the right to one vote for each share of Class A Common Stock into which such share of Series A/A-1 Preferred Stock could then be converted, and, with respect to such vote, such holder shall have full voting rights and powers equal to the voting rights and powers of the holders of Class A Common Stock and shall be entitled, notwithstanding any provision hereof, to notice of any stockholders' meeting in accordance with the bylaws of the Corporation and shall be entitled to vote, together with holders of Class A Common Stock, with respect to any question upon which holders of Class A Common Stock have the right to vote. Fractional votes shall not, however, be permitted and any fractional voting rights available on an as-converted to Class A Common Stock basis (after aggregating all fractional shares into which shares of Series A/A-1 Preferred Stock held by each holder could be converted) shall be rounded down to the nearest whole share.

(b) For the avoidance of doubt, at any time that the shares of Series A-1 Preferred Stock are convertible into shares of Class B Common Stock, except for any special class or series voting rights provided herein or under the DGCL, the Series A-1 Preferred Stock shall have no voting rights and shall not entitle to holders thereof to any vote at any meeting of stockholders, or in connection with any written consent of stockholders, with respect to any matter, and the shares of Series A-1 Preferred Stock shall not be considered present or entitled to vote or otherwise accounted for in connection with any meeting or vote that occurs during such time (including for purposes of determining the presence or absence of a quorum or the minimum vote required to approve any matter), regardless of whether the record date in respect of such meeting or written consent preceded the date that the Series A-1 Preferred Stock became convertible into Class B Common Stock.

6. Board of Directors.

(a) Subject to Section (B)5(b), the holders of Series A/A-1 Preferred Stock shall be entitled to elect three (3) members of the Board (the "***Series A Directors***") at each meeting or pursuant to each consent of the Corporation's stockholders for the election of directors, and to remove from office such directors and to fill any vacancy caused by the resignation, death or removal of such directors; *provided*, *however*, that the holders of shares of Series A-1 Preferred Stock shall not have any such right at any time that the shares of Series A-1 Preferred Stock are convertible into shares of Class B Common Stock

(b) Subject to Section (B)5(b), the holders of Common Stock and Preferred Stock, voting together as a single class, shall be entitled, by vote of the holders of a majority of the then outstanding shares of Class A Common Stock (calculated on an as-converted to Class A Common Stock basis), to elect all remaining members of the Board at each meeting or pursuant to each consent of the Corporation's stockholders for the election of directors, and to remove from office such directors and to fill any vacancy caused by the resignation, death or removal of such directors; *provided*, *however*, that the holders of shares of Series A-1 Preferred Stock shall not have any such right at any time that the shares of Series A-1 Preferred Stock are convertible into shares of Class B Common Stock.

(c) Notwithstanding any other provision set forth herein, each of the Series A Directors shall be entitled to cast two (2) votes on each matter before the Board and each committee thereof and each other director shall be entitled to cast a single vote on each matter before the Board and each committee thereof. For the avoidance of doubt, in the event that this Amended and Restated Certificate of Incorporation, the DGCL, the Corporation's bylaws or any agreement, instrument or document or any other context requires that a resolution, consent, determination (including, without limitation, for the purpose of determining whether a quorum is present at any meeting of the Board) or other action be approved, executed, made or taken by a majority or other proportion of directors, such requirement shall instead be a majority or other proportion of the votes of the directors, notwithstanding anything to the contrary set forth herein or therein.

(d) Notwithstanding the provisions of Section 223(a)(1) and 223(a)(2) of the DGCL, any vacancy, including newly created directorships resulting from any increase in the authorized number of directors or amendment of the Amended and Restated Certificate of Incorporation, and vacancies created by removal or resignation of a director, may be filled by a majority of the directors then in office, though less than a quorum, or by a sole remaining director, and the directors so chosen shall hold office until the next annual election and until their successors are duly elected and shall qualify, unless sooner displaced; *provided*, *however*, that where such vacancy occurs among the directors elected by the holders of a class or series of stock, the holders of shares of such class or series may override the Board's action to fill such vacancy by (i) voting for their own designee to fill such vacancy at a meeting of this Corporation's stockholders or (ii) written consent, if the consenting stockholders hold a sufficient number of shares to elect their designee. Any director may be removed during his or her term of office, either with or without cause, by, and only by, the affirmative vote of the holders of the shares of the class or series of stock entitled to elect such director or directors, given either at a special meeting of such stockholders duly called for that purpose or pursuant to a written consent of stockholders, and any vacancy thereby created may be filled by the holders of that class or series of stock represented at the meeting or pursuant to written consent.

7. Protective Provisions.

(a) At any time when shares of Series A/A-1 Preferred Stock are outstanding, the Corporation shall not, either directly or indirectly by amendment, merger, consolidation or otherwise, do any of the following without (in addition to any other vote required by law or the Amended and Restated Certificate of Incorporation) the written consent or affirmative vote of the Required Holders, given in writing or by vote at a meeting, consenting or voting (as the case may be) separately as a class, and any such act or transaction entered into without such consent or vote shall be null and void *ab initio*, and of no force or effect:

(i) liquidate, dissolve or wind-up the business and affairs of the Corporation, effect any merger or consolidation or any other Sale Transaction, or consent to any of the foregoing;

(ii) amend, alter or repeal any provision of the Amended and Restated Certificate of Incorporation or Bylaws of the Corporation in a manner that adversely affects the powers, preferences or rights of the Series A Preferred Stock and/or the Series A-1 Preferred Stock;

(iii) create, or authorize the creation of, or issue or obligate itself to issue shares of, any additional class or series of capital stock, or increase the authorized number of shares of Series A Preferred Stock and/or Series A-1 Preferred Stock or increase the authorized number of shares of any additional class or series of capital stock;

(iv) (i) reclassify, alter or amend any existing security of the Corporation that is *pari passu* with the Series A/A-1 Preferred Stock in respect of the distribution of assets on the liquidation, dissolution or winding up of the Corporation, the payment of dividends or rights of redemption, if such reclassification, alteration or amendment would render such other security senior to the Series A Preferred Stock and/or Series A-1 Preferred Stock in respect of any such right, preference, or privilege or (ii) reclassify, alter or amend any existing security of the Corporation that is junior to the Series A/A-1 Preferred Stock in respect of the distribution of assets on the liquidation, dissolution or winding up of the Corporation, the payment of dividends or rights of redemption, if such reclassification, alteration or amendment would render such other security senior to *or pari passu* with the Series A Preferred Stock and/or Series A-1 Preferred Stock in respect of any such right, preference or privilege;

(v) purchase or redeem (or permit any subsidiary to purchase or redeem) any shares of capital stock of the Corporation other than (i) redemptions of the Series A/A-1 Preferred Stock as expressly authorized herein or (ii) repurchases of stock from former employees, officers, directors, consultants or other persons who performed services for the Corporation or any subsidiary in connection with the cessation of such employment or service at the lower of the original purchase price or the then-current fair market value thereof;

(vi) make, or authorize the making of, any pledge of any assets of the Corporation or of the equity interests of any subsidiary of the Corporation or create, or authorize the creation of, any security interest in any assets of the Corporation or any subsidiary of the Corporation unless such making, creation or authorization is approved by each of the Series A Directors;

(vii) create, or hold capital stock in, any subsidiary that is not wholly owned (either directly or through one or more other subsidiaries) by the Corporation, or sell, transfer or otherwise dispose of any capital stock of any direct or indirect subsidiary of the Corporation, or permit any direct or indirect subsidiary to sell, lease, transfer, exclusively license or otherwise dispose (in a single transaction or series of related transactions) of all or substantially all of the assets of such subsidiary; or

(viii) increase or decrease the authorized number of directors constituting the Board of Directors.

(b) At any time when shares of Series A Preferred Stock are outstanding, the Corporation shall not, either directly or indirectly, whether by amendment, or through merger, recapitalization, consolidation or otherwise, do any of the following without (in addition to any other vote required by law or this Amended and Restated Certificate of Incorporation) the written consent or affirmative vote of the holders of a majority of the then outstanding shares of Series A Preferred Stock, given in writing or by vote at a meeting, consenting or voting (as the case may be) separately as a class, and any such act or transaction entered into without such consent or vote shall be null and void *ab initio*, and of no force or effect:

(i) amend or repeal, or adopt any provision of this Amended and Restated Certificate of Incorporation if the effect thereof would be to adversely and disproportionately modify the voting, conversion or other rights, powers, preferences, privileges or restrictions of the Class A Common Stock; or

(ii) amend or repeal, or adopt any provision of this Amended and Restated Certificate of Incorporation if the effect thereof would be to adversely and disproportionately modify the voting, conversion or other rights, powers, preferences, privileges or restrictions of the Series A Preferred Stock.

(c) At any time when shares of Series A-1 Preferred Stock are outstanding, the Corporation shall not, either directly or indirectly, whether by amendment, or through merger, recapitalization, consolidation or otherwise, do any of the following without (in addition to any other vote required by law or this Amended and Restated Certificate of Incorporation) the written consent or affirmative vote of the holders of a majority of the then outstanding shares of Series A-1 Preferred Stock, given in writing or by vote at a meeting, consenting or voting (as the case may be) separately as a class, and any such act or transaction entered into without such consent or vote shall be null and void *ab initio*, and of no force or effect:

(i) amend or repeal, or adopt any provision of this Amended and Restated Certificate of Incorporation if the effect thereof would be (y) to adversely and disproportionately modify the voting, conversion or other rights, powers, preferences, privileges or restrictions of the Class B Common Stock or (z) modify any of the rights, powers, preferences, privileges, restrictions or provisions of the Class B Common Stock that are not applicable to the Class A Common Stock;

(ii) amend or repeal, or adopt any provision of this Amended and Restated Certificate of Incorporation if the effect thereof would be to modify the voting, conversion or other rights, powers, preferences, privileges or restrictions of the Series A-1 Preferred Stock; or

(iii) set a record date for any special meeting or any other meeting or vote of stockholders (or for purposes of determining stockholders entitled to consent to any matter in writing) as of any date on which outstanding shares of Series A-1 Preferred Stock are convertible into Class B Common Stock, or hold a meeting or vote of stockholders (or solicit written consents with respect to any matter) on any such date.

8. No Reissuance of Preferred Stock. No share or shares of Series A/A-1 Preferred Stock acquired by the Corporation by reason of redemption, purchase, conversion or otherwise shall be reissued, and all such shares shall be cancelled, retired and eliminated from the shares which the Corporation shall be authorized to issue.

C. Common Stock.

1. Identical Rights.

(a) Except as otherwise provided in this Amended and Restated Certificate of Incorporation or required by applicable law, shares of Common Stock shall have the same rights and powers, rank equally (including as to dividends and distributions, and upon any liquidation, dissolution or winding up of the Corporation), share ratably and be identical in all respects as to all matters.

(b) If the Corporation in any manner subdivides (by stock split or otherwise) or combines (by reverse stock split or otherwise) the outstanding shares of Class A Common Stock or Class B Common Stock, then the outstanding shares of all Common Stock will be subdivided or combined in the same proportion and manner.

2. Dividend Rights.

(a) Subject to the provisions set forth herein and the preferential rights of holders of all classes of stock at the time outstanding having preferential rights as to dividends and distributions, the holders of the Common Stock shall be entitled to receive, when, as and if declared by the Board, out of any assets of the Corporation legally available therefor, such dividends and distributions as may be declared from time to time by the Board; *provided* that no such dividend or distribution may be declared or paid (other than in the form of shares of Common Stock or other securities and rights convertible into or entitling the holder thereof to receive, directly or indirectly, additional shares of Common Stock) unless a dividend or distribution is simultaneously declared or paid, as the case may be, on the Series A/A-1 Preferred Stock in an amount equal to the amount which would be paid on the Series A/A-1 Preferred Stock if the Series A/A-1 Preferred Stock had been converted into Common Stock immediately prior to the record date for the dividend on the Common Stock.

(b) Without limiting the provisions of Section (C)2(a) of this Article IV, the Corporation shall not declare or pay any dividend or make any other distribution to the holders of Common Stock unless the same dividend or distribution with the same record date and payment date shall be declared and paid on all shares of Common Stock; *provided*, *however*, that any dividend or other distribution payable in additional shares of Common Stock or rights to acquire shares of Common Stock shall be payable on the Class A Common Stock in additional shares of Class A Common Stock or rights to acquire shares of Class A Common Stock and on the Class B Common Stock in additional shares of Class B Common Stock or rights to acquire shares of Class B Common Stock, in each case, at the same rate and with the same record date and payment date.

3. Liquidation Rights. Upon the liquidation, dissolution or winding up of the Corporation, the assets of the Corporation shall be distributed as provided in Section (B)2 of this Article IV.

4. Redemption. The Common Stock is not by its terms redeemable.

5. Voting Rights.

(a) The holders of Class A Common Stock shall have the right to one vote for each share of Class A Common Stock, and the holders of Class A Common Stock shall be entitled to notice of any stockholders' meeting in accordance with the bylaws of the Corporation, and shall be entitled to vote upon such matters and in such manner as may be provided by law. Except as otherwise restricted herein, the number of authorized shares of Common Stock or any class thereof may be increased or decreased by the affirmative vote of the holders of capital stock having a majority of the voting power of the Corporation (voting together on an as-if-converted to Class A Common Stock basis), irrespective of the provision of Section 242(b)(2) of the DGCL.

(b) Except as otherwise provided herein or as otherwise required by the DGCL, the Class B Common Stock shall have no voting rights and shall not entitle to holders thereof to any vote at any meeting of stockholders, or in connection with any written consent of stockholders, with respect to any matter, and the shares of Class B Common Stock shall not be considered present or entitled to vote or otherwise accounted for in connection with any meeting or vote that occurs during such time (including for purposes of determining the presence or absence of a quorum or the minimum vote required to approve any matter). However, as long as any shares of Class B Common Stock are outstanding, without the affirmative vote or written consent of the holders of a majority of the then outstanding shares of the Class B Common Stock, the Corporation shall not, directly or indirectly, whether by or through any subsidiary and whether by merger, consolidation or otherwise, amend, modify or repeal any provision of the Amended and Restated Certificate of Incorporation if the effect thereof would be to modify the voting, conversion or other rights, powers, preferences, privileges or restrictions of the Class B Common Stock.

6. Conversion of Class B Common Stock.

(a) *Conversions at Option of Holder*. Each share of Class B Common Stock shall be convertible, at any time and from time to time from and after the date of issuance, at the option of the holder thereof, into one share of Class A Common Stock. A holder of Class B Common Stock shall effect conversions by providing the Corporation with the form of conversion notice attached hereto as Annex A (a "***Notice of Conversion***"), duly completed by such holder. If the Notice of Conversion is delivered at a time when the Conversion Shares (as defined below) are required to bear a restrictive legend pursuant to Section (C)6(d), on or before the fifth (5th) Business Day following the Conversion Date (as defined below) (the "***Restricted Voluntary Conversion Delivery Deadline***"), the Corporation shall, or shall cause its transfer agent to, issue and deliver to the address as specified in the Notice of Conversion, a stock certificate, registered in the name of the holder or its designee, for the number of shares of Class A Common Stock to which the holder shall be entitled, and in the case of a Notice of Conversion delivered at a time when the Conversion Shares are not required to bear a restrictive legend pursuant to Section (C)6(d), on or before the second (2nd) Business Day (or, if earlier, the last day of the Standard Settlement Period (as defined below)) following the Conversion Date (the "***Unrestricted Voluntary Conversion Delivery Deadline***"), cause the Transfer Agent to credit the aggregate number of shares of Class A Common Stock to which the holder shall be entitled to the holder's or its designee's balance account with The Depository Trust Corporation ("***DTC***") through DTC's Deposit/Withdrawal at Custodian (***DWAC***) system. The "***Conversion Date***," or the date on which a conversion shall be deemed effective, shall be defined as the Trading Day (as defined below) that the completed Notice of Conversion is sent by electronic mail or facsimile to, and received during regular business hours by, the Corporation. The calculations and entries set forth in the Notice of Conversion shall control in the absence of verifiable or mathematical error. Shares of Class B Common Stock converted into Class A Common Stock in accordance with the terms hereof shall be canceled and shall not be reissued. The holder shall not be required to physically surrender the certificate(s) representing the Class B Common Stock to the Corporation until all shares of Class B Common Stock represented by such certificate(s) have been converted in full, in which case the holder shall surrender such certificate(s) to the Corporation for cancellation within three (3) Trading Days of the date the final Notice of Conversion is delivered to the Corporation. Delivery of a Notice of Conversion with respect to a partial conversion shall have the same effect as cancellation of the original certificate(s) representing such shares of Class B Common Stock and issuance of a certificate representing such remaining shares of Class B Common Stock. In accordance with the preceding sentence, upon the written request of the holder and the surrender of certificate(s) representing Class B Common Stock, the Corporation shall, within three (3) Trading Days of such request, deliver to the holder certificate(s) (as specified by the holder in such request) representing the remaining shares of Class B Common Stock represented by the surrendered certificate(s).

(b) *Beneficial Ownership Limitation*. Notwithstanding anything herein to the contrary, but subject to the last sentence of this Section (C)6(b), the Corporation shall not effect any conversion of the Class B Common Stock, and a holder shall not have the right to convert any portion of the Class B Common Stock, to the extent that, after giving effect to an attempted conversion set forth on the applicable Notice of Conversion, such holder together with such holder's Affiliates, and any other Person whose beneficial ownership of Class A Common Stock would be aggregated with such holder's for purposes of Section 13(d) of the Exchange Act and the applicable rules and regulations of the Commission, including any "group" of which the holder is a member would beneficially own a number of shares of Class A Common Stock in excess of 4.9% of the total number of shares of Class A Common Stock then issued and outstanding (the "***Beneficial Ownership Limitation***"); provided that the Beneficial Ownership Limitation shall not apply to the extent that the Class A Common Stock is not deemed to constitute an "equity security" pursuant to Rule 13d-1(i) under the Exchange Act. Delivery of a Notice of Conversion by a holder in respect of the conversion of Class B Common Stock shall constitute a representation by such holder that the issuance of shares of Class A Common Stock in accordance with such Notice of Conversion will not cause such holder (together with such holder's Affiliates, and any other Person whose beneficial ownership of Class A Common Stock would be aggregated with such holder's for purposes of Section 13(d) of the Exchange Act and the applicable regulations of the Commission) to beneficially own a number of shares of Class A Common Stock in excess of the Beneficial Ownership Limitation, as determined in accordance with this Amended and Restated Certificate of Incorporation. For purposes of this Section (C)6(a), the number of shares of Class A Common Stock beneficially owned by such holder and its Affiliates shall include the number of shares of Class A Common Stock issuable upon conversion of the Class B Common Stock subject to the Notice of Conversion with respect to which such determination is being made, but shall exclude the number of shares of Class A Common Stock which are issuable upon (A) conversion of the remaining, unconverted Class B Common Stock beneficially owned by such holder or any of its Affiliates (and any other Person whose beneficial ownership of Class A Common Stock would be aggregated with such holder's for purposes of Section 13(d) of the Exchange Act and the applicable regulations of the Commission), and (B) exercise, exchange or conversion of the unexercised, unexchanged or unconverted portion of any other securities of the Corporation subject to a limitation on conversion, exchange or exercise analogous to the limitation contained herein (including any class or series of preferred stock and warrants) beneficially owned by such holder or any of its Affiliates (and any other Person whose beneficial ownership of Class A Common Stock would be aggregated with such holder's for purposes of Section 13(d) of the Exchange Act and the applicable regulations of the Commission). Except as set forth in the preceding sentence, for purposes of this Section (C)6(b), beneficial ownership shall be calculated in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder. In addition, a determination as to any "group" status as contemplated above shall be determined in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder. For purposes of this Section 6(b), in determining the number of outstanding shares of Class A Common Stock, a holder may rely on the number of outstanding shares of Class A Common Stock as stated in the Corporation's most recent quarterly or annual report filed with the Securities and Exchange Commission (the "***Commission***"), any current report or other filing filed by the Corporation with the Commission subsequent thereto or any confirmation provided by the Corporation in accordance with the next sentence. Upon the written request of a holder (which may be via electronic mail), the Corporation shall within two (2) Trading Days following such request, confirm in writing via electronic mail to such holder the number of shares of Class A Common Stock then outstanding. In any case, the number of outstanding shares of Class A Common Stock shall be determined after giving effect to any actual conversion, exchange or exercise of securities of the Corporation, including Class B Common Stock, by such holder or its Affiliates since the date as of which such number of outstanding shares of Class A Common Stock was last publicly reported.

(c) *Mechanics of Conversion*

(i) Delivery of Certificate or Electronic Issuance Upon Conversion. Not later than the Restricted Voluntary Conversion Delivery Deadline or the Unrestricted Voluntary Conversion Delivery Deadline, as applicable (as applicable, the "***Share Delivery Date***"), the Corporation shall (a) deliver, or cause to be delivered, to the converting holder a certificate or certificates representing the number of Conversion Shares being acquired upon the conversion of shares of Class B Common Stock or (b) in the case of a DWAC Delivery, electronically deliver such Conversion Shares by crediting the account of the holder's prime broker with DTC through its DWAC system. If in the case of any Notice of Conversion such certificate or certificates are not delivered to or as directed by or, in the case of a DWAC Delivery, such shares are not electronically delivered to or as directed by, the applicable holder by the Share Delivery Date, the applicable holder shall be entitled to elect to rescind such Notice of Conversion by written notice to the Corporation at any time on or before its receipt of such certificate or certificates for Conversion Shares or electronic receipt of such shares, as applicable, in which event the Corporation shall promptly return to such holder any original Class B Common Stock certificate delivered to the Corporation.

(ii) Obligation Absolute. Subject to Section (C)6(b) hereof and subject to holder's right to rescind a Notice of Conversion pursuant to Section (C)6(c)(i) above, the Corporation's obligation to issue and deliver the Conversion Shares upon conversion of Class B Common Stock in accordance with the terms hereof is absolute and unconditional, irrespective of any action or inaction by a holder to enforce the same, any waiver or consent with respect to any provision hereof, the recovery of any judgment against any Person or any action to enforce the same, or any setoff, counterclaim, recoupment, limitation or termination, or any breach or alleged breach by such holder or any other Person of any obligation to the Corporation or any violation or alleged violation of law by such holder or any other Person, and irrespective of any other circumstance which might otherwise limit such obligation of the Corporation to such holder in connection with the issuance of such Conversion Shares.

(iii) Compensation for Buy-In on Failure to Timely Deliver Certificates Upon Conversion. If the Corporation fails to deliver to a holder a certificate or certificates representing Conversion Shares or to effect a DWAC Delivery, as applicable, by the Share Delivery Date pursuant to Section (C)6(c)(i), and if after such Share Delivery Date such holder is required by its brokerage firm to purchase (in an open market transaction or otherwise), or the holder's brokerage firm otherwise purchases, shares of Class A Common Stock to deliver in satisfaction of a sale by such holder of the Conversion Shares which such holder was entitled to receive upon the conversion relating to such Share Delivery Date (a "***Buy-In***"), then, at the election of such holder, the Corporation shall (A) pay in cash to such holder (in addition to any other remedies available to or elected by such holder) the amount by which (x) such holder's total purchase price (including any brokerage commissions) for the shares of Class A Common Stock so purchased exceeds (y) the product of (1) the aggregate number of shares of Class A Common Stock that such holder was entitled to receive from the conversion at issue multiplied by (2) the actual sale price at which the sell order giving rise to such purchase obligation was executed (including any brokerage commissions), and (B) at the option of such holder, either reissue (if surrendered) the shares of Class B Common Stock equal to the number of shares of Class B Common Stock submitted for conversion or deliver to such holder the number of shares of Class A Common Stock that would have been issued if the Corporation had timely complied with its delivery requirements under Section (C)6(c)(i). The holder shall provide the Corporation written notice within five (5) Trading Days after the occurrence of a Buy-In indicating the amounts payable to such holder in respect of the Buy-In together with applicable confirmations and any other evidence reasonably requested by the Corporation related thereto. Nothing herein shall limit a holder's right to pursue any other remedies available to it hereunder, at law or in equity including a decree of specific performance and/or injunctive relief with respect to the Corporation's failure to timely deliver shares of Class A Common Stock upon conversion of the shares of Class B Common Stock as required pursuant to the terms hereof.

(iv) Reservation of Shares Issuable Upon Conversion. The Corporation covenants that it will at all times reserve and keep available out of its authorized and unissued shares of Class A Common Stock for the sole purpose of issuance upon conversion of the Class B Common Stock and payment of dividends on the Class B Common Stock, each as herein provided, free from preemptive rights or any other actual contingent purchase rights, not less than such aggregate number of shares of the Class A Common Stock as shall be issuable (without regard to the Beneficial Ownership Limitation) upon the conversion of all outstanding shares of Class B Common Stock. The Corporation covenants that all shares of Class A Common Stock that shall be so issuable shall, upon issue, be duly authorized, validly issued, fully paid and nonassessable.

(v) Taxes. The Corporation shall pay any and all issue and other taxes that may be payable in respect of any issue or delivery of shares of Class A Common Stock upon conversion of any shares of Class B Common Stock; provided, however, that the Corporation shall not be obligated to pay any transfer taxes resulting from any transfer requested by any holder in connection with any such conversion.

(vi) Status as Class A Stockholder. Effective as of the delivery by the holder of the Notice of Conversion by the holder by facsimile or electronic mail, as provided herein, (A) the shares of Class B Common Stock being converted shall be deemed converted into shares of Class A Common Stock, (B) the holder shall be deemed the holder or record of such applicable Conversion Shares, and (C) subject to a holder's right to rescind a Notice of Conversion pursuant to Section (C)6(c)(i), the holder's rights as a holder of such converted shares of Class B Common Stock shall cease and terminate, excepting only the right to receive certificates evidencing such shares of Class A Common Stock, or electronic delivery of such shares in the case of DWAC Delivery, and to any remedies provided herein or otherwise available at law or in equity to such holder because of a failure by the Corporation to comply with the terms of this Amended and Restated Certificate of Incorporation. In all cases, the holder shall retain all of its rights and remedies for the Corporation's failure to convert Class B Common Stock.

(vii) Automatic Conversion Upon Certain Transfers. Upon a transfer of shares of Class B Common Stock by a holder to a Person that is neither an Affiliate of such holder nor a Person whose beneficial ownership of Class A Common Stock would be aggregated with such holder's for purposes of Section 13(d) of the Exchange Act and the applicable regulations of the Commission, each share of Class B Common Stock so transferred shall automatically, without further action by the transferor or transferee thereof, convert into a share of Class A Common Stock; and upon delivery to the Corporation of written notice of any such transfer, the Corporation shall issue and deliver the shares of Class A Common Stock into which such transferred shares of Class B Common Stock shall have thereby converted, with the same effect as if such notice of transfer were a Notice of Conversion delivered in accordance with Section (C)6.

(d) Legends. Certificates evidencing shares of Class B Common Stock, or shares of Class A Common Stock issued upon conversion thereof ("***Conversion Shares***"), issued or sold pursuant to an effective registration statement under the Securities Act shall not contain any legend restricting the transfer thereof. Certificates evidencing shares of Class B Common Stock or Conversion Shares shall not be required to contain any legend restricting the transfer thereof: (A) while a registration statement covering the sale or resale of such security is effective under the Securities Act; *provided* that the holder of such security provides a representation reasonably satisfactory to counsel to the Corporation that such holder will not sell or resell such security at any time that such registration statement is not effective or such registration statement is otherwise not available for the sale or resale of such security, except pursuant to a sale that is exempt from the registration requirements of the Securities Act pursuant to Rule 144 thereunder, or (B) if the holder thereof provides customary good-faith representations to the effect that it has sold such shares pursuant to Rule 144, or (C) if such shares of Class B Common Stock or Conversion Shares, as the case may be, are eligible for sale under Rule 144(b)(1) as set forth in customary non-affiliate good-faith representations provided by the holder thereof, or (D) at any time on or after the date hereof that the applicable holder certifies in good faith that it is not an Affiliate of the Corporation and that such holder's holding period for purposes of Rule 144 and, in the case of the Conversion Shares, subsection (d)(3)(ii) thereof with respect to such shares of Class B Common Stock and/or Conversion Shares is at least twelve (12) months (or six (6) months if the Corporation is, and shall have been for a period of at least ninety (90) days, subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act), or (E) if such legend is not required under applicable requirements of the Securities Act (including judicial interpretations and pronouncements issued by the staff of the SEC) as determined in good faith by counsel to the Corporation or set forth in a legal opinion delivered by counsel to the Corporation (clauses (A) through (E) collectively with the first sentence of this paragraph, the "***Unrestricted Conditions***"). The Corporation shall use its reasonable best efforts to cause its counsel to issue a legal opinion to the Transfer Agent at such time as any of the Unrestricted Conditions has been satisfied, if required by the Corporation's Transfer Agent to effect the issuance of shares of Class B Common Stock or the Conversion Shares, as applicable, without a restrictive legend or removal of the legend hereunder. If any of the Unrestricted Condition is met at the time of issuance of shares of Class B Common Stock or at the time of issuance of Conversion Shares, then such shares of Class B Common Stock or Conversion Shares, as applicable, shall be issued free of all legends. The Corporation agrees that at such time as such legend is no longer required under this Section (C)6(d), it will, no later than two (2) Trading Days (or, if less, the number of days comprising the Standard Settlement Period) following the delivery by the applicable holder to the Corporation or the Transfer Agent of a certificate representing shares of Class B Common Stock or Conversion Shares, as applicable, issued with a restrictive legend, deliver or cause to be delivered to such Holder this Note and/or a certificate (or electronic transfer) representing such shares that is free from all restrictive and other legends.

7. Certain Defined Terms. For the purposes hereof, the following terms shall have the following meanings:

(a) "***Affiliate***" means any Person that, directly or indirectly through one or more intermediaries, controls or is controlled by or is under common control with a Person, as such terms are used in and construed under Rule 144 under the Securities Act. For this purpose, "control" (including, with its correlative meanings, "controlled by" and "under common control with") shall mean the possession, directly or indirectly, of the power to direct or cause the direction of management or policies of a Person, whether through the ownership of securities or partnership or other ownership interests, by contract or otherwise. With respect to a holder of capital stock, any investment fund or managed account that is managed on a discretionary basis by the same investment manager as such holder will be deemed to be an Affiliate of such holder.

(b) "***Business Day***" means any day other than a Saturday, Sunday or other day on which commercial banks are authorized to close under the laws of, or are in fact closed in, New York, New York.

(c) "***Person***" means any individual, sole proprietorship, partnership (general or limited), limited liability company, joint venture, company, trust (statutory or common law), unincorporated organization, association, corporation, institution, public benefit corporation, firm, joint stock company, estate, entity or governmental or regulatory agency.

(d) "***Standard Settlement Period***" means the standard settlement period for equity trades effected by U.S. broker-dealers, expressed in a number of Trading Days, as in effect on the applicable date (which, as of the date hereof, is two (2) Trading Days).

(e) "***Trading Day***" means a day on which the Class A Common Stock is traded for any period on the principal securities exchange or other securities market on which the Class A Common Stock is then being traded.

ARTICLE V

A director of the Corporation shall, to the fullest extent permitted by the DGCL as it now exists or as it may hereafter be amended, not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except for liability (a) for any breach of the director's duty of loyalty to the Corporation or its stockholders, (b) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (c) under Section 174 of the DGCL or (d) for any transaction from which the director derived any improper personal benefit. If the DGCL is amended, after approval by the stockholders of this Article V, to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the DGCL as so amended.

Any amendment, repeal or modification of this Article V, or the adoption of any provision of this Amended and Restated Certificate of Incorporation inconsistent with this Article V by the stockholders of the Corporation shall not apply to or adversely affect any right or protection of a director of the Corporation occurring prior to the time of such amendment, repeal, modification or adoption.

ARTICLE VI

The Corporation shall indemnify its directors, and shall provide for advancement of the expenses of such persons, to the fullest extent provided by Section 145 of the DGCL. To the fullest extent permitted by applicable law, the Corporation is authorized to provide indemnification of (and advancement of expenses to) officers and agents of the Corporation (and any other persons to which the DGCL permits the Corporation to provide indemnification) through Bylaw provisions, agreements with such officer, agents or other persons, vote of stockholders or disinterested directors or otherwise, in excess of the indemnification and advancement otherwise permitted by Section 145 of the DGCL, subject only to limits created by applicable law (statutory or non-statutory), with respect to actions for breach of duty to the Corporation, its stockholders and others.

Any amendment, repeal or modification of the foregoing provision of this Article VI shall not adversely affect any right or protection of a director, officer, agent, or other person existing at the time of, or increase the liability of any director of the Corporation with respect to any acts or omissions of such director, officer or agent occurring prior to, such amendment, repeal, modification or adoption.

ARTICLE VII

The Board may from time to time adopt, amend, alter, supplement, rescind or repeal any or all of the Bylaws of the Corporation without any action on the part of the stockholders; *provided*, *however*, that the stockholders may adopt, amend or repeal any Bylaw adopted by the Board, and no amendment or supplement to the Bylaws adopted by the Board shall vary or conflict with any amendment or supplement adopted by the stockholders.

ARTICLE VIII

Subject to any additional vote required by this Amended and Restated Certificate of Incorporation, the number of directors of the Corporation shall be set from time to time by resolution of the Board.

ARTICLE IX

Elections of directors need not be by written ballot unless the Bylaws of the Corporation shall so provide.

ARTICLE X

Meetings of stockholders may be held within or outside of the State of Delaware, as the Bylaws may provide. The books of the Corporation may be kept (subject to any statutory requirements) outside the State of Delaware at such place or places as may be designated from time to time by the Board or in the Bylaws of the Corporation.

ARTICLE XI

Pursuant to Section 122(17) of the DGCL, the Corporation hereby renounces any interest or expectancy of the Corporation or any subsidiary of the Corporation in, or in being offered an opportunity to participate in, any and all business opportunities that are presented to the holders of Series A/A-1 Preferred Stock or their affiliates other than holders who are employees of the Corporation (including, without limitation, any representative or affiliate of such holders of Series A/A-1 Preferred Stock serving on the Board or the board of directors or other governing body of any subsidiary of the Corporation (each a "***Board of Directors***")) (collectively, the "***Series A Investor Parties***"). Without limiting the foregoing renunciation, the Corporation on behalf of itself and its subsidiaries (a) acknowledges that the Series A Investor Parties are in the business of making investments in, and have or may have investments in, other businesses similar to and that may compete with the businesses of the Corporation and its subsidiaries ("***Competing Businesses***") and (b) agrees that the Series A Investor Parties shall have the unfettered right to make investments in or have relationships with other Competing Businesses independent of their investments in the Corporation. By virtue of a Series A Investor Party holding capital stock of the Corporation or by having persons designated by or affiliated with such Series A Investor Party serving on or observing at meetings of any Board of Directors or otherwise, no Series A Investor Party shall have any obligation to the Corporation, any of its subsidiaries or any other holder of capital stock or securities of the Corporation to refrain from competing with the Corporation and any of its subsidiaries, making investments in or having relationships with Competing Businesses, or otherwise engaging in any commercial activity and none of the Corporation, any of its subsidiaries or any other holder of capital stock or securities of the Corporation shall have any right with respect to any investment or activities undertaken by such Series A Investor Party.

Without limitation of the foregoing, each Series A Investor Party may engage in or possess any interest in other business ventures of any nature or description, independently or with others, similar or dissimilar to the business of the Corporation or any of its subsidiaries, and none of the Corporation, any of its subsidiaries or any other holder of capital stock or securities of the Corporation shall have any rights or expectancy by virtue of such Series A Investor Parties' relationships with the Corporation, or otherwise in and to such independent ventures or the income or profits derived therefrom; and the pursuit of any such ventures, even if such investment is in a Competing Business, shall not for any purpose be deemed wrongful or improper. No Series A Investor Party shall be obligated to present any particular investment opportunity to the Corporation or its subsidiaries even if such opportunity is of a character that, if presented to the Corporation or such subsidiary, could be taken by the Corporation or such subsidiary, and each Series A Investor Party shall continue to have the right for its own respective account or to recommend to others any such particular investment opportunity.

ARTICLE XII

For purposes of Section 500 of the California Corporations Code (to the extent applicable), in connection with any repurchase of shares of Common Stock permitted under this Amended and Restated Certificate of Incorporation from employees, officers, directors or consultants of the Company in connection with a termination of employment or services pursuant to agreements or arrangements approved by the Board (in addition to any other consent required under this Amended and Restated Certificate of Incorporation), such repurchase may be made without regard to any "preferential dividends arrears amount" or "preferential rights amount" (as those terms are defined in Section 500 of the California Corporations Code). Accordingly, for purposes of making any calculation under California Corporations Code Section 500 in connection with such repurchase, the amount of any "preferential dividends arrears amount" or "preferential rights amount" (as those terms are defined therein) shall be deemed to be zero (0).

ARTICLE XIII

The foregoing amendment and restatement was approved by the holders of the requisite number of shares of this Corporation in accordance with Section 228 of the DGCL.

ARTICLE XIV

This Amended and Restated Certificate of Incorporation, which restates and integrates and further amends the provisions of this Corporation's Certificate of Incorporation dated August 6, 2015, has been duly adopted in accordance with Sections 242 and 245 of the DGCL.

IN WITNESS WHEREOF, this Amended and Restated Certificate of Incorporation has been executed by a duly authorized officer of this corporation on this 14th day of September, 2020.

By: /s/ Ronald Lloyd
Name: Ronald Lloyd
Title: President and Chief Executive Officer

ANNEX A

NOTICE OF CONVERSION

(TO BE EXECUTED BY THE REGISTERED HOLDER IN ORDER TO CONVERT SHARES OF CLASS B COMMON STOCK)

Reference is made to the Amended and Restated Certificate of Incorporation (the "Certificate of Incorporation"). In accordance with and pursuant to the Certificate of Incorporation, the undersigned hereby elects to convert the number of shares of Class B Common Stock, par value $0.001 per share (the "Class B Common Stock"), of Aziyo Biologics, Inc., a Delaware corporation (the "Corporation"), indicated below into shares of Class A Common Stock, par value $0.001 per share (the "Class A Common Stock"), of the Corporation, as of the date specified below.

Date of Conversion: _____

Number of shares of Class B Common Stock to be converted: _____

Please confirm the following information:

Number of shares of Class A Common Stock to be issued:

Please issue the shares of Common Stock in accordance with the terms of the Certificate of Incorporation as follows:

Issue to: _____

E-mail: _____

DTC Participant Number and Name: _____

Account Number: _____

Exhibit 3.3

RESTATED CERTIFICATE OF INCORPORATION

OF

AZIYO BIOLOGICS, INC.

The name of the corporation is Aziyo Biologics, Inc. The corporation was originally incorporated by the filing of its original Certificate of Incorporation with the Secretary of State of the State of Delaware on August 6, 2015. This Restated Certificate of Incorporation of the corporation, which restates and integrates and also further amends the provisions of the corporation's Certificate of Incorporation, was duly adopted in accordance with the provisions of Sections 242 and 245 of the General Corporation Law of the State of Delaware and by the written consent of its stockholders in accordance with Section 228 of the General Corporation Law of the State of Delaware. The Certificate of Incorporation of the corporation is hereby amended, integrated and restated to read in its entirety as follows:

FIRST: The name of the Corporation is Aziyo Biologics, Inc. (the "Corporation").

SECOND: The address of the Corporation's registered office in the State of Delaware is 251 Little Falls Drive, in the City of Wilmington, County of New Castle, Delaware 19808. The name of its registered agent at that address is: Corporation Service Company.

THIRD: The nature of the business or purposes to be conducted or promoted by the Corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware.

FOURTH: The total number of shares of all classes of stock which the Corporation shall have authority to issue is 230,000,000 shares, consisting of (a) 220,000,000 shares of Common Stock, $0.001 par value per share ("Common Stock"), 200,000,000 of which shall be designated Class A Common Stock, $0.001 par value per share ("Class A Common Stock"), and 20,000,000 of which shall be designated Class B Common Stock, $0.001 par value per share ("Class B Common Stock"), and (b) 10,000,000 shares of Preferred Stock, $0.001 par value per share ("Preferred Stock").

The following is a statement of the designations and the powers, privileges and rights, and the qualifications, limitations or restrictions thereof in respect of each class of capital stock of the Corporation.

A. COMMON STOCK.

1. General. The voting, dividend and liquidation rights of the holders of the Common Stock are subject to and qualified by the rights of the holders of the Preferred Stock of any series as may be designated by the Board of Directors of the Corporation (the "Board of Directors") upon any issuance of the Preferred Stock of any series.

2. Identical Rights.

(a) Except as otherwise provided in this Restated Certificate of Incorporation or required by applicable law, shares of Common Stock shall have the same rights and powers, rank equally (including as to dividends and distributions, and upon any liquidation, dissolution or winding up of the Corporation), share ratably and be identical in all respects as to all matters.

(b) If the Corporation in any manner subdivides (by stock split or otherwise) or combines (by reverse stock split or otherwise) the outstanding shares of Class A Common Stock or Class B Common Stock, then the outstanding shares of all Common Stock will be subdivided or combined in the same proportion and manner.

3. Voting.

(a) The holders of Class A Common Stock shall have voting rights at all meetings of stockholders, each such holder being entitled to one vote for each share thereof held by such holder; provided, however, that, except as otherwise required by law, holders of Class A Common Stock shall not be entitled to vote on any amendment to this Restated Certificate of Incorporation (which, as used herein, shall mean the certificate of incorporation of the Corporation, as amended from time to time, including the terms of any certificate of designations of any series of Preferred Stock) that relates solely to the terms of one or more outstanding series of Preferred Stock if the holders of such affected series are entitled, either separately or together as a class with the holders of one or more other such series, to vote thereon pursuant to this Restated Certificate of Incorporation or the General Corporation Law of the State of Delaware. There shall be no cumulative voting. The number of authorized shares of Common Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of the holders of a majority of the stock of the Corporation entitled to vote thereon, irrespective of the provisions of Section 242(b)(2) of the General Corporation Law of the State of Delaware.

(b) Except as otherwise provided herein or as otherwise required by the DGCL, the Class B Common Stock shall have no voting rights, and shall not entitle the holders thereof to any vote at any meeting of stockholders, with respect to any matter, and the shares of Class B Common Stock shall not be considered present or entitled to vote or otherwise accounted for in connection with any meeting or vote that occurs during such time (including for purposes of determining the presence or absence of a quorum or the minimum vote required to approve any matter). However, subject to the rights of the holders of any series of Preferred Stock pursuant to the terms of this Restated Certificate of Incorporation or any resolution or resolutions providing for the issuance of such series of stock adopted by the Board of Directors, as long as any shares of Class B Common Stock are outstanding, without the affirmative vote or written consent of the holders of a majority of the then outstanding shares of the Class B Common Stock, the Corporation shall not, directly or indirectly, whether by or through any subsidiary and whether by merger, consolidation or otherwise, amend, modify or repeal any provision of this Restated Certificate of Incorporation if the effect thereof would be to modify the voting, conversion or other rights, powers, preferences, privileges or restrictions of the Class B Common Stock.

4. Dividends. Dividends may be declared and paid on the Common Stock if, as and when determined by the Board of Directors subject to any preferential dividend or other rights of any then outstanding Preferred Stock and to the requirements of applicable law. Without limiting the preceding sentence, the Corporation shall not declare or pay any dividend or make any other distribution to the holders of Common Stock unless the same dividend or distribution with the same record date and payment date shall be declared and paid on all shares of Common Stock; *provided*, *however*, that any dividend or other distribution payable in additional shares of Common Stock or rights to acquire shares of Common Stock shall be payable on the Class A Common Stock in additional shares of Class A Common Stock or rights to acquire shares of Class A Common Stock and on the Class B Common Stock in additional shares of Class B Common Stock or rights to acquire shares of Class B Common Stock, in each case, at the same rate and with the same record date and payment date.

5. Liquidation. Upon the dissolution or liquidation of the Corporation, whether voluntary or involuntary, holders of Common Stock will be entitled to receive all assets of the Corporation available for distribution to its stockholders, subject to any preferential or other rights of any then outstanding Preferred Stock.

6. Conversion of Class B Common Stock.

(a) *Conversions at Option of Holder*. Each share of Class B Common Stock shall be convertible, at any time and from time to time from and after the date of issuance, at the option of the holder thereof, into one share of Class A Common Stock. A holder of Class B Common Stock shall effect conversions by providing the Corporation with the form of conversion notice attached hereto as Annex A (a "***Notice of Conversion***"), duly completed by such holder. If the Notice of Conversion is delivered at a time when the Conversion Shares (as defined below) are required to bear a restrictive legend pursuant to Section 6(d) of this Part A, on or before the fifth (5th) Business Day following the Conversion Date (as defined below) (the "***Restricted Voluntary Conversion Delivery Deadline***"), the Corporation shall, or shall cause its transfer agent to, issue and deliver to the address as specified in the Notice of Conversion, a stock certificate, registered in the name of the holder or its designee, for the number of shares of Class A Common Stock to which the holder shall be entitled, and in the case of a Notice of Conversion delivered at a time when the Conversion Shares are not required to bear a restrictive legend pursuant to Section 6(d) of this Part A, on or before the second (2nd) Business Day (or, if earlier, the last day of the Standard Settlement Period (as defined below)) following the Conversion Date (the "***Unrestricted Voluntary Conversion Delivery Deadline***"), cause the Transfer Agent to credit the aggregate number of shares of Class A Common Stock to which the holder shall be entitled to the holder's or its designee's balance account with The Depository Trust Corporation ("***DTC***") through DTC's Deposit/Withdrawal at Custodian ("***DWAC***") system. The "***Conversion Date***," or the date on which a conversion shall be deemed effective, shall be defined as the Trading Day (as defined below) that the completed Notice of Conversion is sent by electronic mail or facsimile to, and received during regular business hours by, the Corporation. The calculations and entries set forth in the Notice of Conversion shall control in the absence of verifiable or mathematical error. Shares of Class B Common Stock converted into Class A Common Stock in accordance with the terms hereof shall be canceled and shall not be reissued. The holder shall not be required to physically surrender the certificate(s) representing the Class B Common Stock to the Corporation until all shares of Class B Common Stock represented by such certificate(s) have been converted in full, in which case the holder shall surrender such certificate(s) to the Corporation for cancellation within three (3) Trading Days of the date the final Notice of Conversion is delivered to the Corporation. Delivery of a Notice of Conversion with respect to a partial conversion shall have the same effect as cancellation of the original certificate(s) representing such shares of Class B Common Stock and issuance of a certificate representing such remaining shares of Class B Common Stock. In accordance with the preceding sentence, upon the written request of the holder and the surrender of certificate(s) representing Class B Common Stock, the Corporation shall, within three (3) Trading Days of such request, deliver to the holder certificate(s) (as specified by the holder in such request) representing the remaining shares of Class B Common Stock represented by the surrendered certificate(s).

(b) *Beneficial Ownership Limitation*. Notwithstanding anything herein to the contrary, but subject to the last sentence of this Section 6(b) of this Part A, the Corporation shall not effect any conversion of the Class B Common Stock, and a holder shall not have the right to convert any portion of the Class B Common Stock, to the extent that, after giving effect to an attempted conversion set forth on the applicable Notice of Conversion, such holder together with such holder's Affiliates, and any other Person whose beneficial ownership of Class A Common Stock would be aggregated with such holder's for purposes of Section 13(d) of the Securities Exchange Act of 1934, as amended (the "***Exchange Act***"), and the applicable rules and regulations of the Securities and Exchange Commission (the "***Commission***"), including any "group" of which the holder is a member would beneficially own a number of shares of Class A Common Stock in excess of 4.9% of the total number of shares of Class A Common Stock then issued and outstanding (the "***Beneficial Ownership Limitation***"); *provided* that the Beneficial Ownership Limitation shall not apply to the extent that the Class A Common Stock is not deemed to constitute an "equity security" pursuant to Rule 13d-1(i) under the Exchange Act. Delivery of a Notice of Conversion by a holder in respect of the conversion of Class B Common Stock shall constitute a representation by such holder that the issuance of shares of Class A Common Stock in accordance with such Notice of Conversion will not cause such holder (together with such holder's Affiliates, and any other Person whose beneficial ownership of Class A Common Stock would be aggregated with such holder's for purposes of Section 13(d) of the Exchange Act and the applicable regulations of the Commission) to beneficially own a number of shares of Class A Common Stock in excess of the Beneficial Ownership Limitation, as determined in accordance with this Restated Certificate of Incorporation. For purposes of this Section 6(b) of this Part A, the number of shares of Class A Common Stock beneficially owned by such holder and its Affiliates shall include the number of shares of Class A Common Stock issuable upon conversion of the Class B Common Stock subject to the Notice of Conversion with respect to which such determination is being made, but shall exclude the number of shares of Class A Common Stock which are issuable upon (A) conversion of the remaining, unconverted Class B Common Stock beneficially owned by such holder or any of its Affiliates (and any other Person whose beneficial ownership of Class A Common Stock would be aggregated with such holder's for purposes of Section 13(d) of the Exchange Act and the applicable regulations of the Commission), and (B) exercise, exchange or conversion of the unexercised, unexchanged or unconverted portion of any other securities of the Corporation subject to a limitation on conversion, exchange or exercise analogous to the limitation contained herein (including any class or series of preferred stock and warrants) beneficially owned by such holder or any of its Affiliates (and any other Person whose beneficial ownership of Class A Common Stock would be aggregated with such holder's for purposes of Section 13(d) of the Exchange Act and the applicable regulations of the Commission). Except as set forth in the preceding sentence, for purposes of this Section 6(b) of this Part A, beneficial ownership shall be calculated in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder. In addition, a determination as to any "group" status as contemplated above shall be determined in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder. For purposes of this Section 6(b) of this Part A, in determining the number of outstanding shares of Class A Common Stock, a holder may rely on the number of outstanding shares of Class A Common Stock as stated in the Corporation's most recent quarterly or annual report filed with the Commission, any current report or other filing filed by the Corporation with the Commission subsequent thereto or any confirmation provided by the Corporation in accordance with the next sentence. Upon the written request of a holder (which may be via electronic mail), the Corporation shall within two (2) Trading Days following such request, confirm in writing via electronic mail to such holder the number of shares of Class A Common Stock then outstanding. In any case, the number of outstanding shares of Class A Common Stock shall be determined after giving effect to any actual conversion, exchange or exercise of securities of the Corporation, including Class B Common Stock, by such holder or its Affiliates since the date as of which such number of outstanding shares of Class A Common Stock was last publicly reported.

(c) *Mechanics of Conversion*

(i) Delivery of Certificate or Electronic Issuance Upon Conversion. Not later than the Restricted Voluntary Conversion Delivery Deadline or the Unrestricted Voluntary Conversion Delivery Deadline, as applicable (as applicable, the "***Share Delivery Date***"), the Corporation shall (a) deliver, or cause to be delivered, to the converting holder a certificate or certificates representing the number of Conversion Shares being acquired upon the conversion of shares of Class B Common Stock or (b) in the case of a DWAC Delivery, electronically deliver such Conversion Shares by crediting the account of the holder's prime broker with DTC through its DWAC system. If in the case of any Notice of Conversion such certificate or certificates are not delivered to or as directed by or, in the case of a DWAC Delivery, such shares are not electronically delivered to or as directed by, the applicable holder by the Share Delivery Date, the applicable holder shall be entitled to elect to rescind such Notice of Conversion by written notice to the Corporation at any time on or before its receipt of such certificate or certificates for Conversion Shares or electronic receipt of such shares, as applicable, in which event the Corporation shall promptly return to such holder any original Class B Common Stock certificate delivered to the Corporation.

(ii) Obligation Absolute. Subject to Section 6(b) of this Part A and subject to holder's right to rescind a Notice of Conversion pursuant to Section 6(c)(i) of this Part A, the Corporation's obligation to issue and deliver the Conversion Shares upon conversion of Class B Common Stock in accordance with the terms hereof is absolute and unconditional, irrespective of any action or inaction by a holder to enforce the same, any waiver or consent with respect to any provision hereof, the recovery of any judgment against any Person or any action to enforce the same, or any setoff, counterclaim, recoupment, limitation or termination, or any breach or alleged breach by such holder or any other Person of any obligation to the Corporation or any violation or alleged violation of law by such holder or any other Person, and irrespective of any other circumstance which might otherwise limit such obligation of the Corporation to such holder in connection with the issuance of such Conversion Shares.

(iii) Compensation for Buy-In on Failure to Timely Deliver Certificates Upon Conversion. If the Corporation fails to deliver to a holder a certificate or certificates representing Conversion Shares or to effect a DWAC Delivery, as applicable, by the Share Delivery Date pursuant to Section 6(c)(i) of this Part A, and if after such Share Delivery Date such holder is required by its brokerage firm to purchase (in an open market transaction or otherwise), or the holder's brokerage firm otherwise purchases, shares of Class A Common Stock to deliver in satisfaction of a sale by such holder of the Conversion Shares which such holder was entitled to receive upon the conversion relating to such Share Delivery Date (a "***Buy-In***"), then, at the election of such holder, the Corporation shall (A) pay in cash to such holder (in addition to any other remedies available to or elected by such holder) the amount by which (x) such holder's total purchase price (including any brokerage commissions) for the shares of Class A Common Stock so purchased exceeds (y) the product of (1) the aggregate number of shares of Class A Common Stock that such holder was entitled to receive from the conversion at issue multiplied by (2) the actual sale price at which the sell order giving rise to such purchase obligation was executed (including any brokerage commissions), and (B) at the option of such holder, either reissue (if surrendered) the shares of Class B Common Stock equal to the number of shares of Class B Common Stock submitted for conversion or deliver to such holder the number of shares of Class A Common Stock that would have been issued if the Corporation had timely complied with its delivery requirements under Section 6(c)(i) of this Part A. The holder shall provide the Corporation written notice within five (5) Trading Days after the occurrence of a Buy-In indicating the amounts payable to such holder in respect of the Buy-In together with applicable confirmations and any other evidence reasonably requested by the Corporation related thereto. Nothing herein shall limit a holder's right to pursue any other remedies available to it hereunder, at law or in equity including a decree of specific performance and/or injunctive relief with respect to the Corporation's failure to timely deliver shares of Class A Common Stock upon conversion of the shares of Class B Common Stock as required pursuant to the terms hereof.

(iv) Reservation of Shares Issuable Upon Conversion. The Corporation covenants that it will at all times reserve and keep available out of its authorized and unissued shares of Class A Common Stock for the sole purpose of issuance upon conversion of the Class B Common Stock and payment of dividends on the Class B Common Stock, each as herein provided, free from preemptive rights or any other actual contingent purchase rights, not less than such aggregate number of shares of the Class A Common Stock as shall be issuable (without regard to the Beneficial Ownership Limitation) upon the conversion of all outstanding shares of Class B Common Stock. The Corporation covenants that all shares of Class A Common Stock that shall be so issuable shall, upon issue, be duly authorized, validly issued, fully paid and nonassessable.

(v) Taxes. The Corporation shall pay any and all issue and other taxes that may be payable in respect of any issue or delivery of shares of Class A Common Stock upon conversion of any shares of Class B Common Stock; *provided*, *however*, that the Corporation shall not be obligated to pay any transfer taxes resulting from any transfer requested by any holder in connection with any such conversion.

(vi) Status as Class A Stockholder. Effective as of the delivery by the holder of the Notice of Conversion by the holder by facsimile or electronic mail, as provided herein, (A) the shares of Class B Common Stock being converted shall be deemed converted into shares of Class A Common Stock, (B) the holder shall be deemed the holder or record of such applicable Conversion Shares, and (C) subject to a holder's right to rescind a Notice of Conversion pursuant to Section 6(c)(i) of this Part A, the holder's rights as a holder of such converted shares of Class B Common Stock shall cease and terminate, excepting only the right to receive certificates evidencing such shares of Class A Common Stock, or electronic delivery of such shares in the case of DWAC Delivery, and to any remedies provided herein or otherwise available at law or in equity to such holder because of a failure by the Corporation to comply with the terms of this Restated Certificate of Incorporation. In all cases, the holder shall retain all of its rights and remedies for the Corporation's failure to convert Class B Common Stock.

(vii) Automatic Conversion Upon Certain Transfers. Upon a transfer of shares of Class B Common Stock by a holder to a Person that is neither an Affiliate of such holder nor a Person whose beneficial ownership of Class A Common Stock would be aggregated with such holder's for purposes of Section 13(d) of the Exchange Act and the applicable regulations of the Commission, each share of Class B Common Stock so transferred shall automatically, without further action by the transferor or transferee thereof, convert into a share of Class A Common Stock; and upon delivery to the Corporation of written notice of any such transfer, the Corporation shall issue and deliver the shares of Class A Common Stock into which such transferred shares of Class B Common Stock shall have thereby converted, with the same effect as if such notice of transfer were a Notice of Conversion delivered in accordance with Section 5 of this Part A.

(d) *Legends*. Certificates evidencing shares of Class B Common Stock, or shares of Class A Common Stock issued upon conversion thereof ("***Conversion Shares***"), issued or sold pursuant to an effective registration statement under the Securities Act shall not contain any legend restricting the transfer thereof. Certificates evidencing shares of Class B Common Stock or Conversion Shares shall not be required to contain any legend restricting the transfer thereof: (A) while a registration statement covering the sale or resale of such security is effective under the Securities Act; *provided* that the holder of such security provides a representation reasonably satisfactory to counsel to the Corporation that such holder will not sell or resell such security at any time that such registration statement is not effective or such registration statement is otherwise not available for the sale or resale of such security, except pursuant to a sale that is exempt from the registration requirements of the Securities Act pursuant to Rule 144 thereunder, or (B) if the holder thereof provides customary good-faith representations to the effect that it has sold such shares pursuant to Rule 144, or (C) if such shares of Class B Common Stock or Conversion Shares, as the case may be, are eligible for sale under Rule 144(b)(1) as set forth in customary non-affiliate good-faith representations provided by the holder thereof, or (D) at any time on or after the date hereof that the applicable holder certifies in good faith that it is not an Affiliate of the Corporation and that such holder's holding period for purposes of Rule 144 and, in the case of the Conversion Shares, subsection (d)(3)(ii) thereof with respect to such shares of Class B Common Stock and/or Conversion Shares is at least twelve (12) months (or six (6) months if the Corporation is, and shall have been for a period of at least ninety (90) days, subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act), or (E) if such legend is not required under applicable requirements of the Securities Act (including judicial interpretations and pronouncements issued by the staff of the Commission) as determined in good faith by counsel to the Corporation or set forth in a legal opinion delivered by counsel to the Corporation (clauses (A) through (E), collectively with the first sentence of this paragraph, the "***Unrestricted Conditions***"). The Corporation shall use its reasonable best efforts to cause its counsel to issue a legal opinion to the Transfer Agent at such time as any of the Unrestricted Conditions has been satisfied, if required by the Corporation's Transfer Agent to effect the issuance of shares of Class B Common Stock or the Conversion Shares, as applicable, without a restrictive legend or removal of the legend hereunder. If any of the Unrestricted Condition is met at the time of issuance of shares of Class B Common Stock or at the time of issuance of Conversion Shares, then such shares of Class B Common Stock or Conversion Shares, as applicable, shall be issued free of all legends. The Corporation agrees that at such time as such legend is no longer required under this Section 6(d) of this Part A, it will, no later than two (2) Trading Days (or, if less, the number of days comprising the Standard Settlement Period) following the delivery by the applicable holder to the Corporation or the Transfer Agent of a certificate representing shares of Class B Common Stock or Conversion Shares, as applicable, issued with a restrictive legend, deliver or cause to be delivered to such holder a certificate (or electronic transfer) representing such shares that is free from all restrictive and other legends.

(e) *Certain Defined Terms*. For the purposes of this Section 5 of this Part A, the following terms shall have the following meanings:

"***Affiliate***" means any Person that, directly or indirectly through one or more intermediaries, controls or is controlled by or is under common control with a Person, as such terms are used in and construed under Rule 144 under the Securities Act. For this purpose, "control" (including, with its correlative meanings, "controlled by" and "under common control with") shall mean the possession, directly or indirectly, of the power to direct or cause the direction of management or policies of a Person, whether through the ownership of securities or partnership or other ownership interests, by contract or otherwise. With respect to a holder of capital stock, any investment fund or managed account that is managed on a discretionary basis by the same investment manager as such holder will be deemed to be an Affiliate of such holder.

"***Business Day***" means any day other than a Saturday, Sunday or other day on which commercial banks are authorized to close under the laws of, or are in fact closed in, New York, New York.

"***Person***" means any individual, sole proprietorship, partnership (general or limited), limited liability company, joint venture, company, trust (statutory or common law), unincorporated organization, association, corporation, institution, public benefit corporation, firm, joint stock company, estate, entity or governmental or regulatory agency.

"***Standard Settlement Period***" means the standard settlement period for equity trades effected by U.S. broker-dealers, expressed in a number of Trading Days, as in effect on the applicable date (which, as of the date hereof, is two (2) Trading Days).

"***Trading Day***" means a day on which the Class A Common Stock is traded for any period on the principal securities exchange or other securities market on which the Class A Common Stock is then being traded.

B. PREFERRED STOCK.

Preferred Stock may be issued from time to time in one or more series, each of such series to have such terms as stated or expressed herein and in the resolution or resolutions providing for the issue of such series adopted by the Board of Directors as hereinafter provided.

Authority is hereby expressly granted to the Board of Directors from time to time to issue the Preferred Stock in one or more series, and in connection with the creation of any such series, by adopting a resolution or resolutions providing for the issuance of the shares thereof and by filing a certificate of designations relating thereto in accordance with the General Corporation Law of the State of Delaware, to determine and fix the number of shares of such series and such voting powers, full or limited, or no voting powers, and such designations, preferences and relative, participating, optional or other special rights, and qualifications, limitations or restrictions thereof, including without limitation thereof, dividend rights, conversion rights, redemption privileges and liquidation preferences, as shall be stated and expressed in such resolutions, all to the fullest extent now or hereafter permitted by the General Corporation Law of the State of Delaware. The powers, preferences and relative, participating, optional and other special rights of each such series of Preferred Stock, and the qualifications, limitations or restrictions thereof, if any, may differ from those of any and all other series at any time outstanding. Without limiting the generality of the foregoing, the resolution or resolutions providing for the issuance of any series of Preferred Stock may provide that such series shall be superior or rank equally or be junior to any other series of Preferred Stock to the extent permitted by law.

Subject to the rights of the holders of any series of Preferred Stock pursuant to the terms of this Restated Certificate of Incorporation or any resolution or resolutions providing for the issuance of such series of stock adopted by the Board of Directors, the number of authorized shares of Preferred Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of the holders of a majority of the stock of the Corporation entitled to vote thereon, irrespective of the provisions of Section 242(b)(2) of the General Corporation Law of the State of Delaware.

FIFTH: Except as otherwise provided herein, the Corporation reserves the right to amend, alter, change or repeal any provision contained in this Restated Certificate of Incorporation, in the manner now or hereafter prescribed by statute and this Restated Certificate of Incorporation, and all rights conferred upon stockholders, directors or any other persons herein are granted subject to this reservation.

SIXTH: In furtherance and not in limitation of the powers conferred upon it by the General Corporation Law of the State of Delaware, and subject to the terms of any series of Preferred Stock, the Board of Directors shall have the power to adopt, amend, alter or repeal the Bylaws of the Corporation. The stockholders may not adopt, amend, alter or repeal the Bylaws of the Corporation, or adopt any provision inconsistent therewith, unless such action is approved, in addition to any other vote required by this Restated Certificate of Incorporation, by the affirmative vote of the holders of at least two-thirds in voting power of the outstanding shares of capital stock of the Corporation entitled to vote thereon. Notwithstanding any other provisions of law, this Restated Certificate of Incorporation or the Bylaws of the Corporation, and notwithstanding the fact that a lesser percentage may be specified by law, the affirmative vote of the holders of at least two-thirds in voting power of the outstanding shares of capital stock of the Corporation entitled to vote thereon shall be required to amend or repeal, or to adopt any provision inconsistent with, this Article SIXTH.

SEVENTH: Except to the extent that the General Corporation Law of the State of Delaware prohibits the elimination or limitation of liability of directors for breaches of fiduciary duty, no director of the Corporation shall be personally liable to the Corporation or its stockholders for monetary damages for any breach of fiduciary duty as a director, notwithstanding any provision of law imposing such liability. No amendment to or repeal of this provision shall apply to or have any effect on the liability or alleged liability of any director of the Corporation for or with respect to any acts or omissions of such director occurring prior to such amendment or repeal. If the General Corporation Law of the State of Delaware is amended to permit further elimination or limitation of the personal liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the General Corporation Law of the State of Delaware as so amended.

EIGHTH: This Article EIGHTH is inserted for the management of the business and for the conduct of the affairs of the Corporation.

1. General Powers. The business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors.

2. Number of Directors; Election of Directors. Subject to the rights of holders of any series of Preferred Stock to elect directors, the number of directors of the Corporation shall be established from time to time by the Board of Directors. Election of directors need not be by written ballot, except as and to the extent provided in the Bylaws of the Corporation.

3. Classes of Directors. Subject to the rights of holders of any series of Preferred Stock to elect directors, the Board of Directors shall be and is divided into three classes, designated as Class I, Class II and Class III. Each class shall consist, as nearly as may be possible, of one-third of the total number of directors constituting the entire Board of Directors. The Board of Directors is authorized to assign members of the Board of Directors to Class I, Class II or Class III.

4. Terms of Office. Subject to the rights of holders of any series of Preferred Stock to elect directors, each director shall serve for a term ending on the date of the third annual meeting of stockholders following the annual meeting of stockholders at which such director was elected; *provided* that each director initially assigned to Class I shall serve for a term expiring at the Corporation's first annual meeting of stockholders held after the effectiveness of this Restated Certificate of Incorporation; each director initially assigned to Class II shall serve for a term expiring at the Corporation's second annual meeting of stockholders held after the effectiveness of this Restated Certificate of Incorporation; and each director initially assigned to Class III shall serve for a term expiring at the Corporation's third annual meeting of stockholders held after the effectiveness of this Restated Certificate of Incorporation; *provided further*, that the term of each director shall continue until the election and qualification of his or her successor and be subject to his or her earlier death, resignation or removal.

5. Quorum. The greater of (a) a majority of the directors at any time in office and (b) one-third of the number of directors fixed pursuant to Section 2 of this Article EIGHTH shall constitute a quorum of the Board of Directors. If at any meeting of the Board of Directors there shall be less than such a quorum, a majority of the directors present may adjourn the meeting from time to time without further notice other than announcement at the meeting, until a quorum shall be present.

6. Action at Meeting. Every act or decision done or made by a majority of the directors present at a meeting duly held at which a quorum is present shall be regarded as the act of the Board of Directors unless a greater number is required by law or by this Restated Certificate of Incorporation.

7. Removal. Subject to the rights of holders of any series of Preferred Stock, directors of the Corporation may be removed but only for cause and only by the affirmative vote of the holders of at least two-thirds in voting power of the outstanding shares of capital stock of the Corporation entitled to vote thereon at an election of directors.

8. Vacancies. Subject to the rights of holders of any series of Preferred Stock, any vacancy or newly created directorship in the Board of Directors, however occurring, shall be filled only by vote of a majority of the directors then in office, although less than a quorum, or by a sole remaining director and shall not be filled by the stockholders, unless the Board of Directors determines by resolution that any such vacancy or newly created directorship shall be filled by the stockholders. A director elected to fill a vacancy shall hold office until the next election of the class for which such director shall have been chosen, subject to the election and qualification of a successor and to such director's earlier death, resignation or removal.

9. Stockholder Nominations and Introduction of Business, Etc. Advance notice of stockholder nominations for election of directors and other business to be brought by stockholders before a meeting of stockholders shall be given in the manner provided by the Bylaws of the Corporation.

10. Amendments to Article. Notwithstanding any other provisions of law, this Restated Certificate of Incorporation or the Bylaws of the Corporation, and notwithstanding the fact that a lesser percentage may be specified by law, the affirmative vote of the holders of at least two-thirds in voting power of the outstanding shares of capital stock of the Corporation entitled to vote thereon shall be required to amend or repeal, or to adopt any provision inconsistent with, this Article EIGHTH.

NINTH: No action that is required or permitted to be taken by the stockholders of the Corporation at any annual or special meeting of stockholders may be effected by written consent of stockholders in lieu of a meeting. Notwithstanding any other provisions of law, this Restated Certificate of Incorporation or the Bylaws of the Corporation, and notwithstanding the fact that a lesser percentage may be specified by law, the affirmative vote of the holders of at least two-thirds in voting power of the outstanding shares of capital stock of the Corporation entitled to vote thereon shall be required to amend or repeal, or to adopt any provision inconsistent with, this Article NINTH.

TENTH: Special meetings of stockholders for any purpose or purposes may be called at any time only by the Board of Directors, the chairperson of the Board of Directors, the chief executive officer or the president (in the absence of a chief executive officer) of the Corporation, and may not be called by any other person or persons. Business transacted at any special meeting of stockholders shall be limited to the purpose or purposes stated in the notice of meeting. Notwithstanding any other provisions of law, this Restated Certificate of Incorporation or the Bylaws of the Corporation, and notwithstanding the fact that a lesser percentage may be specified by law, the affirmative vote of the holders of at least two-thirds in voting power of the outstanding shares of capital stock of the Corporation entitled to vote thereon shall be required to amend or repeal, or to adopt any provision inconsistent with, this Article TENTH.

ELEVENTH: Unless the Corporation consents in writing to the selection of an alternative forum, the Court of Chancery of the State of Delaware shall, to the fullest extent permitted by law, be the sole and exclusive forum for (a) any derivative action or proceeding brought on behalf of the Corporation, (b) any action asserting a claim of breach of fiduciary duty owed by any director, officer, employee or stockholder of the Corporation to the Corporation or the Corporation's stockholders, (c) any action asserting a claim arising pursuant to any provision of the General Corporation Law of the State of Delaware or as to which the General Corporation Law of the State of Delaware confers jurisdiction on the Court of Chancery of the State of Delaware or (d) any action asserting a claim governed by the internal affairs doctrine, in each case subject to said Court of Chancery having personal jurisdiction over the indispensable parties named as defendants therein; provided that, the provisions of this sentence will not apply to suits brought to enforce any liability or duty created by the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended, or any other claim for which the federal courts have exclusive jurisdiction; and provided further that, if and only if the Court of Chancery of the State of Delaware dismisses any such action for lack of subject matter jurisdiction, such action may be brought in another state or federal court sitting in the State of Delaware. Unless the Corporation consents in writing to the selection of an alternative forum, the federal district courts of the United States of America shall, to the fullest extent permitted by law, be the sole and exclusive forum for the resolution of any complaint asserting a cause of action arising under the Securities Act of 1933, as amended. To the fullest extent permitted by applicable law, any person or entity purchasing or otherwise acquiring or holding any interest in shares of capital stock of the Corporation shall be deemed to have notice of and consented to the provisions of this Article ELEVENTH. Notwithstanding any other provisions of law, this Restated Certificate of Incorporation or the Bylaws of the Corporation, and notwithstanding the fact that a lesser percentage may be specified by law, the affirmative vote of the holders of at least two-thirds in voting power of the outstanding shares of capital stock of the Corporation entitled to vote thereon shall be required to amend or repeal, or to adopt any provision inconsistent with, this Article ELEVENTH. If any provision or provisions of this Article ELEVENTH shall be held to be invalid, illegal or unenforceable as applied to any person or entity or circumstance for any reason whatsoever, then, to the fullest extent permitted by law, the validity, legality and enforceability of such provisions in any other circumstance and of the remaining provisions of this Article ELEVENTH (including, without limitation, each portion of any sentence of this Article ELEVENTH containing any such provision held to be invalid, illegal or unenforceable that is not itself held to be invalid, illegal or unenforceable) and the application of such provision to other persons or entities and circumstances shall not in any way be affected or impaired thereby.

IN WITNESS WHEREOF, this Restated Certificate of Incorporation, which restates, integrates and amends the certificate of incorporation of the Corporation, and which has been duly adopted in accordance with Sections 228, 242 and 245 of the General Corporation Law of the State of Delaware, has been executed by its duly authorized officer this ___ day of October, 2020.

AZIYO BIOLOGICS, INC.

By: _____

Name: Ronald Lloyd
Title: President and Chief Executive Officer

ANNEX A

NOTICE OF CONVERSION

(TO BE EXECUTED BY THE REGISTERED HOLDER IN ORDER TO CONVERT SHARES OF CLASS B COMMON STOCK)

Reference is made to the Restated Certificate of Incorporation (the "Certificate of Incorporation"). In accordance with and pursuant to the Certificate of Incorporation, the undersigned hereby elects to convert the number of shares of Class B Common Stock, par value $0.001 per share (the "Class B Common Stock"), of Aziyo Biologics, Inc., a Delaware corporation (the "Corporation"), indicated below into shares of Class A Common Stock, par value $0.001 per share (the "Class A Common Stock"), of the Corporation, as of the date specified below.

Date of Conversion: _____

Number of shares of Class B Common Stock to be converted: _____

Please confirm the following information:

Number of shares of Class A Common Stock to be issued: _____

Please issue the shares of Common Stock in accordance with the terms of the Certificate of Incorporation as follows:

Issue to: _____

E-mail: _____

DTC Participant Number and Name: _____

Account Number: _____

Exhibit 3.4

AMENDED AND RESTATED

BYLAWS

OF

AZIYO BIOLOGICS, INC.

(a Delaware corporation)

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AMENDED AND RESTATED BYLAWS
OF
AZIYO BIOLOGICS, INC.

ARTICLE I - CORPORATE OFFICES

1.1 REGISTERED OFFICE.

The registered office of Aziyo Biologics, Inc. (the "Corporation") shall be fixed in the Corporation's certificate of incorporation, as the same may be amended and/or restated from time to time (the "certificate of incorporation").

1.2 OTHER OFFICES.

The Corporation may have other offices at any place or places, either within or outside the State of Delaware, as the Corporation's board of directors (the "Board") shall from time to time determine or the business of the Corporation may from time to time require.

ARTICLE II - MEETINGS OF STOCKHOLDERS

2.1 PLACE OF MEETINGS.

Meetings of stockholders shall be held at any place, within or outside the State of Delaware, designated by the Board. The Board may, in its sole discretion, determine that a meeting of stockholders shall not be held at any place, but may instead be held solely by means of remote communication as authorized by Section 211(a) of the General Corporation Law of the State of Delaware (the "DGCL"). In the absence of any such designation or determination, stockholders' meetings shall be held at the Corporation's principal executive office.

2.2 ANNUAL MEETING.

The Board shall designate the date and time of the annual meeting. At the annual meeting, directors shall be elected and other proper business properly brought before the meeting in accordance with Section 2.4 of these bylaws may be transacted.

2.3 SPECIAL MEETING.

A special meeting of the stockholders may be called at any time by the Board, chairperson of the Board, chief executive officer or president (in the absence of a chief executive officer) of the Corporation, but such special meetings may not be called by any other person or persons.

No business may be transacted at such special meeting other than the business specified in such notice to stockholders. Nothing contained in this paragraph of this Section 2.3 shall be construed as limiting, fixing, or affecting the time when a meeting of stockholders called by action of the Board may be held.

2.4 ADVANCE NOTICE PROCEDURES FOR BUSINESS BROUGHT BEFORE A MEETING.

(a) At an annual meeting of the stockholders, only such business shall be conducted as shall have been properly brought before the meeting. To be properly brought before an annual meeting, business must be (i) brought before the meeting by the Corporation and specified in a notice of meeting given by or at the direction of the Board, (ii) brought before the meeting by or at the direction of the Board (or a committee thereof) or (iii) otherwise properly brought before the meeting by a stockholder who (A) was a stockholder of record of the Corporation (and, with respect to any beneficial owner, if different, on whose behalf such business is proposed, only if such beneficial owner was the beneficial owner of shares of the Corporation) both at the time of giving the notice provided for in this Section 2.4 and at the time of the meeting, (B) is entitled to vote at the meeting and (C) has complied with this Section 2.4 as to such business. Except for proposals properly made in accordance with Rule 14a-8 under the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder (as so amended and inclusive of such rules and regulations, the "Exchange Act"), and included in the notice of meeting given by or at the direction of the Board, the foregoing clause (iii) shall be the exclusive means for a stockholder to propose business to be brought before an annual meeting of the stockholders. Stockholders shall not be permitted to propose business to be brought before a special meeting of the stockholders, and the only matters that may be brought before a special meeting are the matters specified in the notice of meeting given by or at the direction of the person calling the meeting pursuant to Section 2.3 of these bylaws. Stockholders seeking to nominate persons for election to the Board must comply with Section 2.5 of these bylaws, and this Section 2.4 shall not be applicable to nominations except as expressly provided in Section 2.5 of these bylaws.

(b) Without qualification, for business to be properly brought before an annual meeting by a stockholder pursuant to clause (iii) of the second sentence of Section 2.4(a) of these bylaws, the stockholder must (i) provide Timely Notice (as defined below) thereof in writing and in proper form to the secretary of the Corporation and (ii) provide any updates or supplements to such notice at the times and in the forms required by this Section 2.4. To be timely, a stockholder's notice must be delivered to, or mailed and received by the Secretary at, the principal executive offices of the Corporation not less than ninety (90) days nor more than one hundred twenty (120) days prior to the first anniversary of the preceding year's annual meeting; ***provided***, ***however***, that, if the date of the annual meeting is more than thirty (30) days before or more than sixty (60) days after such anniversary date, notice by the stockholder to be timely must be so delivered, or mailed and received, not earlier than the close of business on the one hundred twentieth (120^{th}) day prior to such annual meeting and not later than the later of the close of business on the ninetieth (90^{th}) day prior to such annual meeting and the close of business on the tenth (10^{th}) day following the day on which public disclosure of the date of such annual meeting was first made (such notice within such time periods, "Timely Notice"); ***provided***, ***further***, that for the purposes of calculating Timely Notice for the first annual meeting held after the Company's initial public offering of its shares pursuant to a registration statement on Form S-1, the date of the immediately preceding annual meeting shall be deemed to be June 5, 2020. In no event shall any adjournment or postponement of an annual meeting or the announcement thereof commence a new time period (or extend any time period) for the giving of Timely Notice as described above.

(c) To be in proper form for purposes of this Section 2.4, a stockholder's notice to the secretary of the Corporation shall set forth:

(i) As to each Proposing Person (as defined below), (A) the name and address of such Proposing Person (including, without limitation, if applicable, the name and address that appear on the Corporation's books and records) and (B) the class or series and number of shares of the Corporation that are, directly or indirectly, owned of record or beneficially owned (within the meaning of Rule 13d-3 under the Exchange Act) by such Proposing Person, except that such Proposing Person shall in all events be deemed to beneficially own any shares of any class or series of the Corporation as to which such Proposing Person has a right to acquire beneficial ownership at any time in the future (the disclosures to be made pursuant to the foregoing clauses (A) and (B) are referred to as "Stockholder Information");

(ii) As to each Proposing Person, (A) any derivative, swap or other transaction or series of transactions engaged in, directly or indirectly, by such Proposing Person, the purpose or effect of which is to give such Proposing Person economic risk similar to ownership of shares of any class or series of the Corporation, including, without limitation, due to the fact that the value of such derivative, swap or other transactions are determined by reference to the price, value or volatility of any shares of any class or series of the Corporation, or which derivative, swap or other transactions provide, directly or indirectly, the opportunity to profit from any increase in the price or value of shares of any class or series of the Corporation ("Synthetic Equity Interests"), which Synthetic Equity Interests shall be disclosed without regard to whether (x) the derivative, swap or other transactions convey any voting rights in such shares to such Proposing Person, (y) the derivative, swap or other transactions are required to be, or are capable of being, settled through delivery of such shares or (z) such Proposing Person may have entered into other transactions that hedge or mitigate the economic effect of such derivative, swap or other transactions, (B) any proxy (other than a revocable proxy or consent given in response to a solicitation made pursuant to, and in accordance with, Section 14(a) of the Exchange Act by way of a solicitation statement filed on Schedule 14A), agreement, arrangement, understanding or relationship pursuant to which such Proposing Person has or shares a right to vote any shares of any class or series of the Corporation, (C) any agreement, arrangement, understanding or relationship, including, without limitation, any repurchase or similar so-called "stock borrowing" agreement or arrangement, engaged in, directly or indirectly, by such Proposing Person, the purpose or effect of which is to mitigate loss to, reduce the economic risk (of ownership or otherwise) of shares of any class or series of the Corporation by, manage the risk of share price changes for, or increase or decrease the voting power of, such Proposing Person with respect to the shares of any class or series of the Corporation, or which provides, directly or indirectly, the opportunity to profit from any decrease in the price or value of the shares of any class or series of the Corporation ("Short Interests"), (D) any rights to dividends on the shares of any class or series of the Corporation owned beneficially by such Proposing Person that are separated or separable from the underlying shares of the Corporation, (E) any performance related fees (other than an asset based fee) that such Proposing Person is entitled to based on any increase or decrease in the price or value of shares of any class or series of the Corporation, or any Synthetic Equity Interests or Short Interests, if any, (F)(x) if such Proposing Person is not a natural person, the identity of the natural person or persons associated with such Proposing Person responsible for the formulation of and decision to propose the business to be brought before the meeting (such person or persons, the "Responsible Person"), the manner in which such Responsible Person was selected, any fiduciary duties owed by such Responsible Person to the equity holders or other beneficiaries of such Proposing Person, the qualifications and background of such Responsible Person and any material interests or relationships of such Responsible Person that are not shared generally by any other record or beneficial holder of the shares of any class or series of the Corporation and that reasonably could have influenced the decision of such Proposing Person to propose such business to be brought before the meeting, and (y) if such Proposing Person is a natural person, the qualifications and background of such natural person and any material interests or relationships of such natural person that are not shared generally by any other record or beneficial holder of the shares of any class or series of the Corporation and that reasonably could have influenced the decision of such Proposing Person to propose such business to be brought before the meeting, (G) any significant equity interests or any Synthetic Equity Interests or Short Interests in any principal competitor of the Corporation held by such Proposing Persons, (H) any direct or indirect interest of such Proposing Person in any contract with the Corporation, any affiliate of the Corporation or any principal competitor of the Corporation (including, without limitation, in any such case, any employment agreement, collective bargaining agreement or consulting agreement), (I) any pending or threatened litigation in which such Proposing Person is a party or material participant involving the Corporation or any of its officers or directors, or any affiliate of the Corporation, (J) any material transaction occurring during the prior twelve months between such Proposing Person, on the one hand, and the Corporation, any affiliate of the Corporation or any principal competitor of the Corporation, on the other hand, (K) a summary of any material discussions regarding the business proposed to be brought before the meeting (x) between or among any of the Proposing Persons or (y) between or among any Proposing Person and any other record or beneficial holder of the shares of any class or series of the Corporation (including, without limitation, their names) and (L) any other information relating to such Proposing Person that would be required to be disclosed in a proxy statement or other filing required to be made in connection with solicitations of proxies or consents by such Proposing Person in support of the business proposed to be brought before the meeting pursuant to Section 14(a) of the Exchange Act (the disclosures to be made pursuant to the foregoing clauses (A) through (L) are referred to as "Disclosable Interests"); *provided, however*, that Disclosable Interests shall not include any such disclosures with respect to the ordinary course business activities of any broker, dealer, commercial bank, trust company or other nominee who is a Proposing Person solely as a result of being the stockholder directed to prepare and submit the notice required by these bylaws on behalf of a beneficial owner; and

(iii) As to each item of business that the stockholder proposes to bring before the annual meeting, (A) a reasonably brief description of the business desired to be brought before the annual meeting, the reasons for conducting such business at the annual meeting and any material interest in such business of each Proposing Person, (B) the text of the proposal or business (including, without limitation, the text of any resolutions proposed for consideration and in the event that such business includes a proposal to amend the bylaws of the Corporation, the language of the proposed amendment), (C) a reasonably detailed description of all agreements, arrangements and understandings between or among any of the Proposing Persons or between or among any Proposing Person and any other person or entity (including, without limitation, their names) in connection with the proposal of such business by such stockholder, (D) a representation that the stockholder is a holder of record of stock of the Corporation entitled to vote at such meeting and intends to appear in person or by proxy at the meeting to propose such business, (E) a representation whether the Proposing Person intends or is part of a group which intends (1) to deliver a proxy statement and/or form of proxy to holders of at least the percentage of the Corporation's outstanding capital stock required to approve or adopt the proposal and/or (2) otherwise to solicit proxies or votes from stockholders in support of such proposal and (F) any other information relating to such item of business that would be required to be disclosed in a proxy statement or other filing required to be made in connection with solicitations of proxies in support of the business proposed to be brought before the meeting pursuant to Section 14(a) of the Exchange Act; ***provided, however***, that the disclosures required by this paragraph (c)(iii) shall not include any disclosures with respect to any broker, dealer, commercial bank, trust company or other nominee who is a Proposing Person solely as a result of being the stockholder directed to prepare and submit the notice required by these bylaws on behalf of a beneficial owner.

(d) For purposes of this Section 2.4, the term "Proposing Person" shall mean (i) the stockholder providing the notice of business proposed to be brought before an annual meeting, (ii) the beneficial owner or beneficial owners, if different, on whose behalf the notice of the business proposed to be brought before the annual meeting is made, (iii) any affiliate or associate (each within the meaning of Rule 12b-2 under the Exchange Act for the purposes of these bylaws) of such stockholder or beneficial owner and (iv) any other person with whom such stockholder or beneficial owner (or any of their respective affiliates or associates) is Acting in Concert (as defined below).

(e) A person shall be deemed to be "Acting in Concert" with another person for purposes of these bylaws if such person knowingly acts (whether or not pursuant to an express agreement, arrangement or understanding) in concert with, or towards a common goal relating to the management, governance or control of the Corporation in parallel with, such other person where (i) each person is conscious of the other person's conduct or intent and this awareness is an element in their decision-making processes and (ii) at least one additional factor suggests that such persons intend to act in concert or in parallel, which such additional factors may include, without limitation, exchanging information (whether publicly or privately), attending meetings, conducting discussions, or making or soliciting invitations to act in concert or in parallel; ***provided***, that a person shall not be deemed to be Acting in Concert with any other person solely as a result of the solicitation or receipt of revocable proxies or consents from such other person in response to a solicitation made pursuant to, and in accordance with, Section 14(a) of the Exchange Act by way of a proxy or consent solicitation statement filed on Schedule 14A. A person Acting in Concert with another person shall be deemed to be Acting in Concert with any third party who is also Acting in Concert with such other person.

(f) A stockholder providing notice of business proposed to be brought before an annual meeting shall further update and supplement such notice, if necessary, so that the information provided or required to be provided in such notice pursuant to this Section 2.4 shall be true and correct as of the record date for determining stockholders entitled to notice of the annual meeting and as of the date that is ten (10) business days prior to the meeting or any adjournment or postponement thereof, and such update and supplement shall be delivered to, or mailed and received by, the secretary of the Corporation at the principal executive offices of the Corporation not later than five (5) business days after the record date for determining stockholders entitled to notice of the annual meeting (in the case of the update and supplement required to be made as of the record date), and not later than eight (8) business days prior to the date for the meeting or, if practicable, any adjournment or postponement thereof (and, if not practicable, on the first practicable date prior to the date to which the meeting has been adjourned or postponed) (in the case of the update and supplement required to be made as of ten (10) business days prior to the meeting or any adjournment or postponement thereof).

(g) Notwithstanding anything in these bylaws to the contrary and except as otherwise expressly provided in any applicable rule or regulation promulgated under the Exchange Act, no business shall be conducted at an annual meeting except in accordance with this Section 2.4. The presiding officer of an annual meeting of stockholders shall have the power and duty (a) to determine that any business was not properly brought before the meeting in accordance with this Section 2.4 (including whether the stockholder or beneficial owner, if any, on whose behalf the business proposed to be brought before the annual meeting is made, solicited (or is part of a group which solicited) or did not so solicit, as the case may be, proxies or votes in support of such stockholder's business in compliance with such stockholder's representation as required by clause (c)(iii)(E) of this Section 2.4); and (b) if any proposed business was not proposed in compliance with this Section 2.4 to declare to the meeting that any such business not properly brought before the meeting shall not be transacted.

(h) The foregoing notice requirements of this Section 2.4 shall be deemed satisfied by a stockholder with respect to business other than a nomination if the stockholder has notified the Corporation of his, her or its intention to present a proposal at an annual meeting in compliance with applicable rules and regulations promulgated under the Exchange Act and such stockholder's proposal has been included in a proxy statement that has been prepared by the Corporation to solicit proxies for such annual meeting. Nothing in this Section 2.4 shall be deemed to affect the rights of stockholders to request inclusion of proposals in the Corporation's proxy statement pursuant to Rule 14a-8 under the Exchange Act.

(i) For purposes of these bylaws, "public disclosure" shall mean disclosure in a press release reported by a national news service or in a document publicly filed by the Corporation with the Securities and Exchange Commission pursuant to Sections 13, 14 or 15(d) of the Exchange Act.

(j) Notwithstanding the foregoing provisions of this Section 2.4, unless otherwise required by law, if the stockholder (or a qualified representative of the stockholder) does not appear at the annual meeting to present proposed business, such proposed business shall not be transacted, notwithstanding that proxies in respect of such vote may have been received by the Corporation. For purposes of this Section 2.4, except as provided under Rule 14a-8 under the Exchange Act, to be considered a qualified representative of the stockholder, a person must be a duly authorized officer, manager or partner of such stockholder or must be authorized by a writing executed by such stockholder or an electronic transmission delivered by such stockholder to act for such stockholder as proxy at the annual meeting and such person must produce such writing or electronic transmission, or a reliable reproduction of the writing or electronic transmission, at the annual meeting.

(k) Notwithstanding the foregoing provisions of this Section 2.4, a stockholder shall also comply with all applicable requirements of the Exchange Act with respect to the matters set forth in this Section 2.4; provided however, that any references in these bylaws to the Exchange Act are not intended to and shall not limit any requirements applicable to proposals as to any business to be considered pursuant to this Section 2.4 (including paragraph (a)(iii) hereof), and compliance with paragraph (a)(iii) of this Section 2.4 shall be the exclusive means for a stockholder to submit business (other than, as provided in the first sentence of paragraph (h) of this Section 2.4, business brought properly under and in compliance with Rule 14a-8 of the Exchange Act, as may be amended from time to time).

2.5 ADVANCE NOTICE PROCEDURES FOR NOMINATIONS OF DIRECTORS.

(a) Nominations of any person for election to the Board at an annual meeting or at a special meeting (but, in the case of a special meeting, only if the election of directors is a matter specified in the notice of meeting given by or at the direction of the person calling such special meeting) may be made at such meeting only (i) by or at the direction of the Board or any committee thereof, or (ii) by a stockholder who (A) was a stockholder of record of the Corporation (and, with respect to any beneficial owner, if different, on whose behalf such nomination is proposed to be made, only if such beneficial owner was the beneficial owner of shares of the Corporation) both at the time of giving the notice provided for in this Section 2.5 and at the time of the meeting, (B) is entitled to vote at the meeting and (C) has complied with this Section 2.5 as to such nomination. The foregoing clause (ii) shall be the exclusive means for a stockholder to make any nomination of a person or persons for election to the Board to be considered by the stockholders at an annual meeting or special meeting.

(b) Without qualification, for a stockholder to make any nomination of a person or persons for election to the Board at an annual meeting, the stockholder must (i) provide Timely Notice (as defined in Section 2.4(b) of these bylaws) thereof in writing and in proper form to the secretary of the Corporation and (ii) provide any updates or supplements to such notice at the times and in the forms required by this Section 2.5. Notwithstanding anything in this paragraph to the contrary, in the event that the number of directors to be elected to the Board at an annual meeting is increased effective after the time period for which nominations would otherwise by due under this paragraph (b) and there is no public announcement by the Corporation naming the nominees for the additional directorships at least one hundred (100) days prior to the first anniversary of the preceding year's annual meeting, a stockholder's notice required by paragraph (b) of this Section 2.5 shall also be considered timely, but only with respect to nominees for the additional directorships, if it shall be delivered to the Secretary at the principal executive offices of the Corporation not later than the close of business on the tenth (10th) day following the day on which such public announcement is first made by the Corporation. Without qualification, if the election of directors is a matter specified in the notice of meeting given by or at the direction of the person calling such special meeting, then for a stockholder to make any nomination of a person or persons for election to such position(s) as specified in the notice of the special meeting, the stockholder must (i) provide timely notice thereof in writing and in proper form to the secretary of the Corporation at the principal executive offices of the Corporation and (ii) provide any updates or supplements to such notice at the times and in the forms required by this Section 2.5. To be timely, a stockholder's notice for nominations to be made at a special meeting must be delivered to, or mailed and received at, the principal executive offices of the Corporation not earlier than the close of business on the one hundred twentieth (120^{th}) day prior to such special meeting and not later than the later of the close of business on the ninetieth (90^{th}) day prior to such special meeting and the close of business on the tenth (10^{th}) day following the day on which public disclosure (as defined in Section 2.4(i) of these bylaws) of the date of such special meeting was first made. In no event shall any adjournment or postponement of an annual meeting or special meeting or the announcement thereof commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above.

(c) To be in proper form for purposes of this Section 2.5, a stockholder's notice to the secretary of the Corporation shall set forth:

(i) As to each Nominating Person (as defined below), the Stockholder Information (as defined in Section 2.4(c)(i) of these bylaws) except that for purposes of this Section 2.5, the term "Nominating Person" shall be substituted for the term "Proposing Person" in all places it appears in Section 2.4(c)(i);

(ii) As to each Nominating Person, any Disclosable Interests (as defined in Section 2.4(c)(ii), except that for purposes of this Section 2.5 the term "Nominating Person" shall be substituted for the term "Proposing Person" in all places it appears in Section 2.4(c)(ii) and the disclosure in clause (L) of Section 2.4(c)(ii) shall be made with respect to the election of directors at the meeting) ***provided, however***, that Disclosable Interests shall not include any such disclosures with respect to the ordinary course business activities of any broker, dealer, commercial bank, trust company or other nominee who is a Nominating Person solely as a result of being the stockholder directed to prepare and submit the notice required by these bylaws on behalf of a beneficial owner; and

(iii) As to each person whom a Nominating Person proposes to nominate for election as a director, (A) all information with respect to such proposed nominee that would be required to be set forth in a stockholder's notice pursuant to this Section 2.5 if such proposed nominee were a Nominating Person, (B) all information relating to such proposed nominee that is required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for election of directors in a contested election pursuant to Section 14(a) under the Exchange Act (including, without limitation, such proposed nominee's written consent to being named in the proxy statement as a nominee and to serving as a director if elected), (C) a statement whether the proposed nominee, if elected, intends to tender, promptly following such person's failure to receive the required vote for election as a director at any subsequent meeting at which such person is nominated for re-election, a resignation that will become effective upon the acceptance of such resignation by the Board of Directors, (D) a description of all direct and indirect compensation and other material monetary agreements, arrangements and understandings during the past three (3) years, and any other material relationships, between or among any Nominating Person, on the one hand, and each proposed nominee, his or her respective affiliates and associates and any other persons with whom such proposed nominee (or any of his or her respective affiliates and associates) is Acting in Concert (as defined in Section 2.4(e) of these bylaws), on the other hand, including, without limitation, all information that would be required to be disclosed pursuant to Item 404 under Regulation S-K if such Nominating Person were the "registrant" for purposes of such rule and the proposed nominee were a director or executive officer of such registrant (the disclosures to be made pursuant to the foregoing clauses (A) through (C) are referred to as "Nominee Information"), (E) a representation that the Nominating Person is a holder of record of stock of the Corporation entitled to vote at such meeting and intends to appear in person or by proxy at the meeting to propose such nomination, (F) a representation whether the Nominating Person intends or is part of a group which intends (1) to deliver a proxy statement and/or form of proxy to holders of at least the percentage of the Corporation's outstanding capital stock required to elect the nominee and/or (2) otherwise to solicit proxies or votes from stockholders in support of such nomination and (G) a completed and signed questionnaire, representation and agreement as provided in Section 2.5(g); and

(iv) The Corporation may require any proposed nominee to furnish such other information (A) as may reasonably be required by the Corporation to determine the eligibility of such proposed nominee to serve as an independent director of the Corporation in accordance with the Corporation's Corporate Governance Guidelines or (B) that could be material to a reasonable stockholder's understanding of the independence or lack of independence of such proposed nominee.

(d) For purposes of this Section 2.5, the term "Nominating Person" shall mean (i) the stockholder providing the notice of the nomination proposed to be made at the meeting, (ii) the beneficial owner or beneficial owners, if different, on whose behalf the notice of the nomination proposed to be made at the meeting is made, (iii) any affiliate or associate of such stockholder or beneficial owner and (iv) any other person with whom such stockholder or such beneficial owner (or any of their respective affiliates or associates) is Acting in Concert.

(e) A stockholder providing notice of any nomination proposed to be made at a meeting shall further update and supplement such notice, if necessary, so that the information provided or required to be provided in such notice pursuant to this Section 2.5 shall be true and correct as of the record date for determining stockholders entitled to notice of the meeting and as of the date that is ten (10) business days prior to the meeting or any adjournment or postponement thereof, and such update and supplement shall be delivered to, or mailed and received by, the secretary of the Corporation at the principal executive offices of the Corporation not later than five (5) business days after the record date for determining stockholders entitled to notice of the meeting (in the case of the update and supplement required to be made as of the record date), and not later than eight (8) business days prior to the date for the meeting or, if practicable, any adjournment or postponement thereof (and, if not practicable, on the first practicable date prior to the date to which the meeting has been adjourned or postponed) (in the case of the update and supplement required to be made as of ten (10) business days prior to the meeting or any adjournment or postponement thereof).

(f) Notwithstanding anything in these bylaws to the contrary, no person shall be eligible for election as a director of the Corporation unless nominated in accordance with this Section 2.5, except as otherwise expressly provided in any applicable rule or regulation promulgated under the Exchange Act. The presiding officer at any meeting of stockholders shall have the power and duty to (a) determine that a nomination was not properly made in accordance with this Section 2.5 (including whether the stockholder or beneficial owner, if any, on whose behalf the nomination was made, solicited or is part of a group which solicited) or did not so solicit, as the case may be, proxies or votes in support of such stockholder's nomination in compliance with such stockholder's representation as required by clause (c)(iii)(E) of this Section 2.5); and (b) if any proposed nomination was not made in compliance with this Section 2.5 to declare such determination to the meeting that the defective nomination shall be disregarded.

(g) To be eligible to be a nominee for election as a director of the Corporation, the proposed nominee must deliver (in accordance with the time periods prescribed for delivery of notice under this Section 2.5) to the secretary of the Corporation at the principal executive offices of the Corporation a written questionnaire with respect to the background and qualification of such proposed nominee (which questionnaire shall be provided by the secretary upon written request) and a written representation and agreement (in form provided by the secretary upon written request) that such proposed nominee (i) is not and will not become a party to (A) any agreement, arrangement or understanding with, and has not given any commitment or assurance to, any person or entity as to how such proposed nominee, if elected as a director of the Corporation, will act or vote on any issue or question (a "Voting Commitment") that has not been disclosed to the Corporation or (B) any Voting Commitment that could limit or interfere with such proposed nominee's ability to comply, if elected as a director of the Corporation, with such proposed nominee's fiduciary duties under applicable law, (ii) is not, and will not become a party to, any agreement, arrangement or understanding with any person or entity other than the Corporation with respect to any direct or indirect compensation, reimbursement or indemnification in connection with candidacy, service or action as a director that has not been disclosed to the Corporation and (iii) in such proposed nominee's individual capacity and on behalf of the stockholder (and the beneficial owner, if different, on whose behalf the nomination is made) would be in compliance, if elected as a director of the Corporation, and will comply with applicable publicly disclosed corporate governance, conflict of interest, confidentiality and stock ownership and trading policies and guidelines of the Corporation.

(h) In addition to the requirements of this Section 2.5 with respect to any nomination proposed to be made at a meeting, each Nominating Person shall comply with all applicable requirements of the Exchange Act with respect to any such nominations.

(i) Notwithstanding the foregoing provisions of this Section 2.5, unless otherwise required by law, if the stockholder (or a qualified representative of the stockholder) does not appear at the meeting to present the proposed nomination, such proposed nomination shall not be considered, notwithstanding that proxies in respect of such vote may have been received by the Corporation. For purposes of this Section 2.5, to be considered a qualified representative of the stockholder, a person must be a duly authorized officer, manager or partner of such stockholder or must be authorized by a writing executed by such stockholder or an electronic transmission delivered by such stockholder to act for such stockholder as proxy at the meeting of stockholders and such person must produce such writing or electronic transmission, or a reliable reproduction of the writing or electronic transmission, at the meeting.

2.6 NOTICE OF STOCKHOLDERS' MEETINGS

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Unless otherwise provided by law, the certificate of incorporation or these bylaws, the notice of any meeting of stockholders shall be given in accordance with either Section 2.7 or Section 8.1 of these bylaws not less than ten (10) nor more than sixty (60) days before the date of the meeting to each stockholder entitled to vote at such meeting as of the record date for determining the stockholders entitled to notice of the meeting. The notice shall specify the place, if any, date and hour of the meeting, the record date for determining the stockholders entitled to vote at the meeting (if such date is different from the record date for stockholders entitled to notice of the meeting), the means of remote communication, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such meeting, and, in the case of a special meeting, the purpose or purposes for which the meeting is called.

2.7 MANNER OF GIVING NOTICE; AFFIDAVIT OF NOTICE.

Notice of any meeting of stockholders shall be deemed given:

(a) if mailed, when deposited in the United States mail, postage prepaid, directed to the stockholder at such stockholder's address as it appears on the Corporation's records; or

(b) if electronically transmitted, as provided in Section 8.1 of these bylaws.

An affidavit of the secretary or an assistant secretary of the Corporation or of the transfer agent or any other agent of the Corporation that the notice has been given by mail or by a form of electronic transmission, as applicable, shall, in the absence of fraud, be prima facie evidence of the facts stated therein.

2.8 QUORUM.

Unless otherwise provided by law, the certificate of incorporation or these bylaws, the holders of a majority in voting power of the capital stock issued and outstanding and entitled to vote, present in person, or by remote communication, if applicable, or represented by proxy, shall constitute a quorum for the transaction of business at all meetings of the stockholders. A quorum, once established at a meeting, shall not be broken by the withdrawal of enough votes to leave less than a quorum. If, however, a quorum is not present or represented at any meeting of the stockholders, then either (a) the chairperson of the meeting or (b) a majority in voting power of the stockholders entitled to vote thereon, present in person, or by remote communication, if applicable, or represented by proxy, shall have power to adjourn the meeting from time to time in the manner provided in Section 2.9 of these bylaws until a quorum is present or represented. At such adjourned meeting at which a quorum is present or represented, any business may be transacted that might have been transacted at the meeting as originally noticed.

2.9 ADJOURNED MEETING; NOTICE.

When a meeting is adjourned to another time or place, unless these bylaws otherwise require, notice need not be given of the adjourned meeting if the time, place, if any, thereof, and the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such adjourned meeting are announced at the meeting at which the adjournment is taken. At the adjourned meeting, the Corporation may transact any business which might have been transacted at the original meeting. If the adjournment is for more than thirty (30) days, or if after the adjournment a new record date for determining the stockholders entitled to vote is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the adjourned meeting as of the record date for determining the stockholders entitled to notice of the adjourned meeting.

2.10 CONDUCT OF BUSINESS.

The date and time of the opening and the closing of the polls for each matter upon which the stockholders will vote at a meeting shall be announced at the meeting by the person presiding over the meeting. The Board may adopt by resolution such rules and regulations for the conduct of the meeting of stockholders as it shall deem appropriate. Except to the extent inconsistent with such rules and regulations as adopted by the Board, the person presiding over any meeting of stockholders shall have the right and authority to convene and (for any or no reason) to recess and/or adjourn the meeting, to prescribe such rules, regulations and procedures (which need not be in writing) and to do all such acts as, in the judgment of such presiding person, are appropriate for the proper conduct of the meeting. Such rules, regulations or procedures, whether adopted by the Board or prescribed by the presiding person of the meeting, may include, without limitation, the following: (a) the establishment of an agenda or order of business for the meeting; (b) rules and procedures for maintaining order at the meeting and the safety of those present (including, without limitation, rules and procedures for removal of disruptive persons from the meeting); (c) limitations on attendance at or participation in the meeting to stockholders entitled to vote at the meeting, their duly authorized and constituted proxies or such other persons as the presiding person of the meeting shall determine; (d) restrictions on entry to the meeting after the time fixed for the commencement thereof; and (e) limitations on the time allotted to questions or comments by participants. The presiding person at any meeting of stockholders, in addition to making any other determinations that may be appropriate to the conduct of the meeting (including, without limitation, determinations with respect to the administration and/or interpretation of any of the rules, regulations or procedures of the meeting, whether adopted by the Board or prescribed by the person presiding over the meeting), shall, if the facts warrant, determine and declare to the meeting that a matter or business was not properly brought before the meeting and if such presiding person should so determine, such presiding person shall so declare to the meeting and any such matter or business not properly brought before the meeting shall not be transacted or considered. Unless and to the extent determined by the Board or the person presiding over the meeting, meetings of stockholders shall not be required to be held in accordance with the rules of parliamentary procedure.

2.11 VOTING.

The stockholders entitled to vote at any meeting of stockholders shall be determined in accordance with the provisions of Section 2.13 of these bylaws, subject to Section 217 (relating to voting rights of fiduciaries, pledgors and joint owners of stock) and Section 218 (relating to voting trusts and other voting agreements) of the DGCL.

Except as may be otherwise provided in the certificate of incorporation or these bylaws, each stockholder shall be entitled to one (1) vote for each share of capital stock held by such stockholder.

At all duly called or convened meetings of stockholders, at which a quorum is present, for the election of directors, a plurality of the votes cast shall be sufficient to elect a director. All other elections and questions presented to the stockholders at a duly called or convened meeting, at which a quorum is present, shall, unless a different or minimum vote is required by the certificate of incorporation, these bylaws, the rules or regulations of any stock exchange applicable to the Corporation, or any law or regulation applicable to the Corporation or its securities, in which case such different or minimum vote shall be the applicable vote on the matter, be decided by the affirmative vote of the holders of a majority in voting power of the votes cast affirmatively or negatively (excluding abstentions) at the meeting by the holders entitled to vote thereon.

2.12 STOCKHOLDER ACTION BY WRITTEN CONSENT WITHOUT A MEETING.

Any action required or permitted to be taken by the stockholders of the Corporation must be effected at a duly called annual or special meeting of stockholders of the Corporation and may not be effected by any consent in writing by such stockholders.

2.13 RECORD DATE FOR STOCKHOLDER NOTICE; VOTING.

In order that the Corporation may determine the stockholders entitled to notice of any meeting of stockholders or any adjournment thereof, the Board may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board, and which record date shall, unless otherwise required by law, not be more than sixty (60) nor less than ten (10) days before the date of such meeting. If the Board so fixes a date, such date shall also be the record date for determining the stockholders entitled to vote at such meeting unless the Board determines, at the time it fixes such record date, that a later date on or before the date of the meeting shall be the date for making such determination. If no record date is fixed by the Board, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; *provided, however*, that the Board may fix a new record date for determination of stockholders entitled to vote at the adjourned meeting, and in such case shall also fix as the record date for stockholders entitled to notice of such adjourned meeting the same or an earlier date as that fixed for determination of stockholders entitled to vote in accordance herewith at the adjourned meeting.

In order that the Corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights, or entitled to exercise any rights in respect of any change, conversion or exchange of stock or for the purpose of any other lawful action, the Board may fix a record date, which shall not be more than sixty (60) days prior to such other action. If no such record date is fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the Board adopts the resolution relating thereto.

2.14 PROXIES.

Each stockholder entitled to vote at a meeting of stockholders may authorize another person or persons to act for such stockholder by proxy, but no such proxy shall be voted or acted upon after three (3) years from its date, unless the proxy provides for a longer period. The revocability of a proxy that states on its face that it is irrevocable shall be governed by the provisions of Section 212 of the DGCL. A proxy may be in the form of a telegram, cablegram or other means of electronic transmission which sets forth or is submitted with information from which it can be determined that the telegram, cablegram or other means of electronic transmission was authorized by the stockholder.

2.15 LIST OF STOCKHOLDERS ENTITLED TO VOTE.

The Corporation shall prepare, at least ten (10) days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting (*provided, however*, if the record date for determining the stockholders entitled to vote is less than ten (10) days before the date of the meeting, the list shall reflect the stockholders entitled to vote as of the tenth day before the date of the meeting), arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. The Corporation shall not be required to include electronic mail addresses or other electronic contact information on such list. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting for a period of at least ten (10) days prior to the meeting: (a) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of the meeting, or (b) during ordinary business hours, at the Corporation's principal executive office. In the event that the Corporation determines to make the list available on an electronic network, the Corporation may take reasonable steps to ensure that such information is available only to stockholders of the Corporation. If the meeting is to be held at a place, then the list shall be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any stockholder who is present. If the meeting is to be held solely by means of remote communication, then the list shall also be open to the examination of any stockholder during the whole time of the meeting on a reasonably accessible electronic network, and the information required to access such list shall be provided with the notice of the meeting. Except as otherwise provided by law, the stock ledger shall be the only evidence as to the identity of the stockholders entitled to vote in person or by proxy and the number of shares held by each of them, and as to the stockholders entitled to examine the list of stockholders.

2.16 POSTPONEMENT, ADJOURNMENT AND CANCELLATION OF MEETING.

Any previously scheduled annual or special meeting of the stockholders may be postponed or adjourned, and any previously scheduled annual or special meeting of the stockholders may be canceled, by resolution of the Board.

2.17 INSPECTORS OF ELECTION.

Before any meeting of stockholders, the Board shall appoint an inspector or inspectors of election to act at the meeting or its adjournment or postponement and make a written report thereof. The number of inspectors shall be either one (1) or three (3). If any person appointed as inspector fails to appear or fails or refuses to act, then the chairperson of the meeting may, and upon the request of any stockholder or a stockholder's proxy shall, appoint a person to fill that vacancy. Unless otherwise required by law, inspectors may be officers, employees or agents of the Corporation. Such inspectors shall have the duties prescribed by law. Each inspector, before entering upon the discharge of his or her duties, shall take and sign an oath to execute faithfully the duties of inspector with strict impartiality and according to the best of his or her ability. If there are three (3) inspectors of election, the decision, act or certificate of a majority is effective in all respects as the decision, act or certificate of all. Any report or certificate made by the inspectors of election is prima facie evidence of the facts stated therein.

ARTICLE III - DIRECTORS

3.1 POWERS.

Subject to the provisions of the DGCL and any limitations in the certificate of incorporation, the business and affairs of the Corporation shall be managed and all corporate powers shall be exercised by or under the direction of the Board.

3.2 NUMBER OF DIRECTORS.

The authorized number of directors shall be determined from time to time by resolution of the Board, provided the Board shall consist of at least one (1) member. No reduction of the authorized number of directors shall have the effect of removing any director before that director's term of office expires.

3.3 ELECTION, QUALIFICATION AND TERM OF OFFICE OF DIRECTORS.

Except as provided in Section 3.4 of these bylaws, each director, including, without limitation, a director elected to fill a vacancy, shall hold office until the expiration of the term for which elected and until such director's successor is elected and qualified or until such director's earlier death, resignation or removal. Directors need not be stockholders unless so required by the certificate of incorporation or these bylaws. The Corporation may also have, at the discretion of the Board, a chairperson of the Board and a vice chairperson of the Board. The certificate of incorporation or these bylaws may prescribe other qualifications for directors.

3.4 RESIGNATION AND VACANCIES.

Any director may resign at any time upon notice given in writing or by electronic transmission to the chairperson of the Board or the Corporation's chief executive officer, president or secretary. When one or more directors so resigns and the resignation is effective at a future date, a majority of the directors then in office, including those who have so resigned, shall have power to fill such vacancy or vacancies, the vote thereon to take effect when such resignation or resignations shall become effective, and each director so chosen shall hold office as provided in this section in the filling of other vacancies.

Unless otherwise provided in the certificate of incorporation or these bylaws, vacancies and newly created directorships resulting from any increase in the authorized number of directors shall, unless the Board determines by resolution that any such vacancies or newly created directorships shall be filled by stockholders, be filled only by a majority of the directors then in office, although less than a quorum, or by a sole remaining director. Any director elected in accordance with the preceding sentence shall hold office for the remainder of the full term of the director for which the vacancy was created or occurred and until such director's successor shall have been elected and qualified. A vacancy in the Board shall be deemed to exist under these bylaws in the case of the death, removal or resignation of any director.

3.5 PLACE OF MEETINGS; MEETINGS BY TELEPHONE.

The Board may hold meetings, both regular and special, either within or outside the State of Delaware.

Unless otherwise restricted by the certificate of incorporation or these bylaws, members of the Board, or any committee designated by the Board, may participate in a meeting of the Board, or any committee, by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and such participation in a meeting pursuant to this bylaw shall constitute presence in person at the meeting.

3.6 REGULAR MEETINGS.

Regular meetings of the Board may be held without notice at such time and at such place as shall from time to time be determined by the Board; *provided* that any director who is absent when such determination is made shall be given notice of the determination. A regular meeting of the Board may be held without notice immediately after and at the same place as the annual meeting of stockholders.

3.7 SPECIAL MEETINGS; NOTICE.

Special meetings of the Board for any purpose or purposes may be called at any time by the chairperson of the Board, the chief executive officer, the president, the secretary or a majority of the authorized number of directors.

Notice of the time and place of special meetings shall be:

(a) delivered personally by hand, by courier or by telephone;

(b) sent by United States first-class mail, postage prepaid;

(c) sent by facsimile; or

(d) sent by electronic mail, electronic transmission or other similar means,

directed to each director at that director's address, telephone number, facsimile number or electronic mail or other electronic address, as the case may be, as shown on the Corporation's records.

If the notice is (a) delivered personally by hand, by courier or by telephone, (b) sent by facsimile or (c) sent by electronic mail or electronic transmission, it shall be delivered or sent at least twenty-four (24) hours before the time of the holding of the meeting. If the notice is sent by United States mail, it shall be deposited in the United States mail at least four (4) days before the time of the holding of the meeting. Any oral notice may be communicated to the director. The notice need not specify the place of the meeting (if the meeting is to be held at the Corporation's principal executive office) nor the purpose of the meeting.

3.8 QUORUM.

The greater of (a) a majority of the directors at any time in office and (b) one-third of the number of directors established by the Board pursuant to Section 3.2 of these bylaws shall constitute a quorum of the Board for the transaction of business. The vote of a majority of the directors present at any meeting at which a quorum is present shall be the act of the Board, except as may be otherwise specifically provided by statute, the certificate of incorporation or these bylaws. If a quorum is not present at any meeting of the Board, then the directors present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum is present.

3.9 BOARD ACTION BY CONSENT WITHOUT A MEETING.

Unless otherwise restricted by the certificate of incorporation or these bylaws, any action required or permitted to be taken at any meeting of the Board, or of any committee thereof, may be taken without a meeting if all members of the Board or committee, as the case may be, consent thereto in writing or by electronic transmission and the writing or writings or electronic transmission or transmissions are filed with the minutes of proceedings of the Board or committee. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form.

3.10 FEES AND COMPENSATION OF DIRECTORS.

Unless otherwise restricted by the certificate of incorporation or these bylaws, the Board shall have the authority to fix the compensation of directors.

3.11 REMOVAL OF DIRECTORS.

Subject to the rights of the holders of the shares of any series of preferred stock of the Corporation, the Board or any individual director may be removed from office only for cause and only by the affirmative vote of the holders of at least two-thirds in voting power of the outstanding shares of capital stock of the Corporation entitled to vote thereon.

ARTICLE IV - COMMITTEES

4.1 COMMITTEES OF DIRECTORS.

The Board may designate one (1) or more committees, each committee to consist of one (1) or more of the directors of the Corporation. The Board may designate one (1) or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of a member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not such member or members constitute a quorum, may unanimously appoint another member of the Board to act at the meeting in the place of any such absent or disqualified member. Any such committee, to the extent provided in the resolution of the Board or in these bylaws, shall have and may exercise all the powers and authority of the Board in the management of the business and affairs of the Corporation, and may authorize the seal of the Corporation to be affixed to all papers that may require it; but no such committee shall have the power or authority to (a) approve or adopt, or recommend to the stockholders, any action or matter (other than the election or removal of directors) expressly required by the DGCL to be submitted to stockholders for approval, or (b) adopt, amend or repeal any bylaw of the Corporation.

4.2 COMMITTEE MINUTES.

Each committee shall keep regular minutes of its meetings and report the same to the Board when required.

4.3 MEETINGS AND ACTION OF COMMITTEES.

Meetings and actions of committees shall be governed by, and held and taken in accordance with, the provisions of:

(a) Section 3.5 of these bylaws (place of meetings and meetings by telephone);

(b) Section 3.6 of these bylaws (regular meetings);

(c) Section 3.7 of these bylaws (special meetings and notice);

(d) Section 3.8 of these bylaws (quorum);

(e) Section 7.12 of these bylaws (waiver of notice); and

(f) Section 3.9 of these bylaws (action without a meeting),

with such changes in the context of those bylaws as are necessary to substitute the committee and its members for the Board and its members. *However*:

(i) the time of regular meetings of committees may be determined either by resolution of the Board or by resolution of the committee;

(ii) special meetings of committees may also be called by resolution of the Board; and

(iii) notice of special meetings of committees shall also be given to all alternate members, who shall have the right to attend all meetings of the committee. The Board may adopt rules for the governance of any committee not inconsistent with the provisions (or any part thereof) of these bylaws.

ARTICLE V - OFFICERS

5.1 OFFICERS.

The officers of the Corporation shall be a president and a secretary. The Corporation may also have, at the discretion of the Board, a chief executive officer, a chief financial officer or treasurer, one (1) or more vice presidents, one (1) or more assistant vice presidents, one (1) or more assistant treasurers, one (1) or more assistant secretaries, and any such other officers as may be appointed in accordance with the provisions of these bylaws. Any number of offices may be held by the same person.

5.2 APPOINTMENT OF OFFICERS.

The Board shall appoint the officers of the Corporation, except such officers as may be appointed in accordance with the provisions of Section 5.3 of these bylaws, subject to the rights, if any, of an officer under any contract of employment.

5.3 SUBORDINATE OFFICERS.

The Board may appoint, or empower the chief executive officer or, in the absence of a chief executive officer, the president, to appoint, such other officers and agents as the business of the Corporation may require. Each of such officers shall hold office for such period, as is provided in these bylaws or as the Board may from time to time determine.

5.4 REMOVAL AND RESIGNATION OF OFFICERS.

Subject to the rights, if any, of an officer under any contract of employment, any officer may be removed, either with or without cause, by the Board at any regular or special meeting of the Board or, except in the case of an officer chosen by the Board, by any officer upon whom such power of removal may be conferred by the Board.

Any officer may resign at any time by giving written notice to the Corporation. Any resignation shall take effect at the date of the receipt of that notice or at any later time specified in that notice. Unless otherwise specified in the notice of resignation, the acceptance of the resignation shall not be necessary to make it effective. Any resignation is without prejudice to the rights, if any, of the Corporation under any contract to which the officer is a party.

5.5 VACANCIES IN OFFICES.

Any vacancy occurring in any office of the Corporation shall be filled by the Board or as provided in Section 5.3 of these bylaws.

5.6 REPRESENTATION OF SHARES OF OTHER ENTITIES.

The chairperson of the Board, the president, any vice president, the treasurer, the secretary or assistant secretary of this Corporation, or any other person authorized by the Board or the president or a vice president, is authorized to vote, represent and exercise on behalf of this Corporation all rights incident to any and all securities of any other entity or entities standing in the name of this Corporation. The authority granted herein may be exercised either by such person directly or by any other person authorized to do so by proxy or power of attorney duly executed by such person having the authority.

5.7 AUTHORITY AND DUTIES OF OFFICERS.

All officers of the Corporation shall respectively have such authority and perform such duties in the management of the business of the Corporation as may be designated from time to time by the Board and, to the extent not so provided, as generally pertain to their respective offices, subject to the control of the Board.

ARTICLE VI - RECORDS AND REPORTS

6.1 MAINTENANCE OF RECORDS.

Subject to applicable law, the Corporation shall, either at its principal executive office or at such place or places as designated by the Board, keep a record of its stockholders listing their names and addresses and the number and class of shares held by each stockholder, a copy of these bylaws as amended to date, accounting books and other records.

ARTICLE VII - GENERAL MATTERS

7.1 EXECUTION OF CORPORATE CONTRACTS AND INSTRUMENTS.

The Board, except as otherwise provided in these bylaws, may authorize any officer or officers, or agent or agents, to enter into any contract or execute any instrument in the name of and on behalf of the Corporation; such authority may be general or confined to specific instances. Unless so authorized or ratified by the Board or within the agency power of an officer, no officer, agent or employee shall have any power or authority to bind the Corporation by any contract or engagement or to pledge its credit or to render it liable for any purpose or for any amount.

7.2 STOCK CERTIFICATES; PARTLY PAID SHARES.

The shares of the Corporation shall be represented by certificates provided that the Board may provide by resolution or resolutions that some or all of any or all classes or series of stock shall be uncertificated shares. Certificates for the shares of stock, if any, shall be in such form as is consistent with the certificate of incorporation and applicable law. Every holder of stock represented by a certificate shall be entitled to have a certificate signed by, or in the name of the Corporation by any two authorized officers of the Corporation representing the number of shares registered in certificate form. Any or all of the signatures on the certificate may be a facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate has ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the Corporation with the same effect as if he were such officer, transfer agent or registrar at the date of issue.

The Corporation may issue the whole or any part of its shares as partly paid and subject to call for the remainder of the consideration to be paid therefor. Upon the face or back of each stock certificate issued to represent any such partly paid shares, or upon the books and records of the Corporation in the case of uncertificated partly paid shares, the total amount of the consideration to be paid therefor and the amount paid thereon shall be stated. Upon the declaration of any dividend on fully paid shares, the Corporation shall declare a dividend upon partly paid shares of the same class, but only upon the basis of the percentage of the consideration actually paid thereon.

7.3 MULTIPLES CLASSES OR SERIES OF STOCK.

If the Corporation is authorized to issue more than one class of stock or more than one series of any class, then the powers, the designations, the preferences and the relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights shall be set forth in full or summarized on the face or back of the certificate that the Corporation shall issue to represent such class or series of stock; *provided, however*, that, except as otherwise provided in Section 202 of the DGCL, in lieu of the foregoing requirements, there may be set forth on the face or back of the certificate that the Corporation shall issue to represent such class or series of stock a statement that the Corporation will furnish without charge to each stockholder who so requests the powers, the designations, the preferences and the relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights. Within a reasonable time after the issuance or transfer of uncertificated stock, the Corporation shall send to the registered owner thereof a written notice containing the information required to be set forth or stated on certificates pursuant to the DGCL or a statement that the Corporation will furnish without charge to each stockholder who so requests the powers, designations, preferences and relative participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights.

7.4 LOST CERTIFICATES.

Except as provided in this Section 7.4, no new certificates for shares shall be issued to replace a previously issued certificate unless the latter is surrendered to the Corporation in accordance with applicable law. The Corporation may issue a new certificate of stock or uncertificated shares in the place of any certificate theretofore issued by it, alleged to have been lost, stolen or destroyed, and the Corporation may require the owner of the lost, stolen or destroyed certificate, or such owner's legal representative, to give the Corporation a bond sufficient to indemnify it against any claim that may be made against it on account of the alleged loss, theft or destruction of any such certificate or the issuance of such new certificate or uncertificated shares.

7.5 CONSTRUCTION; DEFINITIONS.

Unless the context requires otherwise, the general provisions, rules of construction and definitions in the DGCL shall govern the construction of these bylaws. Without limiting the generality of this provision, the singular number includes the plural, the plural number includes the singular, and the term "person" includes both a corporation and a natural person.

7.6 DIVIDENDS.

The Board, subject to any restrictions contained in either (a) the DGCL or (b) the certificate of incorporation, may declare and pay dividends upon the shares of its capital stock. Dividends may be paid in cash, in property or in shares of the Corporation's capital stock.

The Board may set apart out of any of the funds of the Corporation available for dividends a reserve or reserves for any proper purpose and may abolish any such reserve. Such purposes shall include but not be limited to equalizing dividends, repairing or maintaining any property of the Corporation, and meeting contingencies.

7.7 FISCAL YEAR.

The fiscal year of the Corporation shall be fixed by resolution of the Board and may be changed by the Board.

7.8 SEAL.

The Corporation may adopt a corporate seal, which shall be adopted and which may be altered by the Board. The Corporation may use the corporate seal by causing it or a facsimile thereof to be impressed or affixed or in any other manner reproduced.

7.9 TRANSFER OF STOCK.

Shares of the Corporation shall be transferable in the manner prescribed by law and in these bylaws. Shares of stock of the Corporation shall be transferred on the books of the Corporation only by the holder of record thereof or by such holder's attorney duly authorized in writing, upon surrender to the Corporation of the certificate or certificates representing such shares endorsed by the appropriate person or persons (or by delivery of duly executed instructions with respect to uncertificated shares), with such evidence of the authenticity of such endorsement or execution, transfer, authorization and other matters as the Corporation may reasonably require, and accompanied by all necessary stock transfer stamps. To the fullest extent permitted by law, no transfer of stock shall be valid as against the Corporation for any purpose until it shall have been entered in the stock records of the Corporation by an entry showing the names of the persons from and to whom it was transferred.

7.10 STOCK TRANSFER AGREEMENTS.

The Corporation shall have power to enter into and perform any agreement with any number of stockholders of any one or more classes of stock of the Corporation to restrict the transfer of shares of stock of the Corporation of any one or more classes owned by such stockholders in any manner not prohibited by the DGCL.

7.11 REGISTERED STOCKHOLDERS.

The Corporation, to the fullest extent permitted by law,:

(a) shall be entitled to recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends and to vote as such owner;

(b) shall be entitled to hold liable for calls and assessments the person registered on its books as the owner of shares; and

(c) shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of another person, whether or not it shall have express or other notice thereof, except as otherwise provided by the laws of Delaware.

7.12 WAIVER OF NOTICE.

Whenever notice is required to be given under any provision of the DGCL, the certificate of incorporation or these bylaws, a written waiver, signed by the person entitled to notice, or a waiver by electronic transmission by the person entitled to notice, whether before or after the time of the event for which notice is to be given, shall be deemed equivalent to notice. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the stockholders need be specified in any written waiver of notice or any waiver by electronic transmission unless so required by the certificate of incorporation or these bylaws.

ARTICLE VIII - NOTICE BY ELECTRONIC TRANSMISSION

8.1 NOTICE BY ELECTRONIC TRANSMISSION.

Without limiting the manner by which notice otherwise may be given effectively to stockholders pursuant to the DGCL, the certificate of incorporation or these bylaws, any notice to stockholders given by the Corporation under any provision of the DGCL, the certificate of incorporation or these bylaws shall be effective if given by a form of electronic transmission consented to by the stockholder to whom the notice is given. Any such consent shall be revocable by the stockholder by written notice to the Corporation. Any such consent shall be deemed revoked if:

(a) the Corporation is unable to deliver by electronic transmission two (2) consecutive notices given by the Corporation in accordance with such consent; and

(b) such inability becomes known to the secretary or an assistant secretary of the Corporation or to the transfer agent, or other person responsible for the giving of notice.

However, the inadvertent failure to treat such inability as a revocation shall not invalidate any meeting or other action.

Any notice given pursuant to the preceding paragraph shall be deemed given:

(a) if by facsimile telecommunication, when directed to a number at which the stockholder has consented to receive notice;

(b) if by electronic mail, when directed to an electronic mail address at which the stockholder has consented to receive notice;

(c) if by a posting on an electronic network together with separate notice to the stockholder of such specific posting, upon the later of (i) such posting and (ii) the giving of such separate notice; and

(d) if by any other form of electronic transmission, when directed to the stockholder.

An affidavit of the secretary or an assistant secretary of the Corporation or of the transfer agent or other agent of the Corporation that the notice has been given by a form of electronic transmission shall, in the absence of fraud, be prima facie evidence of the facts stated therein.

8.2 DEFINITION OF ELECTRONIC TRANSMISSION.

For the purposes of these bylaws, an “electronic transmission” means any form of communication, not directly involving the physical transmission of paper, that creates a record that may be retained, retrieved and reviewed by a recipient thereof, and that may be directly reproduced in paper form by such a recipient through an automated process.

ARTICLE IX - INDEMNIFICATION AND ADVANCEMENT

9.1 ACTIONS, SUITS AND PROCEEDINGS OTHER THAN BY OR IN THE RIGHT OF THE CORPORATION.

The Corporation shall indemnify each person who was or is a party or threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Corporation) by reason of the fact that he or she is or was, or has agreed to become, a director or officer of the Corporation, or, while a director or officer of the Corporation, is or was serving, or has agreed to serve, at the request of the Corporation, as a director, officer, partner, employee or trustee of, or in a similar capacity with, another corporation, partnership, joint venture, trust or other enterprise (including, without limitation, any employee benefit plan) (all such persons being referred to hereafter as an "Indemnitee"), or by reason of any action alleged to have been taken or omitted in such capacity, against all expenses (including, without limitation, attorneys' fees), liabilities, losses, judgments, fines (including, without limitation, excise taxes and penalties arising under the Employee Retirement Income Security Act of 1974), and amounts paid in settlement actually and reasonably incurred by or on behalf of Indemnitee in connection with such action, suit or proceeding and any appeal therefrom, if Indemnitee acted in good faith and in a manner which Indemnitee reasonably believed to be in, or not opposed to, the best interests of the Corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that Indemnitee did not act in good faith and in a manner which Indemnitee reasonably believed to be in, or not opposed to, the best interests of the Corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his or her conduct was unlawful.

9.2 ACTIONS OR SUITS BY OR IN THE RIGHT OF THE CORPORATION.

The Corporation shall indemnify any Indemnitee who was or is a party to or threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Corporation to procure a judgment in its favor by reason of the fact that Indemnitee is or was, or has agreed to become, a director or officer of the Corporation, or, while a director or officer of the Corporation, is or was serving, or has agreed to serve, at the request of the Corporation, as a director, officer, partner, employee or trustee of, or in a similar capacity with, another corporation, partnership, joint venture, trust or other enterprise (including, without limitation, any employee benefit plan), or by reason of any action alleged to have been taken or omitted in such capacity, against all expenses (including, without limitation, attorneys' fees) actually and reasonably incurred by or on behalf of Indemnitee in connection with such action, suit or proceeding and any appeal therefrom, if Indemnitee acted in good faith and in a manner which Indemnitee reasonably believed to be in, or not opposed to, the best interests of the Corporation, except that no indemnification shall be made under this Section 9.2 in respect of any claim, issue or matter as to which Indemnitee shall have been adjudged to be liable to the Corporation, unless, and only to the extent, that the Court of Chancery of Delaware or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of such liability but in view of all the circumstances of the case, Indemnitee is fairly and reasonably entitled to indemnity for such expenses (including, without limitation, attorneys' fees) which the Court of Chancery of Delaware or such other court shall deem proper.

9.3 INDEMNIFICATION FOR EXPENSES OF SUCCESSFUL PARTY.

Notwithstanding any other provisions of this Article IX, to the extent that an Indemnitee has been successful, on the merits or otherwise, in defense of any action, suit or proceeding referred to in Sections 9.1 and 9.2 of these bylaws, or in defense of any claim, issue or matter therein, or on appeal from any such action, suit or proceeding, Indemnitee shall be indemnified to the fullest extent permitted by law against all expenses (including, without limitation, attorneys' fees) actually and reasonably incurred by or on behalf of Indemnitee in connection therewith.

9.4 NOTIFICATION AND DEFENSE OF CLAIM.

As a condition precedent to an Indemnitee's right to be indemnified, such Indemnitee must notify the Corporation in writing as soon as practicable of any action, suit, proceeding or investigation involving such Indemnitee for which indemnity will or could be sought. With respect to any action, suit, proceeding or investigation of which the Corporation is so notified, the Corporation will be entitled to participate therein at its own expense and/or to assume the defense thereof at its own expense, with legal counsel reasonably acceptable to Indemnitee. After notice from the Corporation to Indemnitee of its election so to assume such defense, the Corporation shall not be liable to Indemnitee for any legal or other expenses subsequently incurred by Indemnitee in connection with such action, suit, proceeding or investigation, other than as provided below in this Section 9.4. Indemnitee shall have the right to employ his or her own counsel in connection with such action, suit, proceeding or investigation, but the fees and expenses of such counsel incurred after notice from the Corporation of its assumption of the defense thereof shall be at the expense of Indemnitee unless (a) the employment of counsel by Indemnitee has been authorized by the Corporation, (b) counsel to Indemnitee shall have reasonably concluded that there may be a conflict of interest or position on any significant issue between the Corporation and Indemnitee in the conduct of the defense of such action, suit, proceeding or investigation or (c) the Corporation shall not in fact have employed counsel to assume the defense of such action, suit, proceeding or investigation, in each of which cases the fees and expenses of counsel for Indemnitee shall be at the expense of the Corporation, except as otherwise expressly provided by this Article IX. The Corporation shall not be entitled, without the consent of Indemnitee, to assume the defense of any claim brought by or in the right of the Corporation or as to which counsel for Indemnitee shall have reasonably made the conclusion provided for in clause (b) above. The Corporation shall not be required to indemnify Indemnitee under this Article IX for any amounts paid in settlement of any action, suit, proceeding or investigation effected without its written consent. The Corporation shall not settle any action, suit, proceeding or investigation in any manner which would impose any penalty or limitation on Indemnitee without Indemnitee's written consent. Neither the Corporation nor Indemnitee will unreasonably withhold or delay its consent to any proposed settlement.

9.5 ADVANCE OF EXPENSES.

Subject to the provisions of Sections 9.4 and 9.6 of these bylaws, in the event of any threatened or pending action, suit, proceeding or investigation of which the Corporation receives notice under this Article IX, any expenses (including, without limitation, attorneys' fees) incurred by or on behalf of Indemnitee in defending an action, suit, proceeding or investigation or any appeal therefrom shall be paid by the Corporation in advance of the final disposition of such matter to the fullest extent permitted by law; *provided, however*, that, to the extent required by law, the payment of such expenses incurred by or on behalf of Indemnitee in advance of the final disposition of such matter shall be made only upon receipt of an undertaking by or on behalf of Indemnitee to repay all amounts so advanced in the event that it shall ultimately be determined by final judicial decision from which there is no further right to appeal that Indemnitee is not entitled to be indemnified by the Corporation as authorized in this Article IX or otherwise; and *provided further* that no such advancement of expenses shall be made under this Article IX if it is determined (in the manner described in Section 9.6 of these bylaws) that (a) Indemnitee did not act in good faith and in a manner he or she reasonably believed to be in, or not opposed to, the best interests of the Corporation, or (b) with respect to any criminal action or proceeding, Indemnitee had reasonable cause to believe his or her conduct was unlawful. Such undertaking shall be accepted without reference to the financial ability of Indemnitee to make such repayment.

9.6 PROCEDURE FOR INDEMNIFICATION AND ADVANCEMENT OF EXPENSES.

In order to obtain indemnification or advancement of expenses pursuant to Section 9.1, 9.2, 9.3 or 9.5 of these bylaws, an Indemnitee shall submit to the Corporation a written request. Any such advancement of expenses shall be made promptly, and in any event within 60 days after receipt by the Corporation of the written request of Indemnitee, unless (a) the Corporation has assumed the defense pursuant to Section 9.4 of these bylaws (and none of the circumstances described in Section 9.4 of these bylaws that would nonetheless entitle the Indemnitee to indemnification for the fees and expenses of separate counsel have occurred) or (b) the Corporation determines within such 60-day period that Indemnitee did not meet the applicable standard of conduct set forth in Section 9.1, 9.2 or 9.5 of these bylaws, as the case may be. Any such indemnification, unless ordered by a court, shall be made with respect to requests under Section 9.1 or 9.2 of these bylaws only as authorized in the specific case upon a determination by the Corporation that the indemnification of Indemnitee is proper because Indemnitee has met the applicable standard of conduct set forth in Section 9.1 or 9.2 of these bylaws, as the case may be. Such determination shall be made in each instance (a) by a majority vote of the directors of the Corporation consisting of persons who are not at that time parties to the action, suit or proceeding in question ("disinterested directors"), whether or not a quorum, (b) by a committee of disinterested directors designated by majority vote of disinterested directors, whether or not a quorum, (c) if there are no disinterested directors, or if the disinterested directors so direct, by independent legal counsel (who may, to the extent permitted by law, be regular legal counsel to the Corporation) in a written opinion or (d) by the stockholders of the Corporation.

9.7 REMEDIES.

To the fullest extent permitted by law, the right to indemnification or advancement of expenses as granted by this Article IX shall be enforceable by Indemnitee in any court of competent jurisdiction. Neither the failure of the Corporation to have made a determination prior to the commencement of such action that indemnification is proper in the circumstances because Indemnitee has met the applicable standard of conduct, nor an actual determination by the Corporation pursuant to Section 9.6 of these bylaws that Indemnitee has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that Indemnitee has not met the applicable standard of conduct. In any suit brought by Indemnitee to enforce a right to indemnification or advancement, or brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the Corporation shall have the burden of proving that Indemnitee is not entitled to be indemnified, or to such advancement of expenses, under this Article IX. Indemnitee's expenses (including, without limitation, attorneys' fees) reasonably incurred in connection with successfully establishing Indemnitee's right to indemnification or advancement, in whole or in part, in any such proceeding shall also be indemnified by the Corporation to the fullest extent permitted by law. Notwithstanding the foregoing, in any suit brought by Indemnitee to enforce a right to indemnification hereunder it shall be a defense that the Indemnitee has not met any applicable standard for indemnification set forth in the DGCL.

9.8 LIMITATIONS.

Notwithstanding anything to the contrary in this Article IX, except as set forth in Section 9.7 of these bylaws, the Corporation shall not indemnify an Indemnitee pursuant to this Article IX in connection with a proceeding (or part thereof) initiated by such Indemnitee unless the initiation thereof was approved by the Board. Notwithstanding anything to the contrary in this Article IX, the Corporation shall not indemnify (or advance expenses to) an Indemnitee to the extent such Indemnitee is reimbursed (or advanced expenses) from the proceeds of insurance, and in the event the Corporation makes any indemnification (or advancement) payments to an Indemnitee and such Indemnitee is subsequently reimbursed from the proceeds of insurance, such Indemnitee shall promptly refund indemnification (or advancement) payments to the Corporation to the extent of such insurance reimbursement.

9.9 SUBSEQUENT AMENDMENT.

No amendment, termination or repeal of this Article IX or of the relevant provisions of the DGCL or any other applicable laws shall adversely affect or diminish in any way the rights of any Indemnitee to indemnification or advancement of expenses under the provisions hereof with respect to any action, suit, proceeding or investigation arising out of or relating to any actions, transactions or facts occurring prior to the final adoption of such amendment, termination or repeal.

9.10 OTHER RIGHTS.

The indemnification and advancement of expenses provided by this Article IX shall not be deemed exclusive of any other rights to which an Indemnitee seeking indemnification or advancement of expenses may be entitled under any law (common or statutory), agreement or vote of stockholders or disinterested directors or otherwise, both as to action in Indemnitee's official capacity and as to action in any other capacity while holding office for the Corporation, and shall continue as to an Indemnitee who has ceased to be a director or officer, and shall inure to the benefit of the estate, heirs, executors and administrators of Indemnitee. Nothing contained in this Article IX shall be deemed to prohibit, and the Corporation is specifically authorized to enter into, agreements with officers and directors providing indemnification and advancement rights and procedures different from those set forth in this Article IX. In addition, the Corporation may, to the extent authorized from time to time by the Board, grant indemnification and advancement rights to other employees or agents of the Corporation or other persons serving the Corporation and such rights may be equivalent to, or greater or less than, those set forth in this Article IX.

9.11 PARTIAL INDEMNIFICATION.

If an Indemnitee is entitled under any provision of this Article IX to indemnification by the Corporation for some or a portion of the expenses (including, without limitation, attorneys' fees), liabilities, losses, judgments, fines (including, without limitation, excise taxes and penalties arising under the Employee Retirement Income Security Act of 1974, as amended) or amounts paid in settlement actually and reasonably incurred by or on behalf of Indemnitee in connection with any action, suit, proceeding or investigation and any appeal therefrom but not, however, for the total amount thereof, the Corporation shall nevertheless indemnify Indemnitee for the portion of such expenses (including, without limitation, attorneys' fees), liabilities, losses, judgments, fines (including, without limitation, excise taxes and penalties arising under the Employee Retirement Income Security Act of 1974, as amended) or amounts paid in settlement to which Indemnitee is entitled.

9.12 INSURANCE.

The Corporation may purchase and maintain insurance, at its expense, to protect itself and any director, officer, employee or agent of the Corporation or another corporation, partnership, joint venture, trust or other enterprise (including, without limitation, any employee benefit plan) against any expense, liability or loss incurred by him or her in any such capacity, or arising out of his or her status as such, whether or not the Corporation would have the power to indemnify such person against such expense, liability or loss under the DGCL.

9.13 SAVINGS CLAUSE.

If this Article IX or any portion hereof shall be invalidated on any ground by any court of competent jurisdiction, then the Corporation shall nevertheless indemnify each Indemnitee as to any expenses (including, without limitation, attorneys' fees), liabilities, losses, judgments, fines (including, without limitation, excise taxes and penalties arising under the Employee Retirement Income Security Act of 1974, as amended) and amounts paid in settlement in connection with any action, suit, proceeding or investigation, whether civil, criminal or administrative, including, without limitation, an action by or in the right of the Corporation, to the fullest extent permitted by any applicable portion of this Article IX that shall not have been invalidated and to the fullest extent permitted by applicable law.

9.14 DEFINITIONS.

Terms used in this Article IX and defined in Section 145(h) and Section 145(i) of the DGCL shall have the respective meanings assigned to such terms in such Section 145(h) and Section 145(i).

ARTICLE X - AMENDMENTS.

Subject to the limitations set forth in Section 9.9 of these bylaws or the provisions of the certificate of incorporation, the Board is expressly empowered to adopt, amend or repeal the bylaws of the Corporation. The stockholders also shall have power to adopt, amend or repeal the bylaws of the Corporation; *provided*, *however*, that, in addition to any vote of the holders of any class or series of stock of the Corporation required by law or by the certificate of incorporation, such action by stockholders shall require the affirmative vote of the holders of at least two-thirds in voting power of the outstanding shares of capital stock of the Corporation entitled to vote thereon.

Exhibit 4.3


AZIYO
BIOLOGICS
Aziyo Biologics, Inc.
CLASS B COMMON STOCK
INCORPORATED UNDER THE LAWS OF THE STATE OF DELAWARE
CLASS B COMMON STOCK
THIS CERTIFIES THAT
SPECIMEN
is the owner of
FULLY PAID AND NON-ASSESSABLE SHARES OF CLASS B COMMON STOCK OF THE PAR VALUE OF $0.001 PER SHARE OF
AZIYO BIOLOGICS, INC.
transferable on the books of the Corporation by the holder hereof in person or by duly authorized Attorney, upon surrender of this Certificate properly endorsed.
This Certificate is not valid until countersigned and registered by the Transfer Agent and Registrar.
WITNESS the signatures of the Corporation's duly authorized officers.
Dated:
PRESIDENT
TREASURER
COUNTERSIGNED AND REGISTERED
AMERICAN STOCK TRANSFER & TRUST COMPANY, LLC
TRANSFER AGENT AND REGISTRAR
BY
AUTHORIZED SIGNATURE

The following abbreviations, when used in the inscription on the face of this certificate, shall be construed as though they were written out in full according to applicable laws or regulations:

TEN COM — as tenants in common
TEN ENT — as tenants by the entireties
JT TEN — as joint tenants with right of survivorship and not as tenants in commom

UNIF GIFT MIN ACT — _____ Custodian _____
(Cust) (Minor)
under Uniform Gifts to Minors
Act _____
(State)

Additional abbreviations may also be used though not in the above list.

FOR VALUE RECEIVED, _____ hereby sell, assign and transfer unto

PLEASE INSERT SOCIAL SECURITY OR OTHER IDENTIFYING NUMBER OF ASSIGNEE

_____

(PLEASE PRINT OR TYPEWRITE NAME AND ADDRESS, INCLUDING ZIP CODE, OF ASSIGNEE)

_____

_____

_____ Shares of the Class B Common Stock represented by the within Certificate, and do hereby irrevocably constitute and appoint

_____ Attorney to transfer the said stock on the books of the within-named Corporation, with full power of substitution in the premises.

Dated _____

NOTICE: THE SIGNATURE TO THIS ASSIGNMENT MUST CORRESPOND WITH THE NAME AS WRITTEN UPON THE FACE OF THE CERTIFICATE IN EVERY PARTICULAR, WITHOUT ALTERATION OR ENLARGEMENT OR ANY CHANGE WHATEVER.

Signature(s) Guaranteed:

_____

THE SIGNATURE(S) SHOULD BE GUARANTEED BY AN ELIGIBLE GUARANTOR INSTITUTION (BANKS, STOCKBROKERS, SAVINGS AND LOAN ASSOCIATIONS AND CREDIT UNIONS WITH MEMBERSHIP IN AN APPROVED SIGNATURE GUARANTEE MEDALLION PROGRAM), PURSUANT TO S.E.C. RULE 17Ad-15.

Exhibit 5.1

200 Clarendon Street
Boston, Massachusetts 02116
Tel: +1.617.948.6000 Fax: +1.617.948.6001
www.lw.com

LATHAM & WATKINS LLP

September 30, 2020

Aziyo Biologics, Inc.
12510 Prosperity Drive, Suite 370
Silver Spring, MD 20904

Re: Registration Statement No. 333-248788;
$60,882,336 of shares of Common Stock, $0.001 par value per share

Ladies and Gentlemen:

We have acted as special counsel to Aziyo Biologics, Inc., a Delaware corporation (the "***Company***"), in connection with the proposed issuance of up to $60,882,336 of shares (including shares subject to the underwriters' option to purchase additional shares) (the "***Shares***") of Class A common stock, $0.001 par value per share (the "***Class A Common Stock***"), or, to the extent Shares are purchased by entities affiliated with Deerfield Private Design Fund III, L.P., Class B common stock, par value $0.001 per share (together with the Class A Common Stock, the "***Common Stock***"). The Shares are included in a registration statement on Form S-1 under the Securities Act of 1933, as amended (the "***Act***"), filed with the Securities and Exchange Commission (the "***Commission***") on September 14, 2020 (Registration No. 333-248788) (as amended, the "***Registration Statement***"). The term "Shares" shall include any additional shares of Common Stock registered by the Company pursuant to Rule 462(b) under the Act in connection with the offering contemplated by the Registration Statement. This opinion is being furnished in connection with the requirements of Item 601(b)(5) of Regulation S-K under the Act, and no opinion is expressed herein as to any matter pertaining to the contents of the Registration Statement or related Prospectus, other than as expressly stated herein with respect to the issue of the Shares.

As such counsel, we have examined such matters of fact and questions of law as we have considered appropriate for purposes of this letter. With your consent, we have relied upon certificates and other assurances of officers of the Company and others as to factual matters without having independently verified such factual matters. We are opining herein as to the General Corporation Law of the State of Delaware and we express no opinion with respect to any other laws.

LATHAM & WATKINS LLP

Subject to the foregoing and the other matters set forth herein, it is our opinion that, as of the date hereof, when the Shares shall have been duly registered on the books of the transfer agent and registrar therefor in the name or on behalf of the purchasers, and have been issued by the Company against payment therefor (not less than par value) in total numbers that do not exceed the total number of shares available under the Company's certificate of incorporation and in the circumstances contemplated by the form of underwriting agreement most recently filed as an exhibit to the Registration Statement, the issue and sale of the Shares will have been duly authorized by all necessary corporate action of the Company, and the Shares will be validly issued, fully paid and nonassessable. In rendering the foregoing opinion, we have assumed that the Company will comply with all applicable notice requirements regarding uncertificated shares provided in the General Corporation Law of the State of Delaware.

This opinion is for your benefit in connection with the Registration Statement and may be relied upon by you and by persons entitled to rely upon it pursuant to the applicable provisions of the Act. We consent to your filing this opinion as an exhibit to the Registration Statement and to the reference to our firm in the Prospectus under the heading "Legal Matters." We further consent to the incorporation by reference of this letter and consent into any registration statement filed pursuant to Rule 462(b) with respect to the Shares. In giving such consent, we do not thereby admit that we are in the category of persons whose consent is required under Section 7 of the Act or the rules and regulations of the Commission thereunder.

Very truly yours,

/s/ Latham & Watkins LLP

Exhibit 10.2

AZIYO BIOLOGICS, INC.
2020 INCENTIVE AWARD PLAN

ARTICLE 1.

PURPOSE

The purpose of the Aziyo Biologics, Inc. 2020 Incentive Award Plan (as it may be amended or restated from time to time, the "Plan") is to promote the success and enhance the value of Aziyo Biologics, Inc. (the "Company") by linking the individual interests of Directors, Employees, and Consultants to those of Company stockholders and by providing such individuals with an incentive for outstanding performance to generate superior returns to Company stockholders. The Plan is further intended to provide flexibility to the Company in its ability to motivate, attract, and retain the services of Directors, Employees, and Consultants upon whose judgment, interest, and special effort the successful conduct of the Company's operation is largely dependent.

ARTICLE 2.

DEFINITIONS AND CONSTRUCTION

Wherever the following terms are used in the Plan they shall have the meanings specified below, unless the context clearly indicates otherwise. The singular pronoun shall include the plural where the context so indicates.

2.1 "Administrator" shall mean the Board or a Committee to the extent that the Board's powers or authority under the Plan have been delegated to such Committee.

2.2 "Affiliate" shall mean (a) any Subsidiary; and (b) any domestic eligible entity that is disregarded, under Treasury Regulation Section 301.7701-3, as an entity separate from either (i) the Company or (ii) any Subsidiary.

2.3 "Applicable Accounting Standards" shall mean Generally Accepted Accounting Principles in the United States, International Financial Reporting Standards or such other accounting principles or standards as may apply to the Company's financial statements under United States federal securities laws from time to time.

2.4 "Applicable Law" shall mean any applicable law, including, without limitation: (a) provisions of the Code, the Securities Act, the Exchange Act and any rules or regulations thereunder; (b) corporate, securities, tax or other laws, statutes, rules, requirements or regulations, whether federal, state, local or foreign; and (c) rules of any securities exchange or automated quotation system on which the Shares are listed, quoted or traded.

2.5 "Automatic Exercise Date" shall mean, with respect to an Option or a Stock Appreciation Right, the last business day of the applicable Option Term or Stock Appreciation Right Term that was initially established by the Administrator for such Option or Stock Appreciation Right (*e.g.*, the last business day prior to the tenth anniversary of the date of grant of such Option or Stock Appreciation Right if the Option or Stock Appreciation Right initially had a ten-year Option Term or Stock Appreciation Right Term, as applicable).

2.6 "Award" shall mean an Option, a Stock Appreciation Right, a Restricted Stock award, a Restricted Stock Unit award, an Other Stock or Cash Based Award or a Dividend Equivalent award, which may be awarded or granted under the Plan.

2.7 "Award Agreement" shall mean any written notice, agreement, terms and conditions, contract or other instrument or document evidencing an Award, including through electronic medium, which shall contain such terms and conditions with respect to an Award as the Administrator shall determine consistent with the Plan.

2.8 "Board" shall mean the Board of Directors of the Company.

2.9 "Change in Control" shall mean and includes each of the following:

(a) A transaction or series of transactions (other than an offering of Common Stock to the general public through a registration statement filed with the Securities and Exchange Commission) whereby any "person" or related "group" of "persons" (as such terms are used in Sections 13(d) and 14(d)(2) of the Exchange Act) directly or indirectly acquires beneficial ownership (within the meaning of Rules 13d-3 and 13d-5 under the Exchange Act) of securities of the Company possessing more than 50 % of the total combined voting power of the Company's securities outstanding immediately after such acquisition; provided, however, that the following acquisitions shall not constitute a Change in Control: (i) any acquisition by the Company or any of its Subsidiaries; (ii) any acquisition by an employee benefit plan maintained by the Company or any of its Subsidiaries, (iii) any acquisition which complies with Sections 2.9(c)(i), 2.9(c)(ii) or 2.9(c)(iii); or (iv) in respect of an Award held by a particular Holder, any acquisition by the Holder or any group of persons including the Holder (or any entity controlled by the Holder or any group of persons including the Holder); or

(b) The Incumbent Directors cease for any reason to constitute a majority of the Board;

(c) The consummation by the Company (whether directly involving the Company or indirectly involving the Company through one or more intermediaries) of (x) a merger, consolidation, reorganization, or business combination, (y) a sale or other disposition of all or substantially all of the Company's assets in any single transaction or series of related transactions or (z) the acquisition of assets or stock of another entity, in each case other than a transaction:

(i) which results in the Company's voting securities outstanding immediately before the transaction continuing to represent (either by remaining outstanding or by being converted into voting securities of the Company or the person that, as a result of the transaction, controls, directly or indirectly, the Company or owns, directly or indirectly, all or substantially all of the Company's assets or otherwise succeeds to the business of the Company (the Company or such person, the "Successor Entity")) directly or indirectly, at least a majority of the combined voting power of the Successor Entity's outstanding voting securities immediately after the transaction, and

(ii) after which no person or group beneficially owns voting securities representing 50% or more of the combined voting power of the Successor Entity; provided, however, that no person or group shall be treated for purposes of this Section 2.8(c)(ii) as beneficially owning 50% or more of the combined voting power of the Successor Entity solely as a result of the voting power held in the Company prior to the consummation of the transaction; and

(iii) after which at least a majority of the members of the board of directors (or the analogous governing body) of the Successor Entity were Board members at the time of the Board's approval of the execution of the initial agreement providing for such transaction; or

(d) The date which is 10 business days prior to the completion of a liquidation or dissolution of the Company.

Notwithstanding the foregoing, if a Change in Control constitutes a payment event with respect to any Award (or any portion of an Award) that provides for the deferral of compensation that is subject to Section 409A, to the extent required to avoid the imposition of additional taxes under Section 409A, the transaction or event described in subsection (a), (b), (c) or (d) with respect to such Award (or portion thereof) shall only constitute a Change in Control for purposes of the payment timing of such Award if such transaction also constitutes a "change in control event," as defined in Treasury Regulation Section 1.409A-3(i)(5).

The Administrator shall have full and final authority, which shall be exercised in its sole discretion, to determine conclusively whether a Change in Control has occurred pursuant to the above definition, the date of the occurrence of such Change in Control and any incidental matters relating thereto; provided that any exercise of authority in conjunction with a determination of whether a Change in Control is a "change in control event" as defined in Treasury Regulation Section 1.409A-3(i)(5) shall be consistent with such regulation.

2.10 "Code" shall mean the Internal Revenue Code of 1986, as amended from time to time, together with the regulations and official guidance promulgated thereunder, whether issued prior or subsequent to the grant of any Award.

2.11 "Committee" shall mean the Compensation Committee of the Board, or another committee or subcommittee of the Board which may be comprised of one or more Directors and/or executive officers of the Company as appointed by the Board, to the extent permitted in accordance with Applicable Law.

2.12 "Common Stock" shall mean the Class A common stock of the Company.

2.13 "Company" shall have the meaning set forth in Article 1.

2.14 "Consultant" shall mean any consultant or adviser engaged to provide services to the Company or any parent of the Company or Affiliate who qualifies as a consultant or advisor under the applicable rules of the Securities and Exchange Commission for registration of shares on a Form S-8 Registration Statement.

2.15 "Director" shall mean a member of the Board, as constituted from time to time.

2.16 "Director Limit" shall have the meaning set forth in Section 4.6.

2.17 "Dividend Equivalent" shall mean a right to receive the equivalent value (in cash or Shares) of dividends paid on Shares, awarded under Section 9.2.

2.18 "DRO" shall mean a "domestic relations order" as defined by the Code or Title I of the Employee Retirement Income Security Act of 1974, as amended from time to time, or the rules thereunder.

2.19 "Effective Date" shall mean the day prior to the Public Trading Date.

2.20 "Eligible Individual" shall mean any person who is an Employee, a Consultant or a Non-Employee Director, as determined by the Administrator.

2.21 "Employee" shall mean any officer or other employee (as determined in accordance with Section 3401(c) of the Code and the Treasury Regulations thereunder) of the Company or of any parent of the Company or Affiliate.

2.22 "Equity Restructuring" shall mean a nonreciprocal transaction between the Company and its stockholders, such as a stock dividend, stock split, spin-off, rights offering or recapitalization through a large, nonrecurring cash dividend, that affects the number or kind of Shares (or other securities of the Company) or the share price of Common Stock (or other securities) and causes a change in the per-share value of the Common Stock underlying outstanding Awards.

2.23 "Exchange Act" shall mean the Securities Exchange Act of 1934, as amended from time to time.

2.24 "Exchange Program" shall mean a program under which (i) outstanding Awards are surrendered or cancelled in exchange for Awards of the same type (which may have higher or lower exercise prices and different terms), Awards of a different type, and/or cash, (ii) Holders would have the opportunity to transfer any outstanding Awards to a financial institution or other person or entity selected by the Administrator, and/or (iii) the exercise price of an outstanding Award is reduced or increased. The Administrator will determine the terms and conditions of any Exchange Program in its sole discretion.

2.25 "Fair Market Value" shall mean, as of any given date, the value of a Share determined as follows:

(a) If the Common Stock is (i) listed on any established securities exchange (such as the New York Stock Exchange, the Nasdaq Capital Market, the Nasdaq Global Market and the Nasdaq Global Select Market), (ii) listed on any national market system or (iii) quoted or traded on any automated quotation system, its Fair Market Value shall be the closing sales price for a Share as quoted on such exchange or system for such date or, if there is no closing sales price for a Share on the date in question, the closing sales price for a Share on the last preceding date for which such quotation exists, as reported in *The Wall Street Journal* or such other source as the Administrator deems reliable;

(b) If the Common Stock is **not listed on an established securities exchange, national market system or automated quotation system, but the Common Stock is** regularly quoted by a recognized securities dealer, its Fair Market Value shall be the mean of the high bid and low asked prices for such date or, if there are no high bid and low asked prices for a Share on such date, the high bid and low asked prices for a Share on the last preceding date for which such information exists, as reported in *The Wall Street Journal* or such other source as the Administrator deems reliable; or

(c) If the Common Stock is neither listed on an established securities exchange, national market system or automated quotation system nor regularly quoted by a recognized securities dealer, its Fair Market Value shall be established by the Administrator in its discretion.

Notwithstanding the foregoing, with respect to any Award granted on the pricing date of the Company's initial public offering, the Fair Market Value shall mean the initial public offering price of a Share as set forth in the Company's final prospectus relating to its initial public offering filed with the Securities and Exchange Commission.

2.26 "Greater Than 10% Stockholder" shall mean an individual then owning (within the meaning of Section 424(d) of the Code) more than 10% of the total combined voting power of all classes of stock of the Company or any subsidiary corporation (as defined in Section 424(f) of the Code) or parent corporation thereof (as defined in Section 424(e) of the Code).

2.27 "Holder" shall mean a person who has been granted an Award.

2.28 "Incentive Stock Option" shall mean an Option that is intended to qualify as an incentive stock option and conforms to the applicable provisions of Section 422 of the Code.

2.29 "Incumbent Directors" shall mean for any period of 12 consecutive months, individuals who, at the beginning of such period, constitute the Board together with any new Director(s) (other than a Director designated by a person who shall have entered into an agreement with the Company to effect a transaction described in Section 2.8(a) or 2.8(c)) whose election or nomination for election to the Board was approved by a vote of at least a majority (either by a specific vote or by approval of the proxy statement of the Company in which such person is named as a nominee for Director without objection to such nomination) of the Directors then still in office who either were Directors at the beginning of the 12-month period or whose election or nomination for election was previously so approved. No individual initially elected or nominated as a director of the Company as a result of an actual or threatened election contest with respect to Directors or as a result of any other actual or threatened solicitation of proxies by or on behalf of any person other than the Board shall be an Incumbent Director.

2.30 "Non-Employee Director" shall mean a Director of the Company who is not an Employee.

2.31 "Non-Employee Director Equity Compensation Policy" shall have the meaning set forth in Section 4.6.

2.32 "Non-Qualified Stock Option" shall mean an Option that is not an Incentive Stock Option or which is designated as an Incentive Stock Option but does not meet the applicable requirements of Section 422 of the Code.

2.33 "Option" shall mean a right to purchase Shares at a specified exercise price, granted under Article 5. An Option shall be either a Non-Qualified Stock Option or an Incentive Stock Option; provided, however, that Options granted to Non-Employee Directors and Consultants shall only be Non-Qualified Stock Options.

2.34 "Option Term" shall have the meaning set forth in Section 5.4.

2.35 "Organizational Documents" shall mean, collectively, the Company's certificate of incorporation, bylaws or other similar organizational documents relating to the creation and governance of the Company.

2.36 "Other Stock or Cash Based Award" shall mean a cash payment, cash bonus award, stock payment, stock bonus award, performance award or incentive award that is paid in cash, Shares or a combination of both, awarded under Section 9.1, which may include, without limitation, deferred stock, deferred stock units, performance awards, retainers, committee fees, and meeting-based fees.

2.37 "Permitted Transferee" shall mean, with respect to a Holder, any "family member" of the Holder, as defined in the General Instructions to Form S-8 Registration Statement under the Securities Act (or any successor form thereto), or any other transferee specifically approved by the Administrator after taking into account Applicable Law.

2.38 "Performance Criteria" shall mean the criteria (and adjustments) that the Administrator selects for an Award for purposes of establishing the Performance Goal or Performance Goals for a Performance Period.

2.39 "Performance Goals" shall mean, for a Performance Period, one or more goals established in writing by the Administrator for the Performance Period based upon one or more Performance Criteria. Depending on the Performance Criteria used to establish such Performance Goals, the Performance Goals may be expressed in terms of overall Company performance or the performance of an Affiliate, division, business unit, or an individual. The achievement of each Performance Goal shall be determined with reference to Applicable Accounting Standards or other methodology as determined appropriate by the Administrator.

2.40 "Performance Period" shall mean one or more periods of time, which may be of varying and overlapping durations, as the Administrator may select, over which the attainment of one or more Performance Goals will be measured for the purpose of determining a Holder's right to, vesting of, and/or the payment in respect of, an Award.

2.41 "Plan" shall have the meaning set forth in Article 1.

2.42 "Prior Plan" shall mean the Aziyo Biologics, Inc. 2015 Stock Option/Stock Issuance Plan, as amended.

2.43 "Program" shall mean any program adopted by the Administrator pursuant to the Plan containing the terms and conditions intended to govern a specified type of Award granted under the Plan and pursuant to which such type of Award may be granted under the Plan.

2.44 "Public Trading Date" shall mean the first date upon which Common Stock is listed (or approved for listing) upon notice of issuance on any securities exchange or designated (or approved for designation) upon notice of issuance as a national market security on an interdealer quotation system.

2.45 "Restricted Stock" shall mean Common Stock awarded under Article 7 that is subject to certain restrictions and may be subject to risk of forfeiture or repurchase.

2.46 "Restricted Stock Units" shall mean the right to receive Shares awarded under Article 8.

2.47 "SAR Term" shall have the meaning set forth in Section 5.4.

2.48 "Section 409A" shall mean Section 409A of the Code and the Department of Treasury regulations and other interpretive guidance issued thereunder, including, without limitation, any such regulations or other guidance that may be issued after the Effective Date.

2.49 "Securities Act" shall mean the Securities Act of 1933, as amended.

2.50 "Shares" shall mean shares of Common Stock.

2.51 "Stock Appreciation Right" shall mean an Award entitling the Holder (or other person entitled to exercise pursuant to the Plan) to exercise all or a specified portion thereof (to the extent then exercisable pursuant to its terms) and to receive from the Company an amount determined by multiplying (i) the difference obtained by subtracting (x) the exercise price per share of such Award from (y) the Fair Market Value on the date of exercise of such Award by (ii) the number of Shares with respect to which such Award shall have been exercised, subject to any limitations the Administrator may impose.

2.52 "Subsidiary" shall mean any entity (other than the Company), whether domestic or foreign, in an unbroken chain of entities beginning with the Company if each of the entities other than the last entity in the unbroken chain beneficially owns, at the time of the determination, securities or interests representing at least fifty percent (50%) of the total combined voting power of all classes of securities or interests in one of the other entities in such chain.

2.53 "Substitute Award" shall mean an Award granted under the Plan in connection with a corporate transaction, such as a merger, combination, consolidation or acquisition of property or stock, in any case, upon the assumption of, or in substitution for, outstanding equity awards previously granted by a company or other entity; provided, however, that in no event shall the term "Substitute Award" be construed to refer to an award made in connection with the cancellation and repricing of an Option or Stock Appreciation Right.

2.54 "Termination of Service" shall mean the date the Holder ceases to be an Eligible Individual. The Administrator, in its sole discretion, shall determine the effect of all matters and questions relating to any Termination of Service, including, without limitation, whether a Termination of Service has occurred, whether a Termination of Service resulted from a discharge for cause and all questions of whether particular leaves of absence constitute a Termination of Service; provided, however, that, with respect to Incentive Stock Options, unless the Administrator otherwise provides in the terms of any Program, Award Agreement or otherwise, or as otherwise required by Applicable Law, a leave of absence, change in status from an employee to an independent contractor or other change in the employee-employer relationship shall constitute a Termination of Service only if, and to the extent that, such leave of absence, change in status or other change interrupts employment for the purposes of Section 422(a)(2) of the Code and the then-applicable regulations and revenue rulings under said Section. For purposes of the Plan, a Holder's employee-employer relationship or consultancy relations shall be deemed to be terminated in the event that the Affiliate employing or contracting with such Holder ceases to remain an Affiliate following any merger, sale of stock or other corporate transaction or event (including, without limitation, a spin-off).

ARTICLE 3.

SHARES SUBJECT TO THE PLAN

3.1 Number of Shares.

(a) Subject to Sections 3.1(b) and 12.2, Awards may be made under the Plan covering an aggregate number of Shares equal to the sum of: (i) 1,636,000 and (ii) any Shares which as of the Effective Date are available under issuance under the Prior Plan, or are subject to awards under the Prior Plan which are forfeited or lapse unexercised and which following the Effective Date are not issued under the Prior Plan; and (iii) an annual increase on the first day of each calendar year beginning on January 1, 2021 and ending on and including January 1, 2030, equal to the lesser of (A) 4% of the Shares outstanding (on an as-converted basis) on the last day of the immediately preceding fiscal year and (B) such smaller number of Shares as determined by the Board; provided, however, no more than 1,636,000 Shares may be issued upon the exercise of Incentive Stock Options. Any Shares distributed pursuant to an Award may consist, in whole or in part, of authorized and unissued Common Stock, treasury Common Stock or Common Stock purchased on the open market.

(b) If (i) any Shares are forfeited or expire, are surrendered pursuant to an Exchange Program, are converted to shares of another person in connection with a recapitalization, reorganization, merger, consolidation, split-up, spin-off, combination, exchange of shares or other similar event, or such Award is settled for cash (in whole or in part) (including Shares repurchased by the Company under Section 7.5 at the same price paid by the Holder) or (ii) after the Effective Date, any Shares subject to an award under the Prior Plan are forfeited or expire, are converted to shares of another person in connection with a recapitalization, reorganization, merger, consolidation, split-up, spin-off, combination, exchange of shares or other similar event, are surrendered pursuant to the Exchange Program or such award under the Prior Plan is settled for cash (in whole or in part) (including Shares repurchased by the Company), the Shares subject to such Award or award under the Prior Plan shall, to the extent of such forfeiture, surrender, expiration or cash settlement, again be available for future grants of Awards under the Plan. Notwithstanding anything to the contrary contained herein, the following Shares shall not be added to the Shares authorized for grant under Section 3.1(a) and shall not be available for future grants of Awards: (i) Shares tendered by a Holder or withheld by the Company in payment of the exercise price of an Option; (ii) Shares tendered by the Holder or withheld by the Company to satisfy any tax withholding obligation with respect to an Award; (iii) Shares subject to a Stock Appreciation Right or other stock-settled Award (including Awards that may be settled in cash or stock) that are not issued in connection with the settlement or exercise, as applicable, of the Stock Appreciation Right or other stock-settled Award; and (iv) Shares purchased on the open market by the Company with the cash proceeds received from the exercise of Options. Any Shares repurchased by the Company under Section 7.5 at the same price paid by the Holder so that such Shares are returned to the Company shall again be available for Awards. The payment of Dividend Equivalents in cash in conjunction with any outstanding Awards shall not be counted against the Shares available for issuance under the Plan. Notwithstanding the provisions of this Section 3.1(b), no Shares may again be optioned, granted or awarded if such action would cause an Incentive Stock Option to fail to qualify as an incentive stock option under Section 422 of the Code.

(c) Substitute Awards may be granted on such terms as the Administrator deems appropriate, notwithstanding limitations on Awards in the Plan. Substitute Awards shall not reduce the Shares authorized for grant under the Plan, except as may be required by reason of Section 422 of the Code, and Shares subject to such Substitute Awards shall not be added to the Shares available for Awards under the Plan as provided in Section 3.1(b) above. Additionally, in the event that a company acquired by the Company or any Affiliate or with which the Company or any Affiliate combines has shares available under a pre-existing plan approved by its stockholders and not adopted in contemplation of such acquisition or combination, the shares available for grant pursuant to the terms of such pre-existing plan (as adjusted, to the extent appropriate, using the exchange ratio or other adjustment or valuation ratio or formula used in such acquisition or combination to determine the consideration payable to the holders of common stock of the entities party to such acquisition or combination) may be used for Awards under the Plan and shall not reduce the Shares authorized for grant under the Plan (and Shares subject to such Awards shall not be added to the Shares available for Awards under the Plan as provided in Section 3.1(b) above); provided that Awards using such available Shares shall not be made after the date awards or grants could have been made under the terms of the pre-existing plan, absent the acquisition or combination, and shall only be made to individuals who were not employed by or providing services to the Company or its Affiliates immediately prior to such acquisition or combination.

ARTICLE 4.

GRANTING OF AWARDS

4.1 Participation. The Administrator may, from time to time, select from among all Eligible Individuals those to whom an Award shall be granted and shall determine the nature and amount of each Award, which shall not be inconsistent with the requirements of the Plan. Except for any Non-Employee Director's right to Awards that may be required pursuant to the Non-Employee Director Equity Compensation Policy as described in Section 4.6, no Eligible Individual or other person shall have any right to be granted an Award pursuant to the Plan and neither the Company nor the Administrator is obligated to treat Eligible Individuals, Holders or any other persons uniformly. Participation by each Holder in the Plan shall be voluntary and nothing in the Plan or any Program shall be construed as mandating that any Eligible Individual or other person shall participate in the Plan.

4.2 Award Agreement. Each Award shall be evidenced by an Award Agreement that sets forth the terms, conditions and limitations for such Award as determined by the Administrator in its sole discretion (consistent with the requirements of the Plan and any applicable Program). Award Agreements evidencing Incentive Stock Options shall contain such terms and conditions as may be necessary to meet the applicable provisions of Section 422 of the Code. The Administrator, in its sole discretion, may grant Awards to Eligible Individuals that are based on one or more Performance Criteria or achievement of one or more Performance Goals or any such other criteria or goals as the Administrator shall establish.

4.3 Limitations Applicable to Section 16 Persons. Notwithstanding any other provision of the Plan, the Plan, and any Award granted or awarded to any individual who is then subject to Section 16 of the Exchange Act, shall be subject to any additional limitations set forth in any applicable exemptive rule under Section 16 of the Exchange Act (including Rule 16b-3 of the Exchange Act and any amendments thereto) that are requirements for the application of such exemptive rule. To the extent permitted by Applicable Law, the Plan and Awards granted or awarded hereunder shall be deemed amended to the extent necessary to conform to such applicable exemptive rule.

4.4 At-Will Service. Nothing in the Plan or in any Program or Award Agreement hereunder shall confer upon any Holder any right to continue in the employ of, or as a Director or Consultant for, the Company or any Affiliate, or shall interfere with or restrict in any way the rights of the Company and any Affiliate, which rights are hereby expressly reserved, to discharge any Holder at any time for any reason whatsoever, with or without cause, and with or without notice, or to terminate or change all other terms and conditions of employment or engagement, except to the extent expressly provided otherwise in a written agreement between the Holder and the Company or any Affiliate.

4.5 Foreign Holders. Notwithstanding any provision of the Plan or applicable Program to the contrary, in order to comply with the laws in countries other than the United States in which the Company and its Affiliates operate or have Employees, Non-Employee Directors or Consultants, or in order to comply with the requirements of any foreign securities exchange or other Applicable Law, the Administrator, in its sole discretion, shall have the power and authority to: (a) determine which Affiliates shall be covered by the Plan; (b) determine which Eligible Individuals outside the United States are eligible to participate in the Plan; (c) modify the terms and conditions of any Award granted to Eligible Individuals outside the United States to comply with Applicable Law (including, without limitation, applicable foreign laws or listing requirements of any foreign securities exchange); (d) establish subplans and modify exercise procedures and other terms and procedures, to the extent such actions may be necessary or advisable; provided, however, that no such subplans and/or modifications shall increase the share limitation contained in Section 3.1 or the Director Limit; and (e) take any action, before or after an Award is made, that it deems advisable to obtain approval or comply with any necessary local governmental regulatory exemptions or approvals or listing requirements of any foreign securities exchange.

4.6 Non-Employee Director Awards.

(a) Non-Employee Director Equity Compensation Policy. The Administrator, in its sole discretion, may provide that Awards granted to Non-Employee Directors shall be granted pursuant to a written nondiscretionary formula established by the Administrator (the "Non-Employee Director Equity Compensation Policy"), subject to the limitations of the Plan. The Non-Employee Director Equity Compensation Policy shall set forth the type of Award(s) to be granted to Non-Employee Directors, the number of Shares to be subject to Non-Employee Director Awards, the conditions on which such Awards shall be granted, become exercisable and/or payable and expire, and such other terms and conditions as the Administrator shall determine in its sole discretion. The Non-Employee Director Equity Compensation Policy may be modified by the Administrator from time to time in its sole discretion and pursuant to the exercise of its business judgment, taking into account such factors, circumstances and considerations as it shall deem relevant from time to time.

(b) Director Limit. Notwithstanding any provision to the contrary in the Plan or in the Non-Employee Director Equity Compensation Policy, the sum of the grant date fair value of equity-based Awards and the amount of any cash-based Awards or other fees granted to a Non-Employee Director during any calendar year shall not exceed $750,000 (the "Director Limit"), increased to $1,000,000 in the fiscal year of his or her initial service as a Non-Employee Director (the applicable amount, the "Director Limit"). The Administrator may make exceptions to this limit for individual Non-Employee Directors in extraordinary circumstances, as the Administrator may determine in its discretion, provided that the Non-Employee Director receiving such additional compensation may not participate in the decision to award such compensation or in other contemporaneous compensation decisions involving Non-Employee Directors.

ARTICLE 5.

GRANTING OF OPTIONS AND STOCK APPRECIATION RIGHTS

5.1 Granting of Options and Stock Appreciation Rights to Eligible Individuals. The Administrator is authorized to grant Options and Stock Appreciation Rights to Eligible Individuals from time to time, in its sole discretion, on such terms and conditions as it may determine, which shall not be inconsistent with the Plan, including any limitations in the Plan that apply to Incentive Stock Options.

5.2 Qualification of Incentive Stock Options. The Administrator may grant Options intended to qualify as Incentive Stock Options only to employees of the Company, any of the Company's present or future "parent corporations" or "subsidiary corporations" as defined in Sections 424(e) or (f) of the Code, respectively, and any other entities the employees of which are eligible to receive Incentive Stock Options under the Code. No person who qualifies as a Greater Than 10% Stockholder may be granted an Incentive Stock Option unless such Incentive Stock Option conforms to the applicable provisions of Section 422 of the Code. To the extent that the aggregate fair market value of stock with respect to which "incentive stock options" (within the meaning of Section 422 of the Code, but without regard to Section 422(d) of the Code) are exercisable for the first time by a Holder during any calendar year under the Plan, and all other plans of the Company and any parent corporation or subsidiary corporation thereof (as defined in Section 424(e) and 424(f) of the Code, respectively), exceeds $100,000, the Options shall be treated as Non-Qualified Stock Options to the extent required by Section 422 of the Code. The rule set forth in the immediately preceding sentence shall be applied by taking Options and other "incentive stock options" into account in the order in which they were granted and the fair market value of stock shall be determined as of the time the respective options were granted. Any interpretations and rules under the Plan with respect to Incentive Stock Options shall be consistent with the provisions of Section 422 of the Code. Neither the Company nor the Administrator shall have any liability to a Holder, or any other person, (a) if an Option (or any part thereof) which is intended to qualify as an Incentive Stock Option fails to qualify as an Incentive Stock Option or (b) for any action or omission by the Company or the Administrator that causes an Option not to qualify as an Incentive Stock Option, including, without limitation, the conversion of an Incentive Stock Option to a Non-Qualified Stock Option or the grant of an Option intended as an Incentive Stock Option that fails to satisfy the requirements under the Code applicable to an Incentive Stock Option.

5.3 Option and Stock Appreciation Right Exercise Price. The exercise price per Share subject to each Option and Stock Appreciation Right shall be set by the Administrator, but shall not be less than 100% of the Fair Market Value of a Share on the date the Option or Stock Appreciation Right, as applicable, is granted (or, as to Incentive Stock Options, on the date the Option is modified, extended or renewed for purposes of Section 424(h) of the Code). In addition, in the case of Incentive Stock Options granted to a Greater Than 10% Stockholder, such price shall not be less than 110% of the Fair Market Value of a Share on the date the Option is granted (or the date the Option is modified, extended or renewed for purposes of Section 424(h) of the Code). Notwithstanding the foregoing, in the case of an Option or Stock Appreciation Right that is a Substitute Award, the exercise price per share of the Shares subject to such Option or Stock Appreciation Right, as applicable, may be less than the Fair Market Value per share on the date of grant; provided that the exercise price of any Substitute Award shall be determined in accordance with the applicable requirements of Section 424 and 409A of the Code.

5.4 Option and SAR Term. The term of each Option (the "Option Term") and the term of each Stock Appreciation Right (the "SAR Term") shall be set by the Administrator in its sole discretion; provided, however, that the Option Term or SAR Term, as applicable, shall not be more than (a) ten (10) years from the date the Option or Stock Appreciation Right, as applicable, is granted to an Eligible Individual (other than a Greater Than 10% Stockholder), or (b) five (5) years from the date an Incentive Stock Option is granted to a Greater Than 10% Stockholder. Except as limited by the requirements of Section 409A or Section 422 of the Code and regulations and rulings thereunder or the first sentence of this Section 5.4 and without limiting the Company's rights under Section 10.6, the Administrator may extend the Option Term of any outstanding Option or the SAR Term of any outstanding Stock Appreciation Right, and may extend the time period during which vested Options or Stock Appreciation Rights may be exercised, in connection with any Termination of Service of the Holder or otherwise, and may amend, subject to Section 10.6 and 12.1, any other term or condition of such Option or Stock Appreciation Right relating to such Termination of Service of the Holder or otherwise.

5.5 Option and SAR Vesting. The period during which the right to exercise, in whole or in part, an Option or Stock Appreciation Right vests in the Holder shall be set by the Administrator and set forth in the applicable Award Agreement. Notwithstanding the foregoing and unless determined otherwise by the Company, in the event that on the last business day of the term of an Option or Stock Appreciation Right (other than an Incentive Stock Option) (a) the exercise of the Option or Stock Appreciation Right is prohibited by Applicable Law, as determined by the Company, or (b) Shares may not be purchased or sold by the applicable Participant due to any Company insider trading policy (including blackout periods) or a "lock-up" agreement undertaken in connection with an issuance of securities by the Company, the term of the Option or Stock Appreciation Right shall be extended until the date that is thirty (30) days after the end of the legal prohibition, black-out period or lock-up agreement, as determined by the Company; provided, however, in no event shall the extension last beyond the ten year term of the applicable Option or Stock Appreciation Right. Unless otherwise determined by the Administrator in the Award Agreement, the applicable Program or by action of the Administrator following the grant of the Option or Stock Appreciation Right, (i) no portion of an Option or Stock Appreciation Right which is unexercisable at a Holder's Termination of Service shall thereafter become exercisable and (ii) the portion of an Option or Stock Appreciation Right that is unexercisable at a Holder's Termination of Service shall automatically expire thirty (30) days following such Termination of Service.

ARTICLE 6.

EXERCISE OF OPTIONS AND STOCK APPRECIATION RIGHTS

6.1 Exercise and Payment. An exercisable Option or Stock Appreciation Right may be exercised in whole or in part. However, unless the Administrator otherwise determines, an Option or Stock Appreciation Right shall not be exercisable with respect to fractional Shares and the Administrator may require that, by the terms of the Option or Stock Appreciation Right, a partial exercise must be with respect to a minimum number of Shares. Payment of the amounts payable with respect to Stock Appreciation Rights pursuant to this Article 6 shall be in cash, Shares (based on its Fair Market Value as of the date the Stock Appreciation Right is exercised), or a combination of both, as determined by the Administrator.

6.2 Manner of Exercise. All or a portion of an exercisable Option or Stock Appreciation Right shall be deemed exercised upon delivery of all of the following to the Secretary of the Company, the stock plan administrator of the Company or such other person or entity designated by the Administrator, or his, her or its office, as applicable:

(a) A written notice of exercise in a form the Administrator approves (which may be electronic) complying with the applicable rules established by the Administrator. The notice shall be signed or otherwise acknowledge electronically by the Holder or other person then entitled to exercise the Option or Stock Appreciation Right or such portion thereof;

(b) Such representations and documents as the Administrator, in its sole discretion, deems necessary or advisable to effect compliance with Applicable Law.

(c) In the event that the Option shall be exercised pursuant to Section 10.3 by any person or persons other than the Holder, appropriate proof of the right of such person or persons to exercise the Option or Stock Appreciation Right, as determined in the sole discretion of the Administrator; and

(d) Full payment of the exercise price and applicable withholding taxes for the Shares with respect to which the Option or Stock Appreciation Right, or portion thereof, is exercised, in a manner permitted by the Administrator in accordance with Sections 10.1 and 10.2.

6.3 Expiration of Option Term or SAR Term; Automatic Exercise of In-The-Money Options and Stock Appreciation Rights. Unless otherwise provided by the Administrator in an Award Agreement or otherwise or as otherwise directed by an Option or Stock Appreciation Rights Holder in writing to the Company, each vested and exercisable Option and Stock Appreciation Right outstanding on the Automatic Exercise Date with an exercise price per Share that is less than the Fair Market Value per Share as of such date shall automatically and without further action by the Option or Stock Appreciation Rights Holder or the Company be exercised on the Automatic Exercise Date. In the sole discretion of the Administrator, payment of the exercise price of any such Option shall be made pursuant to Section 10.1(b) or 10.1(c) and the Company or any Subsidiary shall be entitled to deduct or withhold an amount sufficient to satisfy all taxes associated with such exercise in accordance with Section 10.2. Unless otherwise determined by the Administrator, this Section 6.3 shall not apply to an Option or Stock Appreciation Right if the Holder of such Option or Stock Appreciation Right incurs a Termination of Service on or before the Automatic Exercise Date. For the avoidance of doubt, no Option or Stock Appreciation Right with an exercise price per Share that is equal to or greater than the Fair Market Value per Share on the Automatic Exercise Date shall be exercised pursuant to this Section 6.3.

6.4 Notification Regarding Disposition. The Holder shall give the Company prompt written or electronic notice of any disposition or other transfers (other than in connection with a Change in Control) of Shares acquired by exercise of an Incentive Stock Option which occurs within (a) two years from the date of granting (including the date the Option is modified, extended or renewed for purposes of Section 424(h) of the Code) such Option to such Holder, or (b) one year after the date of transfer of such Shares to such Holder. Such notice shall specify the date of such disposition or other transfer and the amount realized, in cash, other property, assumption of indebtedness or other consideration, by the Holder in such disposition or other transfer.

ARTICLE 7.

AWARD OF RESTRICTED STOCK

7.1 Award of Restricted Stock. The Administrator is authorized to grant Restricted Stock, or the right to purchase Restricted Stock, to Eligible Individuals, and shall determine the terms and conditions, including the restrictions applicable to each award of Restricted Stock, which terms and conditions shall not be inconsistent with the Plan or any applicable Program, and may impose such conditions on the issuance of such Restricted Stock as it deems appropriate. The Administrator shall establish the purchase price, if any, and form of payment for Restricted Stock; provided, however, that if a purchase price is charged, such purchase price shall be no less than the par value, if any, of the Shares to be purchased, unless otherwise permitted by Applicable Law. In all cases, legal consideration shall be required for each issuance of Restricted Stock to the extent required by Applicable Law.

7.2 Vesting of Restricted Stock. At the time of grant, the Administrator shall specify the date or dates on which the Restricted Stock shall become fully vested and nonforfeitable, and may specify such conditions to vesting as it deems appropriate, including, without limitation, vesting based upon the Holder's duration of service to the Company or any Affiliate or one or more Performance Goals, in each case on a specified date or dates or over any period or periods, as determined by the Administrator. An Award of Restricted Stock shall only be eligible to vest while the Holder is an Employee, a Consultant or a Director, as applicable; provided, however, that the Administrator, in its sole discretion, may provide (in an Award Agreement or otherwise) that a Restricted Stock award may become vested subsequent to a Termination of Service in the event of the occurrence of certain events, including a Change in Control, the Holder's death, retirement or disability or any other specified Termination of Service, subject to Section 11.7.

7.3 Rights as Stockholders. Subject to Section 7.5, upon issuance of Restricted Stock, the Holder shall have, unless otherwise provided by the Administrator, all of the rights of a stockholder with respect to said Shares, subject to the restrictions in the Plan, any applicable Program and/or the applicable Award Agreement, including the right to receive all dividends and other distributions paid or made with respect to the Shares to the extent such dividends and other distributions have a record date that is on or after the date on which the Holder to whom such Restricted Stock are granted becomes the record holder of such Restricted Stock; provided, however, that, in the sole discretion of the Administrator, any extraordinary dividends or distributions with respect to the Shares may be subject to the restrictions set forth in Section 7.4.

7.4 Restrictions. All shares of Restricted Stock (including any shares received by Holders thereof with respect to shares of Restricted Stock as a result of stock dividends, stock splits or any other form of recapitalization) and, unless the Administrator provides otherwise, any property (other than cash) transferred to Holders in connection with an extraordinary dividend or distribution shall be subject to such restrictions and vesting requirements as the Administrator shall provide in the applicable Program or Award Agreement.

7.5 Repurchase or Forfeiture of Restricted Stock. Except as otherwise determined by the Administrator, if no price was paid by the Holder for the Restricted Stock, upon a Termination of Service during the applicable restriction period, the Holder's rights in unvested Restricted Stock then subject to restrictions shall lapse, and such Restricted Stock shall be surrendered to the Company and cancelled without consideration on the date of such Termination of Service. If a price was paid by the Holder for the Restricted Stock, upon a Termination of Service during the applicable restriction period, the Company shall have the right to repurchase from the Holder the unvested Restricted Stock then subject to restrictions at a cash price per share equal to the price paid by the Holder for such Restricted Stock or such other amount as may be specified in the applicable Program or Award Agreement.

7.6 Section 83(b) Election. If a Holder makes an election under Section 83(b) of the Code to be taxed with respect to the Restricted Stock as of the date of transfer of the Restricted Stock rather than as of the date or dates upon which the Holder would otherwise be taxable under Section 83(a) of the Code, the Holder shall be required to deliver a copy of such election to the Company promptly after filing such election with the Internal Revenue Service along with proof of the timely filing thereof with the Internal Revenue Service.

ARTICLE 8.

AWARD OF RESTRICTED STOCK UNITS

8.1 Grant of Restricted Stock Units. The Administrator is authorized to grant Awards of Restricted Stock Units to any Eligible Individual selected by the Administrator in such amounts and subject to such terms and conditions as determined by the Administrator. A Holder will have no rights of a stockholder with respect to Shares subject to any Restricted Stock Unit unless and until the Shares are delivered in settlement of the Restricted Stock Unit.

8.2 Vesting of Restricted Stock Units. At the time of grant, the Administrator shall specify the date or dates on which the Restricted Stock Units shall become fully vested and nonforfeitable, and may specify such conditions to vesting as it deems appropriate, including, without limitation, vesting based upon the Holder's duration of service to the Company or any Affiliate, one or more Performance Goals or other specific criteria, in each case on a specified date or dates or over any period or periods, as determined by the Administrator. An Award of Restricted Stock Units shall only be eligible to vest while the Holder is an Employee, a Consultant or a Director, as applicable; provided, however, that the Administrator, in its sole discretion, may provide (in an Award Agreement or otherwise) that a Restricted Stock Unit award may become vested subsequent to a Termination of Service in the event of the occurrence of certain events, including a Change in Control, the Holder's death, retirement or disability or any other specified Termination of Service, subject to Section 11.7.

8.3 Maturity and Payment. At the time of grant, the Administrator shall specify the maturity date applicable to each grant of Restricted Stock Units, which shall be no earlier than the vesting date or dates of the Award and may be determined at the election of the Holder (if permitted by the applicable Award Agreement); provided that, except as otherwise determined by the Administrator, and subject to compliance with Section 409A, in no event shall the maturity date relating to each Restricted Stock Unit occur following the later of (a) the 15th day of the third month following the end of the calendar year in which the applicable portion of the Restricted Stock Unit vests; and (b) the 15th day of the third month following the end of the Company's fiscal year in which the applicable portion of the Restricted Stock Unit vests. On the maturity date, the Company shall, in accordance with the applicable Award Agreement and subject to Section 10.4(f), transfer to the Holder one unrestricted, fully transferable Share for each Restricted Stock Unit scheduled to be paid out on such date and not previously forfeited, or in the sole discretion of the Administrator, an amount in cash equal to the Fair Market Value of such Shares on the maturity date or a combination of cash and Common Stock as determined by the Administrator.

ARTICLE 9.

AWARD OF OTHER STOCK OR CASH BASED AWARDS AND DIVIDEND EQUIVALENTS

9.1 Other Stock or Cash Based Awards. The Administrator is authorized to grant Other Stock or Cash Based Awards, including awards entitling a Holder to receive Shares or cash to be delivered immediately or in the future, to any Eligible Individual. Subject to the provisions of the Plan and any applicable Program, the Administrator shall determine the terms and conditions of each Other Stock or Cash Based Award, including the term of the Award, any exercise or purchase price, Performance Criteria and Performance Goals, transfer restrictions, vesting conditions and other terms and conditions applicable thereto, which shall be set forth in the applicable Award Agreement. Other Stock or Cash Based Awards may be paid in cash, Shares, or a combination of cash and Shares, as determined by the Administrator, and may be available as a form of payment in the settlement of other Awards granted under the Plan, as stand-alone payments, as a part of a bonus, deferred bonus, deferred compensation or other arrangement, and/or as payment in lieu of compensation to which an Eligible Individual is otherwise entitled.

9.2 Dividend Equivalents. Dividend Equivalents may be granted by the Administrator, either alone or in tandem with another Award, based on dividends declared on the Common Stock, to be credited as of dividend payment dates during the period between the date the Dividend Equivalents are granted to a Holder and the date such Dividend Equivalents terminate or expire, as determined by the Administrator. Such Dividend Equivalents shall be converted to cash or additional Shares by such formula and at such time and subject to such restrictions and limitations as may be determined by the Administrator. Notwithstanding the foregoing, no Dividend Equivalents shall be payable with respect to Options or Stock Appreciation Rights.

ARTICLE 10.

ADDITIONAL TERMS OF AWARDS

10.1 Payment. The Administrator shall determine the method or methods by which payments by any Holder with respect to any Awards granted under the Plan shall be made, including, without limitation: (a) cash, wire transfer of immediately available funds or check, (b) Shares (including, in the case of payment of the exercise price of an Award, Shares issuable pursuant to the exercise of the Award) or Shares held for such minimum period of time as may be established by the Administrator, in each case, having a Fair Market Value on the date of delivery equal to the aggregate payments required, (c) delivery of a written or electronic notice that the Holder has placed a market sell order with a broker acceptable to the Company with respect to Shares then issuable upon exercise or vesting of an Award, and that the broker has been directed to pay a sufficient portion of the net proceeds of the sale to the Company in satisfaction of the aggregate payments required; provided that payment of such proceeds is then made to the Company upon settlement of such sale, (d) other form of legal consideration acceptable to the Administrator in its sole discretion, or (e) any combination of the above permitted forms of payment. Notwithstanding any other provision of the Plan to the contrary, no Holder who is a Director or an “executive officer” of the Company within the meaning of Section 13(k) of the Exchange Act shall be permitted to make payment with respect to any Awards granted under the Plan, or continue any extension of credit with respect to such payment, with a loan from the Company or a loan arranged by the Company in violation of Section 13(k) of the Exchange Act.

10.2 Tax Withholding. The Company or any Affiliate shall have the authority and the right to deduct or withhold, or require a Holder to remit to the Company, an amount sufficient to satisfy federal, state, local and foreign taxes (including the Holder's FICA, employment tax or other social security contribution obligation) required by law to be withheld with respect to any taxable event concerning a Holder arising as a result of the Plan or any Award. The Administrator may, in its sole discretion and in satisfaction of the foregoing requirement, or in satisfaction of such additional withholding obligations as a Holder may have elected, allow a Holder to satisfy such obligations by any payment means described in Section 10.1 hereof, including without limitation, by allowing such Holder to elect to have the Company or any Affiliate withhold Shares otherwise issuable under an Award (or allow the surrender of Shares). The number of Shares that may be so withheld or surrendered shall be limited to the number of Shares that have a Fair Market Value on the date of withholding or repurchase no greater than the aggregate amount of such liabilities based on the maximum statutory withholding rates in such Holder's applicable jurisdictions for federal, state, local and foreign income tax and payroll tax purposes that are applicable to such taxable income. The Administrator shall determine the fair market value of the Shares, consistent with applicable provisions of the Code, for tax withholding obligations due in connection with a broker-assisted cashless Option or Stock Appreciation Right exercise involving the sale of Shares to pay the Option or Stock Appreciation Right exercise price or any tax withholding obligation.

10.3 Transferability of Awards.

(a) Except as otherwise provided in Sections 10.3(b) and 10.3(c):

(i) No Award under the Plan may be sold, pledged, assigned or transferred in any manner other than (A) by will or the laws of descent and distribution or (B) subject to the consent of the Administrator, pursuant to a DRO, unless and until such Award has been exercised or the Shares underlying such Award have been issued, and all restrictions applicable to such Shares have lapsed;

(ii) No Award or interest or right therein shall be liable for or otherwise subject to the debts, contracts or engagements of the Holder or the Holder's successors in interest or shall be subject to disposition by transfer, alienation, anticipation, pledge, hypothecation, encumbrance, assignment or any other means whether such disposition be voluntary or involuntary or by operation of law by judgment, levy, attachment, garnishment or any other legal or equitable proceedings (including bankruptcy) unless and until such Award has been exercised, or the Shares underlying such Award have been issued, and all restrictions applicable to such Shares have lapsed, and any attempted disposition of an Award prior to satisfaction of these conditions shall be null and void and of no effect, except to the extent that such disposition is permitted by Section 10.3(a)(i); and

(iii) During the lifetime of the Holder, only the Holder may exercise any exercisable portion of an Award granted to such Holder under the Plan, unless it has been disposed of pursuant to a DRO. After the death of the Holder, any exercisable portion of an Award may, prior to the time when such portion becomes unexercisable under the Plan or the applicable Program or Award Agreement, be exercised by the Holder's personal representative or by any person empowered to do so under the deceased Holder's will or under the then-applicable laws of descent and distribution.

(b) Notwithstanding Section 10.3(a), the Administrator, in its sole discretion, may determine to permit a Holder or a Permitted Transferee of such Holder to transfer an Award other than an Incentive Stock Option (unless such Incentive Stock Option is intended to become a Nonqualified Stock Option) to any one or more Permitted Transferees of such Holder, subject to the following terms and conditions: (i) an Award transferred to a Permitted Transferee shall not be assignable or transferable by the Permitted Transferee other than (A) to another Permitted Transferee of the applicable Holder or (B) by will or the laws of descent and distribution or, subject to the consent of the Administrator, pursuant to a DRO; (ii) an Award transferred to a Permitted Transferee shall continue to be subject to all the terms and conditions of the Award as applicable to the original Holder (other than the ability to further transfer the Award to any person other than another Permitted Transferee of the applicable Holder); (iii) the Holder (or transferring Permitted Transferee) and the receiving Permitted Transferee shall execute any and all documents requested by the Administrator, including, without limitation documents to (A) confirm the status of the transferee as a Permitted Transferee, (B) satisfy any requirements for an exemption for the transfer under Applicable Law and (C) evidence the transfer; and (iv) the transfer of an Award to a Permitted Transferee shall be without consideration. In addition, and further notwithstanding Section 10.3(a), hereof, the Administrator, in its sole discretion, may determine to permit a Holder to transfer Incentive Stock Options to a trust that constitutes a Permitted Transferee if, under Section 671 of the Code and other Applicable Law, the Holder is considered the sole beneficial owner of the Incentive Stock Option while it is held in the trust.

(c) Notwithstanding Section 10.3(a), a Holder may, in the manner determined by the Administrator, designate a beneficiary to exercise the rights of the Holder and to receive any distribution with respect to any Award upon the Holder's death. A beneficiary, legal guardian, legal representative, or other person claiming any rights pursuant to the Plan is subject to all terms and conditions of the Plan and any Program or Award Agreement applicable to the Holder and any additional restrictions deemed necessary or appropriate by the Administrator. If the Holder is married or a domestic partner in a domestic partnership qualified under Applicable Law and resides in a community property state, a designation of a person other than the Holder's spouse or domestic partner, as applicable, as the Holder's beneficiary with respect to more than 50% of the Holder's interest in the Award shall not be effective without the prior written or electronic consent of the Holder's spouse or domestic partner. If no beneficiary has been designated or survives the Holder, payment shall be made to the person entitled thereto pursuant to the Holder's will or the laws of descent and distribution. Subject to the foregoing, a beneficiary designation may be changed or revoked by a Holder at any time; provided that the change or revocation is delivered in writing to the Administrator prior to the Holder's death.

10.4 Conditions to Issuance of Shares.

(a) The Administrator shall determine the methods by which Shares shall be delivered or deemed to be delivered to Holders. Notwithstanding anything herein to the contrary, the Company shall not be required to issue or deliver any certificates or make any book entries evidencing Shares pursuant to the exercise of any Award, unless and until the Administrator has determined that the issuance of such Shares is in compliance with Applicable Law and the Shares are covered by an effective registration statement or applicable exemption from registration. In addition to the terms and conditions provided herein, the Administrator may require that a Holder make such reasonable covenants, agreements and representations as the Administrator, in its sole discretion, deems advisable in order to comply with Applicable Law.

(b) All share certificates delivered pursuant to the Plan and all Shares issued pursuant to book entry procedures are subject to any stop-transfer orders and other restrictions as the Administrator deems necessary or advisable to comply with Applicable Law. The Administrator may place legends on any share certificate or book entry to reference restrictions applicable to the Shares (including, without limitation, restrictions applicable to Restricted Stock).

(c) The Administrator shall have the right to require any Holder to comply with any timing or other restrictions with respect to the settlement, distribution or exercise of any Award, including a window-period limitation, as may be imposed in the sole discretion of the Administrator.

(d) Unless the Administrator otherwise determines, no fractional Shares shall be issued and the Administrator, in its sole discretion, shall determine whether cash shall be given in lieu of fractional Shares or whether such fractional Shares shall be eliminated by rounding down.

(e) The Company, in its sole discretion, may (i) retain physical possession of any stock certificate evidencing Shares until any restrictions thereon shall have lapsed and/or (ii) require that the stock certificates evidencing such Shares be held in custody by a designated escrow agent (which may but need not be the Company) until the restrictions thereon shall have lapsed, and that the Holder deliver a stock power, endorsed in blank, relating to such Shares.

(f) Notwithstanding any other provision of the Plan, unless otherwise determined by the Administrator or required by Applicable Law, the Company shall not deliver to any Holder certificates evidencing Shares issued in connection with any Award and instead such Shares shall be recorded in the books of the Company (or, as applicable, its transfer agent or stock plan administrator).

10.5 Forfeiture and Claw-Back Provisions. All Awards (including any proceeds, gains or other economic benefit actually or constructively received by a Holder upon any receipt or exercise of any Award or upon the receipt or resale of any Shares underlying the Award and any payments of a portion of an incentive-based bonus pool allocated to a Holder) shall be subject to the provisions of any claw-back policy implemented by the Company, including, without limitation, any claw-back policy adopted to comply with the requirements of Applicable Law, including, without limitation, the Dodd-Frank Wall Street Reform and Consumer Protection Act and any rules or regulations promulgated thereunder, whether or not such claw-back policy was in place at the time of grant of an Award, to the extent set forth in such claw-back policy and/or in the applicable Award Agreement.

10.6 Amendment of Awards. Subject to Applicable Law, the Administrator may amend, modify or terminate any outstanding Award, including but not limited to, substituting therefor another Award of the same or a different type, changing the date of exercise or settlement, and converting an Incentive Stock Option to a Non-Qualified Stock Option. The Holder's consent to such action shall be required unless (a) the Administrator determines that the action, taking into account any related action, would not materially and adversely affect the Holder, or (b) the change is otherwise permitted under the Plan (including, without limitation, under Section 12.2 or 12.10).

10.7 Lock-Up Period. The Company may, in connection with registering the offering of any Company securities under the Securities Act, prohibit Holders from, directly or indirectly, selling or otherwise transferring any Shares or other Company securities during a period of up to one hundred eighty days following the effective date of a Company registration statement filed under the Securities Act, or such longer period as determined by the underwriter. In order to enforce the foregoing, the Company shall have the right to place restrictive legends on the certificates of any securities of the Company held by the Holder and to impose stop transfer instructions with the Company's transfer agent with respect to any securities of the Company held by the Holder until the end of such period.

10.8 Data Privacy. As a condition of receipt of any Award, each Holder explicitly and unambiguously consents to the collection, use and transfer, in electronic or other form, of personal data as described in this Section 10.8 by and among, as applicable, the Company and its Affiliates for the exclusive purpose of implementing, administering and managing the Holder's participation in the Plan. The Company and its Affiliates may hold certain personal information about a Holder, including but not limited to, the Holder's name, home address and telephone number, date of birth, social security or insurance number or other identification number, salary, nationality, job title(s), any shares of stock held in the Company or any of its Affiliates, details of all Awards, in each case, for the purpose of implementing, managing and administering the Plan and Awards (the "Data"). The Company and its Affiliates may transfer the Data amongst themselves as necessary for the purpose of implementation, administration and management of a Holder's participation in the Plan, and the Company and its Affiliates may each further transfer the Data to any third parties assisting the Company and its Affiliates in the implementation, administration and management of the Plan. These recipients may be located in the Holder's country, or elsewhere, and the Holder's country may have different data privacy laws and protections than the recipients' country. Through acceptance of an Award, each Holder authorizes such recipients to receive, possess, use, retain and transfer the Data, in electronic or other form, for the purposes of implementing, administering and managing the Holder's participation in the Plan, including any requisite transfer of such Data as may be required to a broker or other third party with whom the Company or any of its Affiliates or the Holder may elect to deposit any Shares. The Data related to a Holder will be held only as long as is necessary to implement, administer, and manage the Holder's participation in the Plan. A Holder may, at any time, view the Data held by the Company with respect to such Holder, request additional information about the storage and processing of the Data with respect to such Holder, recommend any necessary corrections to the Data with respect to the Holder or refuse or withdraw the consents herein in writing, in any case without cost, by contacting his or her local human resources representative. The Company may cancel the Holder's ability to participate in the Plan and, in the Administrator's discretion, the Holder may forfeit any outstanding Awards if the Holder refuses or withdraws his or her consents as described herein. For more information on the consequences of refusal to consent or withdrawal of consent, Holders may contact their local human resources representative.

ARTICLE 11.

ADMINISTRATION

11.1 Administrator. The Committee shall administer the Plan (except as otherwise permitted herein). To the extent required to comply with the provisions of Rule 16b-3, it is intended that each member of the Committee will be, at the time the Committee takes any action with respect to an Award that is subject to Rule 16b-3, a "non-employee director" within the meaning of Rule 16b-3. Additionally, to the extent required by Applicable Law, each of the individuals constituting the Committee shall be an "independent director" under the rules of any securities exchange or automated quotation system on which the Shares are listed, quoted or traded. Notwithstanding the foregoing, any action taken by the Committee shall be valid and effective, whether or not members of the Committee at the time of such action are later determined not to have satisfied the requirements for membership set forth in this Section 11.1 or the Organizational Documents. Except as may otherwise be provided in the Organizational Documents or as otherwise required by Applicable Law, (a) appointment of Committee members shall be effective upon acceptance of appointment, (b) Committee members may resign at any time by delivering written or electronic notice to the Board and (c) vacancies in the Committee may only be filled by the Board. Notwithstanding the foregoing, (i) the full Board, acting by a majority of its members in office, shall conduct the general administration of the Plan with respect to Awards granted to Non-Employee Directors and, with respect to such Awards, the term "Administrator" as used in the Plan shall be deemed to refer to the Board and (ii) the Board or Committee may delegate its authority hereunder to the extent permitted by Section 11.6.

11.2 Duties and Powers of Administrator. It shall be the duty of the Administrator to conduct the general administration of the Plan in accordance with its provisions. The Administrator shall have the power to interpret the Plan, all Programs and Award Agreements, and to adopt such rules for the administration, interpretation and application of the Plan and any Program as are not inconsistent with the Plan, to interpret, amend or revoke any such rules and to amend the Plan or any Program or Award Agreement; provided that the rights or obligations of the Holder of the Award that is the subject of any such Program or Award Agreement are not materially and adversely affected by such amendment, unless the consent of the Holder is obtained or such amendment is otherwise permitted under Section 10.6 or Section 12.10. In its sole discretion, the Board may at any time and from time to time exercise any and all rights and duties of the Committee in its capacity as the Administrator under the Plan except with respect to matters which under Rule 16b-3 under the Exchange Act or any successor rule, or any regulations or rules issued thereunder, or the rules of any securities exchange or automated quotation system on which the Shares are listed, quoted or traded are required to be determined in the sole discretion of the Committee.

11.3 Action by the Administrator. Unless otherwise established by the Board, set forth in any Organizational Documents or as required by Applicable Law, a majority of the Administrator shall constitute a quorum and the acts of a majority of the members present at any meeting at which a quorum is present, and acts approved in writing by all members of the Administrator in lieu of a meeting, shall be deemed the acts of the Administrator. Each member of the Administrator is entitled to, in good faith, rely or act upon any report or other information furnished to that member by any officer or other employee of the Company or any Affiliate, the Company's independent certified public accountants, or any executive compensation consultant or other professional retained by the Company to assist in the administration of the Plan. Neither the Administrator nor any member or delegate thereof shall have any liability to any person (including any Holder) for any action taken or omitted to be taken or any determination made in good faith with respect to the Plan or any Award.

11.4 Authority of Administrator. Subject to the Organizational Documents, any specific designation in the Plan and Applicable Law, the Administrator has the exclusive power, authority and sole discretion to:

(a) Designate Eligible Individuals to receive Awards;

(b) Determine the type or types of Awards to be granted to each Eligible Individual (including, without limitation, any Awards granted in tandem with another Award granted pursuant to the Plan);

(c) Determine the number of Awards to be granted and the number of Shares to which an Award will relate;

(d) Determine the terms and conditions of any Award granted pursuant to the Plan, including, but not limited to, the exercise price, grant price, purchase price, any Performance Criteria and/or Performance Goals, any restrictions or limitations on the Award, any schedule for vesting, lapse of forfeiture restrictions or restrictions on the exercisability of an Award, and accelerations or waivers thereof, and any provisions related to non-competition and claw-back and recapture of gain on an Award, based in each case on such considerations as the Administrator in its sole discretion determines;

(e) Institute and determine the terms and conditions of an Exchange Program;

(f) Determine whether, to what extent, and under what circumstances an Award may be settled in, or the exercise price of an Award may be paid in cash, Shares, other Awards, or other property, or an Award may be canceled, forfeited, or surrendered;

(g) Prescribe the form of each Award Agreement, which need not be identical for each Holder;

(h) Decide all other matters that must be determined in connection with an Award;

(i) Establish, adopt, or revise any Programs, rules and regulations as it may deem necessary or advisable to administer the Plan;

(j) Interpret the terms of, and any matter arising pursuant to, the Plan, any Program or any Award Agreement; and

(k) Make all other decisions and determinations that may be required pursuant to the Plan or as the Administrator deems necessary or advisable to administer the Plan.

11.5 Decisions Binding. The Administrator's interpretation of the Plan, any Awards granted pursuant to the Plan, any Program or any Award Agreement and all decisions and determinations by the Administrator with respect to the Plan are final, binding and conclusive on all persons.

11.6 Delegation of Authority. The Board or Committee may from time to time delegate to a committee of one or more Directors or one or more officers of the Company the authority to grant or amend Awards or to take other administrative actions pursuant to this Article 11; provided, however, that in no event shall an officer of the Company be delegated the authority to grant Awards to, or amend Awards held by, the following individuals: (a) individuals who are subject to Section 16 of the Exchange Act, or (b) officers of the Company (or Directors) to whom authority to grant or amend Awards has been delegated hereunder; provided, further, that any delegation of administrative authority shall only be permitted to the extent it is permissible under any Organizational Documents and Applicable Law. Any delegation hereunder shall be subject to the restrictions and limits that the Board or Committee specifies at the time of such delegation or that are otherwise included in the applicable Organizational Documents, and the Board or Committee, as applicable, may at any time rescind the authority so delegated or appoint a new delegatee. At all times, the delegatee appointed under this Section 11.6 shall serve in such capacity at the pleasure of the Board or the Committee, as applicable, and the Board or the Committee may abolish any committee at any time and re-vest in itself any previously delegated authority.

11.7 Acceleration. Subject to the Organizational Documents, any specific designation in the Plan and Applicable Law, the Administrator has the exclusive power, authority and sole discretion to accelerate, wholly or partially, the vesting or lapse of restrictions (and, if applicable, the Company shall cease to have a right of repurchase) of any Award or portion thereof at any time after the grant of an Award, subject to whatever terms and conditions it selects under Section 12.2.

ARTICLE 12.

MISCELLANEOUS PROVISIONS

12.1 Amendment, Suspension or Termination of the Plan.

(a) Except as otherwise provided in Section 12.1(b), the Plan may be wholly or partially amended or otherwise modified, suspended or terminated at any time or from time to time by the Board; provided that, except as provided in Section 10.6 and Section 12.10, no amendment, suspension or termination of the Plan shall, without the consent of the Holder, materially and adversely affect any rights or obligations under any Award theretofore granted or awarded, unless the Award itself otherwise expressly so provides.

(b) Notwithstanding Section 12.1(a), the Board may not, except as provided in Section 12.2, increase the limit imposed in Section 3.1 on the maximum number of Shares which may be issued under the Plan without approval of the Company's stockholders given within twelve (12) months before or after such action.

(c) No Awards may be granted or awarded during any period of suspension or after termination of the Plan, and notwithstanding anything herein to the contrary, in no event may any Incentive Stock Option be granted under the Plan after the tenth (10^{th}) anniversary of the earlier of (i) the date on which the Plan was adopted by the Board and (ii) the date the Plan was approved by the Company's stockholders. The annual increase to the aggregate number of Shares that may be issued or transferred pursuant to Awards under the Plan (set forth in Section 3.1(a) hereof) shall terminate on the tenth (10^{th}) anniversary of the earlier of (i) the date on which the Plan was adopted by the Board and (ii) the date the Plan was approved by the Company's stockholders and, from and after such tenth (10^{th}) anniversary, no additional share increases shall occur pursuant to Section 3.1(a) hereof.

12.2 Changes in Common Stock or Assets of the Company, Acquisition or Liquidation of the Company and Other Corporate Events.

(a) In the event of any stock dividend, stock split, combination or exchange of shares, merger, consolidation or other distribution (other than normal cash dividends) of Company assets to stockholders, or any other change affecting the shares of the Company's stock or the share price of the Company's stock other than an Equity Restructuring, the Administrator may make equitable adjustments to reflect such change with respect to: (i) the aggregate number and kind of Shares that may be issued under the Plan (including, but not limited to, adjustments of the limitations in Section 3.1 on the maximum number and kind of Shares which may be issued under the Plan); (ii) the number and kind of Shares (or other securities or property) subject to outstanding Awards; (iii) the terms and conditions of any outstanding Awards (including, without limitation, any applicable Performance Criteria and Performance Goals with respect thereto); (iv) the grant or exercise price per share for any outstanding Awards under the Plan and (v) the number and kind of Shares (or other securities or property) for which automatic grants are subsequently to be made to new and continuing Non-Employee Directors pursuant to any Non-Employee Director Compensation Policy adopted in accordance with Section 4.6.

(b) In the event of any transaction or event described in Section 12.2(a) or any unusual or nonrecurring transactions or events affecting the Company, any Affiliate of the Company, or the financial statements of the Company or any Affiliate, or of changes in Applicable Law or Applicable Accounting Standards, the Administrator, in its sole discretion, and on such terms and conditions as it deems appropriate, either by the terms of the Award or by action taken prior to the occurrence of such transaction or event, is hereby authorized to take any one or more of the following actions whenever the Administrator determines that such action is appropriate in order to prevent dilution or enlargement of the benefits or potential benefits intended to be made available under the Plan or with respect to any Award under the Plan, to facilitate such transactions or events or to give effect to such changes in Applicable Law or Applicable Accounting Standards:

(i) To provide for the termination of any such Award in exchange for an amount of cash and/or other property with a value equal to the amount that would have been attained upon the exercise of such Award or realization of the Holder's rights (and, for the avoidance of doubt, if as of the date of the occurrence of the transaction or event described in this Section 12.2 the Administrator determines in good faith that no amount would have been attained upon the exercise of such Award or realization of the Holder's rights, then such Award may be terminated by the Company without payment);

(ii) To provide that such Award be assumed by the successor or survivor corporation, or a parent or subsidiary thereof, or shall be substituted for by similar options, rights or awards covering the stock of the successor or survivor corporation, or a parent or subsidiary thereof, with appropriate adjustments as to the number and kind of shares and applicable exercise or purchase price, in all cases, as determined by the Administrator;

(iii) To make adjustments in the number and type of Shares of the Company's stock (or other securities or property) subject to outstanding Awards, and/or in the terms and conditions of (including the grant or exercise price), and the criteria included in, outstanding Awards and Awards which may be granted in the future;

(iv) To provide that such Award shall be exercisable or payable or fully vested with respect to all Shares covered thereby, notwithstanding anything to the contrary in the Plan or the applicable Program or Award Agreement;

(v) To replace such Award with other rights or property selected by the Administrator; and/or

(vi) To provide that the Award cannot vest, be exercised or become payable after such event.

(c) In connection with the occurrence of any Equity Restructuring, and notwithstanding anything to the contrary in Sections 12.2(a) and 12.2(b):

(i) The number and type of securities subject to each outstanding Award and the exercise price or grant price thereof, if applicable, shall be equitably adjusted (and the adjustments provided under this Section 12.2(c)(i) shall be nondiscretionary and shall be final and binding on the affected Holder and the Company); and/or

(ii) The Administrator shall make such equitable adjustments, if any, as the Administrator, in its sole discretion, may deem appropriate to reflect such Equity Restructuring with respect to the aggregate number and kind of Shares that may be issued under the Plan (including, but not limited to, adjustments of the limitation in Section 3.1 on the maximum number and kind of Shares which may be issued under the Plan).

(d) Notwithstanding any other provision of the Plan, in the event of a Change in Control, unless the Administrator elects to (i) terminate an Award in exchange for cash, rights or property, or (ii) cause an Award to become fully exercisable and no longer subject to any forfeiture restrictions prior to the consummation of a Change in Control, pursuant to Section 12.2, (A) such Award (other than any portion subject to performance-based vesting) shall continue in effect or be assumed or an equivalent Award (which may include, without limitation, an Award settled in cash) substituted by the successor corporation or a parent or subsidiary of the successor corporation and (B) the portion of such Award subject to performance-based vesting shall be subject to the terms and conditions of the applicable Award Agreement and, in the absence of applicable terms and conditions, the Administrator's discretion.

(e) In the event that the successor corporation in a Change in Control refuses to assume or substitute for an Award (other than any portion subject to performance-based vesting), the Administrator may cause (i) any or all of such Award (or portion thereof) to terminate in exchange for cash, rights or other property pursuant to Section 12.2(b)(i) or (ii) any or all of such Award (or portion thereof) to become fully exercisable immediately prior to the consummation of such transaction and all forfeiture restrictions on any or all of such Award to lapse. If any such Award is exercisable in lieu of assumption or substitution in the event of a Change in Control, the Administrator shall notify the Holder that such Award shall be fully exercisable for a period of fifteen (15) days from the date of such notice, contingent upon the occurrence of the Change in Control, and such Award shall terminate upon the expiration of such period.

(f) For the purposes of this Section 12.2, an Award shall be considered assumed if, following the Change in Control, the Award confers the right to purchase or receive, for each Share subject to the Award immediately prior to the Change in Control, the consideration (whether stock, cash, or other securities or property) received in the Change in Control by holders of Common Stock for each Share held on the effective date of the transaction (and if holders were offered a choice of consideration, the type of consideration chosen by the holders of a majority of the outstanding Shares); provided, however, that if such consideration received in the Change in Control was not solely common stock of the successor corporation or its parent, the Administrator may, with the consent of the successor corporation, provide for the consideration to be received upon the exercise of the Award, for each Share subject to an Award, to be solely common stock of the successor corporation or its parent equal in fair market value to the per-share consideration received by holders of Common Stock in the Change in Control.

(g) The Administrator, in its sole discretion, may include such further provisions and limitations in any Award, agreement or certificate, as it may deem equitable and in the best interests of the Company that are not inconsistent with the provisions of the Plan.

(h) Unless otherwise determined by the Administrator, no adjustment or action described in this Section 12.2 or in any other provision of the Plan shall be authorized to the extent it would (i) cause the Plan to violate Section 422(b)(1) of the Code, (ii) result in short-swing profits liability under Section 16 of the Exchange Act or violate the exemptive conditions of Rule 16b-3 of the Exchange Act, or (iii) cause an Award to fail to be exempt from or comply with Section 409A.

(i) The existence of the Plan, any Program, any Award Agreement and/or the Awards granted hereunder shall not affect or restrict in any way the right or power of the Company or the stockholders of the Company to make or authorize any adjustment, recapitalization, reorganization or other change in the Company's capital structure or its business, any merger or consolidation of the Company, any issue of stock or of options, warrants or rights to purchase stock or of bonds, debentures, preferred or prior preference stocks whose rights are superior to or affect the Common Stock or the rights thereof or which are convertible into or exchangeable for Common Stock, or the dissolution or liquidation of the Company, or any sale or transfer of all or any part of its assets or business, or any other corporate act or proceeding, whether of a similar character or otherwise.

(j) If the event of any pending stock dividend, stock split, combination or exchange of shares, merger, consolidation or other distribution (other than normal cash dividends) of Company assets to stockholders, or any other change affecting the Shares or the share price of the Common Stock including any Equity Restructuring, for reasons of administrative convenience, the Administrator, in its sole discretion, may refuse to permit the exercise of any Award during a period of up to thirty (30) days prior to the consummation of any such transaction.

12.3 Approval of Plan by Stockholders. The Plan shall be submitted for the approval of the Company's stockholders within twelve (12) months after the date of the Board's initial adoption of the Plan.

12.4 No Stockholders Rights. Except as otherwise provided herein or in an applicable Program or Award Agreement, a Holder shall have none of the rights of a stockholder with respect to Shares covered by any Award until the Holder becomes the record owner of such Shares.

12.5 Paperless Administration. In the event that the Company establishes, for itself or using the services of a third party, an automated system for the documentation, granting or exercise of Awards, such as a system using an internet website or interactive voice response, then the paperless documentation, granting or exercise of Awards by a Holder may be permitted through the use of such an automated system.

12.6 Effect of Plan upon Other Compensation Plans. The adoption of the Plan shall not affect any other compensation or incentive plans in effect for the Company or any Affiliate. Nothing in the Plan shall be construed to limit the right of the Company or any Affiliate: (a) to establish any other forms of incentives or compensation for Employees, Directors or Consultants of the Company or any Affiliate, or (b) to grant or assume options or other rights or awards otherwise than under the Plan in connection with any proper corporate purpose including without limitation, the grant or assumption of options in connection with the acquisition by purchase, lease, merger, consolidation or otherwise, of the business, stock or assets of any corporation, partnership, limited liability company, firm or association.

12.7 Compliance with Laws. The Plan, the granting and vesting of Awards under the Plan and the issuance and delivery of Shares and the payment of money under the Plan or under Awards granted or awarded hereunder are subject to compliance with all Applicable Law (including but not limited to state, federal and foreign securities law and margin requirements), and to such approvals by any listing, regulatory or governmental authority as may, in the opinion of counsel for the Company, be necessary or advisable in connection therewith. Any securities delivered under the Plan shall be subject to such restrictions, and the person acquiring such securities shall, if requested by the Company, provide such assurances and representations to the Company as the Company may deem necessary or desirable to assure compliance with all Applicable Law. The Administrator, in its sole discretion, may take whatever actions it deems necessary or appropriate to effect compliance with Applicable Law, including, without limitation, placing legends on share certificates and issuing stop-transfer notices to agents and registrars. Notwithstanding anything to the contrary herein, the Administrator may not take any actions hereunder, and no Awards shall be granted, that would violate Applicable Law. To the extent permitted by Applicable Law, the Plan and Awards granted or awarded hereunder shall be deemed amended to the extent necessary to conform to Applicable Law.

12.8 Titles and Headings, References to Sections of the Code or Exchange Act. The titles and headings of the Sections in the Plan are for convenience of reference only and, in the event of any conflict, the text of the Plan, rather than such titles or headings, shall control. References to sections of the Code or the Exchange Act shall include any amendment or successor thereto.

12.9 Governing Law. The Plan and any Programs and Award Agreements hereunder shall be administered, interpreted and enforced under the internal laws of the State of Delaware without regard to conflicts of laws thereof or of any other jurisdiction.

12.10 Section 409A. To the extent that the Administrator determines that any Award granted under the Plan is subject to Section 409A, the Plan, the Program pursuant to which such Award is granted and the Award Agreement evidencing such Award shall incorporate the terms and conditions required by Section 409A. In that regard, to the extent any Award under the Plan or any other compensatory plan or arrangement of the Company or any of its Affiliates is subject to Section 409A, and such Award or other amount is payable on account of a Holder's Termination of Service (or any similarly defined term), then (a) such Award or amount shall only be paid to the extent such Termination of Service qualifies as a "separation from service" as defined in Section 409A, and (b) if such Award or amount is payable to a "specified employee" as defined in Section 409A then to the extent required in order to avoid a prohibited distribution under Section 409A, such Award or other compensatory payment shall not be payable prior to the earlier of (i) the expiration of the six-month period measured from the date of the Holder's Termination of Service, or (ii) the date of the Holder's death. To the extent applicable, the Plan, the Program and any Award Agreements shall be interpreted in accordance with Section 409A. Notwithstanding any provision of the Plan to the contrary, in the event that following the Effective Date the Administrator determines that any Award may be subject to Section 409A, the Administrator may (but is not obligated to), without a Holder's consent, adopt such amendments to the Plan and the applicable Program and Award Agreement or adopt other policies and procedures (including amendments, policies and procedures with retroactive effect), or take any other actions, that the Administrator determines are necessary or appropriate to (A) exempt the Award from Section 409A and/or preserve the intended tax treatment of the benefits provided with respect to the Award, or (B) comply with the requirements of Section 409A and thereby avoid the application of any penalty taxes under Section 409A. The Company makes no representations or warranties as to the tax treatment of any Award under Section 409A or otherwise. The Company shall have no obligation under this Section 12.10 or otherwise to take any action (whether or not described herein) to avoid the imposition of taxes, penalties or interest under Section 409A with respect to any Award and shall have no liability to any Holder or any other person if any Award, compensation or other benefits under the Plan are determined to constitute non-compliant, "nonqualified deferred compensation" subject to the imposition of taxes, penalties and/or interest under Section 409A.

12.11 Unfunded Status of Awards. The Plan is intended to be an "unfunded" plan for incentive compensation. With respect to any payments not yet made to a Holder pursuant to an Award, nothing contained in the Plan or any Program or Award Agreement shall give the Holder any rights that are greater than those of a general creditor of the Company or any Affiliate.

12.12 Indemnification. To the extent permitted under Applicable Law and the Organizational Documents, each member of the Administrator (and each delegate thereof pursuant to Section 11.6) shall be indemnified and held harmless by the Company from any loss, cost, liability, or expense that may be imposed upon or reasonably incurred by such member in connection with or resulting from any claim, action, suit, or proceeding to which he or she may be a party or in which he or she may be involved by reason of any action or failure to act pursuant to the Plan or any Award Agreement and against and from any and all amounts paid by him or her, with the Board's approval, in satisfaction of judgment in such action, suit, or proceeding against him or her; provided he or she gives the Company an opportunity, at its own expense, to handle and defend the same before he or she undertakes to handle and defend it on his or her own behalf and, once the Company gives notice of its intent to assume such defense, the Company shall have sole control over such defense with counsel of the Company's choosing. The foregoing right of indemnification shall not be available to the extent that a court of competent jurisdiction in a final judgment or other final adjudication, in either case not subject to further appeal, determines that the acts or omissions of the person seeking indemnity giving rise to the indemnification claim resulted from such person's bad faith, fraud or willful criminal act or omission. The foregoing right of indemnification shall not be exclusive of any other rights of indemnification to which such persons may be entitled pursuant to the Organizational Documents, as a matter of law, or otherwise, or any power that the Company may have to indemnify them or hold them harmless.

12.13 Relationship to Other Benefits. No payment pursuant to the Plan shall be taken into account in determining any benefits under any pension, retirement, savings, profit sharing, group insurance, welfare or other benefit plan of the Company or any Affiliate except to the extent otherwise expressly provided in writing in such other plan or an agreement thereunder.

12.14 Expenses. The expenses of administering the Plan shall be borne by the Company and its Affiliates.

*** * * * ***

I hereby certify that the foregoing Plan was duly adopted by the Board of Directors of Aziyo Biologics, Inc. on September 27, 2020.

*** * * * ***

I hereby certify that the foregoing Plan was approved by the stockholders of Aziyo Biologics, Inc. on September 29, 2020.

Executed on this 29th day of September, 2020.

/s/ Jeffrey Hamet
Corporate Secretary

AZIYO BIOLOGICS, INC.
2020 INCENTIVE AWARD PLAN

STOCK OPTION GRANT NOTICE AND
STOCK OPTION AGREEMENT

Aziyo Biologics, Inc., a Delaware corporation (the "Company"), pursuant to its 2020 Incentive Award Plan, as amended from time to time (the "Plan"), hereby grants to the holder listed below ("Participant") an option to purchase the number of Shares set forth below (the "Option"). The Option is subject to the terms and conditions set forth in this Stock Option Grant Notice (the "Grant Notice"), the Plan and the Stock Option Agreement attached hereto as Exhibit A including any Appendix thereto (the "Agreement"), each of which is incorporated into this Grant Notice by reference. Unless otherwise defined herein, the terms defined in the Plan shall have the same defined meanings in this Grant Notice and the Agreement.

Participant:	
Grant Date:	
Exercise Price Per Share:	
Total Exercise Price:	
Total Number of Shares Subject to Option:	
Expiration Date:	The earlier of (i) ten years as of the Grant Date or (ii) the termination, expiration or cancellation of the Option in accordance with the terms of the Plan.
Type of Option:	☐ Incentive Stock Option ☐ Non-Qualified Stock Option
Vesting Schedule:	

By Participant's signature below, Participant agrees to be bound by the terms and conditions of the Plan, the Agreement and the Grant Notice. Participant has reviewed the Plan, the Agreement and the Grant Notice in their entirety, has had an opportunity to obtain the advice of counsel prior to executing the Grant Notice and fully understands all provisions of the Plan, the Agreement and the Grant Notice. Participant hereby agrees to accept as binding, conclusive and final all decisions or interpretations of the Administrator upon any questions arising under the Plan, the Agreement and the Grant Notice.

AZIYO BIOLOGICS, INC.

By: _____
Print Name:
Title:

PARTICIPANT

By: _____
Print Name:

EXHIBIT A
TO STOCK OPTION GRANT NOTICE

STOCK OPTION AGREEMENT

Pursuant to the Grant Notice to which this Agreement is attached, the Company has granted to Participant an Option under the Plan to purchase the number of Shares set forth in the Grant Notice.

ARTICLE I.
GENERAL

1.1 Defined Terms. Capitalized terms not specifically defined herein shall have the meanings specified in the Plan or the Grant Notice. For purposes of this Agreement,

(a) "Cause" shall have the meaning ascribed to such term in any relevant employment agreement between Participant and a Company Group Member; *provided* that, in the absence of such agreement containing such definition, "Cause" shall mean (i) Participant performing his or her duties, in the good faith opinion of the Board, in a grossly negligent or reckless manner or with willful malfeasance, (ii) Participant exhibiting habitual drunkenness or engaging in substance abuse, (iii) Participant committing any material violation of any state of any state or federal law relating to the workplace environment (including, without limitation, laws relating to sexual harassment or age, sex or other prohibited discrimination) or any material violation of any Company Group policy, (iv) Participant willfully failing or refusing to perform in the usual manner at the usual time those duties which he or she regularly and routinely performs in connection with the business of the Company Group or such other duties reasonably related to the capacity in which he or she is employed hereunder which may be assigned to him or her by the Board, (v) Participant performing any material action when specifically and reasonably instructed not to do so by the Chairman or the Board, (vi) Participant materially breaching Participant's material breach of this Agreement or any other confidentiality, non-compete or non-solicitation covenant with a Company Group Member, (vii) Participant committing any fraud or using or appropriating for his or her personal use or benefit any funds, properties or opportunities of the Company Group not authorized by the Board to be so used or appropriated; or (viii) Participant being convicted of any felony or any other crime related to his or her employment or involving moral turpitude. The Company Group Member shall not be entitled to terminate Participant for Cause pursuant to clause (iii), (iv), (v) or (vi) unless the Company provides written notice stating in reasonable detail the basis for termination and a fifteen (15) day opportunity to cure to Participant (unless (1) the Company reasonably determines that providing such opportunity to cure to Participant is reasonably likely to have a material adverse effect on its business, financial condition, results of operation, prospects or assets, (2) the facts and circumstances underlying such termination are not able to be cured or (3) the Company has previously provided Participant an opportunity to cure the applicable issues; in the case of (1), (2) or (3), the Company may terminate Participant without providing an opportunity to cure).

(b) "Cessation Date" shall mean the date of Participant's Termination of Service (regardless of the reason for such termination).

(c) "Company Group" shall mean the Company and its Affiliates.

(d) "Company Group Member" shall mean each member of the Company Group.

(e) "Disability" shall have the meaning ascribed to such term in any relevant employment agreement between Participant and a Company Group Member; *provided* that, in the absence of such agreement containing such definition, "Disability" shall mean permanent disability or incapacity as determined in accordance with the Company's disability insurance policy, if such a policy is then in effect, or if no such policy is then in effect, such permanent disability or incapacity shall be determined by the Board in its good faith judgment based upon inability to perform the essential functions of his or her position, with reasonable accommodation by the Company, for a period in excess of 180 days during any period of 365 calendar days.

1.2 Incorporation of Terms of Plan. Except where this Agreement explicitly states that this Agreement prevails over the Plan, the Option is subject to the terms and conditions set forth in this Agreement and the Plan, each of which is incorporated herein by reference. In the event of any inconsistency between the Plan and this Agreement, the terms of the Plan shall control.

ARTICLE II.
GRANT OF OPTION

2.1 Grant of Option. In consideration of Participant's past and/or continued employment with or service to any Company Group Member, and for other good and valuable consideration that the Administrator has determined exceeds the aggregate par value of the Shares subject to the Award, effective as of the grant date set forth in the Grant Notice (the "Grant Date"), the Company hereby grants to Participant the Option to purchase any part or all of an aggregate number of Shares set forth in the Grant Notice upon the terms and conditions set forth in the Grant Notice, the Plan and this Agreement, subject to adjustment as provided in Article 12 of the Plan.

2.2 Exercise Price. The exercise price per Share of the Shares subject to the Option (the "Exercise Price") shall be as set forth in the Grant Notice.

2.3 Consideration to the Company. In consideration of the grant of the Option by the Company, Participant agrees to render faithful and efficient services to any Company Group Member. Nothing in the Plan, the Grant Notice or this Agreement shall confer upon Participant any right to continue in the employ or service of any Company Group Member or shall interfere with or restrict in any way the rights of the Company Group, which rights are hereby expressly reserved, to discharge or terminate the services of Participant at any time for any reason whatsoever, with or without Cause, except to the extent expressly provided otherwise in a written agreement between any Company Group Member and Participant.

ARTICLE III.
PERIOD OF EXERCISABILITY

3.1 Commencement of Exercisability.

(a) Subject to Participant's continued employment with or service to a Company Group Member through the applicable vesting date and subject to anything in the Grant Notice, the Plan or this Agreement to the contrary, the Option shall become vested and exercisable in such amounts and at such times as are set forth in the Grant Notice.

(b) Unless otherwise determined by the Administrator or as set forth in a written agreement between Participant and the Company, any portion of the Option that has not become vested and exercisable on or prior to the Cessation Date (including, without limitation, pursuant to any employment or similar agreement by and between Participant and the Company) shall be forfeited on the Cessation Date and shall not thereafter become vested or exercisable.

3.2 Duration of Exercisability. The installments provided for in the vesting schedule set forth in the Grant Notice are cumulative. Each such installment that becomes vested and exercisable pursuant to the vesting schedule set forth in the Grant Notice shall remain vested and exercisable until it becomes unexercisable under Section 3.3 hereof. Once the Option becomes unexercisable, it shall be forfeited immediately.

3.3 Expiration of Option. The Option may not be exercised to any extent by anyone after the first to occur of the following events:

(a) The expiration date set forth in the Grant Notice;

(b) Except as the Administrator may otherwise approve, the expiration of six (6) months from the Cessation Date by reason of Participant's Termination of Service due to death or, Disability; and

(c) Except as the Administrator may otherwise approve, immediately upon the Cessation Date by reason of Participant's Termination of Service by the Company Group for Cause.

(d) Except as the Administrator may otherwise approve, the expiration of ninety (90) days from the date of Participant's Termination of Service for any other reason.

ARTICLE IV.
EXERCISE OF OPTION

4.1 Person Eligible to Exercise. During the lifetime of Participant, only Participant may exercise the Option or any portion thereof. After the death of Participant, any exercisable portion of the Option may, prior to the time when the Option becomes unexercisable under Section 3.3 hereof, be exercised by Participant's personal representative or by any person empowered to do so under the deceased Participant's will or under the then Applicable Laws of descent and distribution.

4.2 Partial Exercise. Subject to Section 5.5, any exercisable portion of the Option or the entire Option, if then wholly exercisable, may be exercised in whole or in part at any time prior to the time when the Option or portion thereof becomes unexercisable under Section 3.3 hereof.

4.3 Additional Requirements. In order for the Company to issue Shares upon the exercise of the Option, Participant hereby agrees to sign any and all documents required by any applicable law and/or reasonably required by the Administrator. Participant further agrees that in the event that the Company and its counsel deem it necessary or advisable, in their sole discretion, the issuance of Shares may be conditioned upon certain representations, warranties, and acknowledgements by Participant.

4.4 Compliance with Law. The Company shall not be obligated to issue any Shares upon the exercise of the Option if such issuance, in the opinion of the Company, might constitute a violation by the Company of any provision of law.

ARTICLE V.
OTHER PROVISIONS

5.1 Tax Withholding. Notwithstanding any other provision of this Agreement:

(a) The Company Group shall have the authority to deduct or withhold, or require Participant to remit to the applicable Company Group Member, an amount sufficient to satisfy any applicable federal, state, local and foreign taxes (including the employee portion of any FICA obligation) required by Applicable Law to be withheld with respect to any taxable event arising pursuant to this Agreement. The Company Group may withhold or Participant may make such payment in one or more of the forms specified below:

(i) by a bank wire transfer, an ACH (automated clearing house) mechanism, or any other means of electronic funds transfer made payable to the Company Group Member with respect to which the withholding obligation arises;

(ii) by the deduction of such amount from other compensation payable to Participant;

(iii) with respect to any withholding taxes arising in connection with the exercise of the Option, with the consent of the Administrator, by requesting that the Company withhold a net number of Shares issuable upon the exercise of the Option having a then current Fair Market Value not exceeding the amount necessary to satisfy the withholding obligation of the Company Group based on the maximum statutory withholding rates in Participant's applicable jurisdictions for federal, state, local and foreign income tax and payroll tax purposes that are applicable to such taxable income;

(iv) with respect to any withholding taxes arising in connection with the exercise of the Option, with the consent of the Administrator, by tendering to the Company vested Shares held for such period of time as may be required by the Administrator in order to avoid adverse accounting consequences and having a then current Fair Market Value not exceeding the amount necessary to satisfy the withholding obligation of the Company Group based on the maximum statutory withholding rates in Participant's applicable jurisdictions for federal, state, local and foreign income tax and payroll tax purposes that are applicable to such taxable income;

(v) with respect to any withholding taxes arising in connection with the exercise of the Option, through the delivery of a notice that Participant has placed a market sell order with a broker acceptable to the Company with respect to Shares then issuable to Participant pursuant to the Option, and that the broker has been directed to pay a sufficient portion of the net proceeds of the sale to the Company Group Member with respect to which the withholding obligation arises in satisfaction of such withholding taxes; *provided* that payment of such proceeds is then made to the applicable Company Group Member at such time as may be required by the Administrator, but in any event not later than the settlement of such sale; or

(vi) in any combination of the foregoing.

(b) With respect to any withholding taxes arising in connection with the Option, in the event Participant fails to provide timely payment of all sums required pursuant to Section 5.1(a), the Company shall have the right and option, but not the obligation, to treat such failure as an election by Participant to satisfy all or any portion of Participant's required payment obligation pursuant to Section 5.1(a)(ii) or Section 5.1(a)(iii) above, or any combination of the foregoing as the Company may determine to be appropriate. The Company shall not be obligated to deliver any certificate representing Shares issuable with respect to the exercise of the Option to, or to cause any such Shares to be held in book-entry form by, Participant or his or her legal representative unless and until Participant or his or her legal representative shall have paid or otherwise satisfied in full the amount of all federal, state, local and foreign taxes applicable with respect to the taxable income of Participant resulting from the exercise of the Option or any other taxable event related to the Option.

(c) In the event any tax withholding obligation arising in connection with the Option will be satisfied under Section 5.1(a)(iii), then the Company may elect to instruct any brokerage firm determined acceptable to the Company for such purpose to sell on Participant's behalf a whole number of Shares from those Shares then issuable upon the exercise of the Option as the Company determines to be appropriate to generate cash proceeds sufficient to satisfy the tax withholding obligation and to remit the proceeds of such sale to the Company Group Member with respect to which the withholding obligation arises. Participant's acceptance of this Option constitutes Participant's instruction and authorization to the Company and such brokerage firm to complete the transactions described in this Section 5.1(c), including the transactions described in the previous sentence, as applicable. The Company may refuse to issue any Shares to Participant until the foregoing tax withholding obligations are satisfied, *provided* that no payment shall be delayed under this Section 5.1(c) if such delay will result in a violation of Section 409A.

(d) In the event of any broker-assisted sale of Shares in connection with the payment of withholding taxes as provided in Section 5.1(a)(v) or Section 5.1(c) or the payment of the Exercise Price as provided in Section 4.4(c): (a) any Shares to be sold through a broker-assisted sale will be sold on the day the tax withholding obligation or exercise of the Option, as applicable, occurs or arises, or as soon thereafter as practicable; (b) such Shares may be sold as part of a block trade with other participants in the Plan in which all participants receive an average price; (c) Participant will be responsible for all broker's fees and other costs of sale, and Participant agrees to indemnify and hold the Company harmless from any losses, costs, damages, or expenses relating to any such sale; (d) to the extent the proceeds of such sale exceed the applicable tax withholding obligation or Exercise Price, the Company agrees to pay such excess in cash to Participant as soon as reasonably practicable; (e) Participant acknowledges that the Company or its designee is under no obligation to arrange for such sale at any particular price, and that the proceeds of any such sale may not be sufficient to satisfy the applicable tax withholding obligation or Exercise Price; and (f) in the event the proceeds of such sale are insufficient to satisfy the applicable tax withholding obligation, Participant agrees to pay immediately upon demand to the Company Group Member with respect to which the withholding obligation arises an amount in cash sufficient to satisfy any remaining portion of the applicable Company Group Member's withholding obligation.

(e) Any tax consequences arising from the grant or exercise of the Option, from the payment for Shares covered thereby or from any other event or act (of the Company and/or its Affiliates, or Participant), hereunder, shall be borne solely by Participant. Participant is ultimately liable and responsible for, and, to the extent permitted by Applicable Law, agrees to indemnify and keep indemnified the Company Group from, all taxes owed in connection with the Option, regardless of any action any Company Group Member takes with respect to any tax withholding obligations that arise in connection with the Option. No Company Group Member makes any representation or undertaking regarding the treatment of any tax withholding in connection with the awarding, vesting or exercise of the Option or the subsequent sale of Shares. The Company Group does not commit and is under no obligation to structure the Option to reduce or eliminate Participant's tax liability.

(f) The receipt of the Option and the acquisition of the Shares to be issued upon the exercise of the Option may result in tax consequences. PARTICIPANT IS ADVISED TO CONSULT A TAX ADVISOR WITH RESPECT TO THE TAX CONSEQUENCES OF RECEIVING OR EXERCISING THIS OPTION OR DISPOSING OF THE SHARES.

5.2 [Obligations to the Company. Participant agrees to comply with the restrictive covenants set forth on Annex A, and Participant acknowledges and agrees that the grant of the Option shall be in material part in consideration of Participant's affirmation of Participant's agreement to comply with the covenants set forth therein.]

5.3 Rights as Stockholder. Neither Participant nor any person claiming under or through Participant will have any of the rights or privileges of a stockholder of the Company in respect of any Shares purchasable upon the exercise of any part of the Option unless and until certificates representing such Shares (which may be in book-entry form) will have been issued and recorded on the records of the Company or its transfer agents or registrars and delivered to Participant (including through electronic delivery to a brokerage account). No adjustment will be made for a dividend or other right for which the record date is prior to the date of such issuance, recordation and delivery, except as provided in Section 12.2 of the Plan. Except as otherwise provided herein, after such issuance, recordation and delivery, Participant will have all the rights of a stockholder of the Company with respect to such Shares, including, without limitation, the right to receipt of dividends and distributions on such Shares.

5.4 Administration. The Administrator shall have the power to interpret the Plan, the Grant Notice and this Agreement and to adopt such rules for the administration, interpretation and application of the Plan, the Grant Notice and this Agreement as are consistent therewith and to interpret, amend or revoke any such rules. All actions taken and all interpretations and determinations made by the Administrator will be final and binding upon Participant, the Company and all other interested persons. To the extent allowable pursuant to Applicable Law, no member of the Committee or the Board will be personally liable for any action, determination or interpretation made with respect to the Plan, the Grant Notice or this Agreement.

5.5 Whole Shares. The Option may only be exercised for whole Shares and in no case may a fraction of a Share be purchased..

5.6 Option Not Transferable. Subject to Section 4.1 hereof, the Option may not be sold, pledged, assigned or transferred in any manner other than by will or the laws of descent and distribution, unless and until the Shares underlying the Option have been issued, and all restrictions applicable to such Shares have lapsed. Neither the Option nor any interest or right therein or part thereof shall be liable for the debts, contracts or engagements of Participant or his or her successors in interest or shall be subject to disposition by transfer, alienation, anticipation, pledge, encumbrance, assignment or any other means whether such disposition be voluntary or involuntary or by operation of law by judgment, levy, attachment, garnishment or any other legal or equitable proceedings (including bankruptcy), and any attempted disposition thereof shall be null and void and of no effect, except to the extent that such disposition is permitted by the preceding sentence. Notwithstanding the foregoing, with the consent of the Administrator, if the Option is a Non-Qualified Stock Option, it may be transferred to Permitted Transferees pursuant to any conditions and procedures the Administrator may require.

5.7 Adjustments. Participant acknowledges that the Option is subject to adjustment, modification and termination in certain events as provided in this Agreement and the Plan, including Section 12.2 of the Plan.

5.8 Notices. Any notice to be given under the terms of this Agreement to the Company shall be addressed to the Company in care of the Secretary of the Company at the Company's principal office, and any notice to be given to Participant shall be addressed to Participant at Participant's last address or email address reflected on the Company's records. By a notice given pursuant to this Section 5.8, either party may hereafter designate a different address for notices to be given to that party. Any notice shall be deemed duly given when sent via email or when sent by certified mail (return receipt requested) and deposited (with postage prepaid) in a post office or branch post office regularly maintained by the United States Postal Service.

5.9 Titles. Titles are provided herein for convenience only and are not to serve as a basis for interpretation or construction of this Agreement.

5.10 Governing Law. The laws of the State of Delaware shall govern the interpretation, validity, administration, enforcement and performance of the terms of this Agreement regardless of the law that might be applied under principles of conflicts of laws.

5.11 Conformity to Securities Laws. Participant acknowledges that the Plan, the Grant Notice and this Agreement are intended to conform to the extent necessary with all Applicable Laws, including, without limitation, the provisions of the Securities Act and the Exchange Act, and any and all regulations and rules promulgated thereunder by the Securities and Exchange Commission and state securities laws and regulations. Notwithstanding anything herein to the contrary, the Plan shall be administered, and the Option is granted and may be exercised, only in such a manner as to conform to Applicable Law. To the extent permitted by Applicable Law, the Plan, the Grant Notice and this Agreement shall be deemed amended to the extent necessary to conform to Applicable Law.

5.12 Amendment, Suspension and Termination. To the extent permitted by the Plan, this Agreement may be wholly or partially amended or otherwise modified, suspended or terminated at any time or from time to time by the Administrator or the Board, *provided* that, except as may otherwise be provided by the Plan, no amendment, modification, suspension or termination of this Agreement shall adversely affect the Option in any material way without the prior written consent of Participant.

5.13 Successors and Assigns. The Company may assign any of its rights under this Agreement to single or multiple assignees, and this Agreement shall inure to the benefit of the successors and assigns of the Company. Subject to the restrictions on transfer set forth in Section 5.6 and the Plan, this Agreement shall be binding upon and inure to the benefit of the heirs, legatees, legal representatives, successors and assigns of the parties hereto.

5.14 Limitations Applicable to Section 16 Persons. Notwithstanding any other provision of the Plan or this Agreement, if Participant is subject to Section 16 of the Exchange Act, the Plan, the Option, the Grant Notice and this Agreement shall be subject to any additional limitations set forth in any applicable exemptive rule under Section 16 of the Exchange Act (including any amendment to Rule 16b-3 of the Exchange Act) that are requirements for the application of such exemptive rule. To the extent permitted by Applicable Law, this Agreement shall be deemed amended to the extent necessary to conform to such applicable exemptive rule.

5.15 No Other Rights. Participant hereby acknowledges that participation in the Plan is voluntary. The value of the Option is an extraordinary item of compensation outside the scope of Participant's normal compensation rights, if any. As such, the Option is not part of normal or expected compensation for purposes of calculating any payments due to severance, resignation, redundancy, end of service, bonuses, long-service awards, pensions or retirement benefits or similar payments. The Plan is discretionary in nature and may be amended, cancelled, or terminated by the Company, in its sole discretion, at any time. The grant of the Option under the Plan is a one-time benefit and does not create any contractual or other right to receive any other grant of the Option or other Awards under the Plan in the future. Future grants, if any, will be at the sole discretion of the Company, including, but not limited to, the timing of the grant, the form of the Award, number of Shares subject to an Award, vesting, and exercise or settlement provisions, as relevant.

5.16 Not a Contract of Employment. Nothing in this Agreement or in the Plan shall confer upon Participant any right to continue to serve as an Employee or other service provider of any Company Group Member or shall interfere with or restrict in any way the rights of the Company Group, which rights are hereby expressly reserved, to discharge or terminate the services of Participant at any time for any reason whatsoever, with or without Cause, except to the extent expressly provided otherwise in a written agreement between a Company Group Member and Participant.

5.17 Entire Agreement. The Plan, the Grant Notice and this Agreement (including any exhibit hereto) constitute the entire agreement of the parties and supersede in their entirety all prior undertakings and agreements of the Company and Participant with respect to the subject matter hereof.

5.18 No Obligation to Exercise the Option. The grant and acceptance of the Option imposes no obligation on Participant to exercise.

5.19 Section 409A. This Award is not intended to constitute "nonqualified deferred compensation" within the meaning of Section 409A. However, notwithstanding any other provision of the Plan, the Grant Notice or this Agreement, if at any time the Administrator determines that this Award (or any portion thereof) may be subject to Section 409A, the Administrator shall have the right in its sole discretion (without any obligation to do so or to indemnify Participant or any other person for failure to do so) to adopt such amendments to the Plan, the Grant Notice or this Agreement, or adopt other policies and procedures (including amendments, policies and procedures with retroactive effect), or take any other actions, as the Administrator determines are necessary or appropriate for this Award either to be exempt from the application of Section 409A or to comply with the requirements of Section 409A.

5.20 Agreement Severable. In the event that any provision of the Grant Notice or this Agreement is held invalid or unenforceable, such provision will be severable from, and such invalidity or unenforceability will not be construed to have any effect on, the remaining provisions of the Grant Notice or this Agreement.

5.21 Limitation on Participant's Rights. Participation in the Plan confers no rights or interests other than as herein provided. This Agreement creates only a contractual obligation on the part of the Company as to amounts payable and shall not be construed as creating a trust. Neither the Plan nor any underlying program, in and of itself, has any assets. Participant shall have only the right to receive Shares as a general unsecured creditor with respect to the Option, as and when exercised pursuant to the terms hereof.

5.22 Counterparts. The Grant Notice may be executed in one or more counterparts, including by way of any electronic signature, subject to Applicable Law, each of which shall be deemed an original and all of which together shall constitute one instrument.

5.23 Incentive Stock Options. Participant acknowledges that to the extent the aggregate Fair Market Value of Shares (determined as of the time the option with respect to the Shares is granted) with respect to which Incentive Stock Options, including this Option (if applicable), are exercisable for the first time by Participant during any calendar year exceeds $100,000 or if for any other reason such Incentive Stock Options do not qualify or cease to qualify for treatment as "incentive stock options" under Section 422 of the Code, such Incentive Stock Options shall be treated as Non-Qualified Stock Options. Participant further acknowledges that the rule set forth in the preceding sentence shall be applied by taking the Option and other stock options into account in the order in which they were granted, as determined under Section 422(d) of the Code and the Treasury Regulations thereunder. Participant also acknowledges that an Incentive Stock Option exercised more than three (3) months after Participant's Termination of Service, other than by reason of death or disability, will be taxed as a Non-Qualified Stock Option.

5.24 Notification of Disposition. If this Option is designated as an Incentive Stock Option, Participant shall give prompt written notice to the Company of any disposition or other transfer of any Shares acquired under this Agreement if such disposition or transfer is made (a) within two (2) years from the Grant Date or (b) within one (1) year after the transfer of such Shares to Participant. Such notice shall specify the date of such disposition or other transfer and the amount realized, in cash, other property, assumption of indebtedness or other consideration, by Participant in such disposition or other transfer.

Annex A

See attached.

AZIYO BIOLOGICS, INC.
2020 INCENTIVE AWARD PLAN

RESTRICTED STOCK UNIT AWARD GRANT NOTICE AND RESTRICTED STOCK UNIT AGREEMENT

Aziyo Biologics, Inc., a Delaware corporation (the "Company"), pursuant to its 2020 Incentive Award Plan, as amended from time to time (the "Plan"), in connection with its initial public offering, hereby grants to the holder listed below ("Participant") the number of Restricted Stock Units set forth below (the "RSUs"). The RSUs are subject to the terms and conditions set forth in this Restricted Stock Unit Grant Notice (the "Grant Notice"), the Restricted Stock Unit Agreement attached hereto as Exhibit A (the "Agreement") and the Plan, each of which is incorporated herein by reference. Unless otherwise defined herein, the terms defined in the Plan shall have the same defined meanings in the Grant Notice and the Agreement.

Participant:	_____
Grant Date:	_____
Number of RSUs:	[_____]
Type of Shares Issuable:	Class A Common Stock
Vesting Date:	The RSUs will vest on the third anniversary of the Grant Date, subject to the Participant's continued employment with or service to a Company Group Member through such date.

Withholding Tax Election: By accepting this Award electronically through the Plan service provider's online grant acceptance policy, the Participant understands and agrees that as a condition of the grant of the RSUs hereunder, the Participant is required to, and hereby affirmatively elects to (the "Sell to Cover Election"), (1) sell that number of Shares determined in accordance with Section 2.5 of the Agreement as may be necessary to satisfy all applicable withholding obligations with respect to any taxable event arising in connection with the RSUs and similarly sell such number of Shares as may be necessary to satisfy all applicable withholding obligations with respect to any other awards of restricted stock units granted to the Participant under the Plan or any other equity incentive plans of the Company or its predecessor, and (2) to allow the Agent (as defined in the Agreement) to remit the cash proceeds of such sale(s) to the Company. Furthermore, the Participant directs the Company to make a cash payment equal to the required tax withholding from the cash proceeds of such sale(s) directly to the appropriate taxing authorities. **The Participant has carefully reviewed Section 2.5 of the Agreement and the Participant hereby represents and warrants that on the date hereof he or she is not aware of any material, nonpublic information with respect to the Company or any securities of the Company, is not subject to any legal, regulatory or contractual restriction that would prevent the Agent from conducting sales, does not have, and will not attempt to exercise, authority, influence or control over any sales of Shares effected by the Agent pursuant to the Agreement, and is entering into the Agreement and this election to "sell to cover" in good faith and not as part of a plan or scheme to evade the prohibitions of Rule 10b5-1 (regarding trading of the Company's securities on the basis of material nonpublic information) under the Securities Exchange Act of 1934, as amended (the "Exchange Act"). It is the Participant's intent that this election to "sell to cover" comply with the requirements of Rule 10b5-1(c)(1)(i)(B) under the Exchange Act and be interpreted to comply with the requirements of Rule 10b5-1(c) under the Exchange Act.**

By Participant's signature below, Participant agrees to be bound by the terms and conditions of the Plan, the Agreement and the Grant Notice. Participant has reviewed the Plan, the Agreement and the Grant Notice in their entirety, has had an opportunity to obtain the advice of counsel prior to executing the Grant Notice and fully understands all provisions of the Plan, the Agreement and the Grant Notice. Participant hereby agrees to accept as binding, conclusive and final all decisions or interpretations of the Administrator upon any questions arising under the Plan, the Agreement and the Grant Notice.

AZIYO BIOLOGICS, INC.

By: _____
Print Name:
Title:

PARTICIPANT

By: _____
Print Name:

EXHIBIT A

TO RESTRICTED STOCK UNIT AWARD GRANT NOTICE

RESTRICTED STOCK UNIT AWARD AGREEMENT

Pursuant to the Grant Notice to which this Agreement is attached, the Company has granted to Participant the number of RSUs set forth in the Grant Notice.

ARTICLE I.

GENERAL

Section 1.1 Defined Terms. Capitalized terms not specifically defined herein shall have the meanings specified in the Plan or the Grant Notice. For purposes of this Agreement,

(a) "Change in Control" shall mean a Change in Control (as defined under the Plan) that constitutes a "change in control event" as defined in Treasury Regulation Section 1.409A-3(i)(5).

(b) "Company Group" shall mean the Company and its Affiliates.

(c) "Company Group Member" shall mean each member of the Company Group.

(d) "Disability" shall mean any disability or incapacity that (i) renders Participant unable to substantially perform his duties hereunder for ninety (90) days during any 12-month period or (ii) would reasonably be expected to render Executive unable to substantially perform his or her duties for ninety (90) days during any 12-month period, in each case as determined by the Board in its good faith judgment.

Section 1.2 Incorporation of Terms of Plan. The RSUs and the shares of Common Stock issued to Participant hereunder ("Shares") are subject to the terms and conditions set forth in this Agreement and the Plan, which is incorporated herein by reference. In the event of any inconsistency between the Plan and this Agreement, the terms of the Plan shall control.

ARTICLE II.

AWARD OF RESTRICTED STOCK UNITS

Section 2.1 Award of RSUs

(a) In consideration of Participant's past and/or continued employment with or service to a Company Group Member and for other good and valuable consideration, effective as of the grant date set forth in the Grant Notice (the "Grant Date"), the Company has granted to Participant the number of RSUs set forth in the Grant Notice, upon the terms and conditions set forth in the Grant Notice, the Plan and this Agreement, subject to adjustment as provided in Section 12.2 of the Plan. Each RSU represents the right to receive one Share at the times and subject to the conditions set forth herein. However, unless and until the RSUs have vested, Participant will have no right to the payment of any Shares subject thereto. Prior to the actual delivery of any Shares, the RSUs will represent an unsecured obligation of the Company, payable only from the general assets of the Company.

Section 2.2 Vesting of RSUs.

(a) Subject to Participant's continued employment with or service to a Company Group Member on the Vesting Date, and subject to the terms of this Agreement, including, without limitation, Section 2.2(d), the RSUs shall vest on the Vesting Date as set forth in the Grant Notice.

(b) In the event Participant incurs a Termination of Service prior to the Vesting Date, except as may be otherwise provided herein or by the Administrator or as set forth in a written agreement between Participant and the Company, Participant shall immediately forfeit any and all RSUs granted under this Agreement , and Participant's rights in any such RSUs shall lapse and expire.

(c) Notwithstanding the Grant Notice or the provisions of Section 2.2(a) and Section 2.2(b), in the event of Participant's death or in the event Participant incurs a Disability prior to the Vesting Date, the RSUs shall become vested with respect to all Shares covered thereby on the date of such Termination of Service.

(d) Notwithstanding the Grant Notice or the provisions of Section 2.2(a) and Section 2.2(b), in the event of the occurrence of a Change in Control prior to the Vesting Date, the RSUs shall become vested with respect to all Shares covered thereby on the date of the consummation of such Change in Control, subject to Participant's continued employment with or service to a Company Group Member through such Change in Control.

Section 2.3

(a) Distribution or Payment of RSUs. Participant's RSUs shall be distributed in Shares (either in book-entry form or otherwise) on or within two business days following the Vesting Date. Notwithstanding the foregoing, the Company may delay a distribution or payment in settlement of RSUs if it reasonably determines that such payment or distribution will violate federal securities laws or any other Applicable Law, *provided* that such distribution or payment shall be made at the earliest date at which the Company reasonably determines that the making of such distribution or payment will not cause such violation, as required by Treasury Regulation Section 1.409A-2(b)(7)(ii), and *provided further* that no payment or distribution shall be delayed under this Section 2.3(a) if such delay will result in a violation of Section 409A.

(b) All distributions shall be made by the Company in the form of whole Shares, and any fractional share shall be distributed in cash in an amount equal to the value of such fractional share determined based on the Fair Market Value as of the date immediately preceding the date of such distribution.

Section 2.4 Conditions to Issuance of Certificates. The Company shall not be required to issue or deliver any certificate or certificates for any Shares or to cause any Shares to be held in book-entry form prior to the fulfillment of all of the following conditions: (a) the admission of the Shares to listing on all stock exchanges on which such Shares are then listed, (b) the completion of any registration or other qualification of the Shares under any state or federal law or under rulings or regulations of the Securities and Exchange Commission or other governmental regulatory body, which the Administrator shall, in its absolute discretion, deem necessary or advisable, (c) the obtaining of any approval or other clearance from any state or federal governmental agency that the Administrator shall, in its absolute discretion, determine to be necessary or advisable, (d) the receipt by the Company of full payment for such Shares, which may be in one or more of the forms of consideration permitted under Section 2.5, and (e) the receipt of full payment of any applicable withholding tax in accordance with Section 2.5 by the Company Group Member with respect to which the applicable withholding obligation arises.

Section 2.5 Tax Withholding. Notwithstanding any other provision of this Agreement:

(a) As set forth in Section 10.2 of the Plan, the Company shall have the authority and the right to deduct or withhold, or to require the Participant to remit to the Company, an amount sufficient to satisfy all applicable federal, state and local taxes required by law to be withheld with respect to any taxable event arising in connection with the Restricted Stock Units. In satisfaction of such tax withholding obligations and in accordance with the Sell to Cover Election included in the Grant Notice, the Participant has irrevocably elected to sell the portion of the Shares to be delivered under the Restricted Stock Units necessary so as to satisfy the tax withholding obligations and shall execute any letter of instruction or agreement required by the Company's transfer agent (together with any other party the Company determines necessary to execute the Sell to Cover Election, the "Agent") to cause the Agent to irrevocably commit to forward the proceeds necessary to satisfy the tax withholding obligations directly to the Company and/or its Affiliates. Notwithstanding any other provision of this Agreement, the Company shall not be obligated to deliver any new certificate representing Shares to the Participant or the Participant's legal representative or enter such Shares in book entry form unless and until the Participant or the Participant's legal representative shall have paid or otherwise satisfied in full the amount of all federal, state and local taxes applicable to the taxable income of the Participant resulting from the grant or vesting of the Restricted Stock Units or the issuance of Shares. In accordance with Participant's Sell to Cover Election pursuant to the Grant Notice, the Participant hereby acknowledges and agrees:

(i) The Participant hereby appoints the Agent as the Participant's agent and authorizes the Agent to (1) sell on the open market at the then prevailing market price(s), on the Participant's behalf, as soon as practicable on or after the Shares are issued upon the vesting of the Restricted Stock Units, that number (rounded up to the next whole number) of the Shares so issued necessary to generate proceeds to cover (x) any tax withholding obligations incurred with respect to such vesting or issuance and (y) all applicable fees and commissions due to, or required to be collected by, the Agent with respect thereto and (2) apply any remaining funds to the Participant's federal tax withholding.

(ii) The Participant hereby authorizes the Company and the Agent to cooperate and communicate with one another to determine the number of Shares that must be sold pursuant to subsection (i) above.

(iii) The Participant understands that the Agent may effect sales as provided in subsection (i) above in one or more sales and that the average price for executions resulting from bunched orders will be assigned to the Participant's account. In addition, the Participant acknowledges that it may not be possible to sell Shares as provided by subsection (i) above due to (1) a legal or contractual restriction applicable to the Participant or the Agent, (2) a market disruption, or (3) rules governing order execution priority on the national exchange where the Shares may be traded. The Participant further agrees and acknowledges that in the event the sale of Shares would result in material adverse harm to the Company, as determined by the Company in its sole discretion, the Company may instruct the Agent not to sell Shares as provided by subsection (i) above. In the event of the Agent's inability to sell Shares, the Participant will continue to be responsible for the timely payment to the Company and/or its Affiliates of all federal, state, local and foreign taxes that are required by applicable laws and regulations to be withheld, including but not limited to those amounts specified in subsection (i) above.

(iv) The Participant acknowledges that regardless of any other term or condition of this Section 2.5(a), the Agent will not be liable to the Participant for (1) special, indirect, punitive, exemplary, or consequential damages, or incidental losses or damages of any kind, or (2) any failure to perform or for any delay in performance that results from a cause or circumstance that is beyond its reasonable control.

(v) The Participant hereby agrees to execute and deliver to the Agent any other agreements or documents as the Agent reasonably deems necessary or appropriate to carry out the purposes and intent of this Section 2.5(a). The Agent is a third-party beneficiary of this Section 2.5(a).

(vi) This Section 2.5(a) shall terminate not later than the date on which all tax withholding obligations arising in connection with the vesting of the Award have been satisfied.

(b) The Company shall not be obligated to deliver any certificate representing Shares issuable with respect to the RSUs to, or to cause any such Shares to be held in book-entry form by, Participant or his or her legal representative unless and until Participant or his or her legal representative shall have paid or otherwise satisfied in full the amount of all federal, state, local and foreign taxes applicable with respect to the taxable income of Participant resulting from the vesting or settlement of the RSUs or any other taxable event related to the RSUs.

(c) Participant is ultimately liable and responsible for all taxes owed in connection with the RSUs, regardless of any action the Company or any other Company Group Member takes with respect to any tax withholding obligations that arise in connection with the RSUs. No Company Group Member makes any representation or undertaking regarding the treatment of any tax withholding in connection with the awarding, vesting or payment of the RSUs or the subsequent sale of Shares. The Participating Companies do not commit and are under no obligation to structure the RSUs to reduce or eliminate Participant's tax liability.

Section 2.6 Rights as Stockholder. Neither Participant nor any Person claiming under or through Participant will have any of the rights or privileges of a stockholder of the Company in respect of any Shares deliverable hereunder unless and until certificates representing such Shares (which may be in book-entry form) will have been issued and recorded on the records of the Company or its transfer agents or registrars and delivered to Participant (including through electronic delivery to a brokerage account). Except as otherwise provided herein, after such issuance, recordation and delivery, Participant will have all the rights of a stockholder of the Company with respect to such Shares, including, without limitation, the right to receipt of dividends and distributions on such Shares.

Section 2.7 Restrictive Covenants. Participant agrees to comply with the restrictive covenants set forth in Sections 7 through 10 in the employment agreement between Participant and a Company Group Member (the "Restrictive Covenants"), which are hereby incorporated by reference, and Participant acknowledges and agrees that the grant of the RSUs shall be in material part in consideration of Participant's reaffirmation of Participant's agreement to comply with the covenants set forth therein. In the event the Participant materially breaches the Restrictive Covenants or any other written covenants between such Participant and any Company Group Member, the Participant shall immediately forfeit any and all RSUs granted under this Agreement (whether or not vested), and Participant's rights in any such RSUs shall lapse and expire.

ARTICLE III.

OTHER PROVISIONS

Section 3.1 Administration. The Administrator shall have the power to interpret the Plan, the Grant Notice and this Agreement and to adopt such rules for the administration, interpretation and application of the Plan, the Grant Notice and this Agreement as are consistent therewith and to interpret, amend or revoke any such rules. All actions taken and all interpretations and determinations made by the Administrator will be final and binding upon Participant, the Company and all other interested Persons. To the extent allowable pursuant to Applicable Law, no member of the Committee or the Board will be personally liable for any action, determination or interpretation made with respect to the Plan, the Grant Notice or this Agreement.

Section 3.2 RSUs Not Transferable. The RSUs may not be sold, pledged, assigned or transferred in any manner other than by will or the laws of descent and distribution, unless and until the Shares underlying the RSUs have been issued, and all restrictions applicable to such Shares have lapsed. No RSUs or any interest or right therein or part thereof shall be liable for the debts, contracts or engagements of Participant or his or her successors in interest or shall be subject to disposition by transfer, alienation, anticipation, pledge, encumbrance, assignment or any other means whether such disposition be voluntary or involuntary or by operation of law by judgment, levy, attachment, garnishment or any other legal or equitable proceedings (including bankruptcy), and any attempted disposition thereof shall be null and void and of no effect, except to the extent that such disposition is permitted by the preceding sentence. Notwithstanding the foregoing, with the consent of the Administrator, the RSUs may be transferred to Permitted Transferees, pursuant to any such conditions and procedures the Administrator may require.

Section 3.3 Adjustments. The Administrator may accelerate the vesting of all or a portion of the RSUs in such circumstances as it, in its sole discretion, may determine. Participant acknowledges that the RSUs and the Shares subject to the RSUs are subject to adjustment, modification and termination in certain events as provided in this Agreement and the Plan, including Section 12.2 of the Plan.

Section 3.4 Notices. Any notice to be given under the terms of this Agreement to the Company shall be addressed to the Company in care of the Secretary of the Company at the Company's principal office, and any notice to be given to Participant shall be addressed to Participant at Participant's last address reflected on the Company's records. By a notice given pursuant to this Section 3.4, either party may hereafter designate a different address for notices to be given to that party. Any notice shall be deemed duly given when sent via email or when sent by certified mail (return receipt requested) and deposited (with postage prepaid) in a post office or branch post office regularly maintained by the United States Postal Service or similar foreign entity.

Section 3.5 Titles. Titles are provided herein for convenience only and are not to serve as a basis for interpretation or construction of this Agreement.

Section 3.6 Governing Law. The laws of the State of Delaware shall govern the interpretation, validity, administration, enforcement and performance of the terms of this Agreement regardless of the law that might be applied under principles of conflicts of laws.

Section 3.7 Conformity to Securities Laws. Participant acknowledges that the Plan, the Grant Notice and this Agreement, are intended to conform to the extent necessary with all Applicable Laws, including, without limitation, the provisions of the Securities Act and the Exchange Act, and any and all regulations and rules promulgated thereunder by the Securities and Exchange Commission, and state securities laws and regulations. Notwithstanding anything herein to the contrary, the Plan shall be administered, and the RSUs are granted, only in such a manner as to conform to Applicable Law. To the extent permitted by Applicable Law, the Plan, the Grant Notice and this Agreement, shall be deemed amended to the extent necessary to conform to Applicable Law.

Section 3.8 Amendment, Suspension and Termination. To the extent permitted by the Plan, this Agreement may be wholly or partially amended or otherwise modified, suspended or terminated at any time or from time to time by the Administrator or the Board, *provided* that, except as may otherwise be provided by the Plan, no amendment, modification, suspension or termination of this Agreement shall adversely affect the RSUs in any material way without the prior written consent of Participant.

Section 3.9 Successors and Assigns. The Company may assign any of its rights under this Agreement to single or multiple assignees, and this Agreement shall inure to the benefit of the successors and assigns of the Company. Subject to the restrictions on transfer set forth in Section 3.2 and the Plan, this Agreement shall be binding upon and inure to the benefit of the heirs, legatees, legal representatives, successors and assigns of the parties hereto.

Section 3.10 Limitations Applicable to Section 16 Persons. Notwithstanding any other provision of the Plan or this Agreement, if Participant is subject to Section 16 of the Exchange Act, the Plan, the RSUs, the Grant Notice and this Agreement shall be subject to any additional limitations set forth in any applicable exemptive rule under Section 16 of the Exchange Act (including any amendment to Rule 16b-3 of the Exchange Act) that are requirements for the application of such exemptive rule. To the extent permitted by Applicable Law, this Agreement shall be deemed amended to the extent necessary to conform to such applicable exemptive rule.

Section 3.11 Not a Contract of Employment. Nothing in this Agreement or in the Plan shall confer upon Participant any right to continue to serve as an employee or other service provider of any Company Group Member or shall interfere with or restrict in any way the rights of any Company Group Member, which rights are hereby expressly reserved, to discharge or terminate the services of Participant at any time for any reason whatsoever, with or without cause, except to the extent (i) expressly provided otherwise in a written agreement between a Company Group Member and Participant or (ii) where such provisions are not consistent with applicable foreign or local laws, in which case such applicable foreign or local laws shall control.

Section 3.12 Entire Agreement. The Plan, the Grant Notice and this Agreement (including any exhibit hereto) constitute the entire agreement of the parties and supersede in their entirety all prior undertakings and agreements of the Company and Participant with respect to the subject matter hereof.

Section 3.13 Section 409A. The intent of the parties is that the payments and benefits under this Agreement comply with or be exempt from Section 409A of the Internal Revenue Code of 1986, as amended, and the regulations and guidance promulgated thereunder (collectively, "Section 409A") and, accordingly, to the maximum extent permitted, this Agreement shall be interpreted to be in compliance therewith.

Section 3.14 Agreement Severable. In the event that any provision of the Grant Notice or this Agreement is held invalid or unenforceable, such provision will be severable from, and such invalidity or unenforceability will not be construed to have any effect on, the remaining provisions of the Grant Notice or this Agreement.

Section 3.15 Limitation on Participant's Rights. Participation in the Plan confers no rights or interests other than as herein provided. This Agreement creates only a contractual obligation on the part of the Company as to amounts payable and shall not be construed as creating a trust. Neither the Plan nor any underlying program, in and of itself, has any assets. Participant shall have only the rights of a general unsecured creditor of the Company with respect to amounts credited and benefits payable, if any, with respect to the RSUs.

Section 3.16 Counterparts. The Grant Notice may be executed in one or more counterparts, including by way of any electronic signature, subject to Applicable Law, each of which shall be deemed an original and all of which together shall constitute one instrument.

* * * * *

Exhibit 10.3

AZIYO BIOLOGICS, INC.
NON-EMPLOYEE DIRECTOR COMPENSATION POLICY

Non-employee members of the board of directors (the "***Board***") of Aziyo Biologics, Inc. (the "***Company***") shall be eligible to receive cash and equity compensation as set forth in this Non-Employee Director Compensation Policy (this "***Policy***"). The cash and equity compensation described in this Policy shall be paid or be made, as applicable, automatically and without further action of the Board, to each member of the Board who is not an employee of the Company or any parent or subsidiary of the Company (each, a "***Non-Employee Director***") who may be eligible to receive such cash or equity compensation, unless such Non-Employee Director declines the receipt of such cash or equity compensation by written notice to the Company. This Policy shall become effective after the effectiveness of the Company's initial public offering (the "***IPO***") and shall remain in effect until it is revised or rescinded by further action of the Board. This Policy shall apply only to Non-Employee Directors who are initially elected or appointed to the Board after the effectiveness of the IPO. This Policy may be amended, modified or terminated by the Board at any time in its sole discretion. The terms and conditions of this Policy shall supersede any prior cash and/or equity compensation arrangements for service as a member of the Board between the Company and any of its Non-Employee Directors and between any subsidiary of the Company and any of its non-employee directors.

1. Cash Compensation.

(a) Annual Retainers. Each Non-Employee Director shall receive an annual retainer of $40,000 for service on the Board.

(b) Additional Annual Retainers. In addition, a Non-Employee Director shall receive the following annual retainers:

(i) Chairperson of the Board. A Non-Employee Director serving as Chairperson of the Board shall receive an additional annual retainer of $30,000 for such service.

(ii) Audit Committee. A Non-Employee Director serving as Chairperson of the Audit Committee shall receive an additional annual retainer of $20,000 for such service. A Non-Employee Director serving as a member of the Audit Committee (other than the Chairperson) shall receive an additional annual retainer of $10,000 for such service.

(iii) Compensation Committee. A Non-Employee Director serving as Chairperson of the Compensation Committee shall receive an additional annual retainer of $15,000 for such service. A Non-Employee Director serving as a member of the Compensation Committee (other than the Chairperson) shall receive an additional annual retainer of $7,500 for such service.

(iv) Nominating and Corporate Governance Committee. A Non-Employee Director serving as Chairperson of the Nominating and Corporate Governance Committee shall receive an additional annual retainer of $10,000 for such service. A Non-Employee Director serving as a member of the Nominating and Corporate Governance Committee (other than the Chairperson) shall receive an additional annual retainer of $5,000 for such service.

(c) Payment of Retainers. The annual retainers described in Sections 1(a) and 1(b) shall be earned on a quarterly basis based on a calendar quarter and shall be paid by the Company in arrears not later than the fifteenth day following the end of each calendar quarter. In the event a Non-Employee Director does not serve as a Non-Employee Director, or in the applicable positions described in Section 1(b), for an entire calendar quarter, such Non-Employee Director shall receive a prorated portion of the retainer(s) otherwise payable to such Non-Employee Director for such calendar quarter pursuant to Sections 1(a) and 1(b), with such prorated portion determined by multiplying such otherwise payable retainer(s) by a fraction, the numerator of which is the number of days during which the Non-Employee Director serves as a Non-Employee Director or in the applicable positions described in Section 1(b) during the applicable calendar quarter and the denominator of which is the number of days in the applicable calendar quarter.

2. Equity Compensation. Non-Employee Directors shall be granted the equity awards described below. The awards described below shall be granted under and shall be subject to the terms and provisions of the Company's 2020 Incentive Award Plan or any other applicable Company equity incentive plan then-maintained by the Company (such plan, as may be amended from time to time, the "***Equity Plan***") and shall be granted subject to the execution and delivery of award agreements, including attached exhibits, in substantially the forms previously approved by the Board. All applicable terms of the Equity Plan apply to this Policy as if fully set forth herein, and all equity grants hereunder are subject in all respects to the terms of the Equity Plan.

(a) Annual Awards. Each Non-Employee Director who (i) serves on the Board as of the date of any annual meeting of the Company's stockholders (an "***Annual Meeting***") after the Pricing Date and (ii) will continue to serve as a Non-Employee Director immediately following such Annual Meeting shall be automatically granted, on the date of such Annual Meeting, an option to purchase a number of shares of Class A common stock (at a per-share exercise price equal to the closing price per share of the Company's Class A common stock on the date of such Annual Meeting (or on the last preceding trading day if the date of the Annual Meeting is not a trading day) that have an aggregate fair value on the date of grant of $81,000 (as determined in accordance with ASC 718 and subject to adjustment as provided in the Equity Plan). The awards described in this Section 2(b) shall be referred to as the "***Annual Awards***." For the avoidance of doubt, a Non-Employee Director elected for the first time to the Board at an Annual Meeting shall receive only an Annual Award in connection with such election, and shall not receive any Initial Award on the date of such Annual Meeting as well.

(b) Initial Awards. Except as otherwise determined by the Board, each Non-Employee Director who is initially elected or appointed to the Board after the Pricing Date on any date other than the date of an Annual Meeting shall be automatically granted, on the date of such Non-Employee Director's initial election or appointment (such Non-Employee Director's "***Start Date***) an option to purchase a number of shares of Class A common stock (at a per-share exercise price equal to the closing price per share of the Company's Class A common stock on the Start Date (or on the last preceding trading day if the Start Date is not a trading day) that have an aggregate fair value on the date of grant of $126,000 (as determined in accordance with ASC 718 and subject to adjustment as provided in the Equity Plan). The awards described in this Section 2(c) shall be referred to as "***Initial Awards***." For the avoidance of doubt, no Non-Employee Director shall be granted more than one Initial Award.

(c) Termination of Employment of Employee Directors. Members of the Board who are employees of the Company or any parent or subsidiary of the Company who subsequently terminate their employment with the Company and any parent or subsidiary of the Company and remain on the Board will not receive an Initial Award pursuant to Section 2(c) above, but to the extent that they are otherwise eligible, will be eligible to receive, after termination from employment with the Company and any parent or subsidiary of the Company, Annual Awards as described in Section 2(b) above.

(d) Vesting of Awards Granted to Non-Employee Directors. Each Initial Award shall vest shall vest annually in three equal installments of one-third each, on each of the first three anniversaries of the Start Date, subject to the Non-Employee Director continuing in service on the Board through the applicable vesting date. Each Annual Award shall vest and become exercisable on the earlier of (i) the day immediately preceding the date of the first Annual Meeting following the date of grant and (ii) the first anniversary of the date of grant, subject to the Non-Employee Director continuing in service on the Board through the applicable vesting date. No portion of an Annual Award or Initial Award that is unvested at the time of a Non-Employee Director's termination of service on the Board shall become vested and exercisable thereafter. All of a Non-Employee Director's Annual Awards and Initial Awards shall vest in full immediately prior to the occurrence of a Change in Control (as defined in the Equity Plan), to the extent outstanding at such time.

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AZIYO BIOLOGICS, INC.
2020 EMPLOYEE STOCK PURCHASE PLAN

ARTICLE I.
PURPOSE

The purpose of this Plan is to assist Eligible Employees of the Company and its Designated Subsidiaries in acquiring a stock ownership interest in the Company.

The Plan consists of two components: (i) the Section 423 Component and (ii) the Non-Section 423 Component. The Section 423 Component is intended to qualify as an "employee stock purchase plan" under Section 423 of the Code and shall be administered, interpreted and construed in a manner consistent with the requirements of Section 423 of the Code. The Non-Section 423 Component authorizes the grant of rights which need not qualify as rights granted pursuant to an "employee stock purchase plan" under Section 423 of the Code. Rights granted under the Non-Section 423 Component shall be granted pursuant to separate Offerings containing such sub-plans, appendices, rules or procedures as may be adopted by the Administrator and designed to achieve tax, securities laws or other objectives for Eligible Employees and Designated Subsidiaries but shall not be intended to qualify as an "employee stock purchase plan" under Section 423 of the Code. Except as otherwise determined by the Administrator or provided herein, the Non-Section 423 Component will operate and be administered in the same manner as the Section 423 Component. Offerings intended to be made under the Non-Section 423 Component will be designated as such by the Administrator at or prior to the time of such Offering.

For purposes of this Plan, the Administrator may designate separate Offerings under the Plan in which Eligible Employees will participate. The terms of these Offerings need not be identical, even if the dates of the applicable Offering Period(s) in each such Offering are identical, provided that the terms of participation are the same within each separate Offering under the Section 423 Component (as determined under Section 423 of the Code). Solely by way of example and without limiting the foregoing, the Company could, but shall not be required to, provide for simultaneous Offerings under the Section 423 Component and the Non-Section 423 Component of the Plan.

ARTICLE II.
DEFINITIONS AND CONSTRUCTION

Wherever the following terms are used in the Plan they shall have the meanings specified below, unless the context clearly indicates otherwise.

2.1 "***Administrator***" means the entity that conducts the general administration of the Plan as provided in Article XI.

2.2 "***Agent***" means the brokerage firm, bank or other financial institution, entity or person(s), if any, engaged, retained, appointed or authorized to act as the agent of the Company or an Employee with regard to the Plan.

2.3 "***Applicable Law***" means the requirements relating to the administration of equity incentive plans under U.S. federal and state securities, tax and other applicable laws, rules and regulations, the applicable rules of any stock exchange or quotation system on which Shares are listed or quoted and the applicable laws and rules of any foreign country or other jurisdiction where rights under this Plan are granted.

2.4 "***Board***" means the Board of Directors of the Company.

2.5 "***Code***" means the U.S. Internal Revenue Code of 1986, as amended, and the regulations issued thereunder.

2.6 "***Common Stock***" means the Class A common stock of the Company and such other securities of the Company that may be substituted therefore.

2.7 "***Company***" means Aziyo Biologics, Inc., a Delaware corporation, or any successor.

2.8 "***Compensation***" of an Eligible Employee means, unless otherwise determined by the Administrator, the gross base compensation received by such Eligible Employee as compensation for services to the Company or any Designated Subsidiary.

2.9 "***Designated Subsidiary***" means any Subsidiary designated by the Administrator in accordance with Section 11.2(b), such designation to specify whether such participation is in the Section 423 Component or Non-Section 423 Component. A Designated Subsidiary may participate in either the Section 423 Component or Non-Section 423 Component, but not both; provided that a Subsidiary that, for U.S. tax purposes, is disregarded from the Company or any Subsidiary that participates in the Section 423 Component shall automatically constitute a Designated Subsidiary that participates in the Section 423 Component.

2.10 "***Effective Date***" means the date the Plan is adopted by the Board.

2.11 "***Eligible Employee***" means:

(a) an Employee who does not, immediately after any rights under this Plan are granted, own (directly or through attribution) stock possessing 5% or more of the total combined voting power or value of all classes of Shares and other securities of the Company, a Parent or a Subsidiary (as determined under Section 423(b)(3) of the Code). For purposes of the foregoing, the rules of Section 424(d) of the Code with regard to the attribution of stock ownership shall apply in determining the stock ownership of an individual, and stock that an Employee may purchase under outstanding options shall be treated as stock owned by the Employee.

(b) Notwithstanding the foregoing, the Administrator may provide in an Offering Document that an Employee shall not be eligible to participate in an Offering Period under the Section 423 Component if: (i) such Employee is a highly compensated employee within the meaning of Section 423(b)(4)(D) of the Code; (ii) such Employee has not met a service requirement designated by the Administrator pursuant to Section 423(b)(4)(A) of the Code (which service requirement may not exceed two years); (iii) such Employee's customary employment is for twenty hours per week or less; (iv) such Employee's customary employment is for less than five months in any calendar year; and/or (v) such Employee is a citizen or resident of a foreign jurisdiction and the grant of a right to purchase Shares under the Plan to such Employee would be prohibited under the laws of such foreign jurisdiction or the grant of a right to purchase Shares under the Plan to such Employee in compliance with the laws of such foreign jurisdiction would cause the Plan to violate the requirements of Section 423 of the Code, as determined by the Administrator in its sole discretion; provided, further, that any exclusion in clauses (i), (ii), (iii), (iv) or (v) shall be applied in an identical manner under each Offering Period to all Employees, in accordance with Treasury Regulation Section 1.423-2(e).

(c) Further notwithstanding the foregoing, with respect to the Non-Section 423 Component, the first sentence of Section 2.11(a) above shall apply in determining who is an "Eligible Employee," except (i) the Administrator may limit eligibility further within the Company or a Designated Subsidiary so as to only designate some Employees of the Company or a Designated Subsidiary as Eligible Employees, and (ii) to the extent the restrictions in the first sentence in this definition are not consistent with applicable local laws, the applicable local laws shall control.

2.12 "***Employee***" means any individual who renders services to the Company or any Designated Subsidiary in the status of an employee, and, with respect to the Section 423 Component, a person who is an employee within the meaning of Section 3401(c) of the Code. For purposes of an individual's participation in, or other rights under the Plan, all determinations by the Company shall be final, binding and conclusive, notwithstanding that any court of law or governmental agency subsequently makes a contrary determination. For purposes of the Plan, the employment relationship shall be treated as continuing intact while the individual is on sick leave or other leave of absence approved by the Company or Designated Subsidiary and meeting the requirements of Treasury Regulation Section 1.421-1(h)(2). Where the period of leave exceeds three (3) months and the individual's right to reemployment is not guaranteed either by statute or by contract, the employment relationship shall be deemed to have terminated on the first day immediately following such three (3)-month period.

2.13 "***Enrollment Date***" means the first Trading Day of each Offering Period.

2.14 "***Fair Market Value***" means, as of any date, the value of a Share determined as follows: (i) if the Common Stock is listed on any established stock exchange, its Fair Market Value will be the closing sales price for such Shares as quoted on such exchange for such date, or if no sale occurred on such date, the last day preceding such date during which a sale occurred, as reported in The Wall Street Journal or another source the Administrator deems reliable; or (ii) if the Common Stock is not traded on a stock exchange but is quoted on a national market or other quotation system, the closing sales price on such date, or if no sales occurred on such date, then on the last date preceding such date during which a sale occurred, as reported in The Wall Street Journal or another source the Administrator deems reliable;

2.15 "***Non-Section 423 Component***" means those Offerings under the Plan, together with the sub-plans, appendices, rules or procedures, if any, adopted by the Administrator as a part of this Plan, in each case, pursuant to which rights to purchase Shares during an Offering Period may be granted to Eligible Employees that need not satisfy the requirements for rights to purchase Shares granted pursuant to an "employee stock purchase plan" that are set forth under Section 423 of the Code.

2.16 "***Offering***" means an offer under the Plan of a right to purchase Shares that may be exercised during an Offering Period as further described in Article IV hereof. Unless otherwise specified by the Administrator, each Offering to the Eligible Employees of the Company or a Designated Subsidiary shall be deemed a separate Offering, even if the dates and other terms of the applicable Offering Periods of each such Offering are identical, and the provisions of the Plan will separately apply to each Offering. To the extent permitted by Treas. Reg. § 1.423-2(a)(1), the terms of each separate Offering under the Section 423 Component need not be identical, provided that the terms of the Section 423 Component and an Offering thereunder together satisfy Treas. Reg. § 1.423-2(a)(2) and (a)(3).

2.17 "***Offering Document***" has the meaning given to such term in Section 4.1.

2.18 "***Offering Period***" has the meaning given to such term in Section 4.1.

2.19 "***Parent***" means any corporation, other than the Company, in an unbroken chain of corporations ending with the Company if, at the time of the determination, each of the corporations other than the Company owns stock possessing 50% or more of the total combined voting power of all classes of stock in one of the other corporations in such chain.

2.20 "***Participant***" means any Eligible Employee who has executed a subscription agreement and been granted rights to purchase Shares pursuant to the Plan.

2.21 "***Payday***" means the regular and recurring established day for payment of Compensation to an Employee of the Company or any Designated Subsidiary.

2.22 "***Plan***" means this 2020 Employee Stock Purchase Plan, including both the Section 423 Component and Non-Section 423 Component and any other sub-plans or appendices hereto, as amended from time to time.

2.23 "***Purchase Date***" means the last Trading Day of each Offering Period or such other date as determined by the Administrator and set forth in the Offering Document.

2.24 "***Purchase Price***" means the purchase price designated by the Administrator in the applicable Offering Document (which purchase price, for purposes of the Section 423 Component, shall not be less than 85% of the Fair Market Value of a Share on the Enrollment Date or on the Purchase Date, whichever is lower); provided, however, that, in the event no purchase price is designated by the Administrator in the applicable Offering Document, the purchase price for the Offering Periods covered by such Offering Document shall be 85% of the Fair Market Value of a Share on the Enrollment Date or on the Purchase Date, whichever is lower; provided, further, that the Purchase Price may be adjusted by the Administrator pursuant to Article VIII and shall not be less than the par value of a Share.

2.25 "***Section 423 Component***" means those Offerings under the Plan, together with the sub-plans, appendices, rules or procedures, if any, adopted by the Administrator as a part of this Plan, in each case, pursuant to which rights to purchase Shares during an Offering Period may be granted to Eligible Employees that are intended to satisfy the requirements for rights to purchase Shares granted pursuant to an "employee stock purchase plan" that are set forth under Section 423 of the Code.

2.26 "***Securities Act***" means the U.S. Securities Act of 1933, as amended.

2.27 "***Share***" means a share of Common Stock.

2.28 "***Subsidiary***" means any corporation, other than the Company, in an unbroken chain of corporations beginning with the Company if, at the time of the determination, each of the corporations other than the last corporation in an unbroken chain owns stock possessing 50% or more of the total combined voting power of all classes of stock in one of the other corporations in such chain; provided, however, that a limited liability company or partnership may be treated as a Subsidiary to the extent either (a) such entity is treated as a disregarded entity under Treasury Regulation Section 301.7701-3(a) by reason of the Company or any other Subsidiary that is a corporation being the sole owner of such entity, or (b) such entity elects to be classified as a corporation under Treasury Regulation Section 301.7701-3(a) and such entity would otherwise qualify as a Subsidiary. In addition, with respect to the Non-Section 423 Component, Subsidiary shall include any corporate or non-corporate entity in which the Company has a direct or indirect equity interest or significant business relationship.

2.29 "***Trading Day***" means a day on which national stock exchanges in the United States are open for trading.

2.30 "***Treas. Reg.***" means U.S. Department of the Treasury regulations.

ARTICLE III.
SHARES SUBJECT TO THE PLAN

3.1 Number of Shares. Subject to Article VIII, the aggregate number of Shares that may be issued pursuant to rights granted under the Plan shall be 143,150 Shares. In addition to the foregoing, subject to Article VIII, on the first day of each calendar year beginning on January 1, 2021 and ending on and including January 1, 2030, the number of Shares available for issuance under the Plan shall be increased by that number of Shares equal to the lesser of (a) 1% of the Shares outstanding on the final day of the immediately preceding calendar year and (b) such smaller number of Shares as determined by the Board. If any right granted under the Plan shall for any reason terminate without having been exercised, the Shares not purchased under such right shall again become available for issuance under the Plan. .

3.2 Shares Distributed. Any Shares distributed pursuant to the Plan may consist, in whole or in part, of authorized and unissued Shares, treasury shares or Shares purchased on the open market.

ARTICLE IV.
OFFERING PERIODS; OFFERING DOCUMENTS; PURCHASE DATES

4.1 Offering Periods. The Administrator may from time to time grant or provide for the grant of rights to purchase Shares under the Plan to Eligible Employees during one or more periods (each, an "***Offering Period***") selected by the Administrator. The terms and conditions applicable to each Offering Period shall be set forth in an "***Offering Document***" adopted by the Administrator, which Offering Document shall be in such form and shall contain such terms and conditions as the Administrator shall deem appropriate and shall be incorporated by reference into and made part of the Plan and shall be attached hereto as part of the Plan. The provisions of separate Offerings or Offering Periods under the Plan need not be identical.

4.2 Offering Documents. Each Offering Document with respect to an Offering Period shall specify (through incorporation of the provisions of this Plan by reference or otherwise):

(a) the length of the Offering Period, which period shall not exceed twenty-seven months;

(b) the maximum number of Shares that may be purchased by any Eligible Employee during such Offering Period, which, in the absence of a contrary designation by the Administrator, shall be the number of Shares equal to $25,000 divided by the Fair Market Value of a Share on the Enrollment Date, which price shall be adjusted if the price per Share is adjusted pursuant to Article VIII; and

(c) such other provisions as the Administrator determines are appropriate, subject to the Plan.

ARTICLE V.
ELIGIBILITY AND PARTICIPATION

5.1 Eligibility. Any Eligible Employee who shall be employed by the Company or a Designated Subsidiary on a given Enrollment Date for an Offering Period shall be eligible to participate in the Plan during such Offering Period, subject to the requirements of this Article V and, for the Section 423 Component, the limitations imposed by Section 423(b) of the Code.

5.2 Enrollment in Plan.

(a) Except as otherwise set forth in an Offering Document or determined by the Administrator, an Eligible Employee may become a Participant in the Plan for an Offering Period by delivering a subscription agreement to the Company by such time prior to the Enrollment Date for such Offering Period (or such other date specified in the Offering Document) designated by the Administrator and in such form as the Company provides.

(b) Each subscription agreement shall designate a whole percentage of such Eligible Employee's Compensation to be withheld by the Company or the Designated Subsidiary employing such Eligible Employee on each Payday during the Offering Period as payroll deductions under the Plan. The percentage of Compensation designated by an Eligible Employee may not be less than 1% and may not be more than the maximum percentage specified by the Administrator in the applicable Offering Document (which percentage shall be 15% in the absence of any such designation) as payroll deductions. The payroll deductions made for each Participant shall be credited to an account for such Participant under the Plan and shall be deposited with the general funds of the Company.

(c) A Participant may increase or decrease the percentage of Compensation designated in his or her subscription agreement, subject to the limits of this Section 5.2, or may suspend his or her payroll deductions, at any time during an Offering Period; provided, however, that the Administrator may limit the number of changes a Participant may make to his or her payroll deduction elections during each Offering Period in the applicable Offering Document (and in the absence of any specific designation by the Administrator, a Participant shall be allowed to decrease (but not increase) his or her payroll deduction elections one time during each Offering Period). Any such change or suspension of payroll deductions shall be effective with the first full payroll period following ten business days after the Company's receipt of the new subscription agreement (or such shorter or longer period as may be specified by the Administrator in the applicable Offering Document). In the event a Participant suspends his or her payroll deductions, such Participant's cumulative payroll deductions prior to the suspension shall remain in his or her account and shall be applied to the purchase of Shares on the next occurring Purchase Date and shall not be paid to such Participant unless he or she withdraws from participation in the Plan pursuant to Article VII.

(d) Except as otherwise set forth in an Offering Document or determined by the Administrator, a Participant may participate in the Plan only by means of payroll deduction and may not make contributions by lump sum payment for any Offering Period.

5.3 Payroll Deductions. Except as otherwise provided in the applicable Offering Document, payroll deductions for a Participant shall commence on the first Payday following the Enrollment Date and shall end on the last Payday in the Offering Period to which the Participant's authorization is applicable, unless sooner terminated by the Participant as provided in Article VII or suspended by the Participant or the Administrator as provided in Section 5.2 and Section 5.6, respectively. Notwithstanding any other provisions of the Plan to the contrary, in non-U.S. jurisdictions where participation in the Plan through payroll deductions is prohibited, the Administrator may provide that an Eligible Employee may elect to participate through contributions to the Participant's account under the Plan in a form acceptable to the Administrator in lieu of or in addition to payroll deductions; provided, however, that, for any Offering under the Section 423 Component, the Administrator shall take into consideration any limitations under Section 423 of the Code when applying an alternative method of contribution.

5.4 Effect of Enrollment. A Participant's completion of a subscription agreement will enroll such Participant in the Plan for each subsequent Offering Period on the terms contained therein until the Participant either submits a new subscription agreement, withdraws from participation under the Plan as provided in Article VII or otherwise becomes ineligible to participate in the Plan.

5.5 Limitation on Purchase of Shares. An Eligible Employee may be granted rights under the Section 423 Component only if such rights, together with any other rights granted to such Eligible Employee under "employee stock purchase plans" of the Company, any Parent or any Subsidiary, as specified by Section 423(b)(8) of the Code, do not permit such employee's rights to purchase stock of the Company or any Parent or Subsidiary to accrue at a rate that exceeds $25,000 of the Fair Market Value of the Shares (determined as of the first day of the Offering Period during which such rights are granted) for each calendar year in which such rights are outstanding at any time. This limitation shall be applied in accordance with Section 423(b)(8) of the Code.

5.6 Suspension of Payroll Deductions. Notwithstanding the foregoing, to the extent necessary to comply with Section 423(b)(8) of the Code and Section 5.5 (with respect to the Section 423 Component) or the other limitations set forth in this Plan, a Participant's payroll deductions may be suspended by the Administrator at any time during an Offering Period. The balance of the amount credited to the account of each Participant that has not been applied to the purchase of Shares by reason of Section 423(b)(8) of the Code, Section 5.5 or the other limitations set forth in this Plan shall be paid to such Participant in one lump sum in cash as soon as reasonably practicable after the Purchase Date.

5.7 Foreign Employees. In order to facilitate participation in the Plan, the Administrator may provide for such special terms applicable to Participants who are citizens or residents of a foreign jurisdiction, or who are employed by a Designated Subsidiary outside of the United States, as the Administrator may consider necessary or appropriate to accommodate differences in local law, tax policy or custom. Except as permitted by Section 423 of the Code, with respect to the Section 423 Component, such special terms may not be more favorable than the terms of rights granted under the Section 423 Component to Eligible Employees who are residents of the United States. Such special terms may be set forth in an addendum to the Plan in the form of an appendix or sub-plan (which appendix or sub-plan may be designed to govern Offerings under the Section 423 Component or the Non-Section 423 Component, as determined by the Administrator). To the extent that the terms and conditions set forth in an appendix or sub-plan conflict with any provisions of the Plan, the provisions of the appendix or sub-plan shall govern. The adoption of any such appendix or sub-plan shall be pursuant to Section 11.2(f). Without limiting the foregoing, the Administrator is specifically authorized to adopt rules and procedures, with respect to Participants who are foreign nationals or employed in non-U.S. jurisdictions, regarding the exclusion of particular Subsidiaries from participation in the Plan, eligibility to participate, the definition of Compensation, handling of payroll deductions or other contributions by Participants, payment of interest, conversion of local currency, data privacy security, payroll tax, withholding procedures, establishment of bank or trust accounts to hold payroll deductions or contributions.

5.8 Leave of Absence. During leaves of absence approved by the Company meeting the requirements of Treasury Regulation Section 1.421-1(h)(2) under the Code, a Participant may continue participation in the Plan by making cash payments to the Company on his or her normal Payday equal to the Participant's authorized payroll deduction.

ARTICLE VI.
GRANT AND EXERCISE OF RIGHTS

6.1 Grant of Rights. On the Enrollment Date of each Offering Period, each Eligible Employee participating in such Offering Period shall be granted a right to purchase the maximum number of Shares specified under Section 4.2, subject to the limits in Section 5.5, and shall have the right to buy, on each Purchase Date during such Offering Period (at the applicable Purchase Price), such number of whole Shares as is determined by dividing (a) such Participant's payroll deductions accumulated prior to such Purchase Date and retained in the Participant's account as of the Purchase Date, by (b) the applicable Purchase Price (rounded down to the nearest Share). The right shall expire on the last day of the Offering Period.

6.2 Exercise of Rights. On each Purchase Date, each Participant's accumulated payroll deductions and any other additional payments specifically provided for in the applicable Offering Document will be applied to the purchase of whole Shares, up to the maximum number of Shares permitted pursuant to the terms of the Plan and the applicable Offering Document, at the Purchase Price. No fractional Shares shall be issued upon the exercise of rights granted under the Plan, unless the Offering Document specifically provides otherwise. Any cash in lieu of fractional Shares remaining after the purchase of whole Shares upon exercise of a purchase right will be credited to a Participant's account and carried forward and applied toward the purchase of whole Shares for the next following Offering Period. Shares issued pursuant to the Plan may be evidenced in such manner as the Administrator may determine and may be issued in certificated form or issued pursuant to book-entry procedures.

6.3 Pro Rata Allocation of Shares. If the Administrator determines that, on a given Purchase Date, the number of Shares with respect to which rights are to be exercised may exceed (a) the number of Shares that were available for issuance under the Plan on the Enrollment Date of the applicable Offering Period, or (b) the number of Shares available for issuance under the Plan on such Purchase Date, the Administrator may in its sole discretion provide that the Company shall make a pro rata allocation of the Shares available for purchase on such Enrollment Date or Purchase Date, as applicable, in as uniform a manner as shall be practicable and as it shall determine in its sole discretion to be equitable among all Participants for whom rights to purchase Shares are to be exercised pursuant to this Article VI on such Purchase Date, and shall either (i) continue all Offering Periods then in effect, or (ii) terminate any or all Offering Periods then in effect pursuant to Article IX. The Company may make pro rata allocation of the Shares available on the Enrollment Date of any applicable Offering Period pursuant to the preceding sentence, notwithstanding any authorization of additional Shares for issuance under the Plan by the Company's stockholders subsequent to such Enrollment Date. The balance of the amount credited to the account of each Participant that has not been applied to the purchase of Shares shall be paid to such Participant in one lump sum in cash as soon as reasonably practicable after the Purchase Date or such earlier date as determined by the Administrator.

6.4 Withholding. At the time a Participant's rights under the Plan are exercised, in whole or in part, or at the time some or all of the Shares issued under the Plan is disposed of, the Participant must make adequate provision for the Company's federal, state, or other tax withholding obligations, if any, that arise upon the exercise of the right or the disposition of the Shares. At any time, the Company may, but shall not be obligated to, withhold from the Participant's compensation or Shares received pursuant to the Plan the amount necessary for the Company to meet applicable withholding obligations, including any withholding required to make available to the Company any tax deductions or benefits attributable to sale or early disposition of Shares by the Participant.

6.5 Conditions to Issuance of Shares. The Company shall not be required to issue or deliver any certificate or certificates for, or make any book entries evidencing, Shares purchased upon the exercise of rights under the Plan prior to fulfillment of all of the following conditions: (a) the admission of such Shares to listing on all stock exchanges, if any, on which the Shares are then listed; (b) the completion of any registration or other qualification of such Shares under any state or federal law or under the rulings or regulations of the Securities and Exchange Commission or any other governmental regulatory body, that the Administrator shall, in its absolute discretion, deem necessary or advisable; (c) the obtaining of any approval or other clearance from any state or federal governmental agency that the Administrator shall, in its absolute discretion, determine to be necessary or advisable; (d) the payment to the Company of all amounts that it is required to withhold under federal, state or local law upon exercise of the rights, if any; and (e) the lapse of such reasonable period of time following the exercise of the rights as the Administrator may from time to time establish for reasons of administrative convenience.

ARTICLE VII.
WITHDRAWAL; CESSATION OF ELIGIBILITY

7.1 Withdrawal. A Participant may withdraw all but not less than all of the payroll deductions credited to his or her account and not yet used to exercise his or her rights under the Plan at any time by giving written notice to the Company in a form acceptable to the Company no later than one week prior to the end of the Offering Period. All of the Participant's payroll deductions credited to his or her account during an Offering Period shall be paid to such Participant as soon as reasonably practicable after receipt of notice of withdrawal and such Participant's rights for the Offering Period shall be automatically terminated, and no further payroll deductions for the purchase of Shares shall be made for such Offering Period. If a Participant withdraws from an Offering Period, payroll deductions shall not resume at the beginning of the next Offering Period unless the Participant timely delivers to the Company a new subscription agreement.

7.2 Future Participation. A Participant's withdrawal from an Offering Period shall not have any effect upon his or her eligibility to participate in any similar plan that may hereafter be adopted by the Company or a Designated Subsidiary or in subsequent Offering Periods that commence after the termination of the Offering Period from which the Participant withdraws.

7.3 Cessation of Eligibility. Upon a Participant's ceasing to be an Eligible Employee for any reason, he or she shall be deemed to have elected to withdraw from the Plan pursuant to this Article VII and the payroll deductions credited to such Participant's account during the Offering Period shall be paid to such Participant or, in the case of his or her death, to the person or persons entitled thereto under Section 12.4, as soon as reasonably practicable, and such Participant's rights for the Offering Period shall be automatically terminated. If a Participant transfers employment from the Company or any Designated Subsidiary participating in the Section 423 Component to any Designated Subsidiary participating in the Non-Section 423 Component, such transfer shall not be treated as a termination of employment, but the Participant shall immediately cease to participate in the Section 423 Component; however, any contributions made for the Offering Period in which such transfer occurs shall be transferred to the Non-Section 423 Component, and such Participant shall immediately join the then-current Offering under the Non-Section 423 Component upon the same terms and conditions in effect for the Participant's participation in the Section 423 Component, except for such modifications otherwise applicable for Participants in such Offering. A Participant who transfers employment from any Designated Subsidiary participating in the Non-Section 423 Component to the Company or any Designated Subsidiary participating in the Section 423 Component shall not be treated as terminating the Participant's employment and shall remain a Participant in the Non-Section 423 Component until the earlier of (i) the end of the current Offering Period under the Non-Section 423 Component or (ii) the Enrollment Date of the first Offering Period in which the Participant is eligible to participate following such transfer. Notwithstanding the foregoing, the Administrator may establish different rules to govern transfers of employment between entities participating in the Section 423 Component and the Non-Section 423 Component, consistent with the applicable requirements of Section 423 of the Code.

ARTICLE VIII.
ADJUSTMENTS UPON CHANGES IN SHARES

8.1 Changes in Capitalization. Subject to Section 8.3, in the event that the Administrator determines that any dividend or other distribution (whether in the form of cash, Shares, other securities, or other property), change in control, reorganization, merger, amalgamation, consolidation, combination, repurchase, redemption, recapitalization, liquidation, dissolution, or sale, transfer, exchange or other disposition of all or substantially all of the assets of the Company, or sale or exchange of Shares or other securities of the Company, issuance of warrants or other rights to purchase Shares or other securities of the Company, or other similar corporate transaction or event, as determined by the Administrator, affects the Shares such that an adjustment is determined by the Administrator to be appropriate in order to prevent dilution or enlargement of the benefits or potential benefits intended by the Company to be made available under the Plan or with respect to any outstanding purchase rights under the Plan, the Administrator shall make equitable adjustments, if any, to reflect such change with respect to (a) the aggregate number and type of Shares (or other securities or property) that may be issued under the Plan (including, but not limited to, adjustments of the limitations in Section 3.1 and the limitations established in each Offering Document pursuant to Section 4.2 on the maximum number of Shares that may be purchased); (b) the class(es) and number of Shares and price per Share subject to outstanding rights; and (c) the Purchase Price with respect to any outstanding rights.

8.2 Other Adjustments. Subject to Section 8.3, in the event of any transaction or event described in Section 8.1 or any unusual or nonrecurring transactions or events affecting the Company, any affiliate of the Company, or the financial statements of the Company or any affiliate, or of changes in Applicable Law or accounting principles, the Administrator, in its discretion, and on such terms and conditions as it deems appropriate, is hereby authorized to take any one or more of the following actions whenever the Administrator determines that such action is appropriate in order to prevent the dilution or enlargement of the benefits or potential benefits intended to be made available under the Plan or with respect to any right under the Plan, to facilitate such transactions or events or to give effect to such changes in laws, regulations or principles:

(a) To provide for either (i) termination of any outstanding right in exchange for an amount of cash, if any, equal to the amount that would have been obtained upon the exercise of such right had such right been currently exercisable or (ii) the replacement of such outstanding right with other rights or property selected by the Administrator in its sole discretion;

(b) To provide that the outstanding rights under the Plan shall be assumed by the successor or survivor corporation, or a parent or subsidiary thereof, or shall be substituted for by similar rights covering the stock of the successor or survivor corporation, or a parent or subsidiary thereof, with appropriate adjustments as to the number and kind of shares and prices;

(c) To make adjustments in the number and type of Shares (or other securities or property) subject to outstanding rights under the Plan and/or in the terms and conditions of outstanding rights and rights that may be granted in the future;

(d) To provide that Participants' accumulated payroll deductions may be used to purchase Shares prior to the next occurring Purchase Date on such date as the Administrator determines in its sole discretion and the Participants' rights under the ongoing Offering Period(s) shall be terminated; and

(e) To provide that all outstanding rights shall terminate without being exercised.

8.3 No Adjustment Under Certain Circumstances. Unless determined otherwise by the Administrator, no adjustment or action described in this Article VIII or in any other provision of the Plan shall be authorized to the extent that such adjustment or action would cause the Section 423 Component of the Plan to fail to satisfy the requirements of Section 423 of the Code.

8.4 No Other Rights. Except as expressly provided in the Plan, no Participant shall have any rights by reason of any subdivision or consolidation of shares of stock of any class, the payment of any dividend, any increase or decrease in the number of shares of stock of any class or any dissolution, liquidation, merger, or consolidation of the Company or any other corporation. Except as expressly provided in the Plan or pursuant to action of the Administrator under the Plan, no issuance by the Company of shares of stock of any class, or securities convertible into shares of stock of any class, shall affect, and no adjustment by reason thereof shall be made with respect to, the number of Shares subject to outstanding rights under the Plan or the Purchase Price with respect to any outstanding rights.

ARTICLE IX.
AMENDMENT, MODIFICATION AND TERMINATION

9.1 Amendment, Modification and Termination. The Administrator may amend, suspend or terminate the Plan at any time and from time to time; provided, however, that approval of the Company's stockholders shall be required to amend the Plan to: (a) increase the aggregate number, or change the type, of shares that may be sold pursuant to rights under the Plan under Section 3.1 (other than an adjustment as provided by Article VIII) or (b) change the corporations or classes of corporations whose employees may be granted rights under the Plan.

9.2 Certain Changes to Plan. Without stockholder consent and without regard to whether any Participant rights may be considered to have been adversely affected (and, with respect to the Section 423 Component of the Plan, after taking into account Section 423 of the Code), the Administrator shall be entitled to change the Offering Periods, add or revise Offering Period share limits, limit the frequency and/or number of changes in the amount withheld from Compensation during an Offering Period, establish the exchange ratio applicable to amounts withheld in a currency other than U.S. dollars, permit payroll withholding in excess of the amount designated by a Participant in order to adjust for delays or mistakes in the Company's processing of withholding elections, establish reasonable waiting and adjustment periods and/or accounting and crediting procedures to ensure that amounts applied toward the purchase of Shares for each Participant properly correspond with amounts withheld from the Participant's Compensation, and establish such other limitations or procedures as the Administrator determines in its sole discretion to be advisable that are consistent with the Plan.

9.3 Actions In the Event of Unfavorable Financial Accounting Consequences. In the event the Administrator determines that the ongoing operation of the Plan may result in unfavorable financial accounting consequences, the Administrator may, in its discretion and, to the extent necessary or desirable, modify or amend the Plan to reduce or eliminate such accounting consequence including, but not limited to:

(a) altering the Purchase Price for any Offering Period including an Offering Period underway at the time of the change in Purchase Price;

(b) shortening any Offering Period so that the Offering Period ends on a new Purchase Date, including an Offering Period underway at the time of the Administrator action; and

(c) allocating Shares.

Such modifications or amendments shall not require stockholder approval or the consent of any Participant.

9.4 Payments Upon Termination of Plan. Upon termination of the Plan, the balance in each Participant's Plan account shall be refunded as soon as practicable after such termination, without any interest thereon, or the Offering Period may be shortened so that the purchase of Shares occurs prior to the termination of the Plan.

ARTICLE X.
TERM OF PLAN

The Plan shall become effective on the Effective Date. The effectiveness of the Plan shall be subject to approval of the Plan by the Company's stockholders within twelve months following the date the Plan is first approved by the Board. No right may be granted under the Plan prior to such stockholder approval. No rights may be granted under the Plan during any period of suspension of the Plan or after termination of the Plan.

ARTICLE XI.
ADMINISTRATION

11.1 Administrator. Unless otherwise determined by the Board, the Administrator of the Plan shall be the Compensation Committee of the Board (or another committee or a subcommittee of the Board to which the Board delegates administration of the Plan). The Board may at any time vest in the Board any authority or duties for administration of the Plan. The Administrator may delegate administrative tasks under the Plan to the services of an Agent or Employees to assist in the administration of the Plan, including establishing and maintaining an individual securities account under the Plan for each Participant.

11.2 Authority of Administrator. The Administrator shall have the power, subject to, and within the limitations of, the express provisions of the Plan:

(a) To determine when and how rights to purchase Shares shall be granted and the provisions of each offering of such rights (which need not be identical).

(b) To designate from time to time which Subsidiaries of the Company shall be Designated Subsidiaries, which designation may be made without the approval of the stockholders of the Company.

(c) To impose a mandatory holding period pursuant to which Employees may not dispose of or transfer Shares purchased under the Plan for a period of time determined by the Administrator in its discretion.

(d) To construe and interpret the Plan and rights granted under it, and to establish, amend and revoke rules and regulations for its administration. The Administrator, in the exercise of this power, may correct any defect, omission or inconsistency in the Plan, in a manner and to the extent it shall deem necessary or expedient to make the Plan fully effective.

(e) To amend, suspend or terminate the Plan as provided in Article IX.

(f) Generally, to exercise such powers and to perform such acts as the Administrator deems necessary or expedient to promote the best interests of the Company and its Subsidiaries and to carry out the intent that the Plan be treated as an "employee stock purchase plan" within the meaning of Section 423 of the Code for the Section 423 Component.

(g) The Administrator may adopt sub-plans applicable to particular Designated Subsidiaries or locations, which sub-plans may be designed to be outside the scope of Section 423 of the Code. The rules of such sub-plans may take precedence over other provisions of this Plan, with the exception of Section 3.1 hereof, but unless otherwise superseded by the terms of such sub-plan, the provisions of this Plan shall govern the operation of such sub-plan.

11.3 Decisions Binding. The Administrator's interpretation of the Plan, any rights granted pursuant to the Plan, any subscription agreement and all decisions and determinations by the Administrator with respect to the Plan are final, binding, and conclusive on all parties.

ARTICLE XII.
MISCELLANEOUS

12.1 Restriction upon Assignment. A right granted under the Plan shall not be transferable other than by will or the applicable laws of descent and distribution, and is exercisable during the Participant's lifetime only by the Participant. Except as provided in Section 12.4 hereof, a right under the Plan may not be exercised to any extent except by the Participant. The Company shall not recognize and shall be under no duty to recognize any assignment or alienation of the Participant's interest in the Plan, the Participant's rights under the Plan or any rights thereunder.

12.2 Rights as a Stockholder. With respect to Shares subject to a right granted under the Plan, a Participant shall not be deemed to be a stockholder of the Company, and the Participant shall not have any of the rights or privileges of a stockholder, until such Shares have been issued to the Participant or his or her nominee following exercise of the Participant's rights under the Plan. No adjustments shall be made for dividends (ordinary or extraordinary, whether in cash securities, or other property) or distribution or other rights for which the record date occurs prior to the date of such issuance, except as otherwise expressly provided herein or as determined by the Administrator.

12.3 Interest. No interest shall accrue on the payroll deductions or contributions of a Participant under the Plan.

12.4 Designation of Beneficiary.

(a) A Participant may, in the manner determined by the Administrator, file a written designation of a beneficiary who is to receive any Shares and/or cash, if any, from the Participant's account under the Plan in the event of such Participant's death subsequent to a Purchase Date on which the Participant's rights are exercised but prior to delivery to such Participant of such Shares and cash. In addition, a Participant may file a written designation of a beneficiary who is to receive any cash from the Participant's account under the Plan in the event of such Participant's death prior to exercise of the Participant's rights under the Plan. If the Participant is married and resides in a community property state, a designation of a person other than the Participant's spouse as his or her beneficiary shall not be effective without the prior written consent of the Participant's spouse.

(b) Such designation of beneficiary may be changed by the Participant at any time by written notice to the Company. In the event of the death of a Participant and in the absence of a beneficiary validly designated under the Plan who is living at the time of such Participant's death, the Company shall deliver such Shares and/or cash to the executor or administrator of the estate of the Participant, or if no such executor or administrator has been appointed (to the knowledge of the Company), the Company, in its discretion, may deliver such Shares and/or cash to the spouse or to any one or more dependents or relatives of the Participant, or if no spouse, dependent or relative is known to the Company, then to such other person as the Company may designate.

12.5 Notices. All notices or other communications by a Participant to the Company under or in connection with the Plan shall be deemed to have been duly given when received in the form specified by the Company at the location, or by the person, designated by the Company for the receipt thereof.

12.6 Equal Rights and Privileges. Subject to Section 5.7, all Eligible Employees will have equal rights and privileges under the Section 423 Component so that the Section 423 Component of this Plan qualifies as an "employee stock purchase plan" within the meaning of Section 423 of the Code. Subject to Section 5.7, any provision of the Section 423 Component that is inconsistent with Section 423 of the Code will, without further act or amendment by the Company, the Board or the Administrator, be reformed to comply with the equal rights and privileges requirement of Section 423 of the Code. Eligible Employees participating in the Non-Section 423 Component need not have the same rights and privileges as other Eligible Employees participating in the Non-Section 423 Component or as Eligible Employees participating in the Section 423 Component.

12.7 Use of Funds. All payroll deductions received or held by the Company under the Plan may be used by the Company for any corporate purpose, and the Company shall not be obligated to segregate such payroll deductions.

12.8 No Employment Rights. Nothing in the Plan shall be construed to give any person (including any Eligible Employee or Participant) the right to remain in the employ of the Company or any Parent or Subsidiary or affect the right of the Company or any Parent or Subsidiary to terminate the employment of any person (including any Eligible Employee or Participant) at any time, with or without cause.

12.9 Notice of Disposition of Shares. Each Participant shall if requested by the Company give prompt notice to the Company of any disposition or other transfer of any Shares purchased upon exercise of a right under the Section 423 Component of the Plan if such disposition or transfer is made: (a) within two years from the Enrollment Date of the Offering Period in which the Shares were purchased or (b) within one year after the Purchase Date on which such Shares were purchased. Such notice shall specify the date of such disposition or other transfer and the amount realized, in cash, other property, assumption of indebtedness or other consideration, by the Participant in such disposition or other transfer.

12.10 Governing Law. The Plan and any agreements hereunder shall be administered, interpreted and enforced in accordance with the laws of the State of Delaware, disregarding any state's choice of law principles requiring the application of a jurisdiction's laws other than the State of Delaware.

12.11 Electronic Forms. To the extent permitted by Applicable Law and in the discretion of the Administrator, an Eligible Employee may submit any form or notice as set forth herein by means of an electronic form approved by the Administrator. Before the commencement of an Offering Period, the Administrator shall prescribe the time limits within which any such electronic form shall be submitted to the Administrator with respect to such Offering Period in order to be a valid election.

*** * * * ***

EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT (this "***Agreement***"), entered into as of September 30, 2020, is made by and between Aziyo Biologics, Inc. (the "***Company***") and Ronald Lloyd (the "***Executive***") (collectively referred to herein as the "***Parties***").

WHEREAS, the Executive is currently employed by the Company as its President and Chief Executive Officer pursuant to the terms of that certain Employment Agreement by and between the Parties, dated as of June 1, 2018 (the "***Prior Agreement***");

WHEREAS, the Company is contemplating an initial public offering of its Class A common stock pursuant to an effective registration statement filed under the Securities Act of 1933, as amended (the "***IPO***");

WHEREAS, in connection with the IPO, the Company desires to assure itself of the continued services of the Executive by engaging the Executive to perform services under the terms hereof;

WHEREAS, the Executive desires to provide services to the Company on the terms herein provided; and

WHEREAS, the Parties desire to have this Agreement become effective, and supersede the Prior Agreement, as the date of the consummation of the IPO (the "***Effective Date***").

NOW, THEREFORE, IT IS HEREBY AGREED AS FOLLOWS:

1. Employment Period. Subject to the provisions for earlier termination hereinafter provided, the initial term of the Executive's employment hereunder shall be for a term (the "***Initial Employment Period***") commencing on the Effective Date and ending on the second anniversary of the Effective Date. The Initial Employment Period shall automatically be extended for successive one-year periods (each, an "***Extension Employment Period***" and, together with the Initial Employment Period, the "***Employment Period***"), unless either Party gives written notice of non-extension to the other no later than ninety (90) days prior to the expiration of the then-applicable Employment Period, in which case Executive's employment will terminate at the end of the then-applicable Employment Period, subject to earlier termination as provided in Section 4 below.

2. Terms of Employment.

(a) Position and Duties.

(i) Role and Responsibilities. During the Employment Period, the Executive shall serve as President and Chief Executive Officer of the Company, and shall perform such employment duties as are usual and customary for such positions. The Executive shall report directly to the Board of Directors of the Company (the "***Board***") (or his or her designee). At the Company's request, the Executive shall serve the Company and/or its subsidiaries and affiliates in other capacities in addition to the foregoing, consistent with the Executive's position as President and Chief Executive Officer of the Company. In the event that the Executive, during the Employment Period, serves in any one or more of such additional capacities, the Executive's compensation shall not be increased beyond that specified in Section 2(b) hereof. In addition, in the event the Executive's service in one or more of such additional capacities is terminated, the Executive's compensation, as specified in Section 2(b) hereof, shall not be diminished or reduced in any manner as a result of such termination provided that the Executive otherwise remains employed under the terms of this Agreement.

(ii) Exclusivity. During the Employment Period, and excluding any periods of vacation and sick leave to which the Executive may be entitled, the Executive agrees to devote his or her full business time and attention to the business and affairs of the Company. Notwithstanding the foregoing, during the Employment Period, it shall not be a violation of this Agreement for the Executive to: (A) serve on boards, committees or similar bodies of charitable or nonprofit organizations or other companies, (B) fulfill limited teaching, speaking and writing engagements, and (C) manage his or her personal investments, in each case, so long as such activities do not individually or in the aggregate materially interfere or conflict with the performance of the Executive's duties and responsibilities under this Agreement; provided, that with respect to the activities in subclauses (A) and/or (B), the Executive receives prior written approval from the Board. Exhibit A of this Agreement sets forth the board of directors or advisory boards on which the Executive currently serves.

(iii) Principal Location. During the Employment Period, the Executive shall perform the services required by this Agreement at the Company's principal offices located in Silver Spring, Maryland or such other location mutually agreed upon by the Company and the Executive (the "***Principal Location***"), except for travel to other locations as may be necessary to fulfill the Executive's duties and responsibilities hereunder.

(b) Compensation, Benefits, Etc.

(i) Base Salary. During the Employment Period, the Executive shall receive a base salary (the "***Base Salary***") of $537,800 per annum. The Base Salary shall be reviewed annually by the Compensation Committee (the "***Compensation Committee***") of the Board and may be increased from time to time by the Compensation Committee in its sole discretion. The Base Salary shall be paid in accordance with the Company's normal payroll practices for executive salaries generally, but no less often than monthly. The Base Salary may be increased in the Compensation Committee's discretion, but not reduced, and the term "Base Salary" as utilized in this Agreement shall refer to the Base Salary as so increased.

(ii) Annual Cash Bonus. In addition to the Base Salary, the Executive shall be eligible to earn, for each fiscal year of the Company ending during the Employment Period, a discretionary cash performance bonus (an "***Annual Bonus***") under the Company's bonus plan or program applicable to senior executives. The Executive's target Annual Bonus shall be set at 80% of the Base Salary actually paid for such year (the "***Target Bonus***"). The actual amount of any Annual Bonus shall be determined by reference to the attainment of Company performance metrics and/or individual performance objectives, in each case, as determined by the Compensation Committee, and may be greater or less than the Target Bonus (or zero). Subject to Section 4(a)(i) hereof, payment of any Annual Bonus(es), to the extent any Annual Bonus(es) become payable, will be contingent upon the Executive's continued employment through the applicable payment date. The Company will pay any such bonus that has been duly earned and awarded by the Board as soon as administratively possible following its approval by the Board and, in any event, no later than the later of (i) the fifteenth day of the third month after the end of the Company's fiscal year in which such bonus is earned or (ii) March 15 following the calendar year in which such bonus is earned.

(iii) Benefits. During the Employment Period, the Executive (and the Executive's spouse and/or eligible dependents to the extent provided in the applicable plans and programs) shall be eligible to participate in and be covered under the health and welfare benefit plans and programs maintained by the Company for the benefit of its employees from time to time, pursuant to the terms of such plans and programs including any medical and dental insurance plans and programs. During the Employment Period, the Company shall provide the Executive and the Executive's eligible dependents with coverage under its group health plans. In addition, during the Employment Period, Executive shall be eligible to participate in any retirement, savings and other employee benefit plans and programs maintained from time to time by the Company for the benefit of its senior executive officers. Nothing contained in this Section 2(b)(iii) shall create or be deemed to create any obligation on the part of the Company to adopt or maintain any health, welfare, retirement or other benefit plan or program at any time or to create any limitation on the Company's ability to modify or terminate any such plan or program.

(iv) Expenses. During the Employment Period, the Executive shall be entitled to receive prompt reimbursement for all reasonable business expenses incurred by the Executive in accordance with the policies, practices and procedures of the Company provided to employees of the Company.

(v) Fringe Benefits. During the Employment Period, the Executive shall be eligible to receive such fringe benefits and perquisites as are provided by the Company to its employees from time to time, in accordance with the policies, practices and procedures of the Company, and shall receive such additional fringe benefits and perquisites as the Company may, in its discretion, from time-to-time provide.

(vi) Vacation. During the Employment Period, the Executive shall be entitled to paid vacation in accordance with the plans, policies, programs and practices of the Company applicable to its senior executives in effect from time to time, but in no event shall the Executive be entitled to less than four (4) weeks of vacation per calendar year (pro-rated for any partial year of service).

3. Termination of Employment.

(a) Death or Disability. The Executive's employment shall terminate automatically upon the Executive's death during the Employment Period. Either the Company or the Executive may terminate the Executive's employment in the event of the Executive's Disability during the Employment Period. For purposes of this Agreement, "***Disability***" shall mean any disability or incapacity that (i) renders Executive unable to substantially perform his duties hereunder for ninety (90) days during any 12-month period or (ii) would reasonably be expected to render Executive unable to substantially perform his duties for ninety (90) days during any 12-month period, in each case as determined by the Board in its good faith judgment.

(b) Termination by the Company. The Company may terminate the Executive's employment during the Employment Period for Cause or without Cause. For purposes of this Agreement, "***Cause***" shall mean the occurrence of any one or more of the following events unless, to the extent capable of correction, the Executive fully corrects the circumstances constituting Cause within fifteen (15) days after receipt of the Notice of Termination (as defined below):

(i) Executive performing his duties, in the good faith opinion of the Board, in a grossly negligent or reckless manner or with willful malfeasance;

(ii) Executive exhibiting habitual drunkenness or engaging in substance abuse;

(iii) Executive committing any material violation of any state or federal law relating to the workplace environment (including, without limitation, laws relating to sexual harassment or age, sex or other prohibited discrimination) or any material violation of any Company policy;

(iv) Executive willfully failing or refusing to perform in the usual manner at the usual time those duties which he regularly and routinely performs in connection with the business of the Company or such other duties reasonably related to the capacity in which he is employed hereunder which may be assigned to him by the Board;

(v) Executive performing any material action when specifically and reasonably instructed not to do so by the Chairman or the Board;

(vi) Executive breaching Sections 7, 8 and 9 hereof;

(vii) Executive committing any fraud or using or appropriating for his or her personal use or benefit any funds, properties or opportunities of the Company not authorized by the Board to be so used or appropriated; or

(viii) Executive being convicted of any felony or any other crime related to his employment or involving moral turpitude.

The Company shall not be entitled to terminate Executive for Cause pursuant to clause (iii), (iv), (v) or (vi) unless the Company provides written notice stating in reasonable detail the basis for termination and a fifteen (15) day opportunity to cure to Executive (unless (1) the Company reasonably determines that providing such opportunity to cure to Executive is reasonably likely to have a material adverse effect on its business, financial condition, results of operations, prospects or assets, (2) the facts and circumstances underlying such termination are not able to be cured or (3) the Company has previously provided Executive an opportunity to cure the applicable issue; in the case of (1), (2) or (3), the Company may terminate Executive without providing an opportunity to cure).

(c) Termination by the Executive. The Executive's employment may be terminated by the Executive for any reason, including with Good Reason or by the Executive without Good Reason. For purposes of this Agreement, "***Good Reason***" shall mean the occurrence of any one or more of the following events without the Executive's prior written consent, unless the Company fully corrects the circumstances constituting Good Reason (provided such circumstances are capable of correction) as provided below:

(i) A material reduction in the Executive's job responsibilities and duties for the Company;

(ii) A material reduction in the Executive's Base Salary; or

(iii) a requirement imposed by the Company on the Executive that Executive's principal place of employment be anywhere other than within a 50 mile radius of the Executive's Principal Location, except for required travel on Company business to an extent substantially consistent with Executive's business travel obligations, that, in any such case, is not cured by the Company within fifteen (15) days after the Company's receipt of written notice from the Executive of such event.

Notwithstanding the foregoing, the Executive will not be deemed to have resigned for Good Reason unless (1) the Executive provides the Company with written notice setting forth in reasonable detail the facts and circumstances claimed by the Executive to constitute Good Reason within sixty (60) days after the date of the occurrence of any event that the Executive knows or should reasonably have known to constitute Good Reason, (2) the Company fails to cure such acts or omissions within thirty (30) days following its receipt of such notice, and (3) the effective date of the Executive's termination for Good Reason occurs no later than sixty (60) days after the expiration of the Company's cure period.

(d) Notice of Termination. Any termination by the Company for Cause, or by the Executive for Good Reason, shall be communicated by a Notice of Termination to the other parties hereto given in accordance with Section 13(d) hereof. For purposes of this Agreement, a "***Notice of Termination***" means a written notice which (i) indicates the specific termination provision in this Agreement relied upon, (ii) sets forth in reasonable detail the facts and circumstances claimed to provide a basis for termination of the Executive's employment under the provision so indicated and (iii) if the Date of Termination (as defined below) is other than the date of receipt of such notice, specifies the termination date (which date shall be not more than thirty (30) days after the giving of such notice). The failure by the Executive or the Company to set forth in the Notice of Termination any fact or circumstance which contributes to a showing of Good Reason or Cause shall not waive any right of the Executive or the Company, respectively, hereunder or preclude the Executive or the Company, respectively, from asserting such fact or circumstance in enforcing the Executive's or the Company's rights hereunder.

(e) Termination of Offices and Directorships; Return of Property. Upon termination of the Executive's employment for any reason, unless otherwise specified in a written agreement between the Executive and the Company, the Executive shall be deemed to have resigned from all offices, directorships, and other employment positions if any, then held with the Company, and shall take all actions reasonably requested by the Company to effectuate the foregoing. In addition, upon the termination of the Executive's employment for any reason, the Executive agrees to return to the Company all documents of the Company and its affiliates (and all copies thereof) and all other Company or Company affiliate property that the Executive has in his or her possession, custody or control. Such property includes, without limitation: (i) any materials of any kind that the Executive knows contain or embody any proprietary or confidential information of the Company or an affiliate of the Company (and all reproductions thereof), (ii) computers (including, but not limited to, laptop computers, desktop computers and similar devices) and other portable electronic devices (including, but not limited to, tablet computers), cellular phones/smartphones, credit cards, phone cards, entry cards, identification badges and keys, and (iii) any correspondence, drawings, manuals, letters, notes, notebooks, reports, programs, plans, proposals, financial documents, or any other documents concerning the customers, business plans, marketing strategies, products and/or processes of the Company or any of its affiliates and any information received from the Company or any of its affiliates regarding third parties.

4. Obligations of the Company upon Termination. Upon a termination of the Executive's employment for any reason, the Executive shall be paid, in a single lump-sum payment on the date of the Executive's termination of employment, the aggregate amount of the Executive's earned but unpaid Base Salary and accrued but unpaid vacation pay through the date of such termination (the "***Accrued Obligations***").

(a) Without Cause or For Good Reason. If the Executive's employment with the Company is terminated during the Employment Period (x) by the Company without Cause (other than by reason of the Executive's death or Disability or due to the expiration of the Employment Period) or (y) by the Executive for Good Reason (in either case, a "***Qualifying Termination***"), then following the Executive's Separation from Service (as defined below) (such date, the "***Date of Termination***"), in each case, subject to and conditioned upon compliance with Section 4(d) hereof, in addition to the Accrued Obligations:

(i) *Cash Severance*. The Company shall continue to pay to the Executive the sum of (A) the Executive's Base Salary in effect on the Date of Termination and (B) the Target Bonus for the year in which the Date of Termination occurs during the period beginning on the Date of Termination and ending on the 12 -month anniversary of the Date of Termination (the "***Severance Period***") in installments in accordance with the Company's regular payroll practices as of the Date of Termination;

(ii) *COBRA.* During the Severance Period, subject to the Executive's valid election to continue healthcare coverage under Section 4980B of the Internal Revenue Code and the regulations thereunder (together, the "***Code***"), the Company shall continue to provide the Executive and the Executive's eligible dependents with coverage under its group health plans at the same levels and the same cost to the Executive as would have applied if the Executive's employment had not been terminated based on the Executive's elections in effect on the Date of Termination (the "***COBRA Payments***"), provided, however, that (A) if any plan pursuant to which such benefits are provided is not, or ceases prior to the expiration of the period of continuation coverage to be, exempt from the application of Section 409A (as defined below) under Treasury Regulation Section 1.409A-1(a)(5), or (B) the Company is otherwise unable to continue to cover the Executive under its group health plans without incurring penalties (including without limitation, pursuant to Section 2716 of the Public Health Service Act or the Patient Protection and Affordable Care Act), then, in either case, an amount equal to each remaining Company subsidy shall thereafter be paid to the Executive in substantially equal monthly installments over the continuation coverage period (or the remaining portion thereof).

(iii) *Change in Control.* Notwithstanding the foregoing, if the Qualifying Termination occurs within the 12-month period following a Change in Control or within the 3-month period prior to a Change in Control, as defined in the Company's 2020 Incentive Award Plan, as amended (and such Change in Control constitutes a "change in control event" as defined in Treasury Regulations Section 1.409A-3(i)(5)), then in lieu of the foregoing payments set forth in Section 4(a)(i), the Company shall pay to the Executive the sum of (x) 18 -months of Executive's Base Salary in effect on the Date of Termination and (y) 1.5 times the Executive's Target Bonus for the year in which the Date of Termination occurs, during the period beginning on the 18-month anniversary of the Date of Termination (the "***Change in Control Severance Period***") in install ments in accordance with the Company's regular payroll practices as of the Date of Termination, and in lieu of the benefits set forth in Section 4(a)(ii), the Executive shall be entitled to the COBRA Payments during the Change in Control Severance Period. In addition, unless otherwise explicitly set forth in any award agreement, any unvested equity awards outstanding immediately prior to the Date of Termination shall automatically become fully vested and exercisable (as applicable).

Notwithstanding the foregoing, it shall be a condition to the Executive's right to receive the amounts provided for in Sections 4(a)(i), 4(a)(ii) and 4(a)(iii) hereof that the Executive execute and deliver to the Company an effective release of claims in substantially the form attached hereto as Exhibit B (the "***Release***") within twenty-one (21) days (or, to the extent required by law, forty-five (45) days) following the Date of Termination and that the Executive not revoke such Release during any applicable revocation period.

(b) For Cause, Without Good Reason or Other Terminations. If the Company terminates the Executive's employment for Cause, the Executive terminates the Executive's employment without Good Reason, or the Executive's employment terminates for any other reason not enumerated in Sections 4(a) or 4(b) hereof, in any case, during the Employment Period, or if the Executive's employment with the Company is terminated due to the expiration of the Employment Period, then, in any case, the Company shall pay to the Executive the Accrued Obligations in cash within thirty (30) days after the Date of Termination (or by such earlier date as may be required by applicable law), and the Executive shall have no further rights hereunder.

(c) Six-Month Delay. Notwithstanding anything to the contrary in this Agreement, no compensation or benefits, including without limitation any severance payments or benefits payable under Section 4 hereof, shall be paid to the Executive during the six (6)-month period following the Executive's "separation from service" from the Company (within the meaning of Section 409A, a "***Separation from Service***") if the Company determines that paying such amounts at the time or times indicated in this Agreement would be a prohibited distribution under Section 409A(a)(2)(B)(i) of the Code. If the payment of any such amounts is delayed as a result of the previous sentence, then on the first day of the seventh month following the date of Separation from Service (or such earlier date upon which such amount can be paid under Section 409A without resulting in a prohibited distribution, including as a result of the Executive's death), the Company shall pay the Executive a lump-sum amount equal to the cumulative amount that would have otherwise been payable to the Executive during such period.

(d) Exclusive Benefits. Except as expressly provided in this Section 4 and subject to Section 5 hereof, the Executive shall not be entitled to any additional payments or benefits upon or in connection with the Executive's termination of employment.

5. Non-Exclusivity of Rights. Amounts which are vested benefits or which the Executive is otherwise entitled to receive under any plan, policy, practice or program of or any contract or agreement with the Company at or subsequent to the Date of Termination shall be payable in accordance with such plan, policy, practice or program or contract or agreement except as explicitly modified by this Agreement.

6. Excess Parachute Payments, Limitation on Payments.

(a) Best Pay Cap. Notwithstanding any other provision of this Agreement, in the event that any payment or benefit received or to be received by the Executive (including any payment or benefit received in connection with a termination of the Executive's employment, whether pursuant to the terms of this Agreement or any other plan, arrangement or agreement) (all such payments and benefits, including the payments and benefits under Section 4 hereof, being hereinafter referred to as the "***Total Payments***") would be subject (in whole or part), to the excise tax imposed under Section 4999 of the Code (the "***Excise Tax***"), then, after taking into account any reduction in the Total Payments provided by reason of Section 280G of the Code in such other plan, arrangement or agreement, the cash severance payments under this Agreement shall first be reduced, and the noncash severance payments hereunder shall thereafter be reduced, to the extent necessary so that no portion of the Total Payments is subject to the Excise Tax but only if (i) the net amount of such Total Payments, as so reduced (and after subtracting the net amount of federal, state and local income taxes on such reduced Total Payments and after taking into account the phase out of itemized deductions and personal exemptions attributable to such reduced Total Payments) is greater than or equal to (ii) the net amount of such Total Payments without such reduction (but after subtracting the net amount of federal, state and local income taxes on such Total Payments and the amount of Excise Tax to which the Executive would be subject in respect of such unreduced Total Payments and after taking into account the phase out of itemized deductions and personal exemptions attributable to such unreduced Total Payments).

(b) Certain Exclusions. For purposes of determining whether and the extent to which the Total Payments will be subject to the Excise Tax, (i) no portion of the Total Payments the receipt or enjoyment of which the Executive shall have waived at such time and in such manner as not to constitute a "payment" within the meaning of Section 280G(b) of the Code shall be taken into account; (ii) no portion of the Total Payments shall be taken into account which, in the written opinion of an independent, nationally recognized accounting or consulting firm (the "***Independent Advisors***") selected by the Company, does not constitute a "parachute payment" within the meaning of Section 280G(b)(2) of the Code (including by reason of Section 280G(b)(4)(A) of the Code) and, in calculating the Excise Tax, no portion of such Total Payments shall be taken into account which, in the opinion of the Independent Advisors, constitutes reasonable compensation for services actually rendered, within the meaning of Section 280G(b)(4)(B) of the Code, in excess of the "base amount" (as defined in Section 280G(b)(3) of the Code) allocable to such reasonable compensation; and (iii) the value of any non-cash benefit or any deferred payment or benefit included in the Total Payments shall be determined by the Independent Advisors in accordance with the principles of Sections 280G(d)(3) and (4) of the Code.

7. Nondisclosure and Nonuse of Confidential Information.

(a) The Executive's employment creates a relationship of confidence and trust between the Company and the Executive with respect to any information that is applicable to the business of the Company or the affiliates, any information that is otherwise used, developed or obtained by the Company or any affiliate in connection with its business and any information that is applicable to the business of any client, customer or other commercial partner of the Company or the affiliates, which may be made known to the Executive or learned by the Executive in such context during the period of his employment with the Company. All such information, whether oral or written, has commercial value in the business in which the Company is engaged and is referred to herein as "***Confidential Information***".

(b) The Company owns all right, title and interest in and to all Confidential Information. The Executive hereby assigns to the Company all right, title and interest that he may have acquired or hereafter may acquire in all Confidential Information. The Executive shall, at all times, both during the Employment Period and after the termination of the Employment Period, keep in confidence and trust all Confidential Information and the Executive shall not use or disclose any Confidential Information except as may be necessary in the ordinary course of performing his duties as an employee of the Company. Upon termination of the Employment Period, or at any time upon the request of the Company before such termination, the Executive shall promptly (but no later than five (5) days after the earlier of such termination or such request) destroy or deliver to the Company, at the Company's option, all Confidential Information in the Executive's control or possession and a written certification of the Executive's compliance with such obligations.

(c) the Executive hereby represents and warrants to the Company that neither his performance of the terms of this Agreement nor his employment with the Company will breach or conflict with any agreement, understanding, policy or other arrangement that he is a party to or otherwise subject to or bound by (including, without limitation, any such agreement, understanding, policy or arrangement (i) relating to nondisclosure or nonuse of proprietary information, knowledge or data or (ii) that otherwise assigns, licenses or otherwise transfers any interest in or to any Company Innovation (as defined below) to person or entity other than the Company). The Executive shall not disclose to the Company or otherwise use any confidential or proprietary information or material belonging to any other person or entity.

(d) Notice of Immunity Under the Economic Espionage Act of 1996, as amended by the Defend Trade Secrets Act of 2016 ("***DTSA***"). Notwithstanding any other provision of this Agreement:

(e) the Executive will not be held criminally or civilly liable under any federal or state trade secret law for any disclosure of a trade secret that: (A) is made: (1) in confidence to a federal, state, or local government official, either directly or indirectly, or to an attorney; and (2) solely for the purpose of reporting or investigating a suspected violation of law; or (B) is made in a complaint or other document that is filed under seal in a lawsuit or other proceeding.

(f) If the Executive files a lawsuit for retaliation by the Company for reporting a suspected violation of law, the Executive may disclose the Company's trade secrets to the Executive's attorney and use the trade secret information in the court proceeding if the Executive: (A) files any document containing the trade secret under seal; and (B) does not disclose the trade secret, except pursuant to court order.

(g) the Executive shall (i) comply with all Company security policies and procedures as in force from time to time including, without limitation, those regarding computer equipment, telephone systems, voicemail systems, facilities access, monitoring, key cards, access codes, Company intranet, internet, social media and instant messaging systems, e-mail systems, document storage systems, software licenses, data security, encryption, firewalls and passwords (the "***Facilities and Information Technology Resources***"); (ii) not access or use any Facilities and Information Technology Resources except as authorized by the Company; and (iii) not access or use any Facilities and Information Technology Resources in any manner after the termination of the Executive's employment by the Company, whether termination is voluntary or involuntary.

8. Inventions and Proprietary Rights.

(a) the Executive represents and warrants to the Company that he does not have any right, title or interest in or to any Innovation (as defined below) applicable to the business of the Company or relating in any way to the Company's business or demonstrably anticipated research and development or business that were conceived, reduced to practice, created, derived, developed or made by the Executive prior to the date hereof.

(b) the Executive hereby agrees promptly to disclose and describe to the Company, and the Executive hereby assigns to the Company all right, title and interest in and to, each of the Innovations and all associated intellectual property rights that the Executive may solely or jointly conceive, reduce to practice, create, derive, develop or make during the period of his employment with the Company that (i) relate to the Company's or any affiliate's business or actual or demonstrably anticipated research or development, (ii) were developed on any amount of the Company's or any affiliate's time or with the use of any of the Company's or any affiliate's materials, equipment, supplies, facilities or information or (iii) resulted from any work that the Executive performed for the Company or any affiliate (collectively, the "***Company Innovations***"). the Executive further acknowledges and agrees that all Company Innovations, including, without limitation, any computer programs, programming documentation, and other works of authorship, are "works made for hire" for purposes of the Company's rights under copyright laws and the Executive hereby assigns to the Company any and all right, title and interest that the Executive may have acquired or may hereafter acquire in such Company Innovations. Any assignment of copyright hereunder includes all rights of paternity, integrity, disclosure and withdrawal and any other rights that may be known as or referred to as "moral rights" (collectively "***Moral Rights***"). To the extent that such Moral Rights cannot be assigned under applicable law and to the extent the following is allowed by the laws in the various countries where Moral Rights exist, the Executive hereby waives such Moral Rights and consents to any action of the Company and the affiliates that would violate such Moral Rights in the absence of such consent. The Executive shall confirm any such waivers and consents from time to time as requested by the Company. To the extent that any right, title or interest in or to any Company Innovation cannot be assigned by the Executive to the Company, the Executive hereby grants to the Company an exclusive, royalty-free, transferable, irrevocable, worldwide license (with rights to sublicense through multiple tiers of sublicensees) to practice such non-assignable right, title or interest. To the extent that any right, title or interest in or to any Company Innovation can be neither assigned nor licensed by the Executive to the Company, the Executive hereby irrevocably waives and agrees never to assert such non-assignable and non-licensable right, title or interest against the Company, any affiliate or any of their successors in interest to such non-assignable and non-licensable rights.

(c) the Executive recognizes that Innovations and Confidential Information relating to his activities while working for the Company and conceived, reduced to practice, created, derived, developed or made by the Executive, alone or with others, within six (6) months after termination of his employment with the Company may have been conceived, reduced to practice, created, derived, developed or made, as applicable, in significant part while employed by the Company. Accordingly, the Executive agrees that such Innovations and Confidential Information shall be presumed to have been conceived, reduced to practice, created, derived, developed or made, as applicable, during his employment with the Company and shall be assigned to the Company unless and until the Executive has established the contrary by written evidence satisfying the clear and convincing standard of proof.

(d) the Executive shall perform, during and after his employment with the Company, all acts deemed necessary or desirable by the Company to permit and assist the Company, at the Company's expense, in obtaining and enforcing the full benefits, enjoyment, rights and title throughout the world in the Confidential Information and Innovations assigned or licensed to, or whose rights are irrevocably waived and shall not be asserted against, the Company and the affiliates under this Agreement. Such acts may include, but are not limited to, execution of documents and assistance or cooperation (i) in the filing, prosecution, registration, and memorialization of assignment of any applicable patents, copyrights, mask works or other applications, (ii) in the enforcement of any applicable patents, copyrights, mask works, Moral Rights, trade secrets or other rights, and (iii) in other legal proceedings related to the Confidential Information or Innovations.

(e) In the event that the Company is unable for any reason to secure the Executive's signature to any document required to file, prosecute, register, or memorialize the assignment of any patent, copyright, mask work or other applications or to enforce any patent, copyright, mask work, Moral Right, trade secret or other right under any Confidential Information (including improvements thereof) or any Innovations (including derivative works, improvements, renewals, extensions, continuations, divisionals, continuations in part, continuing patent applications, reissues, and reexaminations thereof), the Executive hereby irrevocably designates and appoints the Company and the Company's duly authorized officers and agents as his agents and attorneys-in-fact to act for and on his behalf and instead of the Executive (i) to execute, file, prosecute, register and memorialize the assignment of any such application, (ii) to execute and file any documentation required for such enforcement and (iii) to do all other lawfully permitted acts to further the filing, prosecution, registration, memorialization of assignment, issuance, and enforcement of patents, copyrights, mask works, Moral Rights, trade secrets or other rights under the Confidential Information or Innovations, all with the same legal force and effect as if executed by the Executive.

(f) The term "***Innovations***" means all processes, improvements, inventions (whether or not protectable under patent laws), works of authorship, information fixed in any tangible medium of expression (whether or not protectable under copyright laws), moral rights, mask works, trademarks, trade names, trade dress, trade secrets, know-how, ideas (whether or not protectable under trade secret laws) and all other subject matter protectable under patent, copyright, moral right, mask work, trademark, trade secret or other laws and includes, without limitation, all new or useful art, combinations, designs, developments, modifications, derivative works, discoveries, formulae, techniques and all goodwill associated with any of the foregoing.

(g) The Executive hereby irrevocably consents to any and all uses and displays, by the Company and its affiliates, agents, representatives and licensees, of the Executive's name, voice, likeness, image, appearance, and biographical information in, on or in connection with any pictures, photographs, audio and video recordings, digital images, websites, television programs and advertising, other advertising and publicity, sales and marketing brochures, books, magazines, other publications, CDs, DVDs, tapes, and all other printed and electronic forms and media throughout the world, at any time during or after the period of his employment by the Company, for all legitimate commercial and business purposes of the Company ("***Permitted Uses***") without further consent from or royalty, payment, or other compensation to the Executive. the Executive hereby forever waives and releases the Company and its directors, managing members, officers, employees and agents from any and all claims, actions, damages, losses, costs, expenses, and liability of any kind, arising under any legal or equitable theory whatsoever at any time during or after the period of his employment by the Company, arising directly or indirectly from the Company's and its affiliates', agents', representatives' and licensees' exercise of their rights in connection with any Permitted Uses.

9. Non-Compete; Non-Solicitation.

(a) The Executive acknowledges that, in the course of his employment with the Company and/or the Restricted Affiliates (as defined below), he has become familiar, or will become familiar, with trade secrets and with other confidential information concerning the Company and the Restricted Affiliates and that his services have been and will be of special, unique and extraordinary value to the Company and the Restricted Affiliates. the Executive understands that the following restrictions may limit his ability to earn a livelihood in a business similar to the business of the Company or any of the Restricted Affiliates, but he nevertheless believes that he will receive sufficient consideration and other benefits as an equity holder and an employee of the Company and as otherwise provided hereunder to clearly justify such restrictions which, in any event (given his education, skills and ability), the Executive does not believe would prevent him from otherwise earning a living. The Executive further understands that the provisions of Sections 7 through 9, inclusive, are reasonable and necessary to preserve the business of the Company and the Restricted Affiliates. "***Restricted Affiliate***" means any affiliate for which, during the twenty-four (24) month period preceding the Termination Date, the Executive served as an officer or director or the Executive provided any material services.

(b) In light of Section 9(a), the Executive agrees that while the Executive is employed by the Company, he shall not directly or indirectly own, manage, operate, control, finance or invest in, participate in, consult with, render services for, act as an officer, director, manager, partner, principal, agent, representative, contractor or advisor of or to, or in any manner engage in or be associated with, hold any interest in, be employed by or represent any other business competing with the businesses or the services or products of the Company or the Restricted Affiliates as such businesses and/or services or products exist or are in the process of being formed, developed or acquired as of the Termination Date. Nothing herein shall prohibit the Executive from being a passive owner of not more than one percent (1%) of the outstanding stock of any class of a corporation which is publicly traded, so long as the Executive has no active participation in the business of such corporation.

(c) Furthermore, in light of Section 9(a), the Executive agrees that:

(i) while the Executive is employed by the Company and for twelve (12) months thereafter, the Executive shall not directly or indirectly through another person or entity: (x) induce or attempt to induce any employee or independent contractor of the Company or any Restricted Affiliate to leave the employ of or engagement with the Company or such Restricted Affiliate, or in any way interfere with the relationship between the Company or any such Restricted Affiliate, on the one hand, and any employee or independent contractor thereof, on the other hand; or (y) hire or engage any person who was an employee or independent contractor of the Company until twelve months after such individual's relationship with the Company or any Restricted Affiliate has been terminated; and

(ii) while the Executive is employed by the Company, the Executive shall not directly or indirectly through another person or entity: (x) induce or attempt to induce any customer (it being understood that the term "customer" as used throughout this Agreement includes any person or entity that is receiving services from the Company or any Restricted Affiliate or that is directly or indirectly providing or referring business for the Company or any Restricted Affiliate), supplier, independent contractor, licensee or other business relation of the Company or any Restricted Affiliate to cease doing business with the Company or any Restricted Affiliate, or in any way interfere with the relationship between any such customer, supplier, independent contractor, licensee or business relation, on the one hand, and the Company or any Restricted Affiliate, on the other hand; or (y) solicit any customer of the Company or any Restricted Affiliate in order to offer products or services similar to those offered by the Company or any Restricted Affiliate.

(d) The Executive shall inform any prospective or future employer of any and all restrictions contained in this Agreement and provide such employer with a copy of such restrictions (but no other terms of this Agreement) prior to the commencement of that employment.

(e) If, at the time of enforcement of Section 9, a court holds that the restrictions stated herein are unreasonable under the circumstances then existing, the Executive and the Company agree that the maximum period, scope or geographical area reasonable under such circumstances shall be substituted for the stated period, scope or area so as to protect the Company to the greatest extent possible under applicable law from improper competition.

(f) In the event of any breach or violation by the Executive of any of the restrictions contained in Section 9, any time period specified herein shall abate during the time of any such breach or violation thereof and that portion remaining at the time of commencement of any such breach or violation shall not begin to run until such breach or violation has been cured in all respects.

10. Enforcement. Because the Executive's services are unique and because the Executive has access to Confidential Information and Company Innovations, the parties hereto agree that monetary damages alone would be an inadequate remedy for any breach of this Agreement. Therefore, in the event of a breach or threatened breach of this Agreement, the Company or its successors or assigns may, in addition to other rights and remedies existing in their favor at law or in equity, apply to any court of competent jurisdiction for specific performance and/or injunctive or other relief in order to enforce, or prevent any violations of, the provisions hereof (without posting a bond or other security) or require the Executive to account for and pay over to the Company all compensation, profits, moneys, accruals, increments or other benefits derived from or received as a result of any transactions constituting a breach of the covenants contained in this Agreement, if and when final judgment of a count of competent jurisdiction is so entered against the Executive. The rights and remedies of the Company under this Agreement are not exclusive of or limited by any other rights or remedies which they may have, whether at law, in equity, by contract or otherwise, all of which shall be cumulative (and not alternative). Without limiting the generality of the foregoing, the rights and remedies of the Company under this Agreement, and the obligations and liabilities of the Executive under this Agreement, are in addition to their respective rights, remedies, obligations and liabilities under the laws of unfair competition, laws relating to misappropriation of trade secrets and all other laws, rules and regulations. No failure on the part of any person or entity to exercise any power, right, privilege or remedy under this Agreement, and no delay on the part of any person or entity 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. No person or entity 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 or entity; and any such waiver shall not be applicable or have any effect except in the specific instance in which it is given.

11. Representations. The Executive hereby represents and warrants to the Company that (a) the Executive is entering into this Agreement voluntarily and that the performance of the Executive's obligations hereunder will not violate any agreement between the Executive and any other person, firm, organization or other entity, and (b) the Executive is not bound by the terms of any agreement with any previous employer or other party to refrain from competing, directly or indirectly, with the business of such previous employer or other party that would be violated by the Executive's entering into this Agreement and/or providing services to the Company pursuant to the terms of this Agreement.

12. Successors.

(a) This Agreement is personal to the Executive and, without the prior written consent of the Company, shall not be assignable by the Executive otherwise than by will or the laws of descent and distribution. This Agreement shall inure to the benefit of and be enforceable by the Executive's legal representatives.

(b) This Agreement shall inure to the benefit of and be binding upon the Company and its successors and assigns.

(c) The Company will require any successor (whether direct or indirect, by purchase, merger, consolidation or otherwise) to all or substantially all of the business and/or assets of the Company to assume and agree to perform this Agreement in the same manner and to the same extent that the Company would be required to perform it if no such succession had taken place. As used in this Agreement, "Company" shall mean the Company as hereinbefore defined and any successor to its business and/or assets as aforesaid which assumes and agrees to perform this Agreement by operation of law, or otherwise.

13. Miscellaneous.

(a) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Maryland, without reference to principles of conflict of laws. The captions of this Agreement are not part of the provisions hereof and shall have no force or effect.

(b) Compensation Recovery Policy. Executive acknowledges and agrees that, to the extent the Company adopts any claw-back or similar policy pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act or otherwise, and any rules and regulations promulgated thereunder, he or she shall take all action necessary or appropriate to comply with such policy (including, without limitation, entering into any further agreements, amendments or policies necessary or appropriate to implement and/or enforce such policy with respect to past, present and future compensation, as appropriate).

(c) Whistleblower Protections and Trade Secrets. Notwithstanding anything to the contrary contained herein, nothing in this Agreement prohibits Executive from reporting possible violations of federal law or regulation to any United States governmental agency or entity in accordance with the provisions of and rules promulgated under Section 21F of the Securities Exchange Act of 1934 or Section 806 of the Sarbanes-Oxley Act of 2002, or any other whistleblower protection provisions of state or federal law or regulation (including the right to receive an award for information provided to any such government agencies). Furthermore, in accordance with 18 U.S.C. § 1833, notwithstanding anything to the contrary in this Agreement: (i) Executive shall not be in breach of this Agreement, and shall not be held criminally or civilly liable under any federal or state trade secret law (A) for the disclosure of a trade secret that is made in confidence to a federal, state, or local government official or to an attorney solely for the purpose of reporting or investigating a suspected violation of law, or (B) for the disclosure of a trade secret that is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal; and (ii) if Executive files a lawsuit for retaliation by the Company for reporting a suspected violation of law, Executive may disclose the trade secret to Executive's attorney, and may use the trade secret information in the court proceeding, if Executive files any document containing the trade secret under seal, and does not disclose the trade secret, except pursuant to court order.

(d) Notices. All notices and other communications hereunder shall be in writing and shall be given by hand delivery to the other party or by registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

If to the Executive: at the Executive's most recent address on the records of the Company.

If to the Company:

Azyio Biologics, Inc.
12510 Prosperity Drive
Suite 1-370
Silver Spring, MD 20904
Attention: Board of Directors

with a copy to:

Latham & Watkins LLP
885 Third Avenue
New York, NY 10022-4802
Attn: [XXX]

or to such other address as either party shall have furnished to the other in writing in accordance herewith. Notice and communications shall be effective when actually received by the addressee.

(e) Sarbanes-Oxley Act of 2002. Notwithstanding anything herein to the contrary, if the Company determines, in its good faith judgment, that any transfer or deemed transfer of funds hereunder is likely to be construed as a personal loan prohibited by Section 13(k) of the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder (the "***Exchange Act***"), then such transfer or deemed transfer shall not be made to the extent necessary or appropriate so as not to violate the Exchange Act and the rules and regulations promulgated thereunder.

(f) Section 409A of the Code.

(i) To the extent applicable, this Agreement shall be interpreted in accordance with Section 409A of the Code and Department of Treasury regulations and other interpretive guidance issued thereunder (together, "***Section 409A***"). Notwithstanding any provision of this Agreement to the contrary, if the Company determines that any compensation or benefits payable under this Agreement may be subject to Section 409A, the Company shall work in good faith with the Executive to adopt such amendments to this Agreement or adopt other policies and procedures (including amendments, policies and procedures with retroactive effect), or take any other actions, that the Company determines are necessary or appropriate to avoid the imposition of taxes under Section 409A, including without limitation, actions intended to (i) exempt the compensation and benefits payable under this Agreement from Section 409A, and/or (ii) comply with the requirements of Section 409A; provided, however, that this Section 10(d) shall not create an obligation on the part of the Company to adopt any such amendment, policy or procedure or take any such other action, nor shall the Company have any liability for failing to do so.

(ii) Any right to a series of installment payments pursuant to this Agreement is to be treated as a right to a series of separate payments. To the extent permitted under Section 409A, any separate payment or benefit under this Agreement or otherwise shall not be deemed "nonqualified deferred compensation" subject to Section 409A to the extent provided in the exceptions in Treasury Regulation Section 1.409A-1(b)(4), Section 1.409A-1(b)(9) or any other applicable exception or provision of Section 409A. Any payments subject to Section 409A that are subject to execution of a waiver and release which may be executed and/or revoked in a calendar year following the calendar year in which the payment event (such as termination of employment) occurs shall commence payment only in the calendar year in which the consideration period or, if applicable, release revocation period ends, as necessary to comply with Section 409A. All payments of nonqualified deferred compensation subject to Section 409A to be made upon a termination of employment under this Agreement may only be made upon Employee's "separation from service" from the Company (within the meaning of Section 409A, a "Separation from Service").

(iii) To the extent that any payments or reimbursements provided to the Executive under this Agreement are deemed to constitute compensation to the Executive to which Treasury Regulation Section 1.409A-3(i)(1)(iv) would apply, such amounts shall be paid or reimbursed reasonably promptly, but not later than December 31 of the year following the year in which the expense was incurred. The amount of any such payments eligible for reimbursement in one year shall not affect the payments or expenses that are eligible for payment or reimbursement in any other taxable year, and the Executive's right to such payments or reimbursement of any such expenses shall not be subject to liquidation or exchange for any other benefit.

(g) Severability. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement.

(h) Withholding. The Company may withhold from any amounts payable under this Agreement such federal, state, local or foreign taxes as shall be required to be withheld pursuant to any applicable law or regulation.

(i) No Waiver. The Executive's or the Company's failure to insist upon strict compliance with any provision of this Agreement or the failure to assert any right the Executive or the Company may have hereunder, including, without limitation, the right of the Executive to terminate employment for Good Reason pursuant to Section 3(c) hereof, shall not be deemed to be a waiver of such provision or right or any other provision or right of this Agreement.

(j) Entire Agreement. As of the Effective Date, this Agreement constitutes the final, complete and exclusive agreement between the Executive and the Company with respect to the subject matter hereof and replaces and supersedes any and all other agreements, offers or promises, whether oral or written, by any member of the Company and its subsidiaries or affiliates, or representative thereof, including without limitation Prior Agreement.

(k) Amendment. No amendment or other modification of this Agreement shall be effective unless made in writing and signed by the parties hereto.

(l) Counterparts. This Agreement and any agreement referenced herein may be executed simultaneously in two or more counterparts, each of which shall be deemed an original but which together shall constitute one and the same instrument.

[**SIGNATURES APPEAR ON FOLLOWING PAGE**]

IN WITNESS WHEREOF, the Executive has hereunto set the Executive's hand and, pursuant to the authorization from the Board, the Company has caused these presents to be executed in its name on its behalf, all as of the day and year first above written.

AZIYO BIOLOGICS, INC.

By: /s/ Kevin Rakin
Name: Kevin Rakin
Title: Chairman of the Board

"EXECUTIVE"
/s/ Ronald Lloyd
Ronald Lloyd

EXHIBIT A

1. Member, Board of Directors for Biom'up International LLC, a private company wholly owned by affiliates of Athyrium Capital Management, LP.

EXHIBIT B

GENERAL RELEASE

For valuable consideration, the receipt and adequacy of which are hereby acknowledged, the undersigned does hereby release and forever discharge the "***Releasees***" hereunder, consisting of Aziyo Biologics, Inc., and its partners, subsidiaries, associates, affiliates, successors, heirs, assigns, agents, directors, officers, employees, representatives, lawyers, insurers, and all persons acting by, through, under or in concert with them, or any of them, of and from any and all manner of action or actions, cause or causes of action, in law or in equity, suits, debts, liens, contracts, agreements, promises, liability, claims, demands, damages, losses, costs, attorneys' fees or expenses, of any nature whatsoever, known or unknown, fixed or contingent (hereinafter called "***Claims***"), which the undersigned now has or may hereafter have against the Releasees, or any of them, by reason of any matter, cause, or thing whatsoever from the beginning of time to the date hereof. The Claims released herein include, without limiting the generality of the foregoing, any Claims in any way arising out of, based upon, or related to the employment or termination of employment of the undersigned by the Releasees, or any of them; any alleged breach of any express or implied contract of employment; any alleged torts or other alleged legal restrictions on Releasees' right to terminate the employment of the undersigned; and any alleged violation of any federal, state or local statute or ordinance including, without limitation, Title VII of the Civil Rights Act of 1964, the Age Discrimination In Employment Act, the Americans With Disabilities Act, and [__].[1] Notwithstanding the foregoing, this general release (the "***Release***") shall not operate to release any rights or claims of the undersigned (i) to payments or benefits under Section 4(a) of that certain Employment Agreement, effective as of [Ÿ], between Aziyo Biologics, Inc. and the undersigned (the "***Employment Agreement***"), (ii) to payments or benefits under any equity award agreement between the undersigned and the Company, (iii) with respect to Section 2(b)(iv) of the Employment Agreement, (iv) to accrued or vested benefits the undersigned may have, if any, as of the date hereof under any applicable plan, policy, practice, program, contract or agreement with the Company, (v) to any Claims, including claims for indemnification and/or advancement of expenses arising under any indemnification agreement between the undersigned and the Company or under the bylaws, certificate of incorporation or other similar governing document of the Company, (vi) to any Claims which cannot be waived by an employee under applicable law or (vii) with respect to the undersigned's right to communicate directly with, cooperate with, or provide information to, any federal, state or local government regulator.

[IN ACCORDANCE WITH THE OLDER WORKERS BENEFIT PROTECTION ACT OF 1990, THE UNDERSIGNED IS HEREBY ADVISED AS FOLLOWS:

(A) THE EXECUTIVE HAS THE RIGHT TO CONSULT WITH AN ATTORNEY BEFORE SIGNING THIS RELEASE;

(B) THE EXECUTIVE HAS TWENTY-ONE (21) DAYS TO CONSIDER THIS RELEASE BEFORE SIGNING IT; AND

(C) THE EXECUTIVE HAS SEVEN (7) DAYS AFTER SIGNING THIS RELEASE TO REVOKE THIS RELEASE, AND THIS RELEASE WILL BECOME EFFECTIVE UPON THE EXPIRATION OF THAT REVOCATION PERIOD.]

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[1] Applicable state law references to be included.

The undersigned represents and warrants that there has been no assignment or other transfer of any interest in any Claim which the Executive may have against Releasees, or any of them, and the undersigned agrees to indemnify and hold Releasees, and each of them, harmless from any liability, Claims, demands, damages, costs, expenses and attorneys' fees incurred by Releasees, or any of them, as the result of any such assignment or transfer or any rights or Claims under any such assignment or transfer. It is the intention of the parties that this indemnity does not require payment as a condition precedent to recovery by the Releasees against the undersigned under this indemnity.

Notwithstanding anything herein, the undersigned acknowledges and agrees that, pursuant to 18 USC Section 1833(b), the undersigned will not be held criminally or civilly liable under any federal or state trade secret law for the disclosure of a trade secret that is made: (i) in confidence to a federal, state, or local government official, either directly or indirectly, or to an attorney, and solely for the purpose of reporting or investigating a suspected violation of law; or (ii) in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal.

The undersigned agrees that if the Executive hereafter commences any suit arising out of, based upon, or relating to any of the Claims released hereunder or in any manner asserts against Releasees, or any of them, any of the Claims released hereunder, then the undersigned agrees to pay to Releasees, and each of them, in addition to any other damages caused to Releasees thereby, all attorneys' fees incurred by Releasees in defending or otherwise responding to said suit or Claim.

The undersigned further understands and agrees that neither the payment of any sum of money nor the execution of this Release shall constitute or be construed as an admission of any liability whatsoever by the Releasees, or any of them, who have consistently taken the position that they have no liability whatsoever to the undersigned.

IN WITNESS WHEREOF, the undersigned has executed this Release this ____ day of _____, ____.

_____

EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT (this "***Agreement***"), entered into as of September 30, 2020, is made by and between Aziyo Biologics, Inc. (the "***Company***") and Thomas Englese (the "***Executive***") (collectively referred to herein as the "***Parties***").

WHEREAS, the Executive is currently employed by the Company as its Chief Commercial Officer pursuant to the terms of that certain Offer Letter by and between the Parties, dated as of June 25, 2019 (the "***Prior Agreement***");

WHEREAS, the Company is contemplating an initial public offering of its Class A common stock pursuant to an effective registration statement filed under the Securities Act of 1933, as amended (the "***IPO***");

WHEREAS, in connection with the IPO, the Company desires to assure itself of the continued services of the Executive by engaging the Executive to perform services under the terms hereof;

WHEREAS, the Executive desires to provide services to the Company on the terms herein provided; and

WHEREAS, the Parties desire to have this Agreement become effective, and supersede the Prior Agreement, as the date of the consummation of the IPO (the "***Effective Date***").

NOW, THEREFORE, IT IS HEREBY AGREED AS FOLLOWS:

1. Employment Period. Subject to the provisions for earlier termination hereinafter provided, the initial term of the Executive's employment hereunder shall be for a term (the "***Initial Employment Period***") commencing on the Effective Date and ending on the second anniversary of the Effective Date. The Initial Employment Period shall automatically be extended for successive one-year periods (each, an "***Extension Employment Period***" and, together with the Initial Employment Period, the "***Employment Period***"), unless either Party gives written notice of non-extension to the other no later than ninety (90) days prior to the expiration of the then-applicable Employment Period, in which case Executive's employment will terminate at the end of the then-applicable Employment Period, subject to earlier termination as provided in Section 4 below.

2. Terms of Employment.

(a) Position and Duties.

(i) Role and Responsibilities. During the Employment Period, the Executive shall serve as Chief Commercial Officer of the Company, and shall perform such employment duties as are usual and customary for such positions. The Executive shall report directly to the Chief Executive Officer of the Company (or his or her designee). At the Company's request, the Executive shall serve the Company and/or its subsidiaries and affiliates in other capacities in addition to the foregoing, consistent with the Executive's position as Chief Commercial Officer of the Company. In the event that the Executive, during the Employment Period, serves in any one or more of such additional capacities, the Executive's compensation shall not be increased beyond that specified in Section 2(b) hereof. In addition, in the event the Executive's service in one or more of such additional capacities is terminated, the Executive's compensation, as specified in Section 2(b) hereof, shall not be diminished or reduced in any manner as a result of such termination provided that the Executive otherwise remains employed under the terms of this Agreement.

(ii) Exclusivity. During the Employment Period, and excluding any periods of vacation and sick leave to which the Executive may be entitled, the Executive agrees to devote his or her full business time and attention to the business and affairs of the Company. Notwithstanding the foregoing, during the Employment Period, it shall not be a violation of this Agreement for the Executive to: (A) serve on boards, committees or similar bodies of charitable or nonprofit organizations or other companies, (B) fulfill limited teaching, speaking and writing engagements, and (C) manage his or her personal investments, in each case, so long as such activities do not individually or in the aggregate materially interfere or conflict with the performance of the Executive's duties and responsibilities under this Agreement; provided, that with respect to the activities in subclauses (A) and/or (B), the Executive receives prior written approval from the Chief Executive Officer. Exhibit A of this Agreement sets forth the board of directors or advisory boards on which the Executive currently serves.

(iii) Principal Location. During the Employment Period, the Executive shall perform the services required by this Agreement at the Company's principal offices located in Silver Spring, Maryland or such other location mutually agreed upon by the Company and the Executive (the "***Principal Location***"), except for travel to other locations as may be necessary to fulfill the Executive's duties and responsibilities hereunder.

(b) Compensation, Benefits, Etc.

(i) Base Salary. During the Employment Period, the Executive shall receive a base salary (the "***Base Salary***") of $380,600 per annum. The Base Salary shall be reviewed annually by the Compensation Committee (the "***Compensation Committee***") of the Board of Directors of the Company (the "***Board***") and may be increased from time to time by the Compensation Committee in its sole discretion. The Base Salary shall be paid in accordance with the Company's normal payroll practices for executive salaries generally, but no less often than monthly. The Base Salary may be increased in the Compensation Committee's discretion, but not reduced, and the term "Base Salary" as utilized in this Agreement shall refer to the Base Salary as so increased.

(ii) Annual Cash Bonus. In addition to the Base Salary, the Executive shall be eligible to earn, for each fiscal year of the Company ending during the Employment Period, a discretionary cash performance bonus (an "***Annual Bonus***") under the Company's bonus plan or program applicable to senior executives. The Executive's target Annual Bonus shall be set at 45% of the Base Salary actually paid for such year (the "***Target Bonus***"). The actual amount of any Annual Bonus shall be determined by reference to the attainment of Company performance metrics and/or individual performance objectives, in each case, as determined by the Compensation Committee, and may be greater or less than the Target Bonus (or zero). Subject to Section 4(a)(i) hereof, payment of any Annual Bonus(es), to the extent any Annual Bonus(es) become payable, will be contingent upon the Executive's continued employment through the applicable payment date. The Company will pay any such bonus that has been duly earned and awarded by the Board as soon as administratively possible following its approval by the Board and, in any event, no later than the later of (i) the fifteenth day of the third month after the end of the Company's fiscal year in which such bonus is earned or (ii) March 15 following the calendar year in which such bonus is earned.

(iii) Benefits. During the Employment Period, the Executive (and the Executive's spouse and/or eligible dependents to the extent provided in the applicable plans and programs) shall be eligible to participate in and be covered under the health and welfare benefit plans and programs maintained by the Company for the benefit of its employees from time to time, pursuant to the terms of such plans and programs including any medical and dental insurance plans and programs. During the Employment Period, the Company shall provide the Executive and the Executive's eligible dependents with coverage under its group health plans. In addition, during the Employment Period, Executive shall be eligible to participate in any retirement, savings and other employee benefit plans and programs maintained from time to time by the Company for the benefit of its senior executive officers. Nothing contained in this Section 2(b)(iii) shall create or be deemed to create any obligation on the part of the Company to adopt or maintain any health, welfare, retirement or other benefit plan or program at any time or to create any limitation on the Company's ability to modify or terminate any such plan or program.

(iv) Expenses. During the Employment Period, the Executive shall be entitled to receive prompt reimbursement for all reasonable business expenses incurred by the Executive in accordance with the policies, practices and procedures of the Company provided to employees of the Company.

(v) Fringe Benefits. During the Employment Period, the Executive shall be eligible to receive such fringe benefits and perquisites as are provided by the Company to its employees from time to time, in accordance with the policies, practices and procedures of the Company, and shall receive such additional fringe benefits and perquisites as the Company may, in its discretion, from time-to-time provide.

(vi) Vacation. During the Employment Period, the Executive shall be entitled to paid vacation in accordance with the plans, policies, programs and practices of the Company applicable to its senior executives in effect from time to time, but in no event shall the Executive be entitled to less than four (4) weeks of vacation per calendar year (pro-rated for any partial year of service).

3. Termination of Employment.

(a) Death or Disability. The Executive's employment shall terminate automatically upon the Executive's death during the Employment Period. Either the Company or the Executive may terminate the Executive's employment in the event of the Executive's Disability during the Employment Period. For purposes of this Agreement, "***Disability***" shall mean any disability or incapacity that (i) renders Executive unable to substantially perform his duties hereunder for ninety (90) days during any 12-month period or (ii) would reasonably be expected to render Executive unable to substantially perform his duties for ninety (90) days during any 12-month period, in each case as determined by the Board in its good faith judgment.

(b) Termination by the Company. The Company may terminate the Executive's employment during the Employment Period for Cause or without Cause. For purposes of this Agreement, "***Cause***" shall mean the occurrence of any one or more of the following events unless, to the extent capable of correction, the Executive fully corrects the circumstances constituting Cause within fifteen (15) days after receipt of the Notice of Termination (as defined below):

(i) Executive performing his duties, in the good faith opinion of the Board, in a grossly negligent or reckless manner or with willful malfeasance;

(ii) Executive exhibiting habitual drunkenness or engaging in substance abuse;

(iii) Executive committing any material violation of any state or federal law relating to the workplace environment (including, without limitation, laws relating to sexual harassment or age, sex or other prohibited discrimination) or any material violation of any Company policy;

(iv) Executive willfully failing or refusing to perform in the usual manner at the usual time those duties which he regularly and routinely performs in connection with the business of the Company or such other duties reasonably related to the capacity in which he is employed hereunder which may be assigned to him by the Board;

(v) Executive performing any material action when specifically and reasonably instructed not to do so by the Chairman or the Board;

(vi) Executive breaching Sections 7, 8 and 9 hereof;

(vii) Executive committing any fraud or using or appropriating for his or her personal use or benefit any funds, properties or opportunities of the Company not authorized by the Board to be so used or appropriated; or

(viii) Executive being convicted of any felony or any other crime related to his employment or involving moral turpitude.

The Company shall not be entitled to terminate Executive for Cause pursuant to clause (iii), (iv), (v) or (vi) unless the Company provides written notice stating in reasonable detail the basis for termination and a fifteen (15) day opportunity to cure to Executive (unless (1) the Company reasonably determines that providing such opportunity to cure to Executive is reasonably likely to have a material adverse effect on its business, financial condition, results of operations, prospects or assets, (2) the facts and circumstances underlying such termination are not able to be cured or (3) the Company has previously provided Executive an opportunity to cure the applicable issue; in the case of (1), (2) or (3), the Company may terminate Executive without providing an opportunity to cure).

(c) Termination by the Executive. The Executive's employment may be terminated by the Executive for any reason, including with Good Reason or by the Executive without Good Reason. For purposes of this Agreement, "***Good Reason***" shall mean the occurrence of any one or more of the following events without the Executive's prior written consent, unless the Company fully corrects the circumstances constituting Good Reason (provided such circumstances are capable of correction) as provided below:

(i) A material reduction in the Executive's job responsibilities and duties for the Company;

(ii) A material reduction in the Executive's Base Salary; or

(iii) a requirement imposed by the Company on the Executive that Executive's principal place of employment be anywhere other than within a 50 mile radius of the Executive's Principal Location, except for required travel on Company business to an extent substantially consistent with Executive's business travel obligations, that, in any such case, is not cured by the Company within fifteen (15) days after the Company's receipt of written notice from the Executive of such event.

Notwithstanding the foregoing, the Executive will not be deemed to have resigned for Good Reason unless (1) the Executive provides the Company with written notice setting forth in reasonable detail the facts and circumstances claimed by the Executive to constitute Good Reason within sixty (60) days after the date of the occurrence of any event that the Executive knows or should reasonably have known to constitute Good Reason, (2) the Company fails to cure such acts or omissions within thirty (30) days following its receipt of such notice, and (3) the effective date of the Executive's termination for Good Reason occurs no later than sixty (60) days after the expiration of the Company's cure period.

(d) Notice of Termination. Any termination by the Company for Cause, or by the Executive for Good Reason, shall be communicated by a Notice of Termination to the other parties hereto given in accordance with Section 13(d) hereof. For purposes of this Agreement, a "***Notice of Termination***" means a written notice which (i) indicates the specific termination provision in this Agreement relied upon, (ii) sets forth in reasonable detail the facts and circumstances claimed to provide a basis for termination of the Executive's employment under the provision so indicated and (iii) if the Date of Termination (as defined below) is other than the date of receipt of such notice, specifies the termination date (which date shall be not more than thirty (30) days after the giving of such notice). The failure by the Executive or the Company to set forth in the Notice of Termination any fact or circumstance which contributes to a showing of Good Reason or Cause shall not waive any right of the Executive or the Company, respectively, hereunder or preclude the Executive or the Company, respectively, from asserting such fact or circumstance in enforcing the Executive's or the Company's rights hereunder.

(e) Termination of Offices and Directorships; Return of Property. Upon termination of the Executive's employment for any reason, unless otherwise specified in a written agreement between the Executive and the Company, the Executive shall be deemed to have resigned from all offices, directorships, and other employment positions if any, then held with the Company, and shall take all actions reasonably requested by the Company to effectuate the foregoing. In addition, upon the termination of the Executive's employment for any reason, the Executive agrees to return to the Company all documents of the Company and its affiliates (and all copies thereof) and all other Company or Company affiliate property that the Executive has in his or her possession, custody or control. Such property includes, without limitation: (i) any materials of any kind that the Executive knows contain or embody any proprietary or confidential information of the Company or an affiliate of the Company (and all reproductions thereof), (ii) computers (including, but not limited to, laptop computers, desktop computers and similar devices) and other portable electronic devices (including, but not limited to, tablet computers), cellular phones/smartphones, credit cards, phone cards, entry cards, identification badges and keys, and (iii) any correspondence, drawings, manuals, letters, notes, notebooks, reports, programs, plans, proposals, financial documents, or any other documents concerning the customers, business plans, marketing strategies, products and/or processes of the Company or any of its affiliates and any information received from the Company or any of its affiliates regarding third parties.

4. Obligations of the Company upon Termination. Upon a termination of the Executive's employment for any reason, the Executive shall be paid, in a single lump-sum payment on the date of the Executive's termination of employment, the aggregate amount of the Executive's earned but unpaid Base Salary and accrued but unpaid vacation pay through the date of such termination (the "***Accrued Obligations***").

(a) Without Cause or For Good Reason. If the Executive's employment with the Company is terminated during the Employment Period (x) by the Company without Cause (other than by reason of the Executive's death or Disability or due to the expiration of the Employment Period) or (y) by the Executive for Good Reason (in either case, a "***Qualifying Termination***"), then following the Executive's Separation from Service (as defined below) (such date, the "***Date of Termination***"), in each case, subject to and conditioned upon compliance with Section 4(d) hereof, in addition to the Accrued Obligations:

(i) *Cash Severance*. The Company shall continue to pay to the Executive the Executive's Base Salary in effect on the Date of Termination during the period beginning on the Date of Termination and ending on the 12-month anniversary of the Date of Termination (the "***Severance Period***") in installments in accordance with the Company's regular payroll practices as of the Date of Termination;

(ii) *COBRA.* During the Severance Period, subject to the Executive's valid election to continue healthcare coverage under Section 4980B of the Internal Revenue Code and the regulations thereunder (together, the "***Code***"), the Company shall continue to provide the Executive and the Executive's eligible dependents with coverage under its group health plans at the same levels and the same cost to the Executive as would have applied if the Executive's employment had not been terminated based on the Executive's elections in effect on the Date of Termination (the "***COBRA Payments***"), provided, however, that (A) if any plan pursuant to which such benefits are provided is not, or ceases prior to the expiration of the period of continuation coverage to be, exempt from the application of Section 409A (as defined below) under Treasury Regulation Section 1.409A-1(a)(5), or (B) the Company is otherwise unable to continue to cover the Executive under its group health plans without incurring penalties (including without limitation, pursuant to Section 2716 of the Public Health Service Act or the Patient Protection and Affordable Care Act), then, in either case, an amount equal to each remaining Company subsidy shall thereafter be paid to the Executive in substantially equal monthly installments over the continuation coverage period (or the remaining portion thereof).

(iii) *Change in Control.* Notwithstanding the foregoing, if the Qualifying Termination occurs within the 12-month period following a Change in Control, as defined in the Company's 2020 Incentive Award Plan, as amended (and such Change in Control constitutes a "change in control event" as defined in Treasury Regulations Section 1.409A-3(i)(5)), then in lieu of the foregoing payments set forth in Section 4(a)(i), the Company shall pay to the Executive the sum of (x) 12-months of Executive's Base Salary in effect on the Date of Termination and (y) 1.0 times the Executive's Target Bonus for the year in which the Date of Termination occurs, during the Severance Period in installments in accordance with the Company's regular payroll practices as of the Date of Termination. In addition, unless otherwise explicitly set forth in any award agreement, any unvested equity awards outstanding immediately prior to the Date of Termination shall automatically become fully vested and exercisable (as applicable).

Notwithstanding the foregoing, it shall be a condition to the Executive's right to receive the amounts provided for in Sections 4(a)(i), 4(a)(ii) and 4(a)(iii) hereof that the Executive execute and deliver to the Company an effective release of claims in substantially the form attached hereto as Exhibit B (the "***Release***") within twenty-one (21) days (or, to the extent required by law, forty-five (45) days) following the Date of Termination and that the Executive not revoke such Release during any applicable revocation period.

(b) For Cause, Without Good Reason or Other Terminations. If the Company terminates the Executive's employment for Cause, the Executive terminates the Executive's employment without Good Reason, or the Executive's employment terminates for any other reason not enumerated in Sections 4(a) or 4(b) hereof, in any case, during the Employment Period, or if the Executive's employment with the Company is terminated due to the expiration of the Employment Period, then, in any case, the Company shall pay to the Executive the Accrued Obligations in cash within thirty (30) days after the Date of Termination (or by such earlier date as may be required by applicable law), and the Executive shall have no further rights hereunder.

(c) Six-Month Delay. Notwithstanding anything to the contrary in this Agreement, no compensation or benefits, including without limitation any severance payments or benefits payable under Section 4 hereof, shall be paid to the Executive during the six (6)-month period following the Executive's "separation from service" from the Company (within the meaning of Section 409A, a "***Separation from Service***") if the Company determines that paying such amounts at the time or times indicated in this Agreement would be a prohibited distribution under Section 409A(a)(2)(B)(i) of the Code. If the payment of any such amounts is delayed as a result of the previous sentence, then on the first day of the seventh month following the date of Separation from Service (or such earlier date upon which such amount can be paid under Section 409A without resulting in a prohibited distribution, including as a result of the Executive's death), the Company shall pay the Executive a lump-sum amount equal to the cumulative amount that would have otherwise been payable to the Executive during such period.

(d) Exclusive Benefits. Except as expressly provided in this Section 4 and subject to Section 5 hereof, the Executive shall not be entitled to any additional payments or benefits upon or in connection with the Executive's termination of employment.

5. Non-Exclusivity of Rights. Amounts which are vested benefits or which the Executive is otherwise entitled to receive under any plan, policy, practice or program of or any contract or agreement with the Company at or subsequent to the Date of Termination shall be payable in accordance with such plan, policy, practice or program or contract or agreement except as explicitly modified by this Agreement.

6. Excess Parachute Payments, Limitation on Payments.

(a) Best Pay Cap. Notwithstanding any other provision of this Agreement, in the event that any payment or benefit received or to be received by the Executive (including any payment or benefit received in connection with a termination of the Executive's employment, whether pursuant to the terms of this Agreement or any other plan, arrangement or agreement) (all such payments and benefits, including the payments and benefits under Section 4 hereof, being hereinafter referred to as the "***Total Payments***") would be subject (in whole or part), to the excise tax imposed under Section 4999 of the Code (the "***Excise Tax***"), then, after taking into account any reduction in the Total Payments provided by reason of Section 280G of the Code in such other plan, arrangement or agreement, the cash severance payments under this Agreement shall first be reduced, and the noncash severance payments hereunder shall thereafter be reduced, to the extent necessary so that no portion of the Total Payments is subject to the Excise Tax but only if (i) the net amount of such Total Payments, as so reduced (and after subtracting the net amount of federal, state and local income taxes on such reduced Total Payments and after taking into account the phase out of itemized deductions and personal exemptions attributable to such reduced Total Payments) is greater than or equal to (ii) the net amount of such Total Payments without such reduction (but after subtracting the net amount of federal, state and local income taxes on such Total Payments and the amount of Excise Tax to which the Executive would be subject in respect of such unreduced Total Payments and after taking into account the phase out of itemized deductions and personal exemptions attributable to such unreduced Total Payments).

(b) Certain Exclusions. For purposes of determining whether and the extent to which the Total Payments will be subject to the Excise Tax, (i) no portion of the Total Payments the receipt or enjoyment of which the Executive shall have waived at such time and in such manner as not to constitute a "payment" within the meaning of Section 280G(b) of the Code shall be taken into account; (ii) no portion of the Total Payments shall be taken into account which, in the written opinion of an independent, nationally recognized accounting or consulting firm (the "***Independent Advisors***") selected by the Company, does not constitute a "parachute payment" within the meaning of Section 280G(b)(2) of the Code (including by reason of Section 280G(b)(4)(A) of the Code) and, in calculating the Excise Tax, no portion of such Total Payments shall be taken into account which, in the opinion of the Independent Advisors, constitutes reasonable compensation for services actually rendered, within the meaning of Section 280G(b)(4)(B) of the Code, in excess of the "base amount" (as defined in Section 280G(b)(3) of the Code) allocable to such reasonable compensation; and (iii) the value of any non-cash benefit or any deferred payment or benefit included in the Total Payments shall be determined by the Independent Advisors in accordance with the principles of Sections 280G(d)(3) and (4) of the Code.

7. Nondisclosure and Nonuse of Confidential Information.

(a) The Executive's employment creates a relationship of confidence and trust between the Company and the Executive with respect to any information that is applicable to the business of the Company or the affiliates, any information that is otherwise used, developed or obtained by the Company or any affiliate in connection with its business and any information that is applicable to the business of any client, customer or other commercial partner of the Company or the affiliates, which may be made known to the Executive or learned by the Executive in such context during the period of his employment with the Company. All such information, whether oral or written, has commercial value in the business in which the Company is engaged and is referred to herein as "***Confidential Information***".

(b) The Company owns all right, title and interest in and to all Confidential Information. The Executive hereby assigns to the Company all right, title and interest that he may have acquired or hereafter may acquire in all Confidential Information. The Executive shall, at all times, both during the Employment Period and after the termination of the Employment Period, keep in confidence and trust all Confidential Information and the Executive shall not use or disclose any Confidential Information except as may be necessary in the ordinary course of performing his duties as an employee of the Company. Upon termination of the Employment Period, or at any time upon the request of the Company before such termination, the Executive shall promptly (but no later than five (5) days after the earlier of such termination or such request) destroy or deliver to the Company, at the Company's option, all Confidential Information in the Executive's control or possession and a written certification of the Executive's compliance with such obligations.

(c) the Executive hereby represents and warrants to the Company that neither his performance of the terms of this Agreement nor his employment with the Company will breach or conflict with any agreement, understanding, policy or other arrangement that he is a party to or otherwise subject to or bound by (including, without limitation, any such agreement, understanding, policy or arrangement (i) relating to nondisclosure or nonuse of proprietary information, knowledge or data or (ii) that otherwise assigns, licenses or otherwise transfers any interest in or to any Company Innovation (as defined below) to person or entity other than the Company). The Executive shall not disclose to the Company or otherwise use any confidential or proprietary information or material belonging to any other person or entity.

(d) Notice of Immunity Under the Economic Espionage Act of 1996, as amended by the Defend Trade Secrets Act of 2016 ("***DTSA***"). Notwithstanding any other provision of this Agreement:

(e) the Executive will not be held criminally or civilly liable under any federal or state trade secret law for any disclosure of a trade secret that: (A) is made: (1) in confidence to a federal, state, or local government official, either directly or indirectly, or to an attorney; and (2) solely for the purpose of reporting or investigating a suspected violation of law; or (B) is made in a complaint or other document that is filed under seal in a lawsuit or other proceeding.

(f) If the Executive files a lawsuit for retaliation by the Company for reporting a suspected violation of law, the Executive may disclose the Company's trade secrets to the Executive's attorney and use the trade secret information in the court proceeding if the Executive: (A) files any document containing the trade secret under seal; and (B) does not disclose the trade secret, except pursuant to court order.

(g) the Executive shall (i) comply with all Company security policies and procedures as in force from time to time including, without limitation, those regarding computer equipment, telephone systems, voicemail systems, facilities access, monitoring, key cards, access codes, Company intranet, internet, social media and instant messaging systems, e-mail systems, document storage systems, software licenses, data security, encryption, firewalls and passwords (the "***Facilities and Information Technology Resources***"); (ii) not access or use any Facilities and Information Technology Resources except as authorized by the Company; and (iii) not access or use any Facilities and Information Technology Resources in any manner after the termination of the Executive's employment by the Company, whether termination is voluntary or involuntary.

8. Inventions and Proprietary Rights.

(a) the Executive represents and warrants to the Company that he does not have any right, title or interest in or to any Innovation (as defined below) applicable to the business of the Company or relating in any way to the Company's business or demonstrably anticipated research and development or business that were conceived, reduced to practice, created, derived, developed or made by the Executive prior to the date hereof.

(b) the Executive hereby agrees promptly to disclose and describe to the Company, and the Executive hereby assigns to the Company all right, title and interest in and to, each of the Innovations and all associated intellectual property rights that the Executive may solely or jointly conceive, reduce to practice, create, derive, develop or make during the period of his employment with the Company that (i) relate to the Company's or any affiliate's business or actual or demonstrably anticipated research or development, (ii) were developed on any amount of the Company's or any affiliate's time or with the use of any of the Company's or any affiliate's materials, equipment, supplies, facilities or information or (iii) resulted from any work that the Executive performed for the Company or any affiliate (collectively, the "***Company Innovations***"). the Executive further acknowledges and agrees that all Company Innovations, including, without limitation, any computer programs, programming documentation, and other works of authorship, are "works made for hire" for purposes of the Company's rights under copyright laws and the Executive hereby assigns to the Company any and all right, title and interest that the Executive may have acquired or may hereafter acquire in such Company Innovations. Any assignment of copyright hereunder includes all rights of paternity, integrity, disclosure and withdrawal and any other rights that may be known as or referred to as "moral rights" (collectively "***Moral Rights***"). To the extent that such Moral Rights cannot be assigned under applicable law and to the extent the following is allowed by the laws in the various countries where Moral Rights exist, the Executive hereby waives such Moral Rights and consents to any action of the Company and the affiliates that would violate such Moral Rights in the absence of such consent. The Executive shall confirm any such waivers and consents from time to time as requested by the Company. To the extent that any right, title or interest in or to any Company Innovation cannot be assigned by the Executive to the Company, the Executive hereby grants to the Company an exclusive, royalty-free, transferable, irrevocable, worldwide license (with rights to sublicense through multiple tiers of sublicensees) to practice such non-assignable right, title or interest. To the extent that any right, title or interest in or to any Company Innovation can be neither assigned nor licensed by the Executive to the Company, the Executive hereby irrevocably waives and agrees never to assert such non-assignable and non-licensable right, title or interest against the Company, any affiliate or any of their successors in interest to such non-assignable and non-licensable rights.

(c) the Executive recognizes that Innovations and Confidential Information relating to his activities while working for the Company and conceived, reduced to practice, created, derived, developed or made by the Executive, alone or with others, within six (6) months after termination of his employment with the Company may have been conceived, reduced to practice, created, derived, developed or made, as applicable, in significant part while employed by the Company. Accordingly, the Executive agrees that such Innovations and Confidential Information shall be presumed to have been conceived, reduced to practice, created, derived, developed or made, as applicable, during his employment with the Company and shall be assigned to the Company unless and until the Executive has established the contrary by written evidence satisfying the clear and convincing standard of proof.

(d) the Executive shall perform, during and after his employment with the Company, all acts deemed necessary or desirable by the Company to permit and assist the Company, at the Company's expense, in obtaining and enforcing the full benefits, enjoyment, rights and title throughout the world in the Confidential Information and Innovations assigned or licensed to, or whose rights are irrevocably waived and shall not be asserted against, the Company and the affiliates under this Agreement. Such acts may include, but are not limited to, execution of documents and assistance or cooperation (i) in the filing, prosecution, registration, and memorialization of assignment of any applicable patents, copyrights, mask works or other applications, (ii) in the enforcement of any applicable patents, copyrights, mask works, Moral Rights, trade secrets or other rights, and (iii) in other legal proceedings related to the Confidential Information or Innovations.

(e) In the event that the Company is unable for any reason to secure the Executive's signature to any document required to file, prosecute, register, or memorialize the assignment of any patent, copyright, mask work or other applications or to enforce any patent, copyright, mask work, Moral Right, trade secret or other right under any Confidential Information (including improvements thereof) or any Innovations (including derivative works, improvements, renewals, extensions, continuations, divisionals, continuations in part, continuing patent applications, reissues, and reexaminations thereof), the Executive hereby irrevocably designates and appoints the Company and the Company's duly authorized officers and agents as his agents and attorneys-in-fact to act for and on his behalf and instead of the Executive (i) to execute, file, prosecute, register and memorialize the assignment of any such application, (ii) to execute and file any documentation required for such enforcement and (iii) to do all other lawfully permitted acts to further the filing, prosecution, registration, memorialization of assignment, issuance, and enforcement of patents, copyrights, mask works, Moral Rights, trade secrets or other rights under the Confidential Information or Innovations, all with the same legal force and effect as if executed by the Executive.

(f) The term "***Innovations***" means all processes, improvements, inventions (whether or not protectable under patent laws), works of authorship, information fixed in any tangible medium of expression (whether or not protectable under copyright laws), moral rights, mask works, trademarks, trade names, trade dress, trade secrets, know-how, ideas (whether or not protectable under trade secret laws) and all other subject matter protectable under patent, copyright, moral right, mask work, trademark, trade secret or other laws and includes, without limitation, all new or useful art, combinations, designs, developments, modifications, derivative works, discoveries, formulae, techniques and all goodwill associated with any of the foregoing.

(g) The Executive hereby irrevocably consents to any and all uses and displays, by the Company and its affiliates, agents, representatives and licensees, of the Executive's name, voice, likeness, image, appearance, and biographical information in, on or in connection with any pictures, photographs, audio and video recordings, digital images, websites, television programs and advertising, other advertising and publicity, sales and marketing brochures, books, magazines, other publications, CDs, DVDs, tapes, and all other printed and electronic forms and media throughout the world, at any time during or after the period of his employment by the Company, for all legitimate commercial and business purposes of the Company ("***Permitted Uses***") without further consent from or royalty, payment, or other compensation to the Executive. the Executive hereby forever waives and releases the Company and its directors, managing members, officers, employees and agents from any and all claims, actions, damages, losses, costs, expenses, and liability of any kind, arising under any legal or equitable theory whatsoever at any time during or after the period of his employment by the Company, arising directly or indirectly from the Company's and its affiliates', agents', representatives' and licensees' exercise of their rights in connection with any Permitted Uses.

9. Non-Compete; Non-Solicitation.

(a) The Executive acknowledges that, in the course of his employment with the Company and/or the Restricted Affiliates (as defined below), he has become familiar, or will become familiar, with trade secrets and with other confidential information concerning the Company and the Restricted Affiliates and that his services have been and will be of special, unique and extraordinary value to the Company and the Restricted Affiliates. the Executive understands that the following restrictions may limit his ability to earn a livelihood in a business similar to the business of the Company or any of the Restricted Affiliates, but he nevertheless believes that he will receive sufficient consideration and other benefits as an equityholder and an employee of the Company and as otherwise provided hereunder to clearly justify such restrictions which, in any event (given his education, skills and ability), the Executive does not believe would prevent him from otherwise earning a living. The Executive further understands that the provisions of Sections 7 through 9, inclusive, are reasonable and necessary to preserve the business of the Company and the Restricted Affiliates. "***Restricted Affiliate***" means any affiliate for which, during the twenty-four (24) month period preceding the Termination Date, the Executive served as an officer or director or the Executive provided any material services.

(b) In light of Section 9(a), the Executive agrees that while the Executive is employed by the Company and for twelve (12) months thereafter (such period, subject to automatic extension for an additional period equal to the period of any breach of the covenants in this Section 9, shall be referred to herein as the "***Non-Compete Period***"), he shall not directly or indirectly own, manage, operate, control, finance or invest in, participate in, consult with, render services for, act as an officer, director, manager, partner, principal, agent, representative, contractor or advisor of or to, or in any manner engage in or be associated with, hold any interest in, be employed by or represent any other business competing with the businesses or the services or products of the Company or the Restricted Affiliates as such businesses and/or services or products exist or are in the process of being formed, developed or acquired as of the Termination Date. Nothing herein shall prohibit the Executive from being a passive owner of not more than one percent (1%) of the outstanding stock of any class of a corporation which is publicly traded, so long as the Executive has no active participation in the business of such corporation.

(c) Furthermore, in light of Section 9(a), the Executive agrees that:

(i) during the Non-Compete Period, the Executive shall not directly or indirectly through another person or entity: (x) induce or attempt to induce any employee or independent contractor of the Company or any Restricted Affiliate to leave the employ of or engagement with the Company or such Restricted Affiliate, or in any way interfere with the relationship between the Company or any such Restricted Affiliate, on the one hand, and any employee or independent contractor thereof, on the other hand; or (y) hire or engage any person who was an employee or independent contractor of the Company until twelve months after such individual's relationship with the Company or any Restricted Affiliate has been terminated; and

(ii) during the Non-Compete Period, the Executive shall not directly or indirectly through another person or entity: (x) induce or attempt to induce any customer (it being understood that the term "customer" as used throughout this Agreement includes any person or entity that is receiving services from the Company or any Restricted Affiliate or that is directly or indirectly providing or referring business for the Company or any Restricted Affiliate), supplier, independent contractor, licensee or other business relation of the Company or any Restricted Affiliate to cease doing business with the Company or any Restricted Affiliate, or in any way interfere with the relationship between any such customer, supplier, independent contractor, licensee or business relation, on the one hand, and the Company or any Restricted Affiliate, on the other hand; or (y) solicit any customer of the Company or any Restricted Affiliate in order to offer products or services similar to those offered by the Company or any Restricted Affiliate.

(d) The Executive shall inform any prospective or future employer of any and all restrictions contained in this Agreement and provide such employer with a copy of such restrictions (but no other terms of this Agreement) prior to the commencement of that employment.

(e) If, at the time of enforcement of Section 9, a court holds that the restrictions stated herein are unreasonable under the circumstances then existing, the Executive and the Company agree that the maximum period, scope or geographical area reasonable under such circumstances shall be substituted for the stated period, scope or area so as to protect the Company to the greatest extent possible under applicable law from improper competition.

(f) In the event of any breach or violation by the Executive of any of the restrictions contained in Section 9, any time period specified herein shall abate during the time of any such breach or violation thereof and that portion remaining at the time of commencement of any such breach or violation shall not begin to run until such breach or violation has been cured in all respects.

10. Enforcement. Because the Executive's services are unique and because the Executive has access to Confidential Information and Company Innovations, the parties hereto agree that monetary damages alone would be an inadequate remedy for any breach of this Agreement. Therefore, in the event of a breach or threatened breach of this Agreement, the Company or its successors or assigns may, in addition to other rights and remedies existing in their favor at law or in equity, apply to any court of competent jurisdiction for specific performance and/or injunctive or other relief in order to enforce, or prevent any violations of, the provisions hereof (without posting a bond or other security) or require the Executive to account for and pay over to the Company all compensation, profits, moneys, accruals, increments or other benefits derived from or received as a result of any transactions constituting a breach of the covenants contained in this Agreement, if and when final judgment of a count of competent jurisdiction is so entered against the Executive. The rights and remedies of the Company under this Agreement are not exclusive of or limited by any other rights or remedies which they may have, whether at law, in equity, by contract or otherwise, all of which shall be cumulative (and not alternative). Without limiting the generality of the foregoing, the rights and remedies of the Company under this Agreement, and the obligations and liabilities of the Executive under this Agreement, are in addition to their respective rights, remedies, obligations and liabilities under the laws of unfair competition, laws relating to misappropriation of trade secrets and all other laws, rules and regulations. No failure on the part of any person or entity to exercise any power, right, privilege or remedy under this Agreement, and no delay on the part of any person or entity 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. No person or entity 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 or entity; and any such waiver shall not be applicable or have any effect except in the specific instance in which it is given.

11. Representations. The Executive hereby represents and warrants to the Company that (a) the Executive is entering into this Agreement voluntarily and that the performance of the Executive's obligations hereunder will not violate any agreement between the Executive and any other person, firm, organization or other entity, and (b) the Executive is not bound by the terms of any agreement with any previous employer or other party to refrain from competing, directly or indirectly, with the business of such previous employer or other party that would be violated by the Executive's entering into this Agreement and/or providing services to the Company pursuant to the terms of this Agreement.

12. Successors.

(a) This Agreement is personal to the Executive and, without the prior written consent of the Company, shall not be assignable by the Executive otherwise than by will or the laws of descent and distribution. This Agreement shall inure to the benefit of and be enforceable by the Executive's legal representatives.

(b) This Agreement shall inure to the benefit of and be binding upon the Company and its successors and assigns.

(c) The Company will require any successor (whether direct or indirect, by purchase, merger, consolidation or otherwise) to all or substantially all of the business and/or assets of the Company to assume and agree to perform this Agreement in the same manner and to the same extent that the Company would be required to perform it if no such succession had taken place. As used in this Agreement, "Company" shall mean the Company as hereinbefore defined and any successor to its business and/or assets as aforesaid which assumes and agrees to perform this Agreement by operation of law, or otherwise.

13. Miscellaneous.

(a) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Maryland, without reference to principles of conflict of laws. The captions of this Agreement are not part of the provisions hereof and shall have no force or effect.

(b) Compensation Recovery Policy. Executive acknowledges and agrees that, to the extent the Company adopts any claw-back or similar policy pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act or otherwise, and any rules and regulations promulgated thereunder, he or she shall take all action necessary or appropriate to comply with such policy (including, without limitation, entering into any further agreements, amendments or policies necessary or appropriate to implement and/or enforce such policy with respect to past, present and future compensation, as appropriate).

(c) Whistleblower Protections and Trade Secrets. Notwithstanding anything to the contrary contained herein, nothing in this Agreement prohibits Executive from reporting possible violations of federal law or regulation to any United States governmental agency or entity in accordance with the provisions of and rules promulgated under Section 21F of the Securities Exchange Act of 1934 or Section 806 of the Sarbanes-Oxley Act of 2002, or any other whistleblower protection provisions of state or federal law or regulation (including the right to receive an award for information provided to any such government agencies). Furthermore, in accordance with 18 U.S.C. § 1833, notwithstanding anything to the contrary in this Agreement: (i) Executive shall not be in breach of this Agreement, and shall not be held criminally or civilly liable under any federal or state trade secret law (A) for the disclosure of a trade secret that is made in confidence to a federal, state, or local government official or to an attorney solely for the purpose of reporting or investigating a suspected violation of law, or (B) for the disclosure of a trade secret that is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal; and (ii) if Executive files a lawsuit for retaliation by the Company for reporting a suspected violation of law, Executive may disclose the trade secret to Executive's attorney, and may use the trade secret information in the court proceeding, if Executive files any document containing the trade secret under seal, and does not disclose the trade secret, except pursuant to court order.

(d) Notices. All notices and other communications hereunder shall be in writing and shall be given by hand delivery to the other party or by registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

If to the Executive: at the Executive's most recent address on the records of the Company.

If to the Company:

Azyio Biologics, Inc.
12510 Prosperity Drive
Suite 1-370
Silver Spring, MD 20904
Attention: Board of Directors

with a copy to:

Latham & Watkins LLP
885 Third Avenue
New York, NY 10022-4802
Attn: [XXX]

or to such other address as either party shall have furnished to the other in writing in accordance herewith. Notice and communications shall be effective when actually received by the addressee.

(e) Sarbanes-Oxley Act of 2002. Notwithstanding anything herein to the contrary, if the Company determines, in its good faith judgment, that any transfer or deemed transfer of funds hereunder is likely to be construed as a personal loan prohibited by Section 13(k) of the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder (the "***Exchange Act***"), then such transfer or deemed transfer shall not be made to the extent necessary or appropriate so as not to violate the Exchange Act and the rules and regulations promulgated thereunder.

(f) Section 409A of the Code.

(i) To the extent applicable, this Agreement shall be interpreted in accordance with Section 409A of the Code and Department of Treasury regulations and other interpretive guidance issued thereunder (together, "***Section 409A***"). Notwithstanding any provision of this Agreement to the contrary, if the Company determines that any compensation or benefits payable under this Agreement may be subject to Section 409A, the Company shall work in good faith with the Executive to adopt such amendments to this Agreement or adopt other policies and procedures (including amendments, policies and procedures with retroactive effect), or take any other actions, that the Company determines are necessary or appropriate to avoid the imposition of taxes under Section 409A, including without limitation, actions intended to (i) exempt the compensation and benefits payable under this Agreement from Section 409A, and/or (ii) comply with the requirements of Section 409A; provided, however, that this Section 10(d) shall not create an obligation on the part of the Company to adopt any such amendment, policy or procedure or take any such other action, nor shall the Company have any liability for failing to do so.

(ii) Any right to a series of installment payments pursuant to this Agreement is to be treated as a right to a series of separate payments. To the extent permitted under Section 409A, any separate payment or benefit under this Agreement or otherwise shall not be deemed "nonqualified deferred compensation" subject to Section 409A to the extent provided in the exceptions in Treasury Regulation Section 1.409A-1(b)(4), Section 1.409A-1(b)(9) or any other applicable exception or provision of Section 409A. Any payments subject to Section 409A that are subject to execution of a waiver and release which may be executed and/or revoked in a calendar year following the calendar year in which the payment event (such as termination of employment) occurs shall commence payment only in the calendar year in which the consideration period or, if applicable, release revocation period ends, as necessary to comply with Section 409A. All payments of nonqualified deferred compensation subject to Section 409A to be made upon a termination of employment under this Agreement may only be made upon Employee's "separation from service" from the Company (within the meaning of Section 409A, a "Separation from Service").

(iii) To the extent that any payments or reimbursements provided to the Executive under this Agreement are deemed to constitute compensation to the Executive to which Treasury Regulation Section 1.409A-3(i)(1)(iv) would apply, such amounts shall be paid or reimbursed reasonably promptly, but not later than December 31 of the year following the year in which the expense was incurred. The amount of any such payments eligible for reimbursement in one year shall not affect the payments or expenses that are eligible for payment or reimbursement in any other taxable year, and the Executive's right to such payments or reimbursement of any such expenses shall not be subject to liquidation or exchange for any other benefit.

(g) Severability. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement.

(h) Withholding. The Company may withhold from any amounts payable under this Agreement such federal, state, local or foreign taxes as shall be required to be withheld pursuant to any applicable law or regulation.

(i) No Waiver. The Executive's or the Company's failure to insist upon strict compliance with any provision of this Agreement or the failure to assert any right the Executive or the Company may have hereunder, including, without limitation, the right of the Executive to terminate employment for Good Reason pursuant to Section 3(c) hereof, shall not be deemed to be a waiver of such provision or right or any other provision or right of this Agreement.

(j) Entire Agreement. As of the Effective Date, this Agreement constitutes the final, complete and exclusive agreement between the Executive and the Company with respect to the subject matter hereof and replaces and supersedes any and all other agreements, offers or promises, whether oral or written, by any member of the Company and its subsidiaries or affiliates, or representative thereof, including without limitation Prior Agreement.

(k) Amendment. No amendment or other modification of this Agreement shall be effective unless made in writing and signed by the parties hereto.

(l) Counterparts. This Agreement and any agreement referenced herein may be executed simultaneously in two or more counterparts, each of which shall be deemed an original but which together shall constitute one and the same instrument.

[**SIGNATURES APPEAR ON FOLLOWING PAGE**]

IN WITNESS WHEREOF, the Executive has hereunto set the Executive's hand and, pursuant to the authorization from the Board, the Company has caused these presents to be executed in its name on its behalf, all as of the day and year first above written.

AZIYO BIOLOGICS, INC.

By: /s/ Ronald Lloyd
Name: Ronald Lloyd
Title: President & CEO

"EXECUTIVE"

/s/ Thomas Englese
Thomas Englese

EXHIBIT A

EXHIBIT B

GENERAL RELEASE

For valuable consideration, the receipt and adequacy of which are hereby acknowledged, the undersigned does hereby release and forever discharge the "***Releasees***" hereunder, consisting of Aziyo Biologics, Inc., and its partners, subsidiaries, associates, affiliates, successors, heirs, assigns, agents, directors, officers, employees, representatives, lawyers, insurers, and all persons acting by, through, under or in concert with them, or any of them, of and from any and all manner of action or actions, cause or causes of action, in law or in equity, suits, debts, liens, contracts, agreements, promises, liability, claims, demands, damages, losses, costs, attorneys' fees or expenses, of any nature whatsoever, known or unknown, fixed or contingent (hereinafter called "***Claims***"), which the undersigned now has or may hereafter have against the Releasees, or any of them, by reason of any matter, cause, or thing whatsoever from the beginning of time to the date hereof. The Claims released herein include, without limiting the generality of the foregoing, any Claims in any way arising out of, based upon, or related to the employment or termination of employment of the undersigned by the Releasees, or any of them; any alleged breach of any express or implied contract of employment; any alleged torts or other alleged legal restrictions on Releasees' right to terminate the employment of the undersigned; and any alleged violation of any federal, state or local statute or ordinance including, without limitation, Title VII of the Civil Rights Act of 1964, the Age Discrimination In Employment Act, the Americans With Disabilities Act, and [__].[1] Notwithstanding the foregoing, this general release (the "***Release***") shall not operate to release any rights or claims of the undersigned (i) to payments or benefits under Section 4(a) of that certain Employment Agreement, effective as of [Ÿ], between Aziyo Biologics, Inc. and the undersigned (the "***Employment Agreement***"), (ii) to payments or benefits under any equity award agreement between the undersigned and the Company, (iii) with respect to Section 2(b)(iv) of the Employment Agreement, (iv) to accrued or vested benefits the undersigned may have, if any, as of the date hereof under any applicable plan, policy, practice, program, contract or agreement with the Company, (v) to any Claims, including claims for indemnification and/or advancement of expenses arising under any indemnification agreement between the undersigned and the Company or under the bylaws, certificate of incorporation or other similar governing document of the Company, (vi) to any Claims which cannot be waived by an employee under applicable law or (vii) with respect to the undersigned's right to communicate directly with, cooperate with, or provide information to, any federal, state or local government regulator.

[IN ACCORDANCE WITH THE OLDER WORKERS BENEFIT PROTECTION ACT OF 1990, THE UNDERSIGNED IS HEREBY ADVISED AS FOLLOWS:

(A) THE EXECUTIVE HAS THE RIGHT TO CONSULT WITH AN ATTORNEY BEFORE SIGNING THIS RELEASE;

(B) THE EXECUTIVE HAS TWENTY-ONE (21) DAYS TO CONSIDER THIS RELEASE BEFORE SIGNING IT; AND

(C) THE EXECUTIVE HAS SEVEN (7) DAYS AFTER SIGNING THIS RELEASE TO REVOKE THIS RELEASE, AND THIS RELEASE WILL BECOME EFFECTIVE UPON THE EXPIRATION OF THAT REVOCATION PERIOD.]

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[1] Applicable state law references to be included.

The undersigned represents and warrants that there has been no assignment or other transfer of any interest in any Claim which the Executive may have against Releasees, or any of them, and the undersigned agrees to indemnify and hold Releasees, and each of them, harmless from any liability, Claims, demands, damages, costs, expenses and attorneys' fees incurred by Releasees, or any of them, as the result of any such assignment or transfer or any rights or Claims under any such assignment or transfer. It is the intention of the parties that this indemnity does not require payment as a condition precedent to recovery by the Releasees against the undersigned under this indemnity.

Notwithstanding anything herein, the undersigned acknowledges and agrees that, pursuant to 18 USC Section 1833(b), the undersigned will not be held criminally or civilly liable under any federal or state trade secret law for the disclosure of a trade secret that is made: (i) in confidence to a federal, state, or local government official, either directly or indirectly, or to an attorney, and solely for the purpose of reporting or investigating a suspected violation of law; or (ii) in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal.

The undersigned agrees that if the Executive hereafter commences any suit arising out of, based upon, or relating to any of the Claims released hereunder or in any manner asserts against Releasees, or any of them, any of the Claims released hereunder, then the undersigned agrees to pay to Releasees, and each of them, in addition to any other damages caused to Releasees thereby, all attorneys' fees incurred by Releasees in defending or otherwise responding to said suit or Claim.

The undersigned further understands and agrees that neither the payment of any sum of money nor the execution of this Release shall constitute or be construed as an admission of any liability whatsoever by the Releasees, or any of them, who have consistently taken the position that they have no liability whatsoever to the undersigned.

IN WITNESS WHEREOF, the undersigned has executed this Release this ____ day of _____, ____.

_____

Exhibit 10.10
Execution Version

EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT (this "***Agreement***"), entered into as of September 30, 2020, is made by and between Aziyo Biologics, Inc. (the "***Company***") and Darryl Roberts, Ph.D. (the "***Executive***") (collectively referred to herein as the "***Parties***").

WHEREAS, the Executive is currently employed by the Company as its Executive Vice President, Operations and Product Development pursuant to the terms of that certain Offer Letter by and between the Parties, dated as of April 25, 2016 (the "***Prior Agreement***");

WHEREAS, the Company is contemplating an initial public offering of its Class A common stock pursuant to an effective registration statement filed under the Securities Act of 1933, as amended (the "***IPO***");

WHEREAS, in connection with the IPO, the Company desires to assure itself of the continued services of the Executive by engaging the Executive to perform services under the terms hereof;

WHEREAS, the Executive desires to provide services to the Company on the terms herein provided; and

WHEREAS, the Parties desire to have this Agreement become effective, and supersede the Prior Agreement, as the date of the consummation of the IPO (the "***Effective Date***").

NOW, THEREFORE, IT IS HEREBY AGREED AS FOLLOWS:

1. Employment Period. Subject to the provisions for earlier termination hereinafter provided, the initial term of the Executive's employment hereunder shall be for a term (the "***Initial Employment Period***") commencing on the Effective Date and ending on the second anniversary of the Effective Date. The Initial Employment Period shall automatically be extended for successive one-year periods (each, an "***Extension Employment Period***" and, together with the Initial Employment Period, the "***Employment Period***"), unless either Party gives written notice of non-extension to the other no later than ninety (90) days prior to the expiration of the then-applicable Employment Period, in which case Executive's employment will terminate at the end of the then-applicable Employment Period, subject to earlier termination as provided in Section 4 below.

2. Terms of Employment.

(a) Position and Duties.

(i) Role and Responsibilities. During the Employment Period, the Executive shall serve as Executive Vice President, Operations and Product Development of the Company, and shall perform such employment duties as are usual and customary for such positions. The Executive shall report directly to the Chief Executive Officer of the Company (or his or her designee). At the Company's request, the Executive shall serve the Company and/or its subsidiaries and affiliates in other capacities in addition to the foregoing, consistent with the Executive's position as Executive Vice President, Operations and Product Development of the Company. In the event that the Executive, during the Employment Period, serves in any one or more of such additional capacities, the Executive's compensation shall not be increased beyond that specified in Section 2(b) hereof. In addition, in the event the Executive's service in one or more of such additional capacities is terminated, the Executive's compensation, as specified in Section 2(b) hereof, shall not be diminished or reduced in any manner as a result of such termination provided that the Executive otherwise remains employed under the terms of this Agreement.

(ii) Exclusivity. During the Employment Period, and excluding any periods of vacation and sick leave to which the Executive may be entitled, the Executive agrees to devote his or her full business time and attention to the business and affairs of the Company. Notwithstanding the foregoing, during the Employment Period, it shall not be a violation of this Agreement for the Executive to: (A) serve on boards, committees or similar bodies of charitable or nonprofit organizations or other companies, (B) fulfill limited teaching, speaking and writing engagements, and (C) manage his or her personal investments, in each case, so long as such activities do not individually or in the aggregate materially interfere or conflict with the performance of the Executive's duties and responsibilities under this Agreement; provided, that with respect to the activities in subclauses (A) and/or (B), the Executive receives prior written approval from the Chief Executive Officer. Exhibit A of this Agreement sets forth the board of directors or advisory boards on which the Executive currently serves.

(iii) Principal Location. During the Employment Period, the Executive shall perform the services required by this Agreement at the Company's principal offices located in Silver Spring, Maryland or such other location mutually agreed upon by the Company and the Executive (the "***Principal Location***"), except for travel to other locations as may be necessary to fulfill the Executive's duties and responsibilities hereunder.

(b) Compensation, Benefits, Etc.

(i) Base Salary. During the Employment Period, the Executive shall receive a base salary (the "***Base Salary***") of $309,000 per annum. The Base Salary shall be reviewed annually by the Compensation Committee (the "***Compensation Committee***") of the Board of Directors of the Company (the "***Board***") and may be increased from time to time by the Compensation Committee in its sole discretion. The Base Salary shall be paid in accordance with the Company's normal payroll practices for executive salaries generally, but no less often than monthly. The Base Salary may be increased in the Compensation Committee's discretion, but not reduced, and the term "Base Salary" as utilized in this Agreement shall refer to the Base Salary as so increased.

(ii) Annual Cash Bonus. In addition to the Base Salary, the Executive shall be eligible to earn, for each fiscal year of the Company ending during the Employment Period, a discretionary cash performance bonus (an "***Annual Bonus***") under the Company's bonus plan or program applicable to senior executives. The Executive's target Annual Bonus shall be set at 45% of the Base Salary actually paid for such year (the "***Target Bonus***"). The actual amount of any Annual Bonus shall be determined by reference to the attainment of Company performance metrics and/or individual performance objectives, in each case, as determined by the Compensation Committee, and may be greater or less than the Target Bonus (or zero). Subject to Section 4(a)(i) hereof, payment of any Annual Bonus(es), to the extent any Annual Bonus(es) become payable, will be contingent upon the Executive's continued employment through the applicable payment date. The Company will pay any such bonus that has been duly earned and awarded by the Board as soon as administratively possible following its approval by the Board and, in any event, no later than the later of (i) the fifteenth day of the third month after the end of the Company's fiscal year in which such bonus is earned or (ii) March 15 following the calendar year in which such bonus is earned.

(iii) Benefits. During the Employment Period, the Executive (and the Executive's spouse and/or eligible dependents to the extent provided in the applicable plans and programs) shall be eligible to participate in and be covered under the health and welfare benefit plans and programs maintained by the Company for the benefit of its employees from time to time, pursuant to the terms of such plans and programs including any medical and dental insurance plans and programs. During the Employment Period, the Company shall provide the Executive and the Executive's eligible dependents with coverage under its group health plans. In addition, during the Employment Period, Executive shall be eligible to participate in any retirement, savings and other employee benefit plans and programs maintained from time to time by the Company for the benefit of its senior executive officers. Nothing contained in this Section 2(b)(iii) shall create or be deemed to create any obligation on the part of the Company to adopt or maintain any health, welfare, retirement or other benefit plan or program at any time or to create any limitation on the Company's ability to modify or terminate any such plan or program.

(iv) Expenses. During the Employment Period, the Executive shall be entitled to receive prompt reimbursement for all reasonable business expenses incurred by the Executive in accordance with the policies, practices and procedures of the Company provided to employees of the Company.

(v) Fringe Benefits. During the Employment Period, the Executive shall be eligible to receive such fringe benefits and perquisites as are provided by the Company to its employees from time to time, in accordance with the policies, practices and procedures of the Company, and shall receive such additional fringe benefits and perquisites as the Company may, in its discretion, from time-to-time provide.

(vi) Vacation. During the Employment Period, the Executive shall be entitled to paid vacation in accordance with the plans, policies, programs and practices of the Company applicable to its senior executives in effect from time to time, but in no event shall the Executive be entitled to less than four (4) weeks of vacation per calendar year (pro-rated for any partial year of service).

3. Termination of Employment.

(a) Death or Disability. The Executive's employment shall terminate automatically upon the Executive's death during the Employment Period. Either the Company or the Executive may terminate the Executive's employment in the event of the Executive's Disability during the Employment Period. For purposes of this Agreement, "***Disability***" shall mean any disability or incapacity that (i) renders Executive unable to substantially perform his duties hereunder for ninety (90) days during any 12-month period or (ii) would reasonably be expected to render Executive unable to substantially perform his duties for ninety (90) days during any 12-month period, in each case as determined by the Board in its good faith judgment.

(b) Termination by the Company. The Company may terminate the Executive's employment during the Employment Period for Cause or without Cause. For purposes of this Agreement, "***Cause***" shall mean the occurrence of any one or more of the following events unless, to the extent capable of correction, the Executive fully corrects the circumstances constituting Cause within fifteen (15) days after receipt of the Notice of Termination (as defined below):

(i) Executive performing his duties, in the good faith opinion of the Board, in a grossly negligent or reckless manner or with willful malfeasance;

(ii) Executive exhibiting habitual drunkenness or engaging in substance abuse;

(iii) Executive committing any material violation of any state or federal law relating to the workplace environment (including, without limitation, laws relating to sexual harassment or age, sex or other prohibited discrimination) or any material violation of any Company policy;

(iv) Executive willfully failing or refusing to perform in the usual manner at the usual time those duties which he regularly and routinely performs in connection with the business of the Company or such other duties reasonably related to the capacity in which he is employed hereunder which may be assigned to him by the Board;

(v) Executive performing any material action when specifically and reasonably instructed not to do so by the Chairman or the Board;

(vi) Executive breaching Sections 7, 8 and 9 hereof;

(vii) Executive committing any fraud or using or appropriating for his or her personal use or benefit any funds, properties or opportunities of the Company not authorized by the Board to be so used or appropriated; or

(viii) Executive being convicted of any felony or any other crime related to his employment or involving moral turpitude.

The Company shall not be entitled to terminate Executive for Cause pursuant to clause (iii), (iv), (v) or (vi) unless the Company provides written notice stating in reasonable detail the basis for termination and a fifteen (15) day opportunity to cure to Executive (unless (1) the Company reasonably determines that providing such opportunity to cure to Executive is reasonably likely to have a material adverse effect on its business, financial condition, results of operations, prospects or assets, (2) the facts and circumstances underlying such termination are not able to be cured or (3) the Company has previously provided Executive an opportunity to cure the applicable issue; in the case of (1), (2) or (3), the Company may terminate Executive without providing an opportunity to cure).

(c) Termination by the Executive. The Executive's employment may be terminated by the Executive for any reason, including with Good Reason or by the Executive without Good Reason. For purposes of this Agreement, "***Good Reason***" shall mean the occurrence of any one or more of the following events without the Executive's prior written consent, unless the Company fully corrects the circumstances constituting Good Reason (provided such circumstances are capable of correction) as provided below:

(i) A material reduction in the Executive's job responsibilities and duties for the Company;

(ii) A material reduction in the Executive's Base Salary; or

(iii) a requirement imposed by the Company on the Executive that Executive's principal place of employment be anywhere other than within a 50 mile radius of the Executive's Principal Location, except for required travel on Company business to an extent substantially consistent with Executive's business travel obligations, that, in any such case, is not cured by the Company within fifteen (15) days after the Company's receipt of written notice from the Executive of such event.

Notwithstanding the foregoing, the Executive will not be deemed to have resigned for Good Reason unless (1) the Executive provides the Company with written notice setting forth in reasonable detail the facts and circumstances claimed by the Executive to constitute Good Reason within sixty (60) days after the date of the occurrence of any event that the Executive knows or should reasonably have known to constitute Good Reason, (2) the Company fails to cure such acts or omissions within thirty (30) days following its receipt of such notice, and (3) the effective date of the Executive's termination for Good Reason occurs no later than sixty (60) days after the expiration of the Company's cure period.

(d) Notice of Termination. Any termination by the Company for Cause, or by the Executive for Good Reason, shall be communicated by a Notice of Termination to the other parties hereto given in accordance with Section 13(d) hereof. For purposes of this Agreement, a "***Notice of Termination***" means a written notice which (i) indicates the specific termination provision in this Agreement relied upon, (ii) sets forth in reasonable detail the facts and circumstances claimed to provide a basis for termination of the Executive's employment under the provision so indicated and (iii) if the Date of Termination (as defined below) is other than the date of receipt of such notice, specifies the termination date (which date shall be not more than thirty (30) days after the giving of such notice). The failure by the Executive or the Company to set forth in the Notice of Termination any fact or circumstance which contributes to a showing of Good Reason or Cause shall not waive any right of the Executive or the Company, respectively, hereunder or preclude the Executive or the Company, respectively, from asserting such fact or circumstance in enforcing the Executive's or the Company's rights hereunder.

(e) Termination of Offices and Directorships; Return of Property. Upon termination of the Executive's employment for any reason, unless otherwise specified in a written agreement between the Executive and the Company, the Executive shall be deemed to have resigned from all offices, directorships, and other employment positions if any, then held with the Company, and shall take all actions reasonably requested by the Company to effectuate the foregoing. In addition, upon the termination of the Executive's employment for any reason, the Executive agrees to return to the Company all documents of the Company and its affiliates (and all copies thereof) and all other Company or Company affiliate property that the Executive has in his or her possession, custody or control. Such property includes, without limitation: (i) any materials of any kind that the Executive knows contain or embody any proprietary or confidential information of the Company or an affiliate of the Company (and all reproductions thereof), (ii) computers (including, but not limited to, laptop computers, desktop computers and similar devices) and other portable electronic devices (including, but not limited to, tablet computers), cellular phones/smartphones, credit cards, phone cards, entry cards, identification badges and keys, and (iii) any correspondence, drawings, manuals, letters, notes, notebooks, reports, programs, plans, proposals, financial documents, or any other documents concerning the customers, business plans, marketing strategies, products and/or processes of the Company or any of its affiliates and any information received from the Company or any of its affiliates regarding third parties.

4. Obligations of the Company upon Termination. Upon a termination of the Executive's employment for any reason, the Executive shall be paid, in a single lump-sum payment on the date of the Executive's termination of employment, the aggregate amount of the Executive's earned but unpaid Base Salary and accrued but unpaid vacation pay through the date of such termination (the "***Accrued Obligations***").

(a) Without Cause or For Good Reason. If the Executive's employment with the Company is terminated during the Employment Period (x) by the Company without Cause (other than by reason of the Executive's death or Disability or due to the expiration of the Employment Period) or (y) by the Executive for Good Reason (in either case, a "***Qualifying Termination***"), then following the Executive's Separation from Service (as defined below) (such date, the "***Date of Termination***"), in each case, subject to and conditioned upon compliance with Section 4(d) hereof, in addition to the Accrued Obligations:

(i) *Cash Severance*. The Company shall continue to pay to the Executive the Executive's Base Salary in effect on the Date of Termination during the period beginning on the Date of Termination and ending on the 12-month anniversary of the Date of Termination (the "***Severance Period***") in installments in accordance with the Company's regular payroll practices as of the Date of Termination;

(ii) *COBRA.* During the Severance Period, subject to the Executive's valid election to continue healthcare coverage under Section 4980B of the Internal Revenue Code and the regulations thereunder (together, the "***Code***"), the Company shall continue to provide the Executive and the Executive's eligible dependents with coverage under its group health plans at the same levels and the same cost to the Executive as would have applied if the Executive's employment had not been terminated based on the Executive's elections in effect on the Date of Termination (the "***COBRA Payments***"), provided, however, that (A) if any plan pursuant to which such benefits are provided is not, or ceases prior to the expiration of the period of continuation coverage to be, exempt from the application of Section 409A (as defined below) under Treasury Regulation Section 1.409A-1(a)(5), or (B) the Company is otherwise unable to continue to cover the Executive under its group health plans without incurring penalties (including without limitation, pursuant to Section 2716 of the Public Health Service Act or the Patient Protection and Affordable Care Act), then, in either case, an amount equal to each remaining Company subsidy shall thereafter be paid to the Executive in substantially equal monthly installments over the continuation coverage period (or the remaining portion thereof).

(iii) *Change in Control.* Notwithstanding the foregoing, if the Qualifying Termination occurs within the 12-month period following a Change in Control, as defined in the Company's 2020 Incentive Award Plan, as amended (and such Change in Control constitutes a "change in control event" as defined in Treasury Regulations Section 1.409A-3(i)(5)), then in lieu of the foregoing payments set forth in Section 4(a)(i), the Company shall pay to the Executive the sum of (x) 12-months of Executive's Base Salary in effect on the Date of Termination and (y) 1.0 times the Executive's Target Bonus for the year in which the Date of Termination occurs, during the Severance Period in installments in accordance with the Company's regular payroll practices as of the Date of Termination. In addition, unless otherwise explicitly set forth in any award agreement, any unvested equity awards outstanding immediately prior to the Date of Termination shall automatically become fully vested and exercisable (as applicable).

Notwithstanding the foregoing, it shall be a condition to the Executive's right to receive the amounts provided for in Sections 4(a)(i), 4(a)(ii) and 4(a)(iii) hereof that the Executive execute and deliver to the Company an effective release of claims in substantially the form attached hereto as Exhibit B (the "***Release***") within twenty-one (21) days (or, to the extent required by law, forty-five (45) days) following the Date of Termination and that the Executive not revoke such Release during any applicable revocation period.

(b) For Cause, Without Good Reason or Other Terminations. If the Company terminates the Executive's employment for Cause, the Executive terminates the Executive's employment without Good Reason, or the Executive's employment terminates for any other reason not enumerated in Sections 4(a) or 4(b) hereof, in any case, during the Employment Period, or if the Executive's employment with the Company is terminated due to the expiration of the Employment Period, then, in any case, the Company shall pay to the Executive the Accrued Obligations in cash within thirty (30) days after the Date of Termination (or by such earlier date as may be required by applicable law), and the Executive shall have no further rights hereunder.

(c) Six-Month Delay. Notwithstanding anything to the contrary in this Agreement, no compensation or benefits, including without limitation any severance payments or benefits payable under Section 4 hereof, shall be paid to the Executive during the six (6)-month period following the Executive's "separation from service" from the Company (within the meaning of Section 409A, a "***Separation from Service***") if the Company determines that paying such amounts at the time or times indicated in this Agreement would be a prohibited distribution under Section 409A(a)(2)(B)(i) of the Code. If the payment of any such amounts is delayed as a result of the previous sentence, then on the first day of the seventh month following the date of Separation from Service (or such earlier date upon which such amount can be paid under Section 409A without resulting in a prohibited distribution, including as a result of the Executive's death), the Company shall pay the Executive a lump-sum amount equal to the cumulative amount that would have otherwise been payable to the Executive during such period.

(d) Exclusive Benefits. Except as expressly provided in this Section 4 and subject to Section 5 hereof, the Executive shall not be entitled to any additional payments or benefits upon or in connection with the Executive's termination of employment.

5. Non-Exclusivity of Rights. Amounts which are vested benefits or which the Executive is otherwise entitled to receive under any plan, policy, practice or program of or any contract or agreement with the Company at or subsequent to the Date of Termination shall be payable in accordance with such plan, policy, practice or program or contract or agreement except as explicitly modified by this Agreement.

6. Excess Parachute Payments, Limitation on Payments.

(a) Best Pay Cap. Notwithstanding any other provision of this Agreement, in the event that any payment or benefit received or to be received by the Executive (including any payment or benefit received in connection with a termination of the Executive's employment, whether pursuant to the terms of this Agreement or any other plan, arrangement or agreement) (all such payments and benefits, including the payments and benefits under Section 4 hereof, being hereinafter referred to as the "***Total Payments***") would be subject (in whole or part), to the excise tax imposed under Section 4999 of the Code (the "***Excise Tax***"), then, after taking into account any reduction in the Total Payments provided by reason of Section 280G of the Code in such other plan, arrangement or agreement, the cash severance payments under this Agreement shall first be reduced, and the noncash severance payments hereunder shall thereafter be reduced, to the extent necessary so that no portion of the Total Payments is subject to the Excise Tax but only if (i) the net amount of such Total Payments, as so reduced (and after subtracting the net amount of federal, state and local income taxes on such reduced Total Payments and after taking into account the phase out of itemized deductions and personal exemptions attributable to such reduced Total Payments) is greater than or equal to (ii) the net amount of such Total Payments without such reduction (but after subtracting the net amount of federal, state and local income taxes on such Total Payments and the amount of Excise Tax to which the Executive would be subject in respect of such unreduced Total Payments and after taking into account the phase out of itemized deductions and personal exemptions attributable to such unreduced Total Payments).

(b) Certain Exclusions. For purposes of determining whether and the extent to which the Total Payments will be subject to the Excise Tax, (i) no portion of the Total Payments the receipt or enjoyment of which the Executive shall have waived at such time and in such manner as not to constitute a "payment" within the meaning of Section 280G(b) of the Code shall be taken into account; (ii) no portion of the Total Payments shall be taken into account which, in the written opinion of an independent, nationally recognized accounting or consulting firm (the "***Independent Advisors***") selected by the Company, does not constitute a "parachute payment" within the meaning of Section 280G(b)(2) of the Code (including by reason of Section 280G(b)(4)(A) of the Code) and, in calculating the Excise Tax, no portion of such Total Payments shall be taken into account which, in the opinion of the Independent Advisors, constitutes reasonable compensation for services actually rendered, within the meaning of Section 280G(b)(4)(B) of the Code, in excess of the "base amount" (as defined in Section 280G(b)(3) of the Code) allocable to such reasonable compensation; and (iii) the value of any non-cash benefit or any deferred payment or benefit included in the Total Payments shall be determined by the Independent Advisors in accordance with the principles of Sections 280G(d)(3) and (4) of the Code.

7. Nondisclosure and Nonuse of Confidential Information.

(a) The Executive's employment creates a relationship of confidence and trust between the Company and the Executive with respect to any information that is applicable to the business of the Company or the affiliates, any information that is otherwise used, developed or obtained by the Company or any affiliate in connection with its business and any information that is applicable to the business of any client, customer or other commercial partner of the Company or the affiliates, which may be made known to the Executive or learned by the Executive in such context during the period of his employment with the Company. All such information, whether oral or written, has commercial value in the business in which the Company is engaged and is referred to herein as "***Confidential Information***".

(b) The Company owns all right, title and interest in and to all Confidential Information. The Executive hereby assigns to the Company all right, title and interest that he may have acquired or hereafter may acquire in all Confidential Information. The Executive shall, at all times, both during the Employment Period and after the termination of the Employment Period, keep in confidence and trust all Confidential Information and the Executive shall not use or disclose any Confidential Information except as may be necessary in the ordinary course of performing his duties as an employee of the Company. Upon termination of the Employment Period, or at any time upon the request of the Company before such termination, the Executive shall promptly (but no later than five (5) days after the earlier of such termination or such request) destroy or deliver to the Company, at the Company's option, all Confidential Information in the Executive's control or possession and a written certification of the Executive's compliance with such obligations.

(c) the Executive hereby represents and warrants to the Company that neither his performance of the terms of this Agreement nor his employment with the Company will breach or conflict with any agreement, understanding, policy or other arrangement that he is a party to or otherwise subject to or bound by (including, without limitation, any such agreement, understanding, policy or arrangement (i) relating to nondisclosure or nonuse of proprietary information, knowledge or data or (ii) that otherwise assigns, licenses or otherwise transfers any interest in or to any Company Innovation (as defined below) to person or entity other than the Company). The Executive shall not disclose to the Company or otherwise use any confidential or proprietary information or material belonging to any other person or entity.

(d) Notice of Immunity Under the Economic Espionage Act of 1996, as amended by the Defend Trade Secrets Act of 2016 ("***DTSA***"). Notwithstanding any other provision of this Agreement:

(e) the Executive will not be held criminally or civilly liable under any federal or state trade secret law for any disclosure of a trade secret that: (A) is made: (1) in confidence to a federal, state, or local government official, either directly or indirectly, or to an attorney; and (2) solely for the purpose of reporting or investigating a suspected violation of law; or (B) is made in a complaint or other document that is filed under seal in a lawsuit or other proceeding.

(f) If the Executive files a lawsuit for retaliation by the Company for reporting a suspected violation of law, the Executive may disclose the Company's trade secrets to the Executive's attorney and use the trade secret information in the court proceeding if the Executive: (A) files any document containing the trade secret under seal; and (B) does not disclose the trade secret, except pursuant to court order.

(g) the Executive shall (i) comply with all Company security policies and procedures as in force from time to time including, without limitation, those regarding computer equipment, telephone systems, voicemail systems, facilities access, monitoring, key cards, access codes, Company intranet, internet, social media and instant messaging systems, e-mail systems, document storage systems, software licenses, data security, encryption, firewalls and passwords (the "***Facilities and Information Technology Resources***"); (ii) not access or use any Facilities and Information Technology Resources except as authorized by the Company; and (iii) not access or use any Facilities and Information Technology Resources in any manner after the termination of the Executive's employment by the Company, whether termination is voluntary or involuntary.

8. Inventions and Proprietary Rights.

(a) the Executive represents and warrants to the Company that he does not have any right, title or interest in or to any Innovation (as defined below) applicable to the business of the Company or relating in any way to the Company's business or demonstrably anticipated research and development or business that were conceived, reduced to practice, created, derived, developed or made by the Executive prior to the date hereof.

(b) the Executive hereby agrees promptly to disclose and describe to the Company, and the Executive hereby assigns to the Company all right, title and interest in and to, each of the Innovations and all associated intellectual property rights that the Executive may solely or jointly conceive, reduce to practice, create, derive, develop or make during the period of his employment with the Company that (i) relate to the Company's or any affiliate's business or actual or demonstrably anticipated research or development, (ii) were developed on any amount of the Company's or any affiliate's time or with the use of any of the Company's or any affiliate's materials, equipment, supplies, facilities or information or (iii) resulted from any work that the Executive performed for the Company or any affiliate (collectively, the "***Company Innovations***"). the Executive further acknowledges and agrees that all Company Innovations, including, without limitation, any computer programs, programming documentation, and other works of authorship, are "works made for hire" for purposes of the Company's rights under copyright laws and the Executive hereby assigns to the Company any and all right, title and interest that the Executive may have acquired or may hereafter acquire in such Company Innovations. Any assignment of copyright hereunder includes all rights of paternity, integrity, disclosure and withdrawal and any other rights that may be known as or referred to as "moral rights" (collectively "***Moral Rights***"). To the extent that such Moral Rights cannot be assigned under applicable law and to the extent the following is allowed by the laws in the various countries where Moral Rights exist, the Executive hereby waives such Moral Rights and consents to any action of the Company and the affiliates that would violate such Moral Rights in the absence of such consent. The Executive shall confirm any such waivers and consents from time to time as requested by the Company. To the extent that any right, title or interest in or to any Company Innovation cannot be assigned by the Executive to the Company, the Executive hereby grants to the Company an exclusive, royalty-free, transferable, irrevocable, worldwide license (with rights to sublicense through multiple tiers of sublicensees) to practice such non-assignable right, title or interest. To the extent that any right, title or interest in or to any Company Innovation can be neither assigned nor licensed by the Executive to the Company, the Executive hereby irrevocably waives and agrees never to assert such non-assignable and non-licensable right, title or interest against the Company, any affiliate or any of their successors in interest to such non-assignable and non-licensable rights.

(c) the Executive recognizes that Innovations and Confidential Information relating to his activities while working for the Company and conceived, reduced to practice, created, derived, developed or made by the Executive, alone or with others, within six (6) months after termination of his employment with the Company may have been conceived, reduced to practice, created, derived, developed or made, as applicable, in significant part while employed by the Company. Accordingly, the Executive agrees that such Innovations and Confidential Information shall be presumed to have been conceived, reduced to practice, created, derived, developed or made, as applicable, during his employment with the Company and shall be assigned to the Company unless and until the Executive has established the contrary by written evidence satisfying the clear and convincing standard of proof.

(d) the Executive shall perform, during and after his employment with the Company, all acts deemed necessary or desirable by the Company to permit and assist the Company, at the Company's expense, in obtaining and enforcing the full benefits, enjoyment, rights and title throughout the world in the Confidential Information and Innovations assigned or licensed to, or whose rights are irrevocably waived and shall not be asserted against, the Company and the affiliates under this Agreement. Such acts may include, but are not limited to, execution of documents and assistance or cooperation (i) in the filing, prosecution, registration, and memorialization of assignment of any applicable patents, copyrights, mask works or other applications, (ii) in the enforcement of any applicable patents, copyrights, mask works, Moral Rights, trade secrets or other rights, and (iii) in other legal proceedings related to the Confidential Information or Innovations.

(e) In the event that the Company is unable for any reason to secure the Executive's signature to any document required to file, prosecute, register, or memorialize the assignment of any patent, copyright, mask work or other applications or to enforce any patent, copyright, mask work, Moral Right, trade secret or other right under any Confidential Information (including improvements thereof) or any Innovations (including derivative works, improvements, renewals, extensions, continuations, divisionals, continuations in part, continuing patent applications, reissues, and reexaminations thereof), the Executive hereby irrevocably designates and appoints the Company and the Company's duly authorized officers and agents as his agents and attorneys-in-fact to act for and on his behalf and instead of the Executive (i) to execute, file, prosecute, register and memorialize the assignment of any such application, (ii) to execute and file any documentation required for such enforcement and (iii) to do all other lawfully permitted acts to further the filing, prosecution, registration, memorialization of assignment, issuance, and enforcement of patents, copyrights, mask works, Moral Rights, trade secrets or other rights under the Confidential Information or Innovations, all with the same legal force and effect as if executed by the Executive.

(f) The term "***Innovations***" means all processes, improvements, inventions (whether or not protectable under patent laws), works of authorship, information fixed in any tangible medium of expression (whether or not protectable under copyright laws), moral rights, mask works, trademarks, trade names, trade dress, trade secrets, know-how, ideas (whether or not protectable under trade secret laws) and all other subject matter protectable under patent, copyright, moral right, mask work, trademark, trade secret or other laws and includes, without limitation, all new or useful art, combinations, designs, developments, modifications, derivative works, discoveries, formulae, techniques and all goodwill associated with any of the foregoing.

(g) The Executive hereby irrevocably consents to any and all uses and displays, by the Company and its affiliates, agents, representatives and licensees, of the Executive's name, voice, likeness, image, appearance, and biographical information in, on or in connection with any pictures, photographs, audio and video recordings, digital images, websites, television programs and advertising, other advertising and publicity, sales and marketing brochures, books, magazines, other publications, CDs, DVDs, tapes, and all other printed and electronic forms and media throughout the world, at any time during or after the period of his employment by the Company, for all legitimate commercial and business purposes of the Company ("***Permitted Uses***") without further consent from or royalty, payment, or other compensation to the Executive. the Executive hereby forever waives and releases the Company and its directors, managing members, officers, employees and agents from any and all claims, actions, damages, losses, costs, expenses, and liability of any kind, arising under any legal or equitable theory whatsoever at any time during or after the period of his employment by the Company, arising directly or indirectly from the Company's and its affiliates', agents', representatives' and licensees' exercise of their rights in connection with any Permitted Uses.

9. Non-Compete; Non-Solicitation.

(a) The Executive acknowledges that, in the course of his employment with the Company and/or the Restricted Affiliates (as defined below), he has become familiar, or will become familiar, with trade secrets and with other confidential information concerning the Company and the Restricted Affiliates and that his services have been and will be of special, unique and extraordinary value to the Company and the Restricted Affiliates. the Executive understands that the following restrictions may limit his ability to earn a livelihood in a business similar to the business of the Company or any of the Restricted Affiliates, but he nevertheless believes that he will receive sufficient consideration and other benefits as an equity holder and an employee of the Company and as otherwise provided hereunder to clearly justify such restrictions which, in any event (given his education, skills and ability), the Executive does not believe would prevent him from otherwise earning a living. The Executive further understands that the provisions of Sections 7 through 9, inclusive, are reasonable and necessary to preserve the business of the Company and the Restricted Affiliates. "***Restricted Affiliate***" means any affiliate for which, during the twenty-four (24) month period preceding the Termination Date, the Executive served as an officer or director or the Executive provided any material services.

(b) In light of Section 9(a), the Executive agrees that while the Executive is employed by the Company and for twelve (12) months thereafter (such period, subject to automatic extension for an additional period equal to the period of any breach of the covenants in this Section 9, shall be referred to herein as the "***Non-Compete Period***"), he shall not directly or indirectly own, manage, operate, control, finance or invest in, participate in, consult with, render services for, act as an officer, director, manager, partner, principal, agent, representative, contractor or advisor of or to, or in any manner engage in or be associated with, hold any interest in, be employed by or represent any other business competing with the businesses or the services or products of the Company or the Restricted Affiliates as such businesses and/or services or products exist or are in the process of being formed, developed or acquired as of the Termination Date. Nothing herein shall prohibit the Executive from being a passive owner of not more than one percent (1%) of the outstanding stock of any class of a corporation which is publicly traded, so long as the Executive has no active participation in the business of such corporation.

(c) Furthermore, in light of Section 9(a), the Executive agrees that:

(i) during the Non-Compete Period, the Executive shall not directly or indirectly through another person or entity: (x) induce or attempt to induce any employee or independent contractor of the Company or any Restricted Affiliate to leave the employ of or engagement with the Company or such Restricted Affiliate, or in any way interfere with the relationship between the Company or any such Restricted Affiliate, on the one hand, and any employee or independent contractor thereof, on the other hand; or (y) hire or engage any person who was an employee or independent contractor of the Company until twelve months after such individual's relationship with the Company or any Restricted Affiliate has been terminated; and

(ii) during the Non-Compete Period, the Executive shall not directly or indirectly through another person or entity: (x) induce or attempt to induce any customer (it being understood that the term "customer" as used throughout this Agreement includes any person or entity that is receiving services from the Company or any Restricted Affiliate or that is directly or indirectly providing or referring business for the Company or any Restricted Affiliate), supplier, independent contractor, licensee or other business relation of the Company or any Restricted Affiliate to cease doing business with the Company or any Restricted Affiliate, or in any way interfere with the relationship between any such customer, supplier, independent contractor, licensee or business relation, on the one hand, and the Company or any Restricted Affiliate, on the other hand; or (y) solicit any customer of the Company or any Restricted Affiliate in order to offer products or services similar to those offered by the Company or any Restricted Affiliate.

(d) The Executive shall inform any prospective or future employer of any and all restrictions contained in this Agreement and provide such employer with a copy of such restrictions (but no other terms of this Agreement) prior to the commencement of that employment.

(e) If, at the time of enforcement of Section 9, a court holds that the restrictions stated herein are unreasonable under the circumstances then existing, the Executive and the Company agree that the maximum period, scope or geographical area reasonable under such circumstances shall be substituted for the stated period, scope or area so as to protect the Company to the greatest extent possible under applicable law from improper competition.

(f) In the event of any breach or violation by the Executive of any of the restrictions contained in Section 9, any time period specified herein shall abate during the time of any such breach or violation thereof and that portion remaining at the time of commencement of any such breach or violation shall not begin to run until such breach or violation has been cured in all respects.

10. Enforcement. Because the Executive's services are unique and because the Executive has access to Confidential Information and Company Innovations, the parties hereto agree that monetary damages alone would be an inadequate remedy for any breach of this Agreement. Therefore, in the event of a breach or threatened breach of this Agreement, the Company or its successors or assigns may, in addition to other rights and remedies existing in their favor at law or in equity, apply to any court of competent jurisdiction for specific performance and/or injunctive or other relief in order to enforce, or prevent any violations of, the provisions hereof (without posting a bond or other security) or require the Executive to account for and pay over to the Company all compensation, profits, moneys, accruals, increments or other benefits derived from or received as a result of any transactions constituting a breach of the covenants contained in this Agreement, if and when final judgment of a count of competent jurisdiction is so entered against the Executive. The rights and remedies of the Company under this Agreement are not exclusive of or limited by any other rights or remedies which they may have, whether at law, in equity, by contract or otherwise, all of which shall be cumulative (and not alternative). Without limiting the generality of the foregoing, the rights and remedies of the Company under this Agreement, and the obligations and liabilities of the Executive under this Agreement, are in addition to their respective rights, remedies, obligations and liabilities under the laws of unfair competition, laws relating to misappropriation of trade secrets and all other laws, rules and regulations. No failure on the part of any person or entity to exercise any power, right, privilege or remedy under this Agreement, and no delay on the part of any person or entity 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. No person or entity 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 or entity; and any such waiver shall not be applicable or have any effect except in the specific instance in which it is given.

11. Representations. The Executive hereby represents and warrants to the Company that (a) the Executive is entering into this Agreement voluntarily and that the performance of the Executive's obligations hereunder will not violate any agreement between the Executive and any other person, firm, organization or other entity, and (b) the Executive is not bound by the terms of any agreement with any previous employer or other party to refrain from competing, directly or indirectly, with the business of such previous employer or other party that would be violated by the Executive's entering into this Agreement and/or providing services to the Company pursuant to the terms of this Agreement.

12. Successors.

(a) This Agreement is personal to the Executive and, without the prior written consent of the Company, shall not be assignable by the Executive otherwise than by will or the laws of descent and distribution. This Agreement shall inure to the benefit of and be enforceable by the Executive's legal representatives.

(b) This Agreement shall inure to the benefit of and be binding upon the Company and its successors and assigns.

(c) The Company will require any successor (whether direct or indirect, by purchase, merger, consolidation or otherwise) to all or substantially all of the business and/or assets of the Company to assume and agree to perform this Agreement in the same manner and to the same extent that the Company would be required to perform it if no such succession had taken place. As used in this Agreement, "Company" shall mean the Company as hereinbefore defined and any successor to its business and/or assets as aforesaid which assumes and agrees to perform this Agreement by operation of law, or otherwise.

13. Miscellaneous.

(a) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Maryland, without reference to principles of conflict of laws. The captions of this Agreement are not part of the provisions hereof and shall have no force or effect.

(b) Compensation Recovery Policy. Executive acknowledges and agrees that, to the extent the Company adopts any claw-back or similar policy pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act or otherwise, and any rules and regulations promulgated thereunder, he or she shall take all action necessary or appropriate to comply with such policy (including, without limitation, entering into any further agreements, amendments or policies necessary or appropriate to implement and/or enforce such policy with respect to past, present and future compensation, as appropriate).

(c) Whistleblower Protections and Trade Secrets. Notwithstanding anything to the contrary contained herein, nothing in this Agreement prohibits Executive from reporting possible violations of federal law or regulation to any United States governmental agency or entity in accordance with the provisions of and rules promulgated under Section 21F of the Securities Exchange Act of 1934 or Section 806 of the Sarbanes-Oxley Act of 2002, or any other whistleblower protection provisions of state or federal law or regulation (including the right to receive an award for information provided to any such government agencies). Furthermore, in accordance with 18 U.S.C. § 1833, notwithstanding anything to the contrary in this Agreement: (i) Executive shall not be in breach of this Agreement, and shall not be held criminally or civilly liable under any federal or state trade secret law (A) for the disclosure of a trade secret that is made in confidence to a federal, state, or local government official or to an attorney solely for the purpose of reporting or investigating a suspected violation of law, or (B) for the disclosure of a trade secret that is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal; and (ii) if Executive files a lawsuit for retaliation by the Company for reporting a suspected violation of law, Executive may disclose the trade secret to Executive's attorney, and may use the trade secret information in the court proceeding, if Executive files any document containing the trade secret under seal, and does not disclose the trade secret, except pursuant to court order.

(d) Notices. All notices and other communications hereunder shall be in writing and shall be given by hand delivery to the other party or by registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

If to the Executive: at the Executive's most recent address on the records of the Company.

If to the Company:

Azyio Biologics, Inc.
12510 Prosperity Drive
Suite 1-370
Silver Spring, MD 20904
Attention: Board of Directors

with a copy to:

Latham & Watkins LLP
885 Third Avenue
New York, NY 10022-4802
Attn: [XXX]

or to such other address as either party shall have furnished to the other in writing in accordance herewith. Notice and communications shall be effective when actually received by the addressee.

(e) Sarbanes-Oxley Act of 2002. Notwithstanding anything herein to the contrary, if the Company determines, in its good faith judgment, that any transfer or deemed transfer of funds hereunder is likely to be construed as a personal loan prohibited by Section 13(k) of the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder (the "***Exchange Act***"), then such transfer or deemed transfer shall not be made to the extent necessary or appropriate so as not to violate the Exchange Act and the rules and regulations promulgated thereunder.

(f) Section 409A of the Code.

(i) To the extent applicable, this Agreement shall be interpreted in accordance with Section 409A of the Code and Department of Treasury regulations and other interpretive guidance issued thereunder (together, "***Section 409A***"). Notwithstanding any provision of this Agreement to the contrary, if the Company determines that any compensation or benefits payable under this Agreement may be subject to Section 409A, the Company shall work in good faith with the Executive to adopt such amendments to this Agreement or adopt other policies and procedures (including amendments, policies and procedures with retroactive effect), or take any other actions, that the Company determines are necessary or appropriate to avoid the imposition of taxes under Section 409A, including without limitation, actions intended to (i) exempt the compensation and benefits payable under this Agreement from Section 409A, and/or (ii) comply with the requirements of Section 409A; provided, however, that this Section 10(d) shall not create an obligation on the part of the Company to adopt any such amendment, policy or procedure or take any such other action, nor shall the Company have any liability for failing to do so.

(ii) Any right to a series of installment payments pursuant to this Agreement is to be treated as a right to a series of separate payments. To the extent permitted under Section 409A, any separate payment or benefit under this Agreement or otherwise shall not be deemed "nonqualified deferred compensation" subject to Section 409A to the extent provided in the exceptions in Treasury Regulation Section 1.409A-1(b)(4), Section 1.409A-1(b)(9) or any other applicable exception or provision of Section 409A. Any payments subject to Section 409A that are subject to execution of a waiver and release which may be executed and/or revoked in a calendar year following the calendar year in which the payment event (such as termination of employment) occurs shall commence payment only in the calendar year in which the consideration period or, if applicable, release revocation period ends, as necessary to comply with Section 409A. All payments of nonqualified deferred compensation subject to Section 409A to be made upon a termination of employment under this Agreement may only be made upon Employee's "separation from service" from the Company (within the meaning of Section 409A, a "Separation from Service").

(iii) To the extent that any payments or reimbursements provided to the Executive under this Agreement are deemed to constitute compensation to the Executive to which Treasury Regulation Section 1.409A-3(i)(1)(iv) would apply, such amounts shall be paid or reimbursed reasonably promptly, but not later than December 31 of the year following the year in which the expense was incurred. The amount of any such payments eligible for reimbursement in one year shall not affect the payments or expenses that are eligible for payment or reimbursement in any other taxable year, and the Executive's right to such payments or reimbursement of any such expenses shall not be subject to liquidation or exchange for any other benefit.

(g) Severability. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement.

(h) Withholding. The Company may withhold from any amounts payable under this Agreement such federal, state, local or foreign taxes as shall be required to be withheld pursuant to any applicable law or regulation.

(i) No Waiver. The Executive's or the Company's failure to insist upon strict compliance with any provision of this Agreement or the failure to assert any right the Executive or the Company may have hereunder, including, without limitation, the right of the Executive to terminate employment for Good Reason pursuant to Section 3(c) hereof, shall not be deemed to be a waiver of such provision or right or any other provision or right of this Agreement.

(j) Entire Agreement. As of the Effective Date, this Agreement constitutes the final, complete and exclusive agreement between the Executive and the Company with respect to the subject matter hereof and replaces and supersedes any and all other agreements, offers or promises, whether oral or written, by any member of the Company and its subsidiaries or affiliates, or representative thereof, including without limitation Prior Agreement.

(k) Amendment. No amendment or other modification of this Agreement shall be effective unless made in writing and signed by the parties hereto.

(l) Counterparts. This Agreement and any agreement referenced herein may be executed simultaneously in two or more counterparts, each of which shall be deemed an original but which together shall constitute one and the same instrument.

[**SIGNATURES APPEAR ON FOLLOWING PAGE**]

IN WITNESS WHEREOF, the Executive has hereunto set the Executive's hand and, pursuant to the authorization from the Board, the Company has caused these presents to be executed in its name on its behalf, all as of the day and year first above written.

AZIYO BIOLOGICS, INC.

By: /s/ Ronald Lloyd
Name: Ronald Lloyd
Title: President & CEO

" EXECUTIVE"

/s/ Darryl Roberts
Darryl Roberts, Ph.D.

EXHIBIT A

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EXHIBIT B

GENERAL RELEASE

For valuable consideration, the receipt and adequacy of which are hereby acknowledged, the undersigned does hereby release and forever discharge the "***Releasees***" hereunder, consisting of Aziyo Biologics, Inc., and its partners, subsidiaries, associates, affiliates, successors, heirs, assigns, agents, directors, officers, employees, representatives, lawyers, insurers, and all persons acting by, through, under or in concert with them, or any of them, of and from any and all manner of action or actions, cause or causes of action, in law or in equity, suits, debts, liens, contracts, agreements, promises, liability, claims, demands, damages, losses, costs, attorneys' fees or expenses, of any nature whatsoever, known or unknown, fixed or contingent (hereinafter called "***Claims***"), which the undersigned now has or may hereafter have against the Releasees, or any of them, by reason of any matter, cause, or thing whatsoever from the beginning of time to the date hereof. The Claims released herein include, without limiting the generality of the foregoing, any Claims in any way arising out of, based upon, or related to the employment or termination of employment of the undersigned by the Releasees, or any of them; any alleged breach of any express or implied contract of employment; any alleged torts or other alleged legal restrictions on Releasees' right to terminate the employment of the undersigned; and any alleged violation of any federal, state or local statute or ordinance including, without limitation, Title VII of the Civil Rights Act of 1964, the Age Discrimination In Employment Act, the Americans With Disabilities Act, and [__].[1] Notwithstanding the foregoing, this general release (the "***Release***") shall not operate to release any rights or claims of the undersigned (i) to payments or benefits under Section 4(a) of that certain Employment Agreement, effective as of [Ÿ], between Aziyo Biologics, Inc. and the undersigned (the "***Employment Agreement***"), (ii) to payments or benefits under any equity award agreement between the undersigned and the Company, (iii) with respect to Section 2(b)(iv) of the Employment Agreement, (iv) to accrued or vested benefits the undersigned may have, if any, as of the date hereof under any applicable plan, policy, practice, program, contract or agreement with the Company, (v) to any Claims, including claims for indemnification and/or advancement of expenses arising under any indemnification agreement between the undersigned and the Company or under the bylaws, certificate of incorporation or other similar governing document of the Company, (vi) to any Claims which cannot be waived by an employee under applicable law or (vii) with respect to the undersigned's right to communicate directly with, cooperate with, or provide information to, any federal, state or local government regulator.

[IN ACCORDANCE WITH THE OLDER WORKERS BENEFIT PROTECTION ACT OF 1990, THE UNDERSIGNED IS HEREBY ADVISED AS FOLLOWS:

(A) THE EXECUTIVE HAS THE RIGHT TO CONSULT WITH AN ATTORNEY BEFORE SIGNING THIS RELEASE;

(B) THE EXECUTIVE HAS TWENTY-ONE (21) DAYS TO CONSIDER THIS RELEASE BEFORE SIGNING IT; AND

(C) THE EXECUTIVE HAS SEVEN (7) DAYS AFTER SIGNING THIS RELEASE TO REVOKE THIS RELEASE, AND THIS RELEASE WILL BECOME EFFECTIVE UPON THE EXPIRATION OF THAT REVOCATION PERIOD.]

[1] Applicable state law references to be included.

The undersigned represents and warrants that there has been no assignment or other transfer of any interest in any Claim which the Executive may have against Releasees, or any of them, and the undersigned agrees to indemnify and hold Releasees, and each of them, harmless from any liability, Claims, demands, damages, costs, expenses and attorneys' fees incurred by Releasees, or any of them, as the result of any such assignment or transfer or any rights or Claims under any such assignment or transfer. It is the intention of the parties that this indemnity does not require payment as a condition precedent to recovery by the Releasees against the undersigned under this indemnity.

Notwithstanding anything herein, the undersigned acknowledges and agrees that, pursuant to 18 USC Section 1833(b), the undersigned will not be held criminally or civilly liable under any federal or state trade secret law for the disclosure of a trade secret that is made: (i) in confidence to a federal, state, or local government official, either directly or indirectly, or to an attorney, and solely for the purpose of reporting or investigating a suspected violation of law; or (ii) in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal.

The undersigned agrees that if the Executive hereafter commences any suit arising out of, based upon, or relating to any of the Claims released hereunder or in any manner asserts against Releasees, or any of them, any of the Claims released hereunder, then the undersigned agrees to pay to Releasees, and each of them, in addition to any other damages caused to Releasees thereby, all attorneys' fees incurred by Releasees in defending or otherwise responding to said suit or Claim.

The undersigned further understands and agrees that neither the payment of any sum of money nor the execution of this Release shall constitute or be construed as an admission of any liability whatsoever by the Releasees, or any of them, who have consistently taken the position that they have no liability whatsoever to the undersigned.

IN WITNESS WHEREOF, the undersigned has executed this Release this ____ day of _____, ____.

_____

Exhibit 10.11
Execution Version

EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT (this "***Agreement***"), entered into as of September 30, 2020, is made by and between Aziyo Biologics, Inc. (the "***Company***") and Matthew Ferguson (the "***Executive***") (collectively referred to herein as the "***Parties***").

WHEREAS, the Executive is currently employed by the Company as its Chief Financial Officer pursuant to the terms of that certain Offer Letter by and between the Parties, dated as of September 24, 2020 (the "***Prior Agreement***");

WHEREAS, the Company is contemplating an initial public offering of its Class A common stock pursuant to an effective registration statement filed under the Securities Act of 1933, as amended (the "***IPO***");

WHEREAS, in connection with the IPO, the Company desires to assure itself of the continued services of the Executive by engaging the Executive to perform services under the terms hereof;

WHEREAS, the Executive desires to provide services to the Company on the terms herein provided; and

WHEREAS, the Parties desire to have this Agreement become effective, and supersede the Prior Agreement, as the date of the consummation of the IPO (the "***Effective Date***").

NOW, THEREFORE, IT IS HEREBY AGREED AS FOLLOWS:

1. Employment Period. Subject to the provisions for earlier termination hereinafter provided, the initial term of the Executive's employment hereunder shall be for a term (the "***Initial Employment Period***") commencing on the Effective Date and ending on the second anniversary of the Effective Date. The Initial Employment Period shall automatically be extended for successive one-year periods (each, an "***Extension Employment Period***" and, together with the Initial Employment Period, the "***Employment Period***"), unless either Party gives written notice of non-extension to the other no later than ninety (90) days prior to the expiration of the then-applicable Employment Period, in which case Executive's employment will terminate at the end of the then-applicable Employment Period, subject to earlier termination as provided in Section 4 below.

2. Terms of Employment.

(a) Position and Duties.

(i) Role and Responsibilities. During the Employment Period, the Executive shall serve as Chief Financial Officer of the Company, and shall perform such employment duties as are usual and customary for such positions. The Executive shall report directly to the Chief Executive Officer of the Company (or his or her designee). At the Company's request, the Executive shall serve the Company and/or its subsidiaries and affiliates in other capacities in addition to the foregoing, consistent with the Executive's position as Chief Financial Officer of the Company. In the event that the Executive, during the Employment Period, serves in any one or more of such additional capacities, the Executive's compensation shall not be increased beyond that specified in Section 2(b) hereof. In addition, in the event the Executive's service in one or more of such additional capacities is terminated, the Executive's compensation, as specified in Section 2(b) hereof, shall not be diminished or reduced in any manner as a result of such termination provided that the Executive otherwise remains employed under the terms of this Agreement.

(ii) Exclusivity. During the Employment Period, and excluding any periods of vacation and sick leave to which the Executive may be entitled, the Executive agrees to devote his or her full business time and attention to the business and affairs of the Company. Notwithstanding the foregoing, during the Employment Period, it shall not be a violation of this Agreement for the Executive to: (A) serve on boards, committees or similar bodies of charitable or nonprofit organizations or other companies, (B) fulfill limited teaching, speaking and writing engagements, and (C) manage his or her personal investments, in each case, so long as such activities do not individually or in the aggregate materially interfere or conflict with the performance of the Executive's duties and responsibilities under this Agreement; provided, that with respect to the activities in subclauses (A) and/or (B), the Executive receives prior written approval from the Chief Executive Officer. Exhibit A of this Agreement sets forth the board of directors or advisory boards on which the Executive currently serves.

(iii) Principal Location. During the Employment Period, the Executive shall perform the services required by this Agreement at the Company's principal offices located in Silver Spring, Maryland or such other location mutually agreed upon by the Company and the Executive (the "***Principal Location***"), except for travel to other locations as may be necessary to fulfill the Executive's duties and responsibilities hereunder.

(b) Compensation, Benefits, Etc.

(i) Base Salary. During the Employment Period, the Executive shall receive a base salary (the "***Base Salary***") of $350,000 per annum. The Base Salary shall be reviewed annually by the Compensation Committee (the "***Compensation Committee***") of the Board of Directors of the Company (the "***Board***") and may be increased from time to time by the Compensation Committee in its sole discretion. The Base Salary shall be paid in accordance with the Company's normal payroll practices for executive salaries generally, but no less often than monthly. The Base Salary may be increased in the Compensation Committee's discretion, but not reduced, and the term "Base Salary" as utilized in this Agreement shall refer to the Base Salary as so increased.

(ii) Annual Cash Bonus. In addition to the Base Salary, the Executive shall be eligible to earn, for each fiscal year of the Company ending during the Employment Period, a discretionary cash performance bonus (an "***Annual Bonus***") under the Company's bonus plan or program applicable to senior executives. The Executive's target Annual Bonus shall be set at 45% of the Base Salary actually paid for such year (the "***Target Bonus***"). The actual amount of any Annual Bonus shall be determined by reference to the attainment of Company performance metrics and/or individual performance objectives, in each case, as determined by the Compensation Committee, and may be greater or less than the Target Bonus (or zero). Subject to Section 4(a)(i) hereof, payment of any Annual Bonus(es), to the extent any Annual Bonus(es) become payable, will be contingent upon the Executive's continued employment through the applicable payment date. The Company will pay any such bonus that has been duly earned and awarded by the Board as soon as administratively possible following its approval by the Board and, in any event, no later than the later of (i) the fifteenth day of the third month after the end of the Company's fiscal year in which such bonus is earned or (ii) March 15 following the calendar year in which such bonus is earned.

(iii) Benefits. During the Employment Period, the Executive (and the Executive's spouse and/or eligible dependents to the extent provided in the applicable plans and programs) shall be eligible to participate in and be covered under the health and welfare benefit plans and programs maintained by the Company for the benefit of its employees from time to time, pursuant to the terms of such plans and programs including any medical and dental insurance plans and programs. During the Employment Period, the Company shall provide the Executive and the Executive's eligible dependents with coverage under its group health plans. In addition, during the Employment Period, Executive shall be eligible to participate in any retirement, savings and other employee benefit plans and programs maintained from time to time by the Company for the benefit of its senior executive officers. Nothing contained in this Section 2(b)(iii) shall create or be deemed to create any obligation on the part of the Company to adopt or maintain any health, welfare, retirement or other benefit plan or program at any time or to create any limitation on the Company's ability to modify or terminate any such plan or program.

(iv) Expenses. During the Employment Period, the Executive shall be entitled to receive prompt reimbursement for all reasonable business expenses incurred by the Executive in accordance with the policies, practices and procedures of the Company provided to employees of the Company.

(v) Fringe Benefits. During the Employment Period, the Executive shall be eligible to receive such fringe benefits and perquisites as are provided by the Company to its employees from time to time, in accordance with the policies, practices and procedures of the Company, and shall receive such additional fringe benefits and perquisites as the Company may, in its discretion, from time-to-time provide.

(vi) Vacation. During the Employment Period, the Executive shall be entitled to paid vacation in accordance with the plans, policies, programs and practices of the Company applicable to its senior executives in effect from time to time, but in no event shall the Executive be entitled to less than four (4) weeks of vacation per calendar year (pro-rated for any partial year of service).

3. Termination of Employment.

(a) Death or Disability. The Executive's employment shall terminate automatically upon the Executive's death during the Employment Period. Either the Company or the Executive may terminate the Executive's employment in the event of the Executive's Disability during the Employment Period. For purposes of this Agreement, "***Disability***" shall mean any disability or incapacity that (i) renders Executive unable to substantially perform his duties hereunder for ninety (90) days during any 12-month period or (ii) would reasonably be expected to render Executive unable to substantially perform his duties for ninety (90) days during any 12-month period, in each case as determined by the Board in its good faith judgment.

(b) Termination by the Company. The Company may terminate the Executive's employment during the Employment Period for Cause or without Cause. For purposes of this Agreement, "***Cause***" shall mean the occurrence of any one or more of the following events unless, to the extent capable of correction, the Executive fully corrects the circumstances constituting Cause within fifteen (15) days after receipt of the Notice of Termination (as defined below):

(i) Executive performing his duties, in the good faith opinion of the Board, in a grossly negligent or reckless manner or with willful malfeasance;

(ii) Executive exhibiting habitual drunkenness or engaging in substance abuse;

(iii) Executive committing any material violation of any state or federal law relating to the workplace environment (including, without limitation, laws relating to sexual harassment or age, sex or other prohibited discrimination) or any material violation of any Company policy;

(iv) Executive willfully failing or refusing to perform in the usual manner at the usual time those duties which he regularly and routinely performs in connection with the business of the Company or such other duties reasonably related to the capacity in which he is employed hereunder which may be assigned to him by the Board;

(v) Executive performing any material action when specifically and reasonably instructed not to do so by the Chairman or the Board;

(vi) Executive breaching Sections 7, 8 and 9 hereof;

(vii) Executive committing any fraud or using or appropriating for his or her personal use or benefit any funds, properties or opportunities of the Company not authorized by the Board to be so used or appropriated; or

(viii) Executive being convicted of any felony or any other crime related to his employment or involving moral turpitude.

The Company shall not be entitled to terminate Executive for Cause pursuant to clause (iii), (iv), (v) or (vi) unless the Company provides written notice stating in reasonable detail the basis for termination and a fifteen (15) day opportunity to cure to Executive (unless (1) the Company reasonably determines that providing such opportunity to cure to Executive is reasonably likely to have a material adverse effect on its business, financial condition, results of operations, prospects or assets, (2) the facts and circumstances underlying such termination are not able to be cured or (3) the Company has previously provided Executive an opportunity to cure the applicable issue; in the case of (1), (2) or (3), the Company may terminate Executive without providing an opportunity to cure).

(c) Termination by the Executive. The Executive's employment may be terminated by the Executive for any reason, including with Good Reason or by the Executive without Good Reason. For purposes of this Agreement, "***Good Reason***" shall mean the occurrence of any one or more of the following events without the Executive's prior written consent, unless the Company fully corrects the circumstances constituting Good Reason (provided such circumstances are capable of correction) as provided below:

(i) A material reduction in the Executive's job responsibilities and duties for the Company;

(ii) A material reduction in the Executive's Base Salary; or

(iii) a requirement imposed by the Company on the Executive that Executive's principal place of employment be anywhere other than within a 50 mile radius of the Executive's Principal Location, except for required travel on Company business to an extent substantially consistent with Executive's business travel obligations, that, in any such case, is not cured by the Company within fifteen (15) days after the Company's receipt of written notice from the Executive of such event.

Notwithstanding the foregoing, the Executive will not be deemed to have resigned for Good Reason unless (1) the Executive provides the Company with written notice setting forth in reasonable detail the facts and circumstances claimed by the Executive to constitute Good Reason within sixty (60) days after the date of the occurrence of any event that the Executive knows or should reasonably have known to constitute Good Reason, (2) the Company fails to cure such acts or omissions within thirty (30) days following its receipt of such notice, and (3) the effective date of the Executive's termination for Good Reason occurs no later than sixty (60) days after the expiration of the Company's cure period.

(d) Notice of Termination. Any termination by the Company for Cause, or by the Executive for Good Reason, shall be communicated by a Notice of Termination to the other parties hereto given in accordance with Section 13(d) hereof. For purposes of this Agreement, a "***Notice of Termination***" means a written notice which (i) indicates the specific termination provision in this Agreement relied upon, (ii) sets forth in reasonable detail the facts and circumstances claimed to provide a basis for termination of the Executive's employment under the provision so indicated and (iii) if the Date of Termination (as defined below) is other than the date of receipt of such notice, specifies the termination date (which date shall be not more than thirty (30) days after the giving of such notice). The failure by the Executive or the Company to set forth in the Notice of Termination any fact or circumstance which contributes to a showing of Good Reason or Cause shall not waive any right of the Executive or the Company, respectively, hereunder or preclude the Executive or the Company, respectively, from asserting such fact or circumstance in enforcing the Executive's or the Company's rights hereunder.

(e) Termination of Offices and Directorships; Return of Property. Upon termination of the Executive's employment for any reason, unless otherwise specified in a written agreement between the Executive and the Company, the Executive shall be deemed to have resigned from all offices, directorships, and other employment positions if any, then held with the Company, and shall take all actions reasonably requested by the Company to effectuate the foregoing. In addition, upon the termination of the Executive's employment for any reason, the Executive agrees to return to the Company all documents of the Company and its affiliates (and all copies thereof) and all other Company or Company affiliate property that the Executive has in his or her possession, custody or control. Such property includes, without limitation: (i) any materials of any kind that the Executive knows contain or embody any proprietary or confidential information of the Company or an affiliate of the Company (and all reproductions thereof), (ii) computers (including, but not limited to, laptop computers, desktop computers and similar devices) and other portable electronic devices (including, but not limited to, tablet computers), cellular phones/smartphones, credit cards, phone cards, entry cards, identification badges and keys, and (iii) any correspondence, drawings, manuals, letters, notes, notebooks, reports, programs, plans, proposals, financial documents, or any other documents concerning the customers, business plans, marketing strategies, products and/or processes of the Company or any of its affiliates and any information received from the Company or any of its affiliates regarding third parties.

4. Obligations of the Company upon Termination. Upon a termination of the Executive's employment for any reason, the Executive shall be paid, in a single lump-sum payment on the date of the Executive's termination of employment, the aggregate amount of the Executive's earned but unpaid Base Salary and accrued but unpaid vacation pay through the date of such termination (the "***Accrued Obligations***").

(a) Without Cause or For Good Reason. If the Executive's employment with the Company is terminated during the Employment Period (x) by the Company without Cause (other than by reason of the Executive's death or Disability or due to the expiration of the Employment Period) or (y) by the Executive for Good Reason (in either case, a "***Qualifying Termination***"), then following the Executive's Separation from Service (as defined below) (such date, the "***Date of Termination***"), in each case, subject to and conditioned upon compliance with Section 4(d) hereof, in addition to the Accrued Obligations:

(i) *Cash Severance*. The Company shall continue to pay to the Executive the Executive's Base Salary in effect on the Date of Termination during the period beginning on the Date of Termination and ending on the 12-month anniversary of the Date of Termination (the "***Severance Period***") in installments in accordance with the Company's regular payroll practices as of the Date of Termination;

(ii) *COBRA*. During the Severance Period, subject to the Executive's valid election to continue healthcare coverage under Section 4980B of the Internal Revenue Code and the regulations thereunder (together, the "***Code***"), the Company shall continue to provide the Executive and the Executive's eligible dependents with coverage under its group health plans at the same levels and the same cost to the Executive as would have applied if the Executive's employment had not been terminated based on the Executive's elections in effect on the Date of Termination (the "***COBRA Payments***"), provided, however, that (A) if any plan pursuant to which such benefits are provided is not, or ceases prior to the expiration of the period of continuation coverage to be, exempt from the application of Section 409A (as defined below) under Treasury Regulation Section 1.409A-1(a)(5), or (B) the Company is otherwise unable to continue to cover the Executive under its group health plans without incurring penalties (including without limitation, pursuant to Section 2716 of the Public Health Service Act or the Patient Protection and Affordable Care Act), then, in either case, an amount equal to each remaining Company subsidy shall thereafter be paid to the Executive in substantially equal monthly installments over the continuation coverage period (or the remaining portion thereof).

(iii) *Change in Control.* Notwithstanding the foregoing, if the Qualifying Termination occurs within the 12-month period following a Change in Control, as defined in the Company's 2020 Incentive Award Plan, as amended (and such Change in Control constitutes a "change in control event" as defined in Treasury Regulations Section 1.409A-3(i)(5)), then in lieu of the foregoing payments set forth in Section 4(a)(i), the Company shall pay to the Executive the sum of (x) 12 -months of Executive's Base Salary in effect on the Date of Termination and (y) 1.0 times the Executive's Target Bonus for the year in which the Date of Termination occurs, during the Severance Period in installments in accordance with the Company's regular payroll practices as of the Date of Termination. In addition, unless otherwise explicitly set forth in any award agreement, any unvested equity awards outstanding immediately prior to the Date of Termination shall automatically become fully vested and exercisable (as applicable).

Notwithstanding the foregoing, it shall be a condition to the Executive's right to receive the amounts provided for in Sections 4(a)(i), 4(a)(ii) and 4(a)(iii) hereof that the Executive execute and deliver to the Company an effective release of claims in substantially the form attached hereto as Exhibit B (the "***Release***") within twenty-one (21) days (or, to the extent required by law, forty-five (45) days) following the Date of Termination and that the Executive not revoke such Release during any applicable revocation period.

(b) For Cause, Without Good Reason or Other Terminations. If the Company terminates the Executive's employment for Cause, the Executive terminates the Executive's employment without Good Reason, or the Executive's employment terminates for any other reason not enumerated in Sections 4(a) or 4(b) hereof, in any case, during the Employment Period, or if the Executive's employment with the Company is terminated due to the expiration of the Employment Period, then, in any case, the Company shall pay to the Executive the Accrued Obligations in cash within thirty (30) days after the Date of Termination (or by such earlier date as may be required by applicable law), and the Executive shall have no further rights hereunder.

(c) Six-Month Delay. Notwithstanding anything to the contrary in this Agreement, no compensation or benefits, including without limitation any severance payments or benefits payable under Section 4 hereof, shall be paid to the Executive during the six (6)-month period following the Executive's "separation from service" from the Company (within the meaning of Section 409A, a "***Separation from Service***") if the Company determines that paying such amounts at the time or times indicated in this Agreement would be a prohibited distribution under Section 409A(a)(2)(B)(i) of the Code. If the payment of any such amounts is delayed as a result of the previous sentence, then on the first day of the seventh month following the date of Separation from Service (or such earlier date upon which such amount can be paid under Section 409A without resulting in a prohibited distribution, including as a result of the Executive's death), the Company shall pay the Executive a lump-sum amount equal to the cumulative amount that would have otherwise been payable to the Executive during such period.

(d) Exclusive Benefits. Except as expressly provided in this Section 4 and subject to Section 5 hereof, the Executive shall not be entitled to any additional payments or benefits upon or in connection with the Executive's termination of employment.

5. Non-Exclusivity of Rights. Amounts which are vested benefits or which the Executive is otherwise entitled to receive under any plan, policy, practice or program of or any contract or agreement with the Company at or subsequent to the Date of Termination shall be payable in accordance with such plan, policy, practice or program or contract or agreement except as explicitly modified by this Agreement.

6. Excess Parachute Payments, Limitation on Payments.

(a) Best Pay Cap. Notwithstanding any other provision of this Agreement, in the event that any payment or benefit received or to be received by the Executive (including any payment or benefit received in connection with a termination of the Executive's employment, whether pursuant to the terms of this Agreement or any other plan, arrangement or agreement) (all such payments and benefits, including the payments and benefits under Section 4 hereof, being hereinafter referred to as the "***Total Payments***") would be subject (in whole or part), to the excise tax imposed under Section 4999 of the Code (the "***Excise Tax***"), then, after taking into account any reduction in the Total Payments provided by reason of Section 280G of the Code in such other plan, arrangement or agreement, the cash severance payments under this Agreement shall first be reduced, and the noncash severance payments hereunder shall thereafter be reduced, to the extent necessary so that no portion of the Total Payments is subject to the Excise Tax but only if (i) the net amount of such Total Payments, as so reduced (and after subtracting the net amount of federal, state and local income taxes on such reduced Total Payments and after taking into account the phase out of itemized deductions and personal exemptions attributable to such reduced Total Payments) is greater than or equal to (ii) the net amount of such Total Payments without such reduction (but after subtracting the net amount of federal, state and local income taxes on such Total Payments and the amount of Excise Tax to which the Executive would be subject in respect of such unreduced Total Payments and after taking into account the phase out of itemized deductions and personal exemptions attributable to such unreduced Total Payments).

(b) Certain Exclusions. For purposes of determining whether and the extent to which the Total Payments will be subject to the Excise Tax, (i) no portion of the Total Payments the receipt or enjoyment of which the Executive shall have waived at such time and in such manner as not to constitute a "payment" within the meaning of Section 280G(b) of the Code shall be taken into account; (ii) no portion of the Total Payments shall be taken into account which, in the written opinion of an independent, nationally recognized accounting or consulting firm (the "***Independent Advisors***") selected by the Company, does not constitute a "parachute payment" within the meaning of Section 280G(b)(2) of the Code (including by reason of Section 280G(b)(4)(A) of the Code) and, in calculating the Excise Tax, no portion of such Total Payments shall be taken into account which, in the opinion of the Independent Advisors, constitutes reasonable compensation for services actually rendered, within the meaning of Section 280G(b)(4)(B) of the Code, in excess of the "base amount" (as defined in Section 280G(b)(3) of the Code) allocable to such reasonable compensation; and (iii) the value of any non-cash benefit or any deferred payment or benefit included in the Total Payments shall be determined by the Independent Advisors in accordance with the principles of Sections 280G(d)(3) and (4) of the Code.

7. Nondisclosure and Nonuse of Confidential Information.

(a) The Executive's employment creates a relationship of confidence and trust between the Company and the Executive with respect to any information that is applicable to the business of the Company or the affiliates, any information that is otherwise used, developed or obtained by the Company or any affiliate in connection with its business and any information that is applicable to the business of any client, customer or other commercial partner of the Company or the affiliates, which may be made known to the Executive or learned by the Executive in such context during the period of his employment with the Company. All such information, whether oral or written, has commercial value in the business in which the Company is engaged and is referred to herein as "***Confidential Information***".

(b) The Company owns all right, title and interest in and to all Confidential Information. The Executive hereby assigns to the Company all right, title and interest that he may have acquired or hereafter may acquire in all Confidential Information. The Executive shall, at all times, both during the Employment Period and after the termination of the Employment Period, keep in confidence and trust all Confidential Information and the Executive shall not use or disclose any Confidential Information except as may be necessary in the ordinary course of performing his duties as an employee of the Company. Upon termination of the Employment Period, or at any time upon the request of the Company before such termination, the Executive shall promptly (but no later than five (5) days after the earlier of such termination or such request) destroy or deliver to the Company, at the Company's option, all Confidential Information in the Executive's control or possession and a written certification of the Executive's compliance with such obligations.

(c) the Executive hereby represents and warrants to the Company that neither his performance of the terms of this Agreement nor his employment with the Company will breach or conflict with any agreement, understanding, policy or other arrangement that he is a party to or otherwise subject to or bound by (including, without limitation, any such agreement, understanding, policy or arrangement (i) relating to nondisclosure or nonuse of proprietary information, knowledge or data or (ii) that otherwise assigns, licenses or otherwise transfers any interest in or to any Company Innovation (as defined below) to person or entity other than the Company). The Executive shall not disclose to the Company or otherwise use any confidential or proprietary information or material belonging to any other person or entity.

(d) Notice of Immunity Under the Economic Espionage Act of 1996, as amended by the Defend Trade Secrets Act of 2016 ("***DTSA***"). Notwithstanding any other provision of this Agreement:

(e) the Executive will not be held criminally or civilly liable under any federal or state trade secret law for any disclosure of a trade secret that: (A) is made: (1) in confidence to a federal, state, or local government official, either directly or indirectly, or to an attorney; and (2) solely for the purpose of reporting or investigating a suspected violation of law; or (B) is made in a complaint or other document that is filed under seal in a lawsuit or other proceeding.

(f) If the Executive files a lawsuit for retaliation by the Company for reporting a suspected violation of law, the Executive may disclose the Company's trade secrets to the Executive's attorney and use the trade secret information in the court proceeding if the Executive: (A) files any document containing the trade secret under seal; and (B) does not disclose the trade secret, except pursuant to court order.

(g) the Executive shall (i) comply with all Company security policies and procedures as in force from time to time including, without limitation, those regarding computer equipment, telephone systems, voicemail systems, facilities access, monitoring, key cards, access codes, Company intranet, internet, social media and instant messaging systems, e-mail systems, document storage systems, software licenses, data security, encryption, firewalls and passwords (the "***Facilities and Information Technology Resources***"); (ii) not access or use any Facilities and Information Technology Resources except as authorized by the Company; and (iii) not access or use any Facilities and Information Technology Resources in any manner after the termination of the Executive's employment by the Company, whether termination is voluntary or involuntary.

8. Inventions and Proprietary Rights.

(a) the Executive represents and warrants to the Company that he does not have any right, title or interest in or to any Innovation (as defined below) applicable to the business of the Company or relating in any way to the Company's business or demonstrably anticipated research and development or business that were conceived, reduced to practice, created, derived, developed or made by the Executive prior to the date hereof.

(b) the Executive hereby agrees promptly to disclose and describe to the Company, and the Executive hereby assigns to the Company all right, title and interest in and to, each of the Innovations and all associated intellectual property rights that the Executive may solely or jointly conceive, reduce to practice, create, derive, develop or make during the period of his employment with the Company that (i) relate to the Company's or any affiliate's business or actual or demonstrably anticipated research or development, (ii) were developed on any amount of the Company's or any affiliate's time or with the use of any of the Company's or any affiliate's materials, equipment, supplies, facilities or information or (iii) resulted from any work that the Executive performed for the Company or any affiliate (collectively, the "***Company Innovations***"). the Executive further acknowledges and agrees that all Company Innovations, including, without limitation, any computer programs, programming documentation, and other works of authorship, are "works made for hire" for purposes of the Company's rights under copyright laws and the Executive hereby assigns to the Company any and all right, title and interest that the Executive may have acquired or may hereafter acquire in such Company Innovations. Any assignment of copyright hereunder includes all rights of paternity, integrity, disclosure and withdrawal and any other rights that may be known as or referred to as "moral rights" (collectively "***Moral Rights***"). To the extent that such Moral Rights cannot be assigned under applicable law and to the extent the following is allowed by the laws in the various countries where Moral Rights exist, the Executive hereby waives such Moral Rights and consents to any action of the Company and the affiliates that would violate such Moral Rights in the absence of such consent. The Executive shall confirm any such waivers and consents from time to time as requested by the Company. To the extent that any right, title or interest in or to any Company Innovation cannot be assigned by the Executive to the Company, the Executive hereby grants to the Company an exclusive, royalty-free, transferable, irrevocable, worldwide license (with rights to sublicense through multiple tiers of sublicensees) to practice such non-assignable right, title or interest. To the extent that any right, title or interest in or to any Company Innovation can be neither assigned nor licensed by the Executive to the Company, the Executive hereby irrevocably waives and agrees never to assert such non-assignable and non-licensable right, title or interest against the Company, any affiliate or any of their successors in interest to such non-assignable and non-licensable rights.

(c) the Executive recognizes that Innovations and Confidential Information relating to his activities while working for the Company and conceived, reduced to practice, created, derived, developed or made by the Executive, alone or with others, within six (6) months after termination of his employment with the Company may have been conceived, reduced to practice, created, derived, developed or made, as applicable, in significant part while employed by the Company. Accordingly, the Executive agrees that such Innovations and Confidential Information shall be presumed to have been conceived, reduced to practice, created, derived, developed or made, as applicable, during his employment with the Company and shall be assigned to the Company unless and until the Executive has established the contrary by written evidence satisfying the clear and convincing standard of proof.

(d) the Executive shall perform, during and after his employment with the Company, all acts deemed necessary or desirable by the Company to permit and assist the Company, at the Company's expense, in obtaining and enforcing the full benefits, enjoyment, rights and title throughout the world in the Confidential Information and Innovations assigned or licensed to, or whose rights are irrevocably waived and shall not be asserted against, the Company and the affiliates under this Agreement. Such acts may include, but are not limited to, execution of documents and assistance or cooperation (i) in the filing, prosecution, registration, and memorialization of assignment of any applicable patents, copyrights, mask works or other applications, (ii) in the enforcement of any applicable patents, copyrights, mask works, Moral Rights, trade secrets or other rights, and (iii) in other legal proceedings related to the Confidential Information or Innovations.

(e) In the event that the Company is unable for any reason to secure the Executive's signature to any document required to file, prosecute, register, or memorialize the assignment of any patent, copyright, mask work or other applications or to enforce any patent, copyright, mask work, Moral Right, trade secret or other right under any Confidential Information (including improvements thereof) or any Innovations (including derivative works, improvements, renewals, extensions, continuations, divisionals, continuations in part, continuing patent applications, reissues, and reexaminations thereof), the Executive hereby irrevocably designates and appoints the Company and the Company's duly authorized officers and agents as his agents and attorneys-in-fact to act for and on his behalf and instead of the Executive (i) to execute, file, prosecute, register and memorialize the assignment of any such application, (ii) to execute and file any documentation required for such enforcement and (iii) to do all other lawfully permitted acts to further the filing, prosecution, registration, memorialization of assignment, issuance, and enforcement of patents, copyrights, mask works, Moral Rights, trade secrets or other rights under the Confidential Information or Innovations, all with the same legal force and effect as if executed by the Executive.

(f) The term "***Innovations***" means all processes, improvements, inventions (whether or not protectable under patent laws), works of authorship, information fixed in any tangible medium of expression (whether or not protectable under copyright laws), moral rights, mask works, trademarks, trade names, trade dress, trade secrets, know-how, ideas (whether or not protectable under trade secret laws) and all other subject matter protectable under patent, copyright, moral right, mask work, trademark, trade secret or other laws and includes, without limitation, all new or useful art, combinations, designs, developments, modifications, derivative works, discoveries, formulae, techniques and all goodwill associated with any of the foregoing.

(g) The Executive hereby irrevocably consents to any and all uses and displays, by the Company and its affiliates, agents, representatives and licensees, of the Executive's name, voice, likeness, image, appearance, and biographical information in, on or in connection with any pictures, photographs, audio and video recordings, digital images, websites, television programs and advertising, other advertising and publicity, sales and marketing brochures, books, magazines, other publications, CDs, DVDs, tapes, and all other printed and electronic forms and media throughout the world, at any time during or after the period of his employment by the Company, for all legitimate commercial and business purposes of the Company ("***Permitted Uses***") without further consent from or royalty, payment, or other compensation to the Executive. the Executive hereby forever waives and releases the Company and its directors, managing members, officers, employees and agents from any and all claims, actions, damages, losses, costs, expenses, and liability of any kind, arising under any legal or equitable theory whatsoever at any time during or after the period of his employment by the Company, arising directly or indirectly from the Company's and its affiliates', agents', representatives' and licensees' exercise of their rights in connection with any Permitted Uses.

9. Non-Compete; Non-Solicitation.

(a) The Executive acknowledges that, in the course of his employment with the Company and/or the Restricted Affiliates (as defined below), he has become familiar, or will become familiar, with trade secrets and with other confidential information concerning the Company and the Restricted Affiliates and that his services have been and will be of special, unique and extraordinary value to the Company and the Restricted Affiliates. the Executive understands that the following restrictions may limit his ability to earn a livelihood in a business similar to the business of the Company or any of the Restricted Affiliates, but he nevertheless believes that he will receive sufficient consideration and other benefits as an equity holder and an employee of the Company and as otherwise provided hereunder to clearly justify such restrictions which, in any event (given his education, skills and ability), the Executive does not believe would prevent him from otherwise earning a living. The Executive further understands that the provisions of Sections 7 through 9, inclusive, are reasonable and necessary to preserve the business of the Company and the Restricted Affiliates. "***Restricted Affiliate***" means any affiliate for which, during the twenty-four (24) month period preceding the Termination Date, the Executive served as an officer or director or the Executive provided any material services.

(b) In light of Section 9(a), the Executive agrees that while the Executive is employed by the Company, he shall not directly or indirectly own, manage, operate, control, finance or invest in, participate in, consult with, render services for, act as an officer, director, manager, partner, principal, agent, representative, contractor or advisor of or to, or in any manner engage in or be associated with, hold any interest in, be employed by or represent any other business competing with the businesses or the services or products of the Company or the Restricted Affiliates as such businesses and/or services or products exist or are in the process of being formed, developed or acquired as of the Termination Date. Nothing herein shall prohibit the Executive from being a passive owner of not more than one percent (1%) of the outstanding stock of any class of a corporation which is publicly traded, so long as the Executive has no active participation in the business of such corporation.

(c) Furthermore, in light of Section 9(a), the Executive agrees that:

(i) while the Executive is employed by the Company and for twelve (12) months thereafter, the Executive shall not directly or indirectly through another person or entity: (x) induce or attempt to induce any employee or independent contractor of the Company or any Restricted Affiliate to leave the employ of or engagement with the Company or such Restricted Affiliate, or in any way interfere with the relationship between the Company or any such Restricted Affiliate, on the one hand, and any employee or independent contractor thereof, on the other hand; or (y) hire or engage any person who was an employee or independent contractor of the Company until twelve months after such individual's relationship with the Company or any Restricted Affiliate has been terminated; and

(ii) while the Executive is employed by the Company, the Executive shall not directly or indirectly through another person or entity: (x) induce or attempt to induce any customer (it being understood that the term "customer" as used throughout this Agreement includes any person or entity that is receiving services from the Company or any Restricted Affiliate or that is directly or indirectly providing or referring business for the Company or any Restricted Affiliate), supplier, independent contractor, licensee or other business relation of the Company or any Restricted Affiliate to cease doing business with the Company or any Restricted Affiliate, or in any way interfere with the relationship between any such customer, supplier, independent contractor, licensee or business relation, on the one hand, and the Company or any Restricted Affiliate, on the other hand; or (y) solicit any customer of the Company or any Restricted Affiliate in order to offer products or services similar to those offered by the Company or any Restricted Affiliate.

(d) The Executive shall inform any prospective or future employer of any and all restrictions contained in this Agreement and provide such employer with a copy of such restrictions (but no other terms of this Agreement) prior to the commencement of that employment.

(e) If, at the time of enforcement of Section 9, a court holds that the restrictions stated herein are unreasonable under the circumstances then existing, the Executive and the Company agree that the maximum period, scope or geographical area reasonable under such circumstances shall be substituted for the stated period, scope or area so as to protect the Company to the greatest extent possible under applicable law from improper competition.

(f) In the event of any breach or violation by the Executive of any of the restrictions contained in Section 9, any time period specified herein shall abate during the time of any such breach or violation thereof and that portion remaining at the time of commencement of any such breach or violation shall not begin to run until such breach or violation has been cured in all respects.

10. Enforcement. Because the Executive's services are unique and because the Executive has access to Confidential Information and Company Innovations, the parties hereto agree that monetary damages alone would be an inadequate remedy for any breach of this Agreement. Therefore, in the event of a breach or threatened breach of this Agreement, the Company or its successors or assigns may, in addition to other rights and remedies existing in their favor at law or in equity, apply to any court of competent jurisdiction for specific performance and/or injunctive or other relief in order to enforce, or prevent any violations of, the provisions hereof (without posting a bond or other security) or require the Executive to account for and pay over to the Company all compensation, profits, moneys, accruals, increments or other benefits derived from or received as a result of any transactions constituting a breach of the covenants contained in this Agreement, if and when final judgment of a count of competent jurisdiction is so entered against the Executive. The rights and remedies of the Company under this Agreement are not exclusive of or limited by any other rights or remedies which they may have, whether at law, in equity, by contract or otherwise, all of which shall be cumulative (and not alternative). Without limiting the generality of the foregoing, the rights and remedies of the Company under this Agreement, and the obligations and liabilities of the Executive under this Agreement, are in addition to their respective rights, remedies, obligations and liabilities under the laws of unfair competition, laws relating to misappropriation of trade secrets and all other laws, rules and regulations. No failure on the part of any person or entity to exercise any power, right, privilege or remedy under this Agreement, and no delay on the part of any person or entity 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. No person or entity 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 or entity; and any such waiver shall not be applicable or have any effect except in the specific instance in which it is given.

11. Representations. The Executive hereby represents and warrants to the Company that (a) the Executive is entering into this Agreement voluntarily and that the performance of the Executive's obligations hereunder will not violate any agreement between the Executive and any other person, firm, organization or other entity, and (b) the Executive is not bound by the terms of any agreement with any previous employer or other party to refrain from competing, directly or indirectly, with the business of such previous employer or other party that would be violated by the Executive's entering into this Agreement and/or providing services to the Company pursuant to the terms of this Agreement.

12. Successors.

(a) This Agreement is personal to the Executive and, without the prior written consent of the Company, shall not be assignable by the Executive otherwise than by will or the laws of descent and distribution. This Agreement shall inure to the benefit of and be enforceable by the Executive's legal representatives.

(b) This Agreement shall inure to the benefit of and be binding upon the Company and its successors and assigns.

(c) The Company will require any successor (whether direct or indirect, by purchase, merger, consolidation or otherwise) to all or substantially all of the business and/or assets of the Company to assume and agree to perform this Agreement in the same manner and to the same extent that the Company would be required to perform it if no such succession had taken place. As used in this Agreement, "Company" shall mean the Company as hereinbefore defined and any successor to its business and/or assets as aforesaid which assumes and agrees to perform this Agreement by operation of law, or otherwise.

13. Miscellaneous.

(a) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Maryland, without reference to principles of conflict of laws. The captions of this Agreement are not part of the provisions hereof and shall have no force or effect.

(b) Compensation Recovery Policy. Executive acknowledges and agrees that, to the extent the Company adopts any claw-back or similar policy pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act or otherwise, and any rules and regulations promulgated thereunder, he or she shall take all action necessary or appropriate to comply with such policy (including, without limitation, entering into any further agreements, amendments or policies necessary or appropriate to implement and/or enforce such policy with respect to past, present and future compensation, as appropriate).

(c) Whistleblower Protections and Trade Secrets. Notwithstanding anything to the contrary contained herein, nothing in this Agreement prohibits Executive from reporting possible violations of federal law or regulation to any United States governmental agency or entity in accordance with the provisions of and rules promulgated under Section 21F of the Securities Exchange Act of 1934 or Section 806 of the Sarbanes-Oxley Act of 2002, or any other whistleblower protection provisions of state or federal law or regulation (including the right to receive an award for information provided to any such government agencies). Furthermore, in accordance with 18 U.S.C. § 1833, notwithstanding anything to the contrary in this Agreement: (i) Executive shall not be in breach of this Agreement, and shall not be held criminally or civilly liable under any federal or state trade secret law (A) for the disclosure of a trade secret that is made in confidence to a federal, state, or local government official or to an attorney solely for the purpose of reporting or investigating a suspected violation of law, or (B) for the disclosure of a trade secret that is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal; and (ii) if Executive files a lawsuit for retaliation by the Company for reporting a suspected violation of law, Executive may disclose the trade secret to Executive's attorney, and may use the trade secret information in the court proceeding, if Executive files any document containing the trade secret under seal, and does not disclose the trade secret, except pursuant to court order.

(d) Notices. All notices and other communications hereunder shall be in writing and shall be given by hand delivery to the other party or by registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

If to the Executive: at the Executive's most recent address on the records of the Company.

If to the Company:

Azyio Biologics, Inc.
12510 Prosperity Drive
Suite 1-370
Silver Spring, MD 20904
Attention: Board of Directors

with a copy to:

Latham & Watkins LLP
885 Third Avenue
New York, NY 10022-4802
Attn: [XXX]

or to such other address as either party shall have furnished to the other in writing in accordance herewith. Notice and communications shall be effective when actually received by the addressee.

(e) Sarbanes-Oxley Act of 2002. Notwithstanding anything herein to the contrary, if the Company determines, in its good faith judgment, that any transfer or deemed transfer of funds hereunder is likely to be construed as a personal loan prohibited by Section 13(k) of the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder (the "***Exchange Act***"), then such transfer or deemed transfer shall not be made to the extent necessary or appropriate so as not to violate the Exchange Act and the rules and regulations promulgated thereunder.

(f) Section 409A of the Code.

(i) To the extent applicable, this Agreement shall be interpreted in accordance with Section 409A of the Code and Department of Treasury regulations and other interpretive guidance issued thereunder (together, "***Section 409A***"). Notwithstanding any provision of this Agreement to the contrary, if the Company determines that any compensation or benefits payable under this Agreement may be subject to Section 409A, the Company shall work in good faith with the Executive to adopt such amendments to this Agreement or adopt other policies and procedures (including amendments, policies and procedures with retroactive effect), or take any other actions, that the Company determines are necessary or appropriate to avoid the imposition of taxes under Section 409A, including without limitation, actions intended to (i) exempt the compensation and benefits payable under this Agreement from Section 409A, and/or (ii) comply with the requirements of Section 409A; provided, however, that this Section 10(d) shall not create an obligation on the part of the Company to adopt any such amendment, policy or procedure or take any such other action, nor shall the Company have any liability for failing to do so.

(ii) Any right to a series of installment payments pursuant to this Agreement is to be treated as a right to a series of separate payments. To the extent permitted under Section 409A, any separate payment or benefit under this Agreement or otherwise shall not be deemed "nonqualified deferred compensation" subject to Section 409A to the extent provided in the exceptions in Treasury Regulation Section 1.409A-1(b)(4), Section 1.409A-1(b)(9) or any other applicable exception or provision of Section 409A. Any payments subject to Section 409A that are subject to execution of a waiver and release which may be executed and/or revoked in a calendar year following the calendar year in which the payment event (such as termination of employment) occurs shall commence payment only in the calendar year in which the consideration period or, if applicable, release revocation period ends, as necessary to comply with Section 409A. All payments of nonqualified deferred compensation subject to Section 409A to be made upon a termination of employment under this Agreement may only be made upon Employee's "separation from service" from the Company (within the meaning of Section 409A, a "Separation from Service").

(iii) To the extent that any payments or reimbursements provided to the Executive under this Agreement are deemed to constitute compensation to the Executive to which Treasury Regulation Section 1.409A-3(i)(1)(iv) would apply, such amounts shall be paid or reimbursed reasonably promptly, but not later than December 31 of the year following the year in which the expense was incurred. The amount of any such payments eligible for reimbursement in one year shall not affect the payments or expenses that are eligible for payment or reimbursement in any other taxable year, and the Executive's right to such payments or reimbursement of any such expenses shall not be subject to liquidation or exchange for any other benefit.

(g) Severability. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement.

(h) Withholding. The Company may withhold from any amounts payable under this Agreement such federal, state, local or foreign taxes as shall be required to be withheld pursuant to any applicable law or regulation.

(i) No Waiver. The Executive's or the Company's failure to insist upon strict compliance with any provision of this Agreement or the failure to assert any right the Executive or the Company may have hereunder, including, without limitation, the right of the Executive to terminate employment for Good Reason pursuant to Section 3(c) hereof, shall not be deemed to be a waiver of such provision or right or any other provision or right of this Agreement.

(j) Entire Agreement. As of the Effective Date, this Agreement constitutes the final, complete and exclusive agreement between the Executive and the Company with respect to the subject matter hereof and replaces and supersedes any and all other agreements, offers or promises, whether oral or written, by any member of the Company and its subsidiaries or affiliates, or representative thereof, including without limitation Prior Agreement.

(k) Amendment. No amendment or other modification of this Agreement shall be effective unless made in writing and signed by the parties hereto.

(l) Counterparts. This Agreement and any agreement referenced herein may be executed simultaneously in two or more counterparts, each of which shall be deemed an original but which together shall constitute one and the same instrument.

[**SIGNATURES APPEAR ON FOLLOWING PAGE**]

IN WITNESS WHEREOF, the Executive has hereunto set the Executive's hand and, pursuant to the authorization from the Board, the Company has caused these presents to be executed in its name on its behalf, all as of the day and year first above written.

AZIYO BIOLOGICS, INC.

By: /s/ Ronald Lloyd
Name: Ronald Lloyd
Title: President & CEO

"EXECUTIVE"

/s/ Matthew Ferguson
Matthew Ferguson

EXHIBIT A

EXHIBIT B

GENERAL RELEASE

For valuable consideration, the receipt and adequacy of which are hereby acknowledged, the undersigned does hereby release and forever discharge the "***Releasees***" hereunder, consisting of Aziyo Biologics, Inc., and its partners, subsidiaries, associates, affiliates, successors, heirs, assigns, agents, directors, officers, employees, representatives, lawyers, insurers, and all persons acting by, through, under or in concert with them, or any of them, of and from any and all manner of action or actions, cause or causes of action, in law or in equity, suits, debts, liens, contracts, agreements, promises, liability, claims, demands, damages, losses, costs, attorneys' fees or expenses, of any nature whatsoever, known or unknown, fixed or contingent (hereinafter called "***Claims***"), which the undersigned now has or may hereafter have against the Releasees, or any of them, by reason of any matter, cause, or thing whatsoever from the beginning of time to the date hereof. The Claims released herein include, without limiting the generality of the foregoing, any Claims in any way arising out of, based upon, or related to the employment or termination of employment of the undersigned by the Releasees, or any of them; any alleged breach of any express or implied contract of employment; any alleged torts or other alleged legal restrictions on Releasees' right to terminate the employment of the undersigned; and any alleged violation of any federal, state or local statute or ordinance including, without limitation, Title VII of the Civil Rights Act of 1964, the Age Discrimination In Employment Act, the Americans With Disabilities Act, and [__].[1] Notwithstanding the foregoing, this general release (the "***Release***") shall not operate to release any rights or claims of the undersigned (i) to payments or benefits under Section 4(a) of that certain Employment Agreement, effective as of [Ÿ], between Aziyo Biologics, Inc. and the undersigned (the "***Employment Agreement***"), (ii) to payments or benefits under any equity award agreement between the undersigned and the Company, (iii) with respect to Section 2(b)(iv) of the Employment Agreement, (iv) to accrued or vested benefits the undersigned may have, if any, as of the date hereof under any applicable plan, policy, practice, program, contract or agreement with the Company, (v) to any Claims, including claims for indemnification and/or advancement of expenses arising under any indemnification agreement between the undersigned and the Company or under the bylaws, certificate of incorporation or other similar governing document of the Company, (vi) to any Claims which cannot be waived by an employee under applicable law or (vii) with respect to the undersigned's right to communicate directly with, cooperate with, or provide information to, any federal, state or local government regulator.

[IN ACCORDANCE WITH THE OLDER WORKERS BENEFIT PROTECTION ACT OF 1990, THE UNDERSIGNED IS HEREBY ADVISED AS FOLLOWS:

(A) THE EXECUTIVE HAS THE RIGHT TO CONSULT WITH AN ATTORNEY BEFORE SIGNING THIS RELEASE;

(B) THE EXECUTIVE HAS TWENTY-ONE (21) DAYS TO CONSIDER THIS RELEASE BEFORE SIGNING IT; AND

(C) THE EXECUTIVE HAS SEVEN (7) DAYS AFTER SIGNING THIS RELEASE TO REVOKE THIS RELEASE, AND THIS RELEASE WILL BECOME EFFECTIVE UPON THE EXPIRATION OF THAT REVOCATION PERIOD.]

[1] Applicable state law references to be included.

The undersigned represents and warrants that there has been no assignment or other transfer of any interest in any Claim which the Executive may have against Releasees, or any of them, and the undersigned agrees to indemnify and hold Releasees, and each of them, harmless from any liability, Claims, demands, damages, costs, expenses and attorneys' fees incurred by Releasees, or any of them, as the result of any such assignment or transfer or any rights or Claims under any such assignment or transfer. It is the intention of the parties that this indemnity does not require payment as a condition precedent to recovery by the Releasees against the undersigned under this indemnity.

Notwithstanding anything herein, the undersigned acknowledges and agrees that, pursuant to 18 USC Section 1833(b), the undersigned will not be held criminally or civilly liable under any federal or state trade secret law for the disclosure of a trade secret that is made: (i) in confidence to a federal, state, or local government official, either directly or indirectly, or to an attorney, and solely for the purpose of reporting or investigating a suspected violation of law; or (ii) in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal.

The undersigned agrees that if the Executive hereafter commences any suit arising out of, based upon, or relating to any of the Claims released hereunder or in any manner asserts against Releasees, or any of them, any of the Claims released hereunder, then the undersigned agrees to pay to Releasees, and each of them, in addition to any other damages caused to Releasees thereby, all attorneys' fees incurred by Releasees in defending or otherwise responding to said suit or Claim.

The undersigned further understands and agrees that neither the payment of any sum of money nor the execution of this Release shall constitute or be construed as an admission of any liability whatsoever by the Releasees, or any of them, who have consistently taken the position that they have no liability whatsoever to the undersigned.

IN WITNESS WHEREOF, the undersigned has executed this Release this ____ day of _____, ____.

_____

Exhibit 10.12

AZIYO BIOLOGICS, INC.

INDEMNIFICATION AGREEMENT

THIS INDEMNIFICATION AGREEMENT (the "***Agreement***") is made and entered into as of _____, 20[20] between Aziyo Biologics, Inc., a Delaware corporation (the "***Company***"), and [Name] ("***Indemnitee***").

WITNESSETH THAT:

WHEREAS, highly competent persons have become more reluctant to serve corporations as directors, officers or in other capacities unless they are provided with adequate protection through insurance or adequate indemnification against inordinate risks of claims and actions against them arising out of their service to and activities on behalf of the corporation;

WHEREAS, the Board of Directors of the Company (the "***Board***") has determined that, in order to attract and retain qualified individuals, the Company will attempt to maintain on an ongoing basis, at its sole expense, liability insurance to protect persons serving the Company and its subsidiaries from certain liabilities. Although the furnishing of such insurance has been a customary and widespread practice among United States-based corporations and other business enterprises, the Company believes that, given current market conditions and trends, such insurance may be available to it in the future only at higher premiums and with more exclusions. At the same time, directors, officers, and other persons in service to corporations or business enterprises are being increasingly subjected to expensive and time-consuming litigation relating to, among other things, matters that traditionally would have been brought only against the Company or business enterprise itself. The Bylaws of the Company require indemnification of the officers and directors of the Company. Indemnitee may also be entitled to indemnification pursuant to the General Corporation Law of the State of Delaware ("***DGCL***"). The Bylaws and the DGCL expressly provide that the indemnification provisions set forth therein are not exclusive, and thereby contemplate that contracts may be entered into between the Company and members of the Board, officers and other persons with respect to indemnification;

WHEREAS, the uncertainties relating to such insurance and to indemnification have increased the difficulty of attracting and retaining such persons;

WHEREAS, the Board has determined that the increased difficulty in attracting and retaining such persons is detrimental to the best interests of the Company's stockholders and that the Company should act to assure such persons that there will be increased certainty of such protection in the future;

WHEREAS, it is reasonable, prudent and necessary for the Company contractually to obligate itself to indemnify, and to advance expenses on behalf of, such persons to the fullest extent permitted by applicable law so that they will serve or continue to serve the Company free from undue concern that they will not be so indemnified;

WHEREAS, this Agreement is a supplement to and in furtherance of the Bylaws of the Company and any resolutions adopted pursuant thereto, and shall not be deemed a substitute therefor, nor to diminish or abrogate any rights of Indemnitee thereunder; [and]

WHEREAS, Indemnitee does not regard the protection available under the Company's Bylaws and insurance as adequate in the present circumstances, and may not be willing to serve as an officer or director without adequate protection, and the Company desires Indemnitee to serve in such capacity. Indemnitee is willing to serve, continue to serve and to take on additional service for or on behalf of the Company on the condition that he be so indemnified[; and]

[WHEREAS, Indemnitee has certain rights to indemnification and/or insurance provided by [NAME] which Indemnitee and [NAME] intend to be secondary to the primary obligation of the Company to indemnify Indemnitee as provided herein, with the Company's acknowledgement and agreement to the foregoing being a material condition to Indemnitee's willingness to serve on the Board].

NOW, THEREFORE, in consideration of Indemnitee's agreement to serve as an officer or director from and after the date hereof, the parties hereto agree as follows:

1. Indemnity of Indemnitee. The Company hereby agrees to hold harmless and indemnify Indemnitee to the fullest extent permitted by law, as such may be amended from time to time. In furtherance of the foregoing indemnification, and without limiting the generality thereof:

(a) Proceedings Other Than Proceedings by or in the Right of the Company. Indemnitee shall be entitled to the rights of indemnification provided in this Section l(a) if, by reason of the Indemnitee's Corporate Status (as hereinafter defined), the Indemnitee is, or is threatened to be made, a party to or participant in any Proceeding (as hereinafter defined) other than a Proceeding by or in the right of the Company. Pursuant to this Section 1(a), Indemnitee shall be indemnified against all Expenses (as hereinafter defined), judgments, penalties, fines and amounts paid in settlement actually and reasonably incurred by the Indemnitee, or on the Indemnitee's behalf, in connection with such Proceeding or any claim, issue or matter therein, if the Indemnitee acted in good faith and in a manner the Indemnitee reasonably believed to be in or not opposed to the best interests of the Company, and with respect to any criminal Proceeding, had no reasonable cause to believe the Indemnitee's conduct was unlawful.

(b) Proceedings by or in the Right of the Company. Indemnitee shall be entitled to the rights of indemnification provided in this Section 1(b) if, by reason of the Indemnitee's Corporate Status, the Indemnitee is, or is threatened to be made, a party to or participant in any Proceeding brought by or in the right of the Company. Pursuant to this Section 1(b), Indemnitee shall be indemnified against all Expenses actually and reasonably incurred by the Indemnitee, or on the Indemnitee's behalf, in connection with such Proceeding if the Indemnitee acted in good faith and in a manner the Indemnitee reasonably believed to be in or not opposed to the best interests of the Company; provided, however, no indemnification against such Expenses shall be made in respect of any claim, issue or matter in such Proceeding as to which Indemnitee shall have been adjudged to be liable to the Company unless and to the extent that the Court of Chancery of the State of Delaware or the court in which such Proceeding was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery or such other court shall deem proper.

(c) Indemnification for Expenses of a Party Who is Wholly or Partly Successful. Notwithstanding any other provision of this Agreement, to the extent that Indemnitee is, by reason of the Indemnitee's Corporate Status, a party to and is successful, on the merits or otherwise, in any Proceeding, he shall be indemnified to the maximum extent permitted by law, as such may be amended from time to time, against all Expenses actually and reasonably incurred by the Indemnitee or on the Indemnitee's behalf in connection therewith. If Indemnitee is not wholly successful in such Proceeding but is successful, on the merits or otherwise, as to one or more but less than all claims, issues or matters in such Proceeding, the Company shall indemnify Indemnitee against all Expenses actually and reasonably incurred by the Indemnitee or on the Indemnitee's behalf in connection with each successfully resolved claim, issue or matter. For purposes of this Section and without limitation, the termination of any claim, issue or matter in such a Proceeding by dismissal, with or without prejudice, shall be deemed to be a successful result as to such claim, issue or matter.

2. Additional Indemnity. In addition to, and without regard to any limitations on, the indemnification provided for in Section 1 of this Agreement, the Company shall and hereby does indemnify and hold harmless Indemnitee to the fullest extent permitted by applicable law (including a Proceeding by or in the right of the Company).

3. Contribution. To the fullest extent permissible under applicable law, if the indemnification provided for in this Agreement is unavailable to Indemnitee for any reason whatsoever, the Company, in lieu of indemnifying Indemnitee, shall contribute to the amount incurred by Indemnitee, whether for judgments, fines, penalties, excise taxes, amounts paid or to be paid in settlement and/or for Expenses, in connection with any claim relating to an indemnifiable event under this Agreement, in such proportion as is deemed fair and reasonable in light of all of the circumstances of such Proceeding in order to reflect (i) the relative benefits received by the Company and Indemnitee as a result of the event(s) and/or transaction(s) giving cause to such Proceeding and/or (ii) the relative fault of the Company (and its directors, officers, employees and agents) and Indemnitee in connection with such event(s) and/or transaction(s).

4. Indemnification for Expenses of a Witness. Notwithstanding any other provision of this Agreement, to the extent that Indemnitee is, by reason of the Indemnitee's Corporate Status, a witness, or is made (or asked) to respond to discovery requests, in any Proceeding to which Indemnitee is not a party, he shall be indemnified against all Expenses actually and reasonably incurred by the Indemnitee or on the Indemnitee's behalf in connection therewith.

5. Advancement of Expenses. Notwithstanding any other provision of this Agreement, the Company shall advance all Expenses incurred by or on behalf of Indemnitee in connection with any Proceeding by reason of Indemnitee's Corporate Status within thirty (30) days after the receipt by the Company of a statement or statements from Indemnitee requesting such advance or advances from time to time, whether prior to or after final disposition of such Proceeding. Such statement or statements shall reasonably evidence the Expenses incurred by Indemnitee. The Indemnitee shall qualify for advances upon the execution and delivery to the Company of this Agreement, which shall constitute an undertaking by Indemnitee to repay any Expenses advanced if it shall ultimately be determined that Indemnitee is not entitled to be indemnified against such Expenses. Any advances and undertakings to repay pursuant to this Section 5 shall be unsecured and interest free.

6. Procedures and Presumptions for Determination of Entitlement to Indemnification. It is the intent of this Agreement to secure for Indemnitee rights of indemnity that are as favorable as may be permitted under the DGCL and public policy of the State of Delaware. Accordingly, the parties agree that the following procedures and presumptions shall apply in the event of any question as to whether Indemnitee is entitled to indemnification under this Agreement:

(a) To obtain indemnification under this Agreement, Indemnitee shall submit to the Company a written request, including therein or therewith such documentation and information as is reasonably available to Indemnitee and is reasonably necessary to determine whether and to what extent Indemnitee is entitled to indemnification. The Secretary of the Company shall, promptly upon receipt of such a request for indemnification, advise the Board in writing that Indemnitee has requested indemnification. Notwithstanding the foregoing, any failure of Indemnitee to provide such a request to the Company, or to provide such a request in a timely fashion, shall not relieve the Company of any liability that it may have to Indemnitee unless, and to the extent that, such failure actually and materially prejudices the interests of the Company.

(b) Upon written request by Indemnitee for indemnification pursuant to the first sentence of Section 6(a) hereof, a determination with respect to Indemnitee's entitlement thereto shall be made in the specific case by one of the following four methods, which shall be at the election of the Board: (1) by a majority vote of the disinterested directors, even though less than a quorum, (2) by a committee of disinterested directors designated by a majority vote of the disinterested directors, even though less than a quorum, (3) if there are no disinterested directors or if the disinterested directors so direct, by independent legal counsel in a written opinion to the Board, a copy of which shall be delivered to the Indemnitee, or (4) if so directed by the Board, by the stockholders of the Company. For purposes hereof, disinterested directors are those members of the Board who are not parties to the action, suit or proceeding in respect of which indemnification is sought by Indemnitee.

(c) If the determination of entitlement to indemnification is to be made by Independent Counsel pursuant to Section 6(b) hereof, the Independent Counsel shall be selected as provided in this Section 6(c). The Independent Counsel shall be selected by the Board. Indemnitee may, within ten (10) days after such written notice of selection shall have been given, deliver to the Company a written objection to such selection; provided, however, that such objection may be asserted only on the ground that the Independent Counsel so selected does not meet the requirements of "Independent Counsel" as defined in Section 13 of this Agreement, and the objection shall set forth with particularity the factual basis of such assertion. Absent a proper and timely objection, the person so selected shall act as Independent Counsel. If a written objection is made and substantiated, the Independent Counsel selected may not serve as Independent Counsel unless and until such objection is withdrawn or a court has determined that such objection is without merit. If, within twenty (20) days after the conclusion of the Proceeding giving rise to the request for indemnification, no Independent Counsel shall have been selected and not objected to, either the Company or Indemnitee may petition the Court of Chancery of the State of Delaware for resolution of any objection which shall have been made by the Indemnitee to the Company's selection of Independent Counsel and/or for the appointment as Independent Counsel of a person selected by the court or by such other person as the court shall designate, and the person with respect to whom all objections are so resolved or the person so appointed shall act as Independent Counsel under Section 6(b) hereof. The Company shall pay any and all reasonable fees and expenses of Independent Counsel incurred by such Independent Counsel in connection with acting pursuant to Section 6(b) hereof, and the Company shall pay all reasonable fees and expenses incident to the procedures of this Section 6(c), regardless of the manner in which such Independent Counsel was selected or appointed.

(d) In making a determination with respect to entitlement to indemnification hereunder, the person or persons or entity making such determination shall presume that Indemnitee is entitled to indemnification under this Agreement. Anyone seeking to overcome this presumption shall have the burden of proof and the burden of persuasion. Neither the failure of the Company (including by its directors or independent legal counsel) to have made a determination prior to the commencement of any action pursuant to this Agreement that indemnification is proper in the circumstances because Indemnitee has met the applicable standard of conduct, nor an actual determination by the Company (including by its directors or independent legal counsel) that Indemnitee has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that Indemnitee has not met the applicable standard of conduct.

(e) Indemnitee shall be deemed to have acted in good faith if Indemnitee's action is based on the records or books of account of the Enterprise (as hereinafter defined), including financial statements, or on information supplied to Indemnitee by the officers of the Enterprise in the course of their duties, or on the advice of legal counsel for the Enterprise or on information or records given or reports made to the Enterprise by an independent certified public accountant or by an appraiser or other expert selected with reasonable care by the Enterprise. In addition, the knowledge and/or actions, or failure to act, of any director, officer, agent or employee of the Enterprise shall not be imputed to Indemnitee for purposes of determining the right to indemnification under this Agreement. Whether or not the foregoing provisions of this Section 6(e) are satisfied, it shall in any event be presumed that Indemnitee has at all times acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Company. Anyone seeking to overcome this presumption shall have the burden of proof and the burden of persuasion.

(f) If the person, persons or entity empowered or selected under Section 6 to determine whether Indemnitee is entitled to indemnification shall not have made a determination within sixty (60) days after the conclusion of the Proceeding giving rise to the request for indemnification, the requisite determination of entitlement to indemnification shall be deemed to have been made and Indemnitee shall be entitled to such indemnification absent (i) a misstatement by Indemnitee of a material fact, or an omission of a material fact necessary to make Indemnitee's statement not materially misleading, in connection with the request for indemnification, or (ii) a prohibition of such indemnification under applicable law; provided, however, that such sixty (60)-day period may be extended for a reasonable time, not to exceed an additional thirty (30) days, if the person, persons or entity making such determination with respect to entitlement to indemnification in good faith requires such additional time to obtain or evaluate documentation and/or information relating thereto; and provided, further, that the foregoing provisions of this Section 6(f) shall not apply if the determination of entitlement to indemnification is to be made by the stockholders pursuant to Section 6(b) of this Agreement and if (A) within fifteen (15) days after the conclusion of the Proceeding giving rise to the request for indemnification, the Board or the Disinterested Directors, if appropriate, resolve to submit such determination to the stockholders for their consideration at an annual meeting thereof to be held within seventy-five (75) days after such resolution and such determination is made thereat, or (B) a special meeting of stockholders is called within fifteen (15) days after such resolution and such meeting is held for such purpose within sixty (60) days after having been so called and such determination is made thereat.

(g) Indemnitee shall cooperate with the person, persons or entity making such determination with respect to Indemnitee's entitlement to indemnification, including providing to such person, persons or entity upon reasonable advance request any documentation or information which is not privileged or otherwise protected from disclosure and which is reasonably available to Indemnitee and reasonably necessary to such determination. Any Independent Counsel, member of the Board or stockholder of the Company shall act reasonably and in good faith in making a determination regarding the Indemnitee's entitlement to indemnification under this Agreement. Any costs or expenses (including attorneys' fees and disbursements) incurred by Indemnitee in so cooperating with the person, persons or entity making such determination shall be borne by the Company (irrespective of the determination as to Indemnitee's entitlement to indemnification) and the Company hereby indemnifies and agrees to hold Indemnitee harmless therefrom.

(h) The termination of any Proceeding or of any claim, issue or matter therein, by judgment, order, settlement or conviction, or upon a plea of nolo contendere or its equivalent, shall not (except as otherwise expressly provided in this Agreement) of itself adversely affect the right of Indemnitee to indemnification or create a presumption that Indemnitee did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the Company or, with respect to any criminal Proceeding, that Indemnitee had reasonable cause to believe that Indemnitee's conduct was unlawful.

7. Remedies of Indemnitee.

(a) In the event that (i) a determination is made pursuant to Section 6 of this Agreement that Indemnitee is not entitled to indemnification under this Agreement, (ii) advancement of Expenses is not timely made pursuant to Section 5 of this Agreement, (iii) no determination of entitlement to indemnification is made pursuant to Section 6(b) of this Agreement within ninety (90) days after the conclusion of the Proceeding giving rise to the request for indemnification, (iv) payment of indemnification required by Section 4 is not made pursuant to this Agreement within thirty (30) days after receipt by the Company of a written request therefor or (v) payment of indemnification is not made within ten (10) days after a determination has been made that Indemnitee is entitled to indemnification or such determination is deemed to have been made pursuant to Section 6 of this Agreement, Indemnitee shall be entitled to an adjudication in Court of Chancery of the State of Delaware of Indemnitee's entitlement to such indemnification. Indemnitee shall commence such proceeding seeking an adjudication within one hundred eighty (180) days following the date on which Indemnitee first has the right to commence such proceeding pursuant to this Section 7(a). The Company shall not oppose Indemnitee's right to seek any such adjudication.

(b) In the event that a determination shall have been made pursuant to Section 6(b) of this Agreement that Indemnitee is not entitled to indemnification, any judicial proceeding commenced pursuant to this Section 7 shall be conducted in all respects as a de novo trial on the merits, and Indemnitee shall not be prejudiced by reason of the adverse determination under Section 6(b).

(c) If a determination shall have been made pursuant to Section 6(b) of this Agreement that Indemnitee is entitled to indemnification, the Company shall be bound by such determination in any judicial proceeding commenced pursuant to this Section 7, absent (i) a misstatement by Indemnitee of a material fact, or an omission of a material fact necessary to make Indemnitee's misstatement not materially misleading in connection with the application for indemnification, or (ii) a prohibition of such indemnification under applicable law.

(d) In the event that Indemnitee, pursuant to this Section 7, seeks a judicial adjudication of the Indemnitee's rights under, or to recover damages for breach of, this Agreement, or to recover under any directors' and officers' liability insurance policies maintained by the Company, the Company shall pay on the Indemnitee's behalf, in advance, any and all expenses (of the types described in the definition of Expenses in Section 13 of this Agreement) unless the court determines that Indemnitee's claims in such action were made in bad faith or were frivolous or are prohibited by law.

(e) The Company shall be precluded from asserting in any judicial proceeding commenced pursuant to this Section 7 that the procedures and presumptions of this Agreement are not valid, binding and enforceable and shall stipulate in any such court that the Company is bound by all the provisions of this Agreement.

(f) Notwithstanding anything in this Agreement to the contrary, no determination as to entitlement to indemnification under this Agreement shall be required to be made prior to the final disposition of the Proceeding.

8. Non-Exclusivity; Survival of Rights; Insurance; Primacy of Indemnification; Subrogation.

(a) The rights of indemnification and advancement of Expenses as provided by this Agreement shall not be deemed exclusive of any other rights to which Indemnitee may at any time be entitled under applicable law, the Certificate of Incorporation, the Bylaws, any agreement, a vote of stockholders, a resolution of directors of the Company, or otherwise. No amendment, alteration or repeal of this Agreement or of any provision hereof shall limit or restrict any right of Indemnitee under this Agreement in respect of any action taken or omitted by such Indemnitee in the Indemnitee's Corporate Status prior to such amendment, alteration or repeal. To the extent that a change in the DGCL, whether by statute or judicial decision, permits greater indemnification than would be afforded currently under the Certificate of Incorporation, Bylaws and this Agreement, it is the intent of the parties hereto that Indemnitee shall enjoy by this Agreement the greater benefits so afforded by such change. No right or remedy herein conferred is intended to be exclusive of any other right or remedy, and every other right and remedy shall be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other right or remedy.

(b) To the extent that the Company maintains an insurance policy or policies providing liability insurance for directors, officers, employees, or agents or fiduciaries of the Company or of any other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise that such person serves at the request of the Company, Indemnitee shall be covered by such policy or policies in accordance with its or their terms to the maximum extent of the coverage available for any director, officer, employee, agent or fiduciary under such policy or policies. If, at the time of the receipt of a notice of a claim pursuant to the terms hereof, the Company has directors' and officers' liability insurance in effect, the Company shall give prompt notice of the commencement of such proceeding to the insurers in accordance with the procedures set forth in the respective policies. The Company shall thereafter take all necessary or desirable action to cause such insurers to pay, on behalf of the Indemnitee, all amounts payable as a result of such proceeding in accordance with the terms of such policies.

(c) [The Company hereby acknowledges that Indemnitee has certain rights to indemnification, advancement of expenses and/or insurance provided by [Ÿ] and certain of its affiliates (collectively, the "***Fund Indemnitors***"). The Company hereby agrees (i) that it is the indemnitor of first resort (i.e., its obligations to Indemnitee are primary and any obligation of the Fund Indemnitors to advance expenses or to provide indemnification for the same expenses or liabilities incurred by Indemnitee are secondary), (ii) that it shall be required to advance the full amount of expenses incurred by Indemnitee and shall be liable for the full amount of all Expenses, judgments, penalties, fines and amounts paid in settlement to the extent legally permitted and as required by the terms of this Agreement and the or Bylaws of the Company (or any other agreement between the Company and Indemnitee), without regard to any rights Indemnitee may have against the Fund Indemnitors, and, (iii) that it irrevocably waives, relinquishes and releases the Fund Indemnitors from any and all claims against the Fund Indemnitors for contribution, subrogation or any other recovery of any kind in respect thereof. The Company further agrees that no advancement or payment by the Fund Indemnitors on behalf of Indemnitee with respect to any claim for which Indemnitee has sought indemnification from the Company shall affect the foregoing and the Fund Indemnitors shall have a right of contribution and/or be subrogated to the extent of such advancement or payment to all of the rights of recovery of Indemnitee against the Company. The Company and Indemnitee agree that the Fund Indemnitors are express third party beneficiaries of the terms of this Section 8(c).]

(d) [Except as provided in paragraph (c) above,] in the event of any payment under this Agreement, the Company shall be subrogated to the extent of such payment to all of the rights of recovery of Indemnitee (other than against the Fund Indemnitors), who shall execute all papers required and take all action necessary to secure such rights, including execution of such documents as are necessary to enable the Company to bring suit to enforce such rights.

(e) [Except as provided in paragraph (c) above,] the Company shall not be liable under this Agreement to make any payment of amounts otherwise indemnifiable hereunder if and to the extent that Indemnitee has otherwise actually received such payment under any insurance policy, contract, agreement or otherwise.

(f) [Except as provided in paragraph (c) above,] the Company's obligation to indemnify or advance Expenses hereunder to Indemnitee who is or was serving at the request of the Company as a director, officer, employee or agent of any other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise shall be reduced by any amount Indemnitee has actually received as indemnification or advancement of expenses from such other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise.

9. Exception to Right of Indemnification. Notwithstanding any provision in this Agreement, the Company shall not be obligated under this Agreement to make any indemnity in connection with any claim made against Indemnitee:

(a) for which payment has actually been made to or on behalf of Indemnitee under any insurance policy or other indemnity provision, except with respect to any excess beyond the amount paid under any insurance policy or other indemnity provision[, provided, that the foregoing shall not affect the rights of Indemnitee or the Fund Indemnitors set forth in Section 8(c) above]; or

(b) for an accounting of profits made from the purchase and sale (or sale and purchase) by Indemnitee of securities of the Company within the meaning of Section 16(b) of the Securities Exchange Act of 1934, as amended, or similar provisions of state statutory law or common law; or

(c) in connection with any Proceeding (or any part of any Proceeding) initiated by Indemnitee, including any Proceeding (or any part of any Proceeding) initiated by Indemnitee against the Company or its directors, officers, employees or other indemnitees, unless (i) the Board authorized the Proceeding (or any part of any Proceeding) prior to its initiation, (ii) the Company provides the indemnification, in its sole discretion, pursuant to the powers vested in the Company under applicable law, or (iii) the Proceeding is brought under Section 7 of this Agreement.

10. Duration of Agreement. All agreements and obligations of the Company contained herein shall continue during the period Indemnitee is an officer or director of the Company (or is or was serving at the request of the Company as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise) and shall continue thereafter so long as Indemnitee shall be subject to any Proceeding (or any proceeding commenced under Section 7 hereof) by reason of the Indemnitee's Corporate Status, whether or not he is acting or serving in any such capacity at the time any liability or expense is incurred for which indemnification can be provided under this Agreement. This Agreement shall be binding upon and inure to the benefit of and be enforceable by the parties hereto and their respective successors (including any direct or indirect successor by purchase, merger, consolidation or otherwise to all or substantially all of the business or assets of the Company), assigns, spouses, heirs, executors and personal and legal representatives.

11. Security. To the extent requested by Indemnitee and approved by the Board, the Company may at any time and from time to time provide security to Indemnitee for the Company's obligations hereunder through an irrevocable bank line of credit, funded trust or other collateral. Any such security, once provided to Indemnitee, may not be revoked or released without the prior written consent of the Indemnitee.

12. Enforcement.

(a) The Company expressly confirms and agrees that it has entered into this Agreement and assumes the obligations imposed on it hereby in order to induce Indemnitee to serve as an officer or director of the Company, and the Company acknowledges that Indemnitee is relying upon this Agreement in serving as an officer or director of the Company.

(b) This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings, oral, written and implied, between the parties hereto with respect to the subject matter hereof.

(c) The Company shall not seek from a court, or agree to, a "bar order" which would have the effect of prohibiting or limiting the Indemnitee's rights to receive advancement of expenses under this Agreement.

13. Definitions. For purposes of this Agreement:

(a) "***Corporate Status***" describes the status of a person who is or was a director, officer, employee, agent or fiduciary of the Company or of any other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise that such person is or was serving at the express written request of the Company.

(b) "***Disinterested Director***" means a director of the Company who is not and was not a party to the Proceeding in respect of which indemnification is sought by Indemnitee.

(c) "***Enterprise***" shall mean the Company and any other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise that Indemnitee is or was serving at the express written request of the Company as a director, officer, employee, agent or fiduciary.

(d) "***Expenses***" shall include all reasonable attorneys' fees, retainers, court costs, transcript costs, fees of experts, witness fees, travel expenses, duplicating costs, printing and binding costs, telephone charges, postage, delivery service fees and all other disbursements or expenses of the types customarily incurred in connection with prosecuting, defending, preparing to prosecute or defend, investigating, participating, or being or preparing to be a witness in a Proceeding, or responding to, or objecting to, a request to provide discovery in any Proceeding. Expenses also shall include Expenses incurred in connection with any appeal resulting from any Proceeding and any federal, state, local or foreign taxes imposed on the Indemnitee as a result of the actual or deemed receipt of any payments under this Agreement, including without limitation the premium, security for, and other costs relating to any cost bond, supersede as bond, or other appeal bond or its equivalent. Expenses, however, shall not include amounts paid in settlement by Indemnitee or the amount of judgments or fines against Indemnitee.

(e) "***Independent Counsel***" means a law firm, or a member of a law firm, that is experienced in matters of corporation law and neither presently is, nor in the past five years has been, retained to represent: (i) the Company or Indemnitee in any matter material to either such party (other than with respect to matters concerning Indemnitee under this Agreement, or of other indemnitees under similar indemnification agreements), or (ii) any other party to the Proceeding giving rise to a claim for indemnification hereunder. Notwithstanding the foregoing, the term "Independent Counsel" shall not include any person who, under the applicable standards of professional conduct then prevailing, would have a conflict of interest in representing either the Company or Indemnitee in an action to determine Indemnitee's rights under this Agreement. The Company agrees to pay the reasonable fees of the Independent Counsel referred to above and to fully indemnify such counsel against any and all Expenses, claims, liabilities and damages arising out of or relating to this Agreement or its engagement pursuant hereto.

(f) "***Proceeding***" includes any threatened, pending or completed action, suit, arbitration, alternate dispute resolution mechanism, investigation, inquiry, administrative hearing or any other actual, threatened or completed proceeding, whether brought by or in the right of the Company or otherwise and whether civil, criminal, administrative or investigative, in which Indemnitee was, is or will be involved as a party or otherwise, by reason of the Indemnitee's Corporate Status, by reason of any action taken by the Indemnitee or of any inaction on the Indemnitee's part while acting in the Indemnitee's Corporate Status; in each case whether or not he is acting or serving in any such capacity at the time any liability or expense is incurred for which indemnification can be provided under this Agreement; including one pending on or before the date of this Agreement, but excluding one initiated by an Indemnitee pursuant to Section 7 of this Agreement to enforce the Indemnitee's rights under this Agreement.

14. Severability. The invalidity or unenforceability of any provision hereof shall in no way affect the validity or enforceability of any other provision. Further, the invalidity or unenforceability of any provision hereof as to either Indemnitee shall in no way affect the validity or enforceability of any provision hereof as to the other. Without limiting the generality of the foregoing, this Agreement is intended to confer upon Indemnitee indemnification rights to the fullest extent permitted by applicable laws. In the event any provision hereof conflicts with any applicable law, such provision shall be deemed modified, consistent with the aforementioned intent, to the extent necessary to resolve such conflict.

15. Modification and Waiver. No supplement, modification, termination or amendment of this Agreement shall be binding unless executed in writing by both of the parties hereto. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provisions hereof (whether or not similar) nor shall such waiver constitute a continuing waiver.

16. Notice By Indemnitee. Indemnitee agrees promptly to notify the Company in writing upon being served with or otherwise receiving any summons, citation, subpoena, complaint, indictment, information or other document relating to any Proceeding or matter which may be subject to indemnification covered hereunder. The failure to so notify the Company shall not relieve the Company of any obligation which it may have to Indemnitee under this Agreement or otherwise unless and only to the extent that such failure or delay materially prejudices the Company.

17. Notices. All notices and other communications given or made pursuant to this Agreement shall be in writing and shall be deemed effectively given: (a) upon personal delivery to the party to be notified, (b) when sent by confirmed electronic mail or facsimile if sent during normal business hours of the recipient, and if not so confirmed, then on the next business day, (c) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid, or (d) one (1) day after deposit with a nationally recognized overnight courier, specifying next day delivery, with written verification of receipt. All communications shall be sent:

(a) To Indemnitee at the address set forth below Indemnitee signature hereto.

(b) To the Company at:

Aziyo Biologics, Inc.
12510 Prosperity Drive, Suite 370
Silver Spring, MD 20904
Attention: Principal Financial Officer

or to such other address as may have been furnished to Indemnitee by the Company or to the Company by Indemnitee, as the case may be.

18. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Counterparts may be delivered via facsimile, electronic mail (including pdf or any electronic signature complying with the U.S. federal ESIGN Act of 2000, *e.g.*, www.docusign.com) or any other transmission method and any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes.

19. Headings. The headings of the paragraphs of this Agreement are inserted for convenience only and shall not be deemed to constitute part of this Agreement or to affect the construction thereof.

20. Governing Law and Consent to Jurisdiction. This Agreement and the legal relations among the parties shall be governed by, and construed and enforced in accordance with, the laws of the State of Delaware, without regard to its conflict of laws rules. The Company and Indemnitee hereby irrevocably and unconditionally (i) agree that any action or proceeding arising out of or in connection with this Agreement shall be brought only in the Chancery Court of the State of Delaware (the "***Delaware Court***"), and not in any other state or federal court in the United States of America or any court in any other country, (ii) consent to submit to the exclusive jurisdiction of the Delaware Court for purposes of any action or proceeding arising out of or in connection with this Agreement, (iii) appoint, to the extent such party is not otherwise subject to service of process in the State of Delaware, irrevocably The Corporation Trust Center, 1209 Orange Street, Wilmington, DE 19801 as its agent in the State of Delaware as such party's agent for acceptance of legal process in connection with any such action or proceeding against such party with the same legal force and validity as if served upon such party personally within the State of Delaware, (iv) waive any objection to the laying of venue of any such action or proceeding in the Delaware Court, and (v) waive, and agree not to plead or to make, any claim that any such action or proceeding brought in the Delaware Court has been brought in an improper or inconvenient forum.

SIGNATURE PAGE TO FOLLOW

IN WITNESS WHEREOF, the parties hereto have executed this Indemnification Agreement on and as of the day and year first above written.

AZIYO BIOLOGICS, INC.

By: _____

Name: _____

Title: _____

INDEMNITEE

_____

Name: _____

Address:

_____

_____

_____

_____

AMENDMENT NO. 1 TO AMENDED AND RESTATED CREDIT AND SECURITY AGREEMENT (TERM LOAN)

This AMENDMENT NO. 1 TO AMENDED AND RESTATED CREDIT AND SECURITY AGREEMENT (TERM LOAN) (this "**Agreement**") is made as of September 26, 2020, by and among **AZIYO BIOLOGICS, INC.**, a Delaware corporation ("**Aziyo**"), **AZIYO MED, LLC**, a Delaware limited liability company ("**Aziyo Med**", and Aziyo Med, together with Aziyo, each individually, a "**Borrower**" and collectively, the "**Borrowers**"), **MIDCAP FINANCIAL TRUST**, a Delaware statutory trust, as Agent (in such capacity, together with its successors and assigns, "**Agent**") and the other financial institutions or other entities from time to time parties to the Credit Agreement referenced below, each as a Lender.

RECITALS

A. Agent, Lenders and Borrowers have entered into that certain Amended and Restated Credit and Security Agreement (Term Loan), dated as of July 15, 2019 (as amended, modified, supplemented and restated prior to the date hereof, the "**Original Credit Agreement**" and as the same is amended hereby and as it may be further amended, modified, supplemented and restated from time to time, the "**Credit Agreement**"), pursuant to which the Lenders have agreed to make certain advances of money and to extend certain financial accommodations to Borrowers in the amounts and manner set forth in the Credit Agreement.

B. Borrowers have requested, and Agent and Lenders have agreed, to amend certain provisions of the Original Credit Agreement, in each case, in accordance with the terms and subject to the conditions set forth herein.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing, the terms and conditions set forth in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Agent, Lenders and Borrowers hereby agree as follows:

1. **Recitals**. This Agreement shall constitute a Financing Document and the Recitals and each reference to the Credit Agreement, unless otherwise expressly noted, will be deemed to reference the Credit Agreement as amended hereby. Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Credit Agreement (including those capitalized terms used in the Recitals hereto).

2. **Amendments to Original Credit Agreement**. Subject to the satisfaction of the conditions to effectiveness set forth in Section 4 below, the Original Credit Agreement is hereby amended as follows:

(a) Clause (b) of the definition of "Permitted Modifications" in Section 1.1 of the Original Credit Agreement is hereby amended by adding the words "(or, in the case of any such amendment, consent, waiver or other modification to an Organizational Document in connection with a Qualified IPO materially adversely)" immediately following the word "adversely" contained therein.

(b) The definition of "Qualified IPO" in Section 1.1 of the Original Credit Agreement is hereby amended and restated in its entirety as follows:

"**Qualified IPO**" means the issuance and sale by Aziyo of its common stock in an underwritten public offering (other than a public offering pursuant to a registration statement on Form S-8) pursuant to an effective registration statement (whether alone or in connection with a secondary public offering) filed with the SEC in accordance with the Securities Act of 1933, as amended, following which Aziyo's common stock is listed on a nationally-recognized stock exchange in the United States and in respect of which Aziyo has delivered evidence satisfactory to Agent that Aziyo has received net cash proceeds of not less than (x) solely for purposes of determining whether a Change of Control has occurred, $30,000,000 or (y) for purposes of all other determinations under this Agreement, $40,000,000 (in each case, subject to no clawback, escrow or other terms limiting the Aziyo's ability to freely use such proceeds)."

(c) Sections 4.9(a)(i)(1) and 5.10(b) of the Original Credit Agreement are each hereby amended by adding the words "(or, in the case of any such amendment, consent, waiver or other modification to a Material Contract in connection with a Qualified IPO, materially adverse)" immediately following the word "adverse" contained therein.

3. **Representations and Warranties; Reaffirmation of Security Interest.**

(a) Each Borrower hereby confirms that each of the representations and warranties set forth in the Credit Agreement is true and correct in all material respects (without duplication of any materiality qualifier in the text of such representation or warranty) with respect to such Borrower as of the date hereof except to the extent that any such representation or warranty relates to a specific date in which case such representation or warranty shall be true and correct in all material respects as of such earlier date (without duplication of any materiality qualifier in the text of such representation or warranty). All information set forth in the Schedules to the Credit Agreement is true, accurate and complete in all material respects as of the date of delivery of the last Compliance Certificate except to the extent that any such Schedule relates to the Closing Date only in which case such Schedule shall be true and correct in all material respects as of the Closing Date.

(b) Each Borrower hereby confirms that, other than that certain Amended and Restated Certificate of Incorporation of Aziyo Biologics, Inc., filed with the Secretary of State of the State of Delaware on September 14, 2020, since the Closing Date, there have been no amendments or other modifications to any Borrower's Organizational Documents.

(c) Each Borrower confirms and agrees that all security interests and Liens granted to Agent continue in full force and effect, and that all Collateral remains free and clear of any Liens, other than Permitted Liens. Nothing herein is intended to impair or limit the validity, priority or extent of Agent's security interests in and Liens on the Collateral. Each Borrower acknowledges and agrees that the Credit Agreement, the other Financing Documents and this Agreement constitute the legal, valid and binding obligation of such Borrower, and are enforceable against such Borrower in accordance with their terms, except as the enforceability thereof may be limited by bankruptcy, insolvency or other similar laws relating to the enforcement of creditors' rights generally and by general equitable principles.

4. **Conditions to Effectiveness.** This Agreement shall become effective as of the date on which each of the following conditions has been satisfied (or waived in writing by the Agent and the Lenders), as determined by Agent in its sole discretion:

(a) Borrowers and Lenders shall each have delivered to Agent this Agreement, executed by an authorized officer of each such Person;

(b) Agent shall have received a fully executed copy of Amendment No. 1 to Amended and Restated Credit and Security Agreement (Revolving Loan), dated as of the date hereof, by and among Borrowers, Agent and the Lenders constituting at least the Required Lenders (as each term is defined in the Affiliated Credit Agreement), executed by an authorized officer of each party thereto;

(c) all representations and warranties of Borrowers contained herein shall be true and correct in all material respects (without duplication of any materiality qualifier in the text of such representation or warranty) as of the date hereof except to the extent that any such representation or warranty relates to a specific date in which case such representation or warranty shall be true and correct in all material respects as of such earlier date (without duplication of any materiality qualifier in the text of such representation or warranty) (and such parties' delivery of their respective signatures hereto shall be deemed to be its certification thereof);

(d) prior to and after giving effect to the agreements set forth herein, no Default or Event of Default shall exist under any of the Financing Documents; and

(e) Borrowers shall have delivered such other documents, information, certificates, records, permits, and filings as the Agent may reasonably request in connection with this Agreement.

5. **Release**. In consideration of the agreements of Agent and Lenders contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Borrower, voluntarily, knowingly, unconditionally and irrevocably, with specific and express intent, for and on behalf of itself and all of its respective parents, subsidiaries, affiliates, members, managers, predecessors, successors, and assigns, and each of their respective current and former directors, officers, shareholders, agents, and employees, and each of their respective predecessors, successors, heirs, and assigns (individually and collectively, the "**Releasing Parties**") does hereby fully and completely release, acquit and forever discharge each of Agent, Lenders, and each their respective parents, subsidiaries, affiliates, members, managers, shareholders, directors, officers and employees, and each of their respective predecessors, successors, heirs, and assigns (individually and collectively, the "**Released Parties**"), of and from any and all actions, causes of action, suits, debts, disputes, damages, claims, obligations, liabilities, costs, expenses and demands of any kind whatsoever, at law or in equity, whether matured or unmatured, liquidated or unliquidated, vested or contingent, choate or inchoate, known or unknown that the Releasing Parties (or any of them) has against the Released Parties or any of them (whether directly or indirectly) based in whole or in part on facts, whether or not now known, existing on or before the date hereof. Each Borrower acknowledges that the foregoing release is a material inducement to Agent's and each Lender's decision to enter into this Agreement and agree to the modifications contemplated hereunder, and has been relied upon by Agent and Lenders in connection therewith.

6. **No Waiver or Novation.** The execution, delivery and effectiveness of this Agreement shall not, except as expressly provided in this Agreement, operate as a waiver of any right, power or remedy of Agent, nor constitute a waiver of any provision of the Credit Agreement, the Financing Documents or any other documents, instruments and agreements executed or delivered in connection with any of the foregoing. Nothing herein is intended or shall be construed as a waiver of any existing Defaults or Events of Default under the Credit Agreement or the other Financing Documents or any of Agent's rights and remedies in respect of such Defaults or Events of Default. This Agreement (together with any other document executed in connection herewith) is not intended to be, nor shall it be construed as, a novation of the Credit Agreement.

7. **Affirmation.** Except as specifically amended pursuant to the terms hereof, each Borrower hereby acknowledges and agrees that the Credit Agreement and all other Financing Documents (and all covenants, terms, conditions and agreements therein) shall remain in full force and effect, and are hereby ratified and confirmed in all respects by such Borrower. Each Borrower covenants and agrees to comply with all of the terms, covenants and conditions of the Credit Agreement and the Financing Documents, notwithstanding any prior course of conduct, waivers, releases or other actions or inactions on Agent's or any Lender's part which might otherwise constitute or be construed as a waiver of or amendment to such terms, covenants and conditions.

8. **Miscellaneous**.

(a) Reference to the Effect on the Credit Agreement. Upon the effectiveness of this Agreement, each reference in the Credit Agreement to "this Agreement," "hereunder," "hereof," "herein," or words of similar import shall mean and be a reference to the Credit Agreement, as amended by this Agreement.

(b) Incorporation of Credit Agreement Provisions. The provisions contained in Section 11.6 (Indemnification) of the Credit Agreement are incorporated herein by reference to the same extent as if reproduced herein in their entirety.

(c) THIS AGREEMENT AND ALL DISPUTES AND OTHER MATTERS RELATING HERETO OR THERETO OR ARISING THEREFROM (WHETHER SOUNDING IN CONTRACT LAW, TORT LAW OR OTHERWISE), SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO CONFLICTS OF LAWS PRINCIPLES (OTHER THAN SECTION 5-1401 OF THE GENERAL OBLIGATIONS LAW).

(d) EACH BORROWER HEREBY CONSENTS TO THE JURISDICTION OF ANY STATE OR FEDERAL COURT LOCATED IN THE STATE OF NEW YORK IN THE CITY OF NEW YORK, BOROUGH OF MANHATTAN AND IRREVOCABLY AGREES THAT, SUBJECT TO AGENT'S ELECTION, ALL ACTIONS OR PROCEEDINGS ARISING OUT OF OR RELATING TO THIS AGREEMENT SHALL BE LITIGATED IN SUCH COURTS. EACH BORROWER EXPRESSLY SUBMITS AND CONSENTS TO THE JURISDICTION OF THE AFORESAID COURTS AND WAIVES ANY DEFENSE OF FORUM NON CONVENIENS. EACH BORROWER HEREBY WAIVES PERSONAL SERVICE OF ANY AND ALL PROCESS AND AGREES THAT ALL SUCH SERVICE OF PROCESS MAY BE MADE UPON SUCH BORROWER BY CERTIFIED OR REGISTERED MAIL, RETURN RECEIPT REQUESTED, ADDRESSED TO SUCH BORROWER AT THE ADDRESS SET FORTH IN THIS AGREEMENT AND SERVICE SO MADE SHALL BE COMPLETE TEN (10) DAYS AFTER THE SAME HAS BEEN POSTED.

(e) EACH BORROWER, AGENT AND THE LENDERS HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY AND AGREES THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY. EACH BORROWER, AGENT AND EACH LENDER ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO A BUSINESS RELATIONSHIP, THAT EACH HAS RELIED ON THE WAIVER IN ENTERING INTO THIS AGREEMENT, AND THAT EACH WILL CONTINUE TO RELY ON THIS WAIVER IN THEIR RELATED FUTURE DEALINGS. EACH BORROWER, AGENT AND EACH LENDER WARRANTS AND REPRESENTS THAT IT HAS HAD THE OPPORTUNITY OF REVIEWING THIS JURY WAIVER WITH LEGAL COUNSEL, AND THAT IT KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS.

(f) Headings. Section headings in this Agreement are included for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

(g) Counterparts. This Agreement may be signed in any number of counterparts, each of which shall be deemed an original and all of which when taken together shall constitute one and the same instrument. Delivery of an executed counterpart of this Agreement by facsimile or by electronic mail delivery of an electronic version (e.g., .pdf or .tif file) of an executed signature page shall be effective as delivery of an original executed counterpart hereof and shall bind the parties hereto.

(h) Entire Agreement. This Agreement constitutes the entire agreement and understanding among the parties hereto and supersedes any and all prior agreements and understandings, oral or written, relating to the subject matter hereof.

(i) Severability. In case any provision of or obligation under this Agreement shall be invalid, illegal or unenforceable in any applicable 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.

(j) Successors/Assigns. This Agreement shall bind, and the rights hereunder shall inure to, the respective successors and assigns of the parties hereto, subject to the provisions of the Credit Agreement and the other Financing Documents.

[SIGNATURES APPEAR ON FOLLOWING PAGES]

IN WITNESS WHEREOF, intending to be legally bound, the undersigned have executed this Agreement as of the day and year first hereinabove set forth.

AGENT:

MIDCAP FINANCIAL TRUST

By: Apollo Capital Management, L.P.,
its investment manager

By: Apollo Capital Management GP, LLC,
its general partner

By: /s/ Maurice Amsellem
Name: Maurice Amsellem
Title: Authorized Signatory

LENDER:

ELM 2020-3 TRUST

By: MidCap Financial Services Capital Management, LLC, as Servicer

By: /s/ John O'Dea
Name: John O'Dea
Title: Authorized Signatory

LENDER:

ELM 2018-2 TRUST

By: MidCap Financial Services Capital Management, LLC, as Servicer

By: /s/ John O'Dea
Name: John O'Dea
Title: Authorized Signatory

BORROWERS:

AZIYO BIOLOGICS, INC.

By: /s/ Jeffrey Hamet
Name: Jeffrey Hamet
Title: Treasurer

AZIYO MED, LLC

By: /s/ Jeffrey Hamet
Name: Jeffrey Hamet
Title: Treasurer

Execution Version

AMENDED AND RESTATED CREDIT AND SECURITY AGREEMENT (TERM LOAN)

dated as of July 15, 2019

by and among

AZIYO BIOLOGICS, INC.,

AZIYO MED, LLC

and any additional borrower that hereafter becomes party hereto, each as Borrower, and collectively as Borrowers,

and

MIDCAP FINANCIAL TRUST,

as Agent and as a Lender,

and

THE ADDITIONAL LENDERS

FROM TIME TO TIME PARTY HERETO

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AMENDED AND RESTATED CREDIT AND SECURITY AGREEMENT (TERM LOAN)

This **AMENDED AND RESTATED CREDIT AND SECURITY AGREEMENT (TERM LOAN)** (as the same may be amended, supplemented, restated or otherwise modified from time to time, the "**Agreement**") is dated as of July 15, 2019 by and among AZIYO BIOLOGICS, INC., a Delaware corporation ("**Aziyo**"), **AZIYO MED, LLC**, a Delaware limited liability company ("**Aziyo Med**") and any additional borrower that may hereafter be added to this Agreement (individually as a "**Borrower**", and collectively with any entities that become party hereto as Borrower and each of their successors and permitted assigns, the "**Borrowers**"), **MIDCAP FINANCIAL TRUST,** a Delaware statutory trust, individually as a Lender, and as Agent, and the financial institutions or other entities from time to time parties hereto, each as a Lender.

RECITALS

WHEREAS, Agent, Lenders and Borrowers have entered into that certain Credit and Security Agreement (Term Loan), dated as of May 31, 2017 (as amended by that certain Amendment No. 1 and Limited Waiver to Credit and Security Agreement (Term Loan), dated as of December 14, 2017, as amended by that certain Amendment No. 2 to Credit and Security Agreement (Term Loan), dated as of February 15, 2018, as amended by that certain Amendment No. 3 to Credit and Security Agreement (Term Loan), dated as of November 30, 2018 and as further amended, modified, supplemented and restated prior to the date hereof, the "**Original Credit Agreement**" and as the same is amended hereby and as it may be further amended, modified, supplemented and restated from time to time, the "**Credit Agreement**"), pursuant to which the Lenders have agreed to make certain advances of money and to extend certain financial accommodations to Borrowers in the amounts and manner set forth in the Credit Agreement

WHEREAS, in connection with the continued working capital and other needs of the Borrowers, Borrowers have requested, among other things, that Agent and Lenders (a) make certain term loan facilities available to Borrowers and (b) amend certain other economic terms, covenants and other provisions of the Original Credit Agreement; and

WHEREAS, Agent and Lenders have agreed to the requests of Borrowers and Parent on the terms and conditions set forth herein and in the other Financing Documents.

AGREEMENT

NOW, THEREFORE, in consideration of the premises and the agreements, provisions and covenants herein contained, the receipt and sufficiency of which are hereby acknowledged, Borrowers, Lenders and Agent agree to amend and restate the Original Credit Agreement as follows:

ARTICLE 1 - DEFINITIONS

Section 1.1 Certain Defined Terms. The following terms have the following meanings:

"**Acceleration Event**" means the occurrence of an Event of Default (a) in respect of which Agent has declared all or any portion of the Obligations to be immediately due and payable pursuant to Section 10.2, (b) pursuant to Section 10.1(a), and in respect of which Agent has suspended or terminated the Term Loan Commitment pursuant to Section 10.2, and/or (c) pursuant to either Section 10.1(e) and/or Section 10.1(f).

"**Account Debtor**" means "account debtor", as defined in Article 9 of the UCC, and any other obligor in respect of an Account.

"**Accounts**" means, collectively, (a) any right to payment of a monetary obligation, whether or not earned by performance, (b) without duplication, any "account" (as defined in the UCC), any accounts receivable (whether in the form of payments for services rendered or goods sold, rents, license fees or otherwise), any "health-care-insurance receivables" (as defined in the UCC), any "payment intangibles" (as defined in the UCC) and all other rights to payment and/or reimbursement of every kind and description, whether or not earned by performance, (c) all accounts, "general intangibles" (as defined in the UCC), Intellectual Property, rights, remedies, Guarantees, "supporting obligations" (as defined in the UCC), "letter-of-credit rights" (as defined in the UCC) and security interests in respect of the foregoing, all rights of enforcement and collection, all books and records evidencing or related to the foregoing, and all rights under the Financing Documents in respect of the foregoing, (d) all information and data compiled or derived by any Borrower or to which any Borrower is entitled in respect of or related to the foregoing, and (e) all proceeds of any of the foregoing.

"**Additional Titled Agents**" has the meaning set forth in Section 11.15.

"**Affiliate**" means, with respect to any Person, (a) any Person that directly or indirectly controls such Person, (b) any Person which is controlled by or is under common control with such controlling Person, and (c) each of such Person's (other than, with respect to any Lender, any Lender's) officers or directors (or Persons functioning in substantially similar roles) and the spouses, parents, descendants and siblings of such officers, directors or other Persons. As used in this definition, the term "control" of a Person means the possession, directly or indirectly, of the power to vote five percent (5%) or more of any class of voting securities of such Person or to direct or cause the direction of the management or policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

"**Affiliated Credit Agreement**" means that certain Amended and Restated Credit and Security Agreement (Revolving Loan) (as the same may be amended, restated, supplemented or otherwise modified from time to time), among MCF, as Agent and a lender, the other lenders party thereto and Borrowers pursuant to which such Agent and lenders have extended a revolving credit facility to Borrowers.

"**Affiliated Financing Agent**" means the "Agent" under and as defined in the Affiliated Credit Agreement.

"**Affiliated Financing Documents**" means the "**Financing Documents**" as defined in the Affiliated Credit Agreement.

"**Affiliated Intercreditor Agreement**" means that certain Intercreditor Agreement dated as of the Original Closing Date between Agent and the Affiliated Financing Agent, as the same may be amended, restated, supplemented or otherwise modified from time to time.

"**Affiliated Obligations**" means all "Obligations", as such term is defined in the Affiliated Financing Documents.

"**Agent**" means MCF, in its capacity as administrative agent for itself and for Lenders hereunder, as such capacity is established in, and subject to the provisions of, Article 11, and the successors and assigns of MCF in such capacity.

"**Anti-Terrorism Laws**" means any Laws relating to terrorism or money laundering, including, without limitation, Executive Order No. 13224 (effective September 24, 2001), the USA PATRIOT Act, the Laws comprising or implementing the Bank Secrecy Act, and the Laws administered by OFAC.

"**Applicable Margin**" means seven and one quarter percent (7.25%).

"**Approved Fund**" means any (a) investment company, fund, trust, securitization vehicle or conduit that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the Ordinary Course of Business, or (b) any Person (other than a natural person) which temporarily warehouses loans for any Lender or any entity described in the preceding clause (a) and that, with respect to each of the preceding clauses (a) and (b), is administered or managed by (i) a Lender, (ii) an Affiliate of a Lender, or (iii) a Person (other than a natural person) or an Affiliate of a Person (other than a natural person) that administers or manages a Lender.

"**Asset Disposition**" means any sale, lease, license, transfer, assignment or other consensual disposition by any Credit Party or any Subsidiary thereof of any asset.

"**Assignment Agreement**" means an assignment agreement in form and substance acceptable to Agent.

"**Aziyo**" has the meaning set forth in the introductory paragraph hereto.

"**Aziyo Med**" has the meaning set forth in the introductory paragraph hereto.

"**Aziyo Med Operating Account**" means the Deposit Account maintained by Aziyo Med at Silicon Valley Bank with account number [XXX] in accordance with the terms of Section 4.18.

"**Aziyo Med Controlled Account**" has the meaning set forth in Section 2.11.

"**Bankruptcy Code**" means Title 11 of the United States Code entitled "Bankruptcy", as the same may be amended, modified or supplemented from time to time, and any successor statute thereto.

"**Base LIBOR Rate**" means, for each Interest Period, the rate per annum, determined by Agent in accordance with its customary procedures, and utilizing such electronic or other quotation sources as it considers appropriate (rounded upwards, if necessary, to the next 1/100%), to be the rate at which Dollar deposits (for delivery on the first day of such Interest Period or, if such day is not a Business Day on the preceding Business Day) in the amount of $1,000,000 are offered to major banks in the London interbank market on or about 11:00 a.m. (London, England time) two (2) Business Days prior to the commencement of such Interest Period, for a term comparable to such Interest Period, which determination shall be conclusive in the absence of manifest error; *provided*, *however*, that Agent may, upon prior written notice to Borrower Representative, choose a reasonably comparable index or source to use as the basis for Base LIBOR Rate.

"**Base Rate**" means a per annum rate of interest equal to the greater of (a) two and one -quarter percent (2.25%) per annum and (b) the rate of interest announced, from time to time, within Wells Fargo Bank, National Association ("**Wells Fargo**") at its principal office in San Francisco as its "prime rate," with the understanding that the "prime rate" is one of Wells Fargo's base rates (not necessarily the lowest of such rates) and serves as the basis upon which effective rates of interest are calculated for those loans making reference thereto and is evidenced by the recording thereof after its announcement in such internal publications as Wells Fargo may designate; *provided*, *however,* that Agent may, upon prior written notice to Borrower, choose a reasonably comparable index or source to use as the basis for the Base Rate.

"**Blocked Person**" means any Person: (a) listed in the annex to, or is otherwise subject to the provisions of, Executive Order No. 13224, (b) owned or controlled by, or acting for or on behalf of, any Person that is listed in the annex to, or is otherwise subject to the provisions of, Executive Order No. 13224, (c) with which any Lender is prohibited from dealing or otherwise engaging in any transaction by any Anti-Terrorism Law, (d) that commits, threatens or conspires to commit or supports "terrorism" as defined in Executive Order No. 13224, or (e) that is named a "specially designated national" or "blocked person" on the most current list published by OFAC or other similar list or is named as a "listed person" or "listed entity" on other lists made under any Anti-Terrorism Law.

"**Borrower**" and "**Borrowers**" has the meaning set forth in the introductory paragraph hereto. If there is more than one Person that constitutes a Borrower, then the term "Borrower" shall mean, on a joint and several basis, the singular and the collective reference to any or all entities constituting or comprising Borrower, as the context may require.

"**Borrower Representative**" means Aziyo, in its capacity as Borrower Representative pursuant to the provisions of Section 2.9, or any successor Borrower Representative selected by Borrowers and approved by Agent.

"**Borrowing Base**" has the meaning set forth in the Affiliated Credit Agreement.

"**Business Day**" means any day except a Saturday, Sunday or other day on which either the New York Stock Exchange is closed, or on which commercial banks in New York City are authorized by Law to close and, in the case of a Business Day which relates to a Loan bearing interest at a rate based on the LIBOR Rate, a day on which dealings are carried on in the London interbank eurodollar market.

"**Capital Expenditures**" means all liabilities incurred or expenditures made by Borrower or any of its Subsidiaries for the acquisition of fixed assets, or any improvements, substitutions or additions thereto with a useful life of more than one year.

"**CERCLA**" means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C.A. § 9601 *et seq*., as the same may be amended from time to time.

"**Change in Control**" means any event, transaction, or occurrence as a result of which: (a) the owners of the voting and economic interests of the equity interests of Aziyo as of the Original Closing Date shall collectively cease to, directly or indirectly, own and control at least (i) fifty-one percent (51%) of the voting and economic interests of the equity interests of Aziyo (other than by the sale of Aziyo's common stock in or following a Qualified IPO; *provided* that upon the consummation of a Qualified IPO, a Change in Control under this clause (a)(i) shall occur when any "person" (as such term is defined in Sections 3(a)(9) and 13(d)(3) of the Exchange Act), other than the owners of the voting and economic interests of the equity interests of Aziyo as of the Original Closing Date, is or becomes a beneficial owner (within the meaning Rule 13d-3 promulgated under the Exchange Act), directly or indirectly, of equity securities of Aziyo, representing thirty-five percent (35%) or more of the combined voting power of Aziyo's then outstanding securities) and/or (ii) that percentage of the outstanding voting equity interests of Aziyo necessary at all times to elect a majority of the board of directors (or similar governing body) of Aziyo and to direct the management policies and decisions of Aziyo; (b) during any period of twelve consecutive calendar months, individuals who at the beginning of such period constituted the board of directors or board of managers or similar governing Person(s) of each Borrower (together with any new directors or managers whose election by the board of directors or board of managers or similar governing Person(s) of each Borrower was approved by a vote of not less than two-thirds of the directors or managers then still in office who either were directors or managers at the beginning of such period or whose election or nomination for election was previously so approved) cease for any reason other than death or disability to constitute a majority of the directors or managers then in office; (c) any Credit Party ceases to own and control, directly or indirectly, all of the economic and voting rights associated with the outstanding securities of each of its Subsidiaries; or (d) the occurrence of any "Change of Control", "Change in Control", or terms of similar import under any document or instrument governing or relating to Debt of or equity in such Person. As used herein, "beneficial ownership" shall have the meaning provided in Rule 13d-3 of the Securities and Exchange Commission under the Securities Exchange Act of 1934. For the avoidance of doubt, a Qualified IPO shall not constitute a Change in Control.

"**Closing Date**" means the date of this Agreement.

"**Code**" means the Internal Revenue Code of 1986, as amended from time to time, any successor statutes thereto, and applicable U.S. Department of Treasury regulations issued pursuant thereto in temporary or final form.

"**Collateral**" means all property, now existing or hereafter acquired, mortgaged or pledged to, or purported to be subjected to a Lien in favor of, Agent, for the benefit of Agent and Lenders, pursuant to this Agreement and the Security Documents, including, without limitation, all of the property described in Schedule 9.1 hereto.

"**Commitment Annex**" means Annex A to this Agreement.

"**Compliance Certificate**" means a certificate, duly executed by a Responsible Officer of Borrower Representative, appropriately completed and substantially in the form of Exhibit B hereto.

"**Consolidated Subsidiary**" means, at any date, any Subsidiary the accounts of which would be consolidated with those of "parent" Borrower (or any other Person, as the context may require hereunder) in its consolidated financial statements if such statements were prepared as of such date.

"**Contingent Obligation**" means, with respect to any Person, any direct or indirect liability of such Person: (a) with respect to any Debt of another Person (a "**Third Party Obligation**") if the purpose or intent of such Person incurring such liability, or the effect thereof, is to provide assurance to the obligee of such Third Party Obligation that such Third Party Obligation will be paid or discharged, or that any agreement relating thereto will be complied with, or that any holder of such Third Party Obligation will be protected, in whole or in part, against loss with respect thereto; (b) with respect to any undrawn portion of any letter of credit issued for the account of such Person or as to which such Person is otherwise liable for the reimbursement of any drawing; (c) under any Swap Contract, to the extent not yet due and payable; (d) to make take-or-pay or similar payments if required regardless of nonperformance by any other party or parties to an agreement; or (e) for any obligations of another Person pursuant to any Guarantee or pursuant to any agreement to purchase, repurchase or otherwise acquire any obligation or any property constituting security therefor, to provide funds for the payment or discharge of such obligation or to preserve the solvency, financial condition or level of income of another Person. The amount of any Contingent Obligation shall be equal to the amount of the obligation so Guaranteed or otherwise supported or, if not a fixed and determinable amount, the maximum amount so Guaranteed or otherwise supported.

"**Controlled Group**" means all members of a group of corporations and all members of a group of trades or businesses (whether or not incorporated) under common control which, together with any Borrower, are treated as a single employer under Section 414(b), (c), (m) or (o) of the Code or Section 4001(b) of ERISA and, solely for purposes of Section 412 and 436 of the Code, Section 414(m) or (o) of the Code.

"**Cook License Agreement**" means that certain License Agreement, dated as of the Original Closing Date, among Cook Biotech Incorporated and Aziyo Med, as amended, supplemented or otherwise modified from time to time following the Original Closing Date in accordance with the terms of the Financing Documents.

"**Cook Supply Agreement**" means that certain Material Supply Agreement, dated as of the Original Closing Date, among Cook Biotech Incorporated and Aziyo Med, as amended, supplemented or otherwise modified from time to time following the Original Closing Date in accordance with the terms of the Financing Documents.

"**CorMatrix**" means CorMatrix Cardiovascular, Inc., a Georgia corporation.

"**Correction**" means repair, modification, adjustment, relabeling, destruction or inspection (including patient monitoring) of a product without its physical removal to some other location.

"**Credit Exposure**" means, at any time, any portion of the Term Loan Commitments and of any other Obligations that remains outstanding; *provided, however,* that no Credit Exposure shall be deemed to exist solely due to the existence of contingent indemnification liability, absent the assertion of a claim, or the known existence of a claim reasonably likely to be asserted, with respect thereto.

"**Credit Party**" means each Borrower and each Guarantor; and "**Credit Parties**" means all such Persons, collectively.

"**Cross License Agreement**" means that certain License Agreement, dated as of the Original Closing Date, by and between CorMatrix and Aziyo Med, as amended, supplemented or otherwise modified from time to time following the Original Closing Date in accordance with the terms of the Financing Documents.

"**DEA**" means the Drug Enforcement Administration of the United States of America, any comparable state or local Governmental Authority, any comparable Governmental Authority in any non-United States jurisdiction, and any successor agency of any of the foregoing.

"**Debt**" of a Person means at any date, without duplication, (a) all obligations of such Person for borrowed money, (b) all obligations of such Person evidenced by bonds, debentures, notes or other similar instruments, (c) all obligations of such Person to pay the deferred purchase price of property or services, except trade accounts payable arising and paid on a timely basis and in the Ordinary Course of Business, (d) all capital leases of such Person, (e) all non-contingent obligations of such Person to reimburse any bank or other Person in respect of amounts paid under a letter of credit, banker's acceptance or similar instrument, (f) all equity securities of such Person subject to repurchase or redemption other than at the sole option of such Person, (g) all obligations secured by a Lien on any asset of such Person, whether or not such obligation is otherwise an obligation of such Person, (h) "earnouts", purchase price adjustments, profit sharing arrangements, deferred purchase money amounts and similar payment obligations or continuing obligations of any nature of such Person arising out of purchase and sale contracts, (i) all Debt of others Guaranteed by such Person, and (j) off-balance sheet liabilities and/or Pension Plan or Multiemployer Plan liabilities of such Person. Without duplication of any of the foregoing, Debt of Borrowers shall include any and all Loans.

"**Default**" means any condition or event which with the giving of notice or lapse of time or both would, unless cured or waived, become an Event of Default.

"**Defaulted Lender**" means, so long as such failure shall remain in existence and uncured, any Lender which shall have failed to make any Loan or other credit accommodation, disbursement, settlement or reimbursement required pursuant to the terms of any Financing Document.

"**Defined Period**" means for any given calendar month or date of determination, the twelve (12) month period ending on the last day of such calendar month or if such date of determination is not the last day of a calendar month, the twelve (12) month period immediately preceding any such date of determination.

"**Deposit Account**" means a "deposit account" (as defined in Article 9 of the UCC), an investment account, or other account in which funds are held or invested for credit to or for the benefit of any Borrower.

"**Deposit Account Control Agreement**" means an agreement, in form and substance satisfactory to Agent, among Agent, any Borrower and each financial institution in which such Borrower maintains a Deposit Account, which agreement provides that (a) such financial institution shall comply with instructions originated by Agent directing disposition of the funds in such Deposit Account without further consent by the applicable Borrower, and (b) such financial institution shall agree that it shall have no Lien on, or right of setoff or recoupment against, such Deposit Account or the contents thereof, other than in respect of usual and customary service fees and returned items for which Agent has been given value, in each such case expressly consented to by Agent, and containing such other terms and conditions as Agent may require**.**

"**Distribution**" means as to any Person (a) any dividend or other distribution (whether in cash, securities or other property) on any equity interest in such Person (except those payable solely in its equity interests of the same class), (b) any payment by such Person on account of (i) the purchase, redemption, retirement, defeasance, surrender, cancellation, termination or acquisition of any equity interests in such Person or any claim respecting the purchase or sale of any equity interest in such Person, or (ii) any option, warrant or other right to acquire any equity interests in such Person, (c) any management fees, salaries or other fees or compensation to any Person holding an equity interest in a Borrower or a Subsidiary of a Borrower (other than reasonable and customary (i) payments of salaries to individuals, (ii) directors fees, and (iii) advances and reimbursements to employees or directors, all in the Ordinary Course of Business), an Affiliate of a Borrower or an Affiliate of any Subsidiary of a Borrower, (d) any lease or rental payments to an Affiliate or Subsidiary of a Borrower, or (e) repayments of or debt service on loans or other indebtedness held by any Person holding an equity interest in a Borrower or a Subsidiary of a Borrower, an Affiliate of a Borrower or an Affiliate of any Subsidiary of a Borrower unless permitted under and made pursuant to a Subordination Agreement applicable to such loans or other indebtedness.

"**Dollars**" or "**$**" means the lawful currency of the United States of America.

"**Donor Network West**" means Donor Network West, a California nonprofit corporation.

"**Donor Network West Note**" means that certain Promissory Note issued by Aziyo in favor of Donor Network West, dated as of March 2, 2017 in the original principal amount of $2,068,492.00.

"**Drug Application**" means a new drug application, an abbreviated drug application, or a product license application for any Product, as appropriate, as those terms are defined in the FDCA.

"**EBITDA**" means, for any period, determined on a consolidated basis for Borrower and its Subsidiaries, net income, calculated before interest expense, provision for income taxes, depreciation and amortization expense, gains or losses arising from the sale of capital assets, gains arising from the write-up of assets, any extraordinary gains and any non-cash equity compensation (in each case, to the extent included in determining net income) *plus* (a) extraordinary losses of Borrower and its Subsidiaries approved by Agent in its sole discretion, and (b) the "Acquiror Buydown Payments" (as defined in the Ligand Royalty Agreement) made pursuant to the terms of the Ligand Royalty Agreement during such period to the extent included in the determination of net income for such period.

"**Eligible Assignee**" means (a) a Lender, (b) an Affiliate of a Lender, (c) an Approved Fund, and (d) any other Person (other than a natural person) approved by Agent; *provided*, *however*, that notwithstanding the foregoing, (x) "**Eligible Assignee**" shall not include any Borrower or any of a Borrower's Affiliates, and (y) no proposed assignee intending to assume any unfunded portion of the Term Loan Commitment shall be an Eligible Assignee unless such proposed assignee either already holds a portion of such Term Loan Commitment, or has been approved as an Eligible Assignee by Agent.

"**Environmental Laws**" means any and all Laws pertaining to the environment, natural resources, pollution, Hazardous Materials, or, to the extent relating to exposure to substances that are harmful or detrimental to the environment, employee health or safety, including any environmental clean-up Laws which pertain to or impose liability or standards of conduct concerning medical waste or medical products, equipment or supplies.

"**Equity Investment Documents**" means, collectively, (i) the Series A Preferred Stock Purchase Agreement, dated as of the Original Closing Date among Aziyo, HighCape and/or certain Affiliates of HighCape and the other parties thereto (the "**Series A Purchase Agreement**"), pursuant to which Borrower received $10,500,000 from HighCape and such Affiliates in exchange for issuing equity interests pursuant thereto on or prior to the Original Closing Date and an additional $1,500,000 thereafter, (ii) the Joinder and Acknowledgement Agreement, dated as of the Original Closing Date among Aziyo, MCF and/or certain Affiliates of MCF, pursuant to which MCF and/or such Affiliates joined and became a party to such Series A Purchase Agreement, the Investor Rights Agreement (as defined in the Series A Purchase Agreement) and the ROFR Agreement (as defined in the Series A Purchase Agreement), (iii) the Investor Rights Agreement (as defined in the Series A Purchase Agreement) and (iv) the ROFR Agreement (as defined in the Series A Purchase Agreement).

"**ERISA**" means the Employee Retirement Income Security Act of 1974, as the same may be amended, modified or supplemented from time to time, and any successor statute thereto, and any and all rules or regulations promulgated from time to time thereunder.

"**ERISA Plan**" means any "employee benefit plan", as such term is defined in Section 3(3) of ERISA (other than a Multiemployer Pension Plan), which any Credit Party or any Subsidiary maintains, sponsors or contributes to, or, in the case of an employee benefit plan which is subject to Section 412 of the Code or Title IV of ERISA, to which any Credit Party or any Subsidiary has any liability, including on account of any member of the Controlled Group, including any liability by reason of having been a substantial employer within the meaning of Section 4063 of ERISA, or by reason of being deemed to be a contributing sponsor under Section 4069 of ERISA.

"**Event of Default**" has the meaning set forth in Section 10.1.

"**Excluded Accounts**" has the meaning set forth in Section 5.14(b).

"**Excluded Taxes**" means any of the following Taxes imposed on or with respect to Agent, any Lender or any other recipient of any payment to be made by or on behalf of any obligation of Credit Parties hereunder or the Obligations or required to be withheld or deducted from a payment to Agent, such Lender or such recipient (including any interest and penalties thereon): (a) Taxes to the extent imposed on or measured by Agent's, any Lender's or such recipient's net income (however denominated), branch profits Taxes, and franchise Taxes and similar Taxes, in each case, (i) imposed by the jurisdiction (or any political subdivision thereof) under which Agent, such Lender or such recipient is organized, has its principal office or conducts business with respect to entering into any of the Financing Documents or taking any action thereunder or (ii) that are Other Connection Taxes; (b) in the case of a Lender, United States withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in the Loans pursuant to a Law in effect on the date on which (i) such Lender becomes a party to this Agreement other than as a result of an assignment requested by a Credit Party under the terms hereof or (ii) such Lender changes its lending office for funding its Loan, except in each case to the extent that, pursuant to Section 2.8, amounts with respect to such Taxes were payable either to such Lender's assignor immediately before such Lender acquired the applicable interest in a Loan or Term Loan Commitment or to such Lender immediately before it changed its lending office; (c) Taxes attributable to such Lender's failure to comply with Section 2.8(c); and (d) any U.S. federal withholding taxes imposed in respect of a Lender under FATCA.

"**FATCA**" means Sections 1471 through 1474 of the Code as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future U.S. Treasury regulations or official interpretations thereof and any agreement entered into pursuant to the implementation of Section 1471(b)(1) of the Code, and any intergovernmental agreement between the United States Internal Revenue Service, the U.S. Government and any governmental or taxation authority under any other jurisdiction which agreement's principal purposes deals with the implement such sections of the Code.

"**FDA**" means the Food and Drug Administration of the United States of America, any comparable state or local Governmental Authority, any comparable Governmental Authority in any non-United States jurisdiction, and any successor agency of any of the foregoing.

"**FDCA**" means the Federal Food, Drug and Cosmetic Act, as amended, 21 U.S.C. Section 301 et seq., and all regulations promulgated thereunder.

"**Federal Funds Rate**" means, for any day, the rate of interest per annum (rounded upwards, if necessary, to the nearest whole multiple of 1/100 of 1%) equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day, *provided*, *however*, that (a) if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day, and (b) if no such rate is so published on such next preceding Business Day, the Federal Funds Rate for such day shall be the average rate quoted to Agent on such day on such transactions as determined by Agent.

"**Fee Letter**" means each agreement between Agent and Borrowers relating to fees payable to Agent, for its own account, in connection with the execution of this Agreement or the Original Credit Agreement.

"**Financing Documents**" means this Agreement, any Notes, the Security Documents, each Fee Letter, the Affiliated Intercreditor Agreement, each subordination or intercreditor agreement pursuant to which any Debt and/or any Liens securing such Debt is subordinated to all or any portion of the Obligations and all other documents, instruments and agreements related to the Obligations and heretofore executed, executed concurrently with the Original Credit Agreement or executed at any time and from time to time thereafter, as any or all of the same may be amended, supplemented, restated or otherwise modified from time to time.

"**Fixed Charge Coverage Ratio**" means, for any period, the quotient obtained by dividing (a) the difference between (i) EBITDA for such period, minus (ii) without duplication, the sum of (A) all of Borrower's Unfinanced Capital Expenditures made in such period, and (B) any Distributions paid by Borrower in such period, and (C) cash Taxes paid by Borrower in such period (without benefit of any refund), *divided* (b) the sum of (i) principal payments on Debt for Money Borrowed in such period plus (ii) cash interest payments paid by Borrower in such period.

"**Foreign Lender**" has the meaning set forth in Section 2.8(c)(i).

"**GAAP**" means generally accepted accounting principles set forth from time to time in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board (or agencies with similar functions of comparable stature and authority within the United States accounting profession), which are applicable to the circumstances as of the date of determination.

"**General Intangible**" means any "general intangible" as defined in Article 9 of the UCC, and any personal property, including things in action, other than accounts, chattel paper, commercial tort claims, deposit accounts, documents, goods, instruments, investment property, letter-of-credit rights, letters of credit, money, and oil, gas or other minerals before extraction, but including payment intangibles and software.

"**Good Manufacturing Practices**" means current good manufacturing practices, as set forth in 21 C.F.R. Parts 210 and 211.

"**Governmental Authority**" means any nation or government, any state, local or other political subdivision thereof, and any agency, department or Person exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government and any corporation or other Person owned or controlled (through stock or capital ownership or otherwise) by any of the foregoing, whether domestic or foreign.

"**Guarantee**" by any Person means any obligation, contingent or otherwise, of such Person directly or indirectly guaranteeing any Debt or other obligation of any other Person and, without limiting the generality of the foregoing, any obligation, direct or indirect, contingent or otherwise, of such Person (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Debt or other obligation (whether arising by virtue of partnership arrangements, by agreement to keep-well, to purchase assets, goods, securities or services, to take-or-pay, or to maintain financial statement conditions or otherwise), or (b) entered into for the purpose of assuring in any other manner the obligee of such Debt or other obligation of the payment thereof or to protect such obligee against loss in respect thereof (in whole or in part), *provided*, *however*, that the term Guarantee shall not include endorsements for collection or deposit in the Ordinary Course of Business. The term "**Guarantee**" used as a verb has a corresponding meaning.

"**Guarantor**" means any Credit Party that has executed or delivered, or shall in the future execute or deliver, any Guarantee of any portion of the Obligations.

"**Hazardous Materials**" means (a) any "hazardous substance" as defined in CERCLA, (b) any "hazardous waste" as defined by the Resource Conservation and Recovery Act, (c) asbestos, (d) polychlorinated biphenyls, (e) petroleum and its derivatives, by-products and other hydrocarbons, and (f) any other pollutant, toxic, radioactive, caustic or otherwise hazardous substance regulated under Environmental Laws.

"**Hazardous Materials Contamination**" means contamination (whether now existing or hereafter occurring) of the improvements, buildings, facilities, personalty, soil, groundwater, air or other elements on or of the relevant property by Hazardous Materials, or any derivatives thereof, or on or of any other property as a result of Hazardous Materials, or any derivatives thereof, generated on, emanating from or disposed of in connection with the relevant property.

"**Healthcare Laws**" means all applicable Laws relating to the procurement, development, provision, clinical and non-clinical evaluation or investigation, product approval or clearance, manufacture, production, analysis, distribution, dispensing, importation, exportation, use, handling, quality, reimbursement, sale, labeling, advertising, promotion, or postmarket requirements of any drug, medical device, food, dietary supplement, or other product (including, without limitation, any ingredient or component of, or accessory to, the foregoing products) subject to regulation under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. et seq.), and similar state or foreign laws, controlled substances laws, pharmacy laws, consumer product safety laws, the National Organ Transplant Act or any regulations promulgated thereunder or any state laws and/or regulations of similar import, Medicare, Medicaid, and all laws, policies, procedures, requirements and regulations pursuant to which Permits are issued, in each case, as the same may be amended from time to time.

"**HighCape**" means, collectively, HighCape Partners QP, L.P., its Affiliates and their respective related funds and management entities.

"**HighCape Portfolio Company**" means any operating portfolio company of HighCape.

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

"**Instrument**" means "instrument", as defined in Article 9 of the UCC.

"**Intellectual Property**" means all copyright rights, copyright applications, copyright registrations and like protections in each work of authorship and derivative work, whether published or unpublished, any patents, patent applications and like protections, including improvements, divisions, continuations, renewals, reissues, extensions, and continuations-in-part of the same, trademarks, trade names, service marks, mask works, rights of use of any name, domain names, or any other similar rights, any applications therefor, whether registered or not, know-how, operating manuals, trade secret rights, clinical and non-clinical data, rights to unpatented inventions, and any claims for damage by way of any past, present, or future infringement of any of the foregoing.

"**Interest Period**" means any period commencing on the first day of a calendar month and ending on the last day of such calendar month.

"**Inventory**" means "inventory" as defined in Article 9 of the UCC, whether now existing or hereafter arising.

"**Investment**" means, with respect to any Person, directly or indirectly, (a) to purchase or acquire any stock or stock equivalents, or any obligations or other securities of, or any interest in, any Person, including the establishment or creation of a Subsidiary, (b) to make or commit to make any acquisition (including through licensing) of (i) of all or substantially all of the assets of another Person, or (ii) any business, business line or product line, division or other unit operation of any Person or any Product or Intellectual Property of any Person (in each case, an "**Acquisition**") or (c) make or purchase any advance, loan, extension of credit or capital contribution to, or any other investment in, any Person. The amount of any Investment shall be the original cost of such Investment plus the cost of all additions thereto, without any adjustments for increases or decreases in value, or write-ups, write-downs or write-offs with respect thereto.

"**Investment Company Act**" means the Investment Company Act of 1940, as amended.

"**IRS**" has the meaning set forth in Section 2.8(c)(i).

"**Laws**" means any and all federal, state, provincial, territorial, local and foreign statutes, laws, judicial decisions, regulations, ordinances, rules, judgments, orders, decrees, codes, injunctions, permits, governmental agreements and governmental restrictions, whether now or hereafter in effect, which are applicable to any Credit Party in any particular circumstance. "**Laws**" includes, without limitation, Healthcare Laws and Environmental Laws.

"**Lender**" means each of (a) MCF, in its capacity as a lender hereunder, (b) each other Person party hereto in its capacity as a lender hereunder, (c) each other Person that becomes a party hereto as Lender pursuant to Section 11.17, and (d) the respective successors of all of the foregoing, and "**Lenders**" means all of the foregoing.

"**LIBOR Rate**" means, for each Loan, a per annum rate of interest equal to the greater of (a) two and one-quarter percent (2.25%) and (b) the rate determined by Agent (rounded upwards, if necessary, to the next 1/100th%) by *dividing* (i) the Base LIBOR Rate for the Interest Period, *by* (ii) the sum of one *minus* the daily average during such Interest Period of the aggregate maximum reserve requirement (expressed as a decimal) then imposed under Regulation D of the Board of Governors of the Federal Reserve System (or any successor thereto) for "Eurocurrency Liabilities" (as defined therein).

"**Lien**" means, with respect to any asset, any mortgage, lien, pledge, charge, security interest or encumbrance of any kind, in respect of such asset. For the purposes of this Agreement and the other Financing Documents, any Borrower or any Subsidiary shall be deemed to own subject to a Lien any asset which it has acquired or holds subject to the interest of a vendor or lessor under any conditional sale agreement, capital lease or other title retention agreement relating to such asset.

"**Ligand**" means Ligand Pharmaceuticals Incorporated, a Delaware corporation.

"**Ligand Intercreditor Agreement**" means that certain Intercreditor Agreement, dated as of the Original Closing Date, among Ligand, Agent, Affiliated Financing Agent and Borrowers, as amended, supplemented or otherwise modified from time to time in accordance with the terms thereof.

"**Ligand Parent Guaranty**" means that certain Guaranty Agreement, dated as of the Original Closing Date, entered into between Aziyo and Ligand in respect of certain of Aziyo Med's obligations under the Ligand Royalty Agreement, as amended, supplemented or otherwise modified from time to time in accordance with the terms of this Agreement and the Ligand Intercreditor Agreement.

"**Ligand Royalty Agreement**" means that certain Royalty Agreement, dated as of the Original Closing Date, by and among Aziyo Med and Ligand, pursuant to which Ligand has the right to receive certain payments from Aziyo Med on the terms and conditions set forth therein as amended, supplemented or otherwise modified from time to time on or prior to the Original Closing Date or following the Original Closing Date in accordance with the terms of the Financing Documents.

"**Ligand Royalty Payments**" means the regularly scheduled payments by Aziyo Med to Ligand on a non-accelerated basis pursuant to Section 2.02 of the Ligand Royalty Agreement.

"**Litigation**" means any action, suit or proceeding before any court, mediator, arbitrator or Governmental Authority.

"**Liquidity**" means, as of any date of calculation, the *sum* of (a) Borrower's cash and cash equivalents and (b) the Revolving Loan Availability.

"**Loan Account**" has the meaning set forth in Section 2.6(b).

"**Loan(s)**" means the Term Loan and each and every advance under the Term Loan. All references herein to the "making" of a Loan or words of similar import mean, with respect to the Term Loan, the making of any advance in respect of a Term Loan.

"**Lockbox Account**" has the meaning set forth in the Affiliated Credit Agreement.

"**Management Agreement**" means that certain Management Services Agreement, dated as of January 1, 2016, between HighCape Partners Management, L.P. and Aziyo, as amended from time to time prior to the Closing Date.

"**Market Withdrawal**" means a Person's Removal or Correction of a distributed product which involves a minor violation that would not be subject to legal action by the FDA or which involves no violation, e.g., normal stock rotation practices, routine equipment adjustments and repairs, etc.

"**Material Adverse Effect**" means with respect to any event, act, condition or occurrence of whatever nature (including any adverse determination in any litigation, arbitration, or governmental investigation or proceeding), whether singly or in conjunction with any other event or events, act or acts, condition or conditions, occurrence or occurrences, whether or not related, a material adverse change in, or a material adverse effect upon, any of (a) the condition (financial or otherwise), operations, business or properties of any of the Credit Parties, (b) the rights and remedies of Agent or Lenders under any Financing Document, or the ability of any Credit Party to perform any of its obligations under any Financing Document to which it is a party, (c) the legality, validity or enforceability of any Financing Document, (d) the existence, perfection or priority of any security interest granted in any Financing Document, (e) the value of any material Collateral, or (f) a material impairment of the prospect of repayment of any portion of the Obligations.

"**Material Contracts**" means (a) the Operative Documents, including the Ligand Royalty Agreement, the Ligand Parent Guaranty and each Subordinated Debt Document, (b) the agreements listed on Schedule 3.17, including the Cook License Agreement , the Cook Supply Agreement and the Cross License Agreement, and (c) (i) each agreement or contract to which a Credit Party is a party relating to Material Intangible Assets or development of Products or Intellectual Property, (ii) any agreement with respect to any Product, the loss of which would materially impair Borrower's ability to sell or market such Product, and (iii) any agreement or contract to which such Credit Party or its Subsidiaries is a party the termination of which could reasonably be expected to result in a Material Adverse Effect.

"**Material Intangible Assets**" means all of (a) Borrower's Intellectual Property and (b) license or sublicense agreements or other agreements with respect to rights in Intellectual Property, in each case that are material to the condition (financial or other), business or operations of Borrower, as determined by Agent.

"**Maturity Date**" means July 15, 2024.

"**Maximum Lawful Rate**" has the meaning set forth in Section 2.7.

"**MCF**" means MidCap Financial Trust, a Delaware statutory trust, and its successors and assigns.

"**Medicaid**" means, collectively, the healthcare assistance program established by Title XIX of the Social Security Act (42 U.S.C. §§ 1396 *et seq*.) and any statutes succeeding thereto, all state statutes and plans for medical assistance enacted in connection with such program, and all laws, rules, regulations, manuals, orders, guidelines or requirements (whether or not having the force of Law) pertaining to such program, in each case as the same may be amended, supplemented or otherwise modified from time to time.

"**Medicare**" means, collectively, the health insurance program for the aged and disabled established by Title XVIII of the Social Security Act (42 U.S.C. §§ 1395 *et seq*.) and any statutes succeeding thereto, and all laws, rules, regulations, manuals, orders or guidelines (whether or not having the force of Law) pertaining to such program, in each case as the same may be amended, supplemented or otherwise modified from time to time.

"**Money Borrowed**" means, as applied to any Credit Party, without duplication: (a) Debt arising from the lending of money by any other Person to such Credit Party; (b) Debt, whether or not in any such case arising from the lending of money by another Person to such Credit Party, (i) which is represented by notes payable or drafts accepted that evidence extensions of credit, (ii) which constitutes obligations evidenced by bonds, debentures, notes or similar instruments, or (iii) upon which interest charges are customarily paid (other than accounts payable) or that was issued or assumed as full or partial payment for property; (c) Debt under a lease that is required to be capitalized for financial reporting purposes in accordance with GAAP; (d) reimbursement obligations with respect to letters of credit or guarantees relating thereto; and (e) Debt of such Credit Party under any guaranty of obligations that would constitute Debt for Money Borrowed under clauses (a) through (d) hereof, if owed directly by such Credit Party.

"**Multiemployer Plan**" means a multiemployer plan within the meaning of Section 4001(a)(3) of ERISA to which any Borrower or any other member of the Controlled Group (or any Person who in the last five years was a member of the Controlled Group) is making or accruing an obligation to make contributions or has within the preceding five plan years (as determined on the applicable date of determination) made contributions.

"**National Organ Transplant Act**" means the National Organ Transplant Act of 1984 ("NOTA") 42 U.S.C. § 274e, as amended.

"**Net Product Revenue**" means, for any period, (a) the consolidated gross revenues of Borrowers and their Subsidiaries generated solely through the commercial sale of all Products by Borrowers and their Subsidiaries in the Ordinary Course of Business during such period, less (b) (i) sales of Products whose specifications are owned by the customer and are sold through a contract manufacturing services agreement, (ii) sales of sports medicine, cancellous bone and cervical spacer Products, (iii) trade, quantity and cash discounts allowed by Borrower or its Subsidiaries, (iv) discounts, refunds, rebates, charge backs, retroactive price adjustments and any other allowances which effectively reduce net selling price, (v) product returns and allowances, (vi) allowances for shipping or other distribution expenses, (vii) set-offs and counterclaims, and (viii) any other similar and customary deductions used by Borrower or its Subsidiaries in determining net revenues, all, in respect of (a) and (b), as determined in accordance with GAAP and in the Ordinary Course of Business.

"**Notes**" has the meaning set forth in Section 2.3.

"**Notice of Borrowing**" means a notice of a Responsible Officer of Borrower Representative, appropriately completed and substantially in the form of Exhibit D hereto.

"**Obligations**" means all obligations, liabilities and indebtedness (monetary (including, without limitation, the payment of interest and other amounts arising after the commencement of any case with respect to any Credit Party under the Bankruptcy Code or any similar statute which would accrue and become due but for the commencement of such case, whether or not such amounts are allowed or allowable in whole or in part in such case) or otherwise) of each Credit Party under this Agreement or any other Financing Document, in each case howsoever created, arising or evidenced, whether direct or indirect, absolute or contingent, now or hereafter existing, or due or to become due. "**Obligations**" does not include obligations under any warrants issued to Agent or a Lender.

"**OFAC**" means the U.S. Department of Treasury Office of Foreign Assets Control.

"**OFAC Lists**" means, collectively, the Specially Designated Nationals and Blocked Persons List maintained by OFAC pursuant to Executive Order No. 13224, 66 Fed. Reg. 49079 (Sept. 25, 2001) and/or any other list of terrorists or other restricted Persons maintained pursuant to any of the rules and regulations of OFAC or pursuant to any other applicable Executive Orders.

"**Operative Documents**" means the Financing Documents, the Equity Investment Documents, the Subordinated Debt Documents and the Transaction Documents.

"**Ordinary Course of Business**" means, in respect of any transaction involving any Credit Party, the ordinary course of business of such Credit Party, as conducted by such Credit Party in accordance with past practices.

"**Organizational Documents**" means, with respect to any Person other than a natural person, the documents by which such Person was organized (such as a certificate of incorporation, certificate of limited partnership or articles of organization, and including, without limitation, any certificates of designation for preferred stock or other forms of preferred equity) and which relate to the internal governance of such Person (such as by-laws, a partnership agreement or an operating agreement, joint venture agreement, limited liability company agreement or members agreement), including any and all shareholder agreements or voting agreements relating to the capital stock or other equity interests of such Person.

"**Original Closing Date**" means May 31, 2017.

"**Original Credit Agreement**" has the meaning set forth in the recitals hereto.

"**Other Connection Taxes**" means taxes imposed as a result of a present or former connection between Agent or any Lender and the jurisdiction imposing such tax (other than connections arising from Agent or such Lender having executed, delivered, become a party to, performed its obligations under, received payments under, engaged in any other transaction pursuant to or enforced any Financing Document, or sold or assigned an interest in any Loans or any Financing Document).

"**Other Taxes**" means all present or future stamp, court or documentary, intangible, recording, filing or similar taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Financing Document, except any such taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 2.8(i)).

"**Participant**" has the meaning set forth in Section 11.17(b).

"**Participant Register**" has the meaning set forth in Section 11.17(a)(iii).

"**Payment Account**" means the account specified on the signature pages hereof into which all payments by or on behalf of each Borrower to Agent under the Financing Documents shall be made, or such other account as Agent shall from time to time specify by notice to Borrower Representative.

"**Payroll Account**" has the meaning set forth in Section 5.14(b).

"**PBGC**" means the Pension Benefit Guaranty Corporation and any Person succeeding to any or all of its functions under ERISA.

"**Pension Plan**" means any ERISA Plan that is subject to Section 412 of the Code or Title IV of ERISA.

"**Perfection Certificate**" means the Perfection Certificate delivered to Agent as of the Closing Date, together with any amendments thereto required under this Agreement.

"**Permit**" means all licenses, certificates, accreditations, product clearances or approvals, provider numbers or provider authorizations, supplier numbers, marketing authorizations, drug or device authorizations and approvals, other authorizations, franchises, qualifications, accreditations, registrations, permits, consents and approvals of a Credit Party issued or required under Laws applicable to the business of Borrower or any of its Subsidiaries or necessary in the manufacturing, importing, exporting, possession, ownership, warehousing, marketing, promoting, sale, labeling, furnishing, distribution or delivery of goods or services under Laws applicable to the business of Borrower or any of its Subsidiaries. Without limiting the generality of the foregoing, "**Permit**" includes any Regulatory Required Permit.

"**Permitted Asset Dispositions**" means the following Asset Dispositions; *provided*, however, that at the time of such Asset Disposition, no Default or Event of Default exists or would result from such Asset Disposition:

(a) dispositions of (i) Inventory in the Ordinary Course of Business and not pursuant to any bulk sale and (ii) equipment that is obsolete, worn out, replaced, is no longer used or useful, unmerchantable, or unsaleable, in each case, in the Ordinary Course of Business;

(b) abandonment or lapse of Intellectual Property (other than any Material Intangible Asset) that is, in the reasonable good faith judgment of a Credit Party, no longer useful in the conduct of the business of the Credit Parties or any of their Subsidiaries;

(c) sales, forgiveness or discounting, on a non-recourse basis and in the Ordinary Course of Business, of past due Accounts (other than Eligible Accounts (as defined in the Affiliated Credit Agreement) included in the Borrowing Base) in connection with the collection or compromise thereof of the settlement of delinquent Accounts or in connection with the bankruptcy or reorganization of suppliers or customers in accordance with the applicable terms of this Agreement;

(d) Permitted Licenses;

(e) Permitted Distributions; and

(f) other dispositions approved by Agent from time to time in its sole discretion.

"**Permitted Contest**" means a contest maintained in good faith by appropriate proceedings promptly instituted and diligently conducted and with respect to which such reserve or other appropriate provision, if any, as shall be required in conformity with GAAP shall have been made; *provided* that compliance with the obligation that is the subject of such contest is effectively stayed during such challenge.

"**Permitted Contingent Obligations**" means

(a) Contingent Obligations arising in respect of the Debt under the Financing Documents;

(b) Contingent Obligations resulting from endorsements for collection or deposit in the Ordinary Course of Business;

(c) Contingent Obligations outstanding on the date of this Agreement and set forth on Schedule 5.1 (but not including any refinancings, extensions, increases or amendments to the indebtedness underlying such Contingent Obligations other than extensions of the maturity thereof without any other change in terms);

(d) Contingent Obligations incurred in the Ordinary Course of Business with respect to surety and appeal bonds, performance bonds and other similar obligations not to exceed $250,000 in the aggregate at any time outstanding;

(e) Contingent Obligations arising under indemnity agreements with title insurers to cause such title insurers to issue to Agent mortgagee title insurance policies;

(f) Contingent Obligations arising with respect to customary indemnification obligations in favor of purchasers in connection with dispositions of personal property assets permitted under Section 5.6;

(g) so long as there exists no Event of Default both immediately before and immediately after giving effect to any such transaction, Contingent Obligations existing or arising under any Swap Contract, *provided, however*, that such obligations are (or were) entered into by Borrower or an Affiliate in the Ordinary Course of Business for the purpose of directly mitigating risks associated with liabilities, commitments, investments, assets, or property held or reasonably anticipated by such Person and not for purposes of speculation;

(h) Guarantees by any Credit Party of any Permitted Debt of any Subsidiary that is a Credit Party provided that (x) any such Contingent Obligation is subordinated to the Obligations to the same extent as the Debt to which it relates is subordinated to the Obligations, (y) no Credit Party may incur Contingent Obligations under this clause (h) in respect of Debt incurred by any Person that is not a Borrower or Guarantor and (z) no guaranties shall be provided by Aziyo in respect of the Aziyo Med's obligations under the Ligand Royalty Agreement; and

(i) other Contingent Obligations not permitted by clauses (a) through (h) above, not to exceed $250,000 in the aggregate at any time outstanding.

"**Permitted Debt**" means:

(a) Borrowers' and its Subsidiaries' Debt to Agent and each Lender under this Agreement and the other Financing Documents;

(b) Debt incurred as a result of endorsing negotiable instruments received in the Ordinary Course of Business;

(c) purchase money Debt not to exceed $250,000 in the aggregate at any time (whether in the form of a loan or a lease) used solely to acquire equipment used in the Ordinary Course of Business and secured only by such equipment;

(d) Debt existing on the date of this Agreement and described on Schedule 5.1 (but not including any refinancings, extensions, increases or amendments to such Debt other than extensions of the maturity thereof without any other change in terms);

(e) so long as there exists no Event of Default both immediately before and immediately after giving effect to any such transaction, Debt existing or arising under any Swap Contract, *provided*, *however*, that such obligations are (or were) entered into by Borrower or an Affiliate in the Ordinary Course of Business for the purpose of directly mitigating risks associated with liabilities, commitments, investments, assets, or property held or reasonably anticipated by such Person and not for purposes of speculation;

(f) Debt not to exceed $250,000 in the aggregate at any time outstanding owed to any Person providing property, casualty, liability, or other insurance to the Credit Parties, including to finance insurance premiums, so long as the amount of such Debt is not in excess of the amount of the unpaid cost of, and shall be incurred only to defer the cost of, such insurance for the policy year in which such Debt is incurred and such Debt is outstanding only during such policy year;

(g) trade accounts payable arising and paid on a timely basis and in the Ordinary Course of Business;

(h) Debt of the Credit Parties incurred under the Affiliated Financing Documents; and

(i) Subordinated Debt (including the Ligand Royalty Payments).

"**Permitted Distributions**" means the following Distributions:

(a) dividends by any Subsidiary of any Borrower to such parent Borrower;

(b) dividends payable solely in common stock;

(c) repurchases of stock of former employees, directors or consultants pursuant to stock purchase agreements so long as an Event of Default does not exist at the time of such repurchase and would not exist after giving effect to such repurchase, *provided*, *however*, that such repurchase does not exceed $50,000 in the aggregate per fiscal year; and

(d) so long as (i) no Event of Default exists at the time of such payment or would exist after giving effect thereto, (ii) Borrower is in pro forma compliance with all of its Obligations hereunder after the making of any such payment, (iii) the payment of such management fees is subordinated to the payment of the Obligations pursuant to the terms of a management fee subordination agreement reasonably satisfactory to Lender and (iv) either (x) the pro forma Fixed Charge Coverage Ratio is greater than 1.20 to 1.00 or (y) Liquidity is greater than $5,000,000, in each case, computed on a pro forma basis as of the last day of the most recent month for which Lender should have received monthly financial statements in accordance with Section 4.1(a) (hereinafter such last day shall be referred to as the "**Management Fee Computation Date**"), with such pro forma calculation being made for the twelve (12) month period ending as of the Management Fee Computation Date and with the amount of any such payment being included in such computation and being deemed to have been made on the Management Fee Computation Date, payment by Aziyo of, the accrued and unpaid management fees owing to HighCape pursuant to the terms of the Management Agreement in an aggregate amount not to exceed $250,000 per fiscal year.

"**Permitted Investments**" means:

(a) [reserved];

(b) Investments shown on Schedule 5.7 and existing on the Closing Date;

(c) Investments consisting of cash and cash equivalents;

(d) Investments consisting of the endorsement of negotiable instruments for deposit or collection or similar transactions in the Ordinary Course of Business;

(e) Investments consisting of (i) travel advances and employee relocation loans and other employee loans and advances in the Ordinary Course of Business, and (ii) loans to employees, officers or directors relating to the purchase of equity securities of Borrowers or their Subsidiaries pursuant to employee stock purchase plans or agreements approved by Borrowers' Board of Directors (or other governing body), but the aggregate of all such loans outstanding may not exceed $250,000 at any time;

(f) Investments (including debt obligations) received in connection with the bankruptcy or reorganization of customers or suppliers and in settlement of delinquent obligations of, and other disputes with, customers or suppliers arising in the Ordinary Course of Business;

(g) Investments consisting of notes receivable of, or prepaid royalties and other credit extensions, to customers and suppliers who are not Affiliates, in the Ordinary Course of Business, *provided, however*, that this subpart (g) shall not apply to Investments of Borrowers in any Subsidiary;

(h) deposits required to be made in the Ordinary Course of Business made to a landlord in the Ordinary Course of Business to secure or support obligations of any Credit Party or any Subsidiary under a lease of real property;

(i) Investments consisting of Deposit Accounts in which Agent has received a Deposit Account Control Agreement;

(j) Investments of cash and cash equivalents by any Borrower in any Subsidiary now owned or hereafter created by such Borrower, which Subsidiary is a Borrower or has provided a Guarantee of the Obligations of the Borrowers which Guarantee is secured by a Lien granted by such Subsidiary to Agent in all or substantially all of its property of the type described in Schedule 9.1 hereto and otherwise made in compliance with Section 4.11(d); *provided* that no Borrower shall make any Investment in Aziyo Med so long as any obligations of Borrowers under the Ligand Royalty Agreement or obligations of Aziyo under the Ligand Parent Guaranty remain outstanding without Agent's prior consent; and

(k) so long as no Event of Default exists at the time of such Investment or after giving effect to such Investment, other Investments of cash and cash equivalents in an amount not exceeding $250,000 in the aggregate.

"**Permitted License**" means (a) the licenses of patent rights granted by Aziyo Med to CorMatrix on the Closing Date pursuant to the Cross License Agreement and (b) any non-exclusive license of patent rights of Borrower or its Subsidiaries so long as all such Permitted Licenses are granted to third parties in the Ordinary Course of Business, do not result in a legal transfer of title to the licensed property, and have been granted in exchange for fair consideration.

"**Permitted Liens**" means:

(a) (i) Liens and encumbrances in favor of Agent under the Financing Documents and (ii) Liens and encumbrances in favor of the holders of the Affiliated Financing Documents;

(b) Liens existing on the date hereof and set forth on Schedule 5.2;

(c) Liens on equipment securing Debt permitted under subpart (c) of the definition of Permitted Debt, *provided*, *however*, that such Lien attaches concurrently with or within twenty (20) days after the acquisition thereof;

(d) deposits or pledges of cash to secure obligations under workmen's compensation, social security or similar laws, or under unemployment insurance (but excluding Liens arising under ERISA or, with respect to any Pension Plan or Multiemployer Plan, the Code) pertaining to a Borrower's or its Subsidiary's employees, if any;

(e) deposits or pledges of cash to secure bids, tenders, contracts (other than contracts for the payment of money or the deferred purchase price of property or services), leases, statutory obligations, surety and appeal bonds and other obligations of like nature arising in the Ordinary Course of Business;

(f) carrier's, warehousemen's, mechanic's, workmen's, materialmen's or other like Liens on Collateral arising in the Ordinary Course of Business with respect to obligations which are not due, or which are being contested pursuant to a Permitted Contest;

(g) Liens for taxes, assessments or other governmental charges (i) not at the time delinquent or thereafter payable without penalty or (ii) which are the subject of a Permitted Contest;

(h) attachments, appeal bonds, judgments and other similar Liens on Collateral for sums not exceeding $100,000 in the aggregate arising in connection with court proceedings; *provided*, *however*, that the execution or other enforcement of such Liens is effectively stayed and the claims secured thereby are the subject of a Permitted Contest;

(i) easements, zoning restrictions, rights of way, restrictions, minor defects or irregularities in title and other similar Liens on real property not interfering in any material respect with the ordinary conduct of the business of any Credit Party or any Subsidiary; and Liens of landlords and mortgagees of landlords (i) arising by statute or under any lease or related contractual obligation entered into in the Ordinary Course of Business, (ii) on fixtures and movable tangible property located on the real property leased or subleased from such landlord and (iii) for amounts not yet due or that are subject to a Permitted Contest;

(j) Liens that are rights of set-off, bankers' liens or similar non-consensual Liens relating to deposit or securities accounts in favor of banks, other depositary institutions and securities intermediaries arising in the Ordinary Course of Business;

(k) purported Liens evidenced by the filing of precautionary UCC financing statements relating solely to operating leases or consignments of personal property entered into the Ordinary Course of Business;

(l) any Lien arising under conditional sale, title retention, consignment or similar arrangements for the sale of goods in the Ordinary Course of Business; *provided* that such Lien attaches only to the goods subject to such sale, title retention, consignment or similar arrangement;

(m) Liens (i) of a collection bank on items in the course of collection arising under Section 4-210 of the UCC or (ii) in favor of a banking or other financial institution arising in the ordinary course of business encumbering deposits or other funds maintained with such financial institution (including the right of setoff) and that are within the general parameters customary in the banking industry (and not securing any Debt for borrowed money);

(n) Liens granted in the Ordinary Course of Business on the unearned portion of insurance premiums securing the financing of insurance premiums to the extent the financing is permitted clause (f) of the definition of Permitted Debt;

(o) Liens in favor of customs and revenue authorities arising as a matter of Law to secure payment of customs duties in connection with the importation of goods;

(p) to the extent constituting a Lien, the granting of a Permitted License; and

(q) Liens granted by Aziyo Med in favor of Ligand under the Ligand Royalty Agreement (as the same is in effect on the Closing Date) to secure Aziyo Med's obligations under the Ligand Royalty Agreement, including on the Permitted Ligand Account, so long as such Liens remain subject to the Ligand Intercreditor Agreement at all times following the Closing Date.

"**Permitted Ligand Account**" means a Deposit Account maintained by Aziyo Med at Silicon Valley Bank with account number [XXX] so long as such Deposit Account is the "Special Account" under the Ligand Royalty Agreement and is used solely for the purpose of holding amounts in respect of regularly scheduled payments due and owing on a non-accelerated basis under the Ligand Royalty Agreement and permitted to be paid pursuant to this Agreement and the Ligand Intercreditor Agreement and holding and distributing to a Credit Party amounts constituting "Excluded Costs" (as defined in the Ligand Royalty Agreement).

"**Permitted Modifications**" means (a) such amendments or other modifications to a Borrower's or Subsidiary's Organizational Documents as are required under this Agreement or by applicable Law and disclosed to Agent within thirty (30) days after such amendments or modifications have become effective, and (b) such amendments or modifications to a Borrower's or Subsidiary's Organizational Documents (other than those involving a change in the name of a Borrower or Subsidiary or involving a reorganization of a Borrower or Subsidiary under the laws of a different jurisdiction) that would not adversely affect the rights and interests of Agent or Lenders and are disclosed to Agent within thirty (30) days after such amendments or modifications have become effective.

"**Person**" means any natural person, corporation, limited liability company, professional association, limited partnership, general partnership, joint stock company, joint venture, association, company, trust, bank, trust company, land trust, business trust or other organization, whether or not a legal entity, and any Governmental Authority.

"**Prepayment Fee**" has the meaning set forth in Section 2.2.

"**Products**" means, from time to time, any products currently manufactured, sold, developed, tested or marketed by any Borrower or any of its Subsidiaries, including without limitation, those products set forth on Schedule 4.17 (as updated from time to time in accordance with Section 4.15); provided, that, for the avoidance of doubt, any new Product not disclosed on Schedule 4.17 shall still constitute a "Product" as herein defined.

"**Pro Rata Share**" means (a) with respect to a Lender's obligation to make advances in respect of a Term Loan and such Lender's right to receive payments of principal and interest with respect to the Term Loans, the Term Loan Commitment Percentage of such Lender in respect of such Term Loan; and (b) for all other purposes (including, without limitation, the indemnification obligations arising under Section 11.6) with respect to any Lender, the percentage obtained by *dividing* (i) the Term Loan Commitment Amount of such Lender (or, in the event the Term Loan Commitment shall have been terminated, such Lender's then outstanding principal advances of such Lender under the Term Loan), *by* (ii) the sum of the Term Loan Commitment (or, in the event the Term Loan Commitment shall have been terminated, the then outstanding principal advances of such Lenders under the Term Loan) of all Lenders.

"**Purchase Agreement**" means that certain Asset Purchase Agreement, dated as of the Original Closing Date, by and among Borrowers, as purchasers, and CorMatrix and certain subsidiaries thereof as sellers (collectively, "**Seller**"), pursuant to which Borrower has purchased certain commercial assets from Seller on the terms and conditions as set forth therein.

"**Qualified IPO**" means the issuance and sale by Aziyo of its common stock in an underwritten public offering (other than a public offering pursuant to a registration statement on Form S-8) pursuant to an effective registration statement (whether alone or in connection with a secondary public offering) filed with the SEC in accordance with the Securities Act of 1933, as amended, following which Aziyo's common stock is listed on a nationally-recognized stock exchange in the United States and in respect of which Aziyo has delivered evidence satisfactory to Agent that Aziyo has received net cash proceeds of not less than $40,000,000 (subject to no clawback, escrow or other terms limiting the Aziyo's ability to freely use such proceeds).

"**Recall**" means a Person's Removal or Correction of a marketed product that the FDA considers to be in violation of the laws it administers and against which the FDA would initiate legal action, e.g., seizure.

"**Registered Intellectual Property**" means any patent, registered trademark or servicemark, registered copyright, registered mask work, or any pending application for any of the foregoing.

"**Regulatory Required Permit**" means any and all licenses, approvals and permits issued by the FDA, DEA or any other applicable Governmental Authority, including without limitation Drug Applications, necessary for the testing, manufacture, marketing or sale of any Product by any applicable Borrower(s) and its Subsidiaries as such activities are being conducted by such Borrower and its Subsidiaries with respect to such Product at such time and any drug listings and drug establishment registrations under 21 U.S.C. Section 510, registrations issued by DEA under 21 U.S.C. Section 823 (if applicable to any Product), and those issued by State or local governments for the conduct of Borrower's or any Subsidiary's business, including without limitation, all licenses, approvals and permits necessary in connection with the removal, transportation, implantation, processing, preservation, quality control, and storage of human tissue.

"**Removal**" means the physical removal of a product from its point of use to some other location for repair, modification, adjustment, relabeling, destruction, or inspection.

"**Required Lenders**" means at any time Lenders holding (a) sixty percent (60%) or more of the sum of the Term Loan Commitment (taken as a whole), or (b) if the Term Loan Commitment has been terminated, sixty percent (60%) or more of the then aggregate outstanding principal balance of the Loans.

"**Responsible Officer**" means any of the Chief Executive Officer, Chief Financial Officer, Treasurer or any other officer of the applicable Borrower acceptable to Agent.

"**Revolving Loan Availability**" has the meaning set forth in the Affiliated Credit Agreement.

"**Revolving Loans**" has the meaning set forth in the Affiliated Credit Agreement.

"**SEC**" means the United States Securities and Exchange Commission.

"**Securities Account**" means a "securities account" (as defined in Article 9 of the UCC), an investment account, or other account in which investment property or securities are held or invested for credit to or for the benefit of any Borrower.

"**Securities Account Control Agreement**" means an agreement, in form and substance satisfactory to Agent, among Agent, any applicable Borrower and each securities intermediary in which such Borrower maintains a Securities Account pursuant to which Agent shall obtain "control" (as defined in Article 9 of the UCC) over such Securities Account.

"**Security Document**" means this Agreement and any other agreement, document or instrument executed concurrently with the Original Credit Agreement or at any time thereafter pursuant to which one or more Credit Parties or any other Person either (a) Guarantees payment or performance of all or any portion of the Obligations, and/or (b) provides, as security for all or any portion of the Obligations, a Lien on any of its assets in favor of Agent for its own benefit and the benefit of the Lenders, as any or all of the same may be amended, supplemented, restated or otherwise modified from time to time.

"**Solvent**" means, with respect to any Person, that such Person (a) owns and will own assets the fair saleable value of which are (i) greater than the total amount of its debts and liabilities (including subordinated and Contingent Obligations), and (ii) greater than the amount that will be required to pay the probable liabilities of its then existing debts as they become absolute and matured considering all financing alternatives and potential asset sales reasonably available to it; (b) has capital that is not unreasonably small in relation to its business as presently conducted or after giving effect to any contemplated transaction; and (c) does not intend to incur and does not believe that it will incur debts beyond its ability to pay such debts as they become due.

"**Stated Rate**" has the meaning set forth in Section 2.7.

"**Subordinated Debt**" means the (a) the Debt or Contingent Obligations (as applicable) under the (i) Ligand Royalty Agreement, (ii) the Ligand Parent Guaranty, and (iii) the Donor Network West Note, and (b) any other Debt of Borrowers incurred pursuant to the terms of the Subordinated Debt Documents and with the prior written consent of Agent, all of which documents must be in form and substance acceptable to Agent in its sole discretion.

"**Subordinated Debt Documents**" means (a) the Ligand Royalty Agreement, (b) the Ligand Parent Guaranty, (c) the Donor Network West Note and (d) any other documents evidencing and/or securing Debt governed by a Subordination Agreement, all of which documents must be in form and substance acceptable to Agent in its sole discretion.

"**Subordination Agreements**" means (a) the Ligand Intercreditor Agreement, (b) that certain Debt Subordination Agreement (Donor Network West), dated as of the date hereof, by and among Donor Network West and Agent, as amended, supplemented, restated or otherwise modified from time to time in accordance with the terms of the Financing Documents (the "**Debt Subordination Agreement (Donor Network West)**"), and (c) each other agreement between Agent and another creditor of Borrowers, as the same may be amended, supplemented, restated or otherwise modified from time to time in accordance with the terms thereof, pursuant to which the Debt owing from any Borrower(s) and/or the Liens securing such Debt granted by any Borrower(s) to such creditor are subordinated in any way to the Obligations and the Liens created under the Security Documents, the terms and provisions of such Subordination Agreements to have been agreed to by and be acceptable to Agent in the exercise of its sole discretion.

"**Subsidiary**" means, with respect to any Person, (a) any corporation of which an aggregate of more than fifty percent (50%) of the outstanding capital stock having ordinary voting power to elect a majority of the board of directors of such corporation (irrespective of whether, at the time, capital stock of any other class or classes of such corporation shall have or might have voting power by reason of the happening of any contingency) is at the time, directly or indirectly, owned legally or beneficially by such Person or one or more Subsidiaries of such Person, or with respect to which any such Person has the right to vote or designate the vote of more than fifty percent (50%) of such capital stock whether by proxy, agreement, operation of law or otherwise, and (b) any partnership or limited liability company in which such Person and/or one or more Subsidiaries of such Person shall have an interest (whether in the form of voting or participation in profits or capital contribution) of more than fifty percent (50%) or of which any such Person is a general partner or may exercise the powers of a general partner. Unless the context otherwise requires, each reference to a Subsidiary shall be a reference to a Subsidiary of a Borrower.

"**Swap Contract**" means any "swap agreement", as defined in Section 101 of the Bankruptcy Code, that is obtained by Borrower to provide protection against fluctuations in interest or currency exchange rates, but only if Agent provides its prior written consent to the entry into such "swap agreement".

"**Taxes**" means all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

"**Termination Date**" means the earlier to occur of (a) the Maturity Date, (b) any date on which Agent accelerates the maturity of the Loans pursuant to Section 10.2, or (c) the termination date stated in any notice of termination of this Agreement provided by Borrowers in accordance with Section 2.12.

"**Term Loan**" means, collectively, the Term Loan Tranche 1, Term Loan Tranche 2, Term Loan Tranche 3, Term Loan Tranche 4 and Term Loan Tranche 5.

"**Term Loan Commitment**" means the sum of each Lender's Term Loan Commitment Amount.

"**Term Loan Commitment Amount**" means, with respect to each Lender, the sum of such Lender's Term Loan Tranche 1 Commitment Amount, Term Loan Tranche 2 Commitment Amount, Term Loan Tranche 3 Commitment Amount, Term Loan Tranche 4 Commitment Amount and Term Loan Tranche 5 Commitment Amount.

"**Term Loan Commitment Percentage**" means, as to any Lender with respect to each of such Lender's Term Loan Commitments, (a) on the Closing Date with respect to each tranche of the Term Loan, the applicable percentage set forth opposite such Lender's name on the Commitment Annex under the column "Term Loan Tranche 1 Commitment Percentage", "Term Loan Tranche 2 Commitment Percentage", "Term Loan Tranche 3 Commitment Percentage", "Term Loan Tranche 4 Commitment Percentage" and "Term Loan Tranche 5 Commitment Percentage" (if such Lender's name is not so set forth thereon, then, on the Closing Date, such percentage for such Lender shall be deemed to be zero), and (b) on any date following the Closing Date, as applicable to each tranche of Term Loan, the percentage equal to (i) the Term Loan Tranche 1 Commitment of such Lender on such date *divided by* the aggregate Term Loan Tranche 1 Commitments on such date, (ii) the Term Loan Tranche 2 Commitment of such Lender on such date *divided by* the aggregate Term Loan Tranche 2 Commitments on such date, (iii) the Term Loan Tranche 3 Commitment of such Lender on such date *divided by* the aggregate Term Loan Tranche 3 Commitments on such date, (iv) the Term Loan Tranche 4 Commitment of such Lender on such date *divided by* the aggregate Term Loan Tranche 4 Commitments on such date or (v) the Term Loan Tranche 5 Commitment of such Lender on such date *divided by* the aggregate Term Loan Tranche 5 Commitments on such date.

"**Term Loan Tranche 1**" has the meaning set forth in Section 2.1(a)(i)(A).

"**Term Loan Tranche 1 Commitment Amount**" means, with respect to each Lender, the amount set forth opposite such Lender's name on Annex A hereto under the caption "Term Loan Tranche 1 Commitment Amount", as amended from time to time to reflect any permitted and effective assignments and as such amount may be reduced or terminated pursuant to this Agreement.

"**Term Loan Tranche 1 Commitments**" means the sum of each Lender's Term Loan Tranche 1 Commitment Amount.

"**Term Loan Tranche 2**" has meaning set forth in Section 2.1(a)(i)(A).

"**Term Loan Tranche 2 Commitment Amount**" means, with respect to each Lender, the amount set forth opposite such Lender's name on Annex A hereto under the caption "Term Loan Tranche 2 Commitment Amount", as amended from time to time to reflect any permitted and effective assignments and as such amount may be reduced or terminated pursuant to this Agreement.

"**Term Loan Tranche 2 Commitments**" means the sum of each Lender's Term Loan Tranche 2 Commitment Amount.

"**Term Loan Tranche 3**" has meaning set forth in Section 2.1(a)(i)(A).

"**Term Loan Tranche 3 Commitment Amount**" means, with respect to each Lender, the amount set forth opposite such Lender's name on Annex A hereto under the caption "Term Loan Tranche 3 Commitment Amount", as amended from time to time to reflect any permitted and effective assignments and as such amount may be reduced or terminated pursuant to this Agreement.

"**Term Loan Tranche 3 Commitments**" means the sum of each Lender's Term Loan Tranche 3 Commitment Amount.

"**Term Loan Tranche 4**" has meaning set forth in Section 2.1(a)(i)(B).

"**Term Loan Tranche 4 Activation Date**" means the date (if any) on or after the Closing Date on which the Credit Parties shall have delivered to Agent (a) such consents from each of Ligand and Donor Network West as may be requested by the Agent in its sole discretion, including without limitation consents to the Term Loan Tranche 4 under the Ligand Intercreditor Agreement and the Debt Subordination Agreement (Donor Network West), respectively, and (b) a Compliance Certificate, delivered in accordance with Section 4.1(i), that demonstrates to Agent's reasonable satisfaction that the consolidated Net Product Revenue for the Defined Period ending on the last day of the month for which the most recent Compliance Certificate was delivered (or required to be delivered) is greater than or equal to $30,000,000.

"**Term Loan Tranche 4 Commitment Amount**" means, with respect to each Lender, the amount set forth opposite such Lender's name on Annex A hereto under the caption "Term Loan Tranche 4 Commitment Amount", as amended from time to time to reflect any permitted and effective assignments and as such amount may be reduced or terminated pursuant to this Agreement.

"**Term Loan Tranche 4 Commitment Termination Date**" means March 31, 2020.

"**Term Loan Tranche 4 Commitments**" means the sum of each Lender's Term Loan Tranche 4 Commitment Amount.

"**Term Loan Tranche 5**" has meaning set forth in Section 2.1(a)(i)(C).

"**Term Loan Tranche 5 Activation Date**" means the date (if any) on or after September 30, 2019 on which the Credit Parties shall have delivered to Agent (a) such consents from each of Ligand and Donor Network West as may be requested by the Agent in sole discretion, including without limitation consents to the Term Loan Tranche 5 under the Ligand Intercreditor Agreement and the Debt Subordination Agreement (Donor Network West), respectively, and (b) evidence satisfactory to Agent that Aziyo has consummated a Qualified IPO.

"**Term Loan Tranche 5 Commitment Amount**" means, with respect to each Lender, the amount set forth opposite such Lender's name on Annex A hereto under the caption "Term Loan Tranche 5 Commitment Amount", as amended from time to time to reflect any permitted and effective assignments and as such amount may be reduced or terminated pursuant to this Agreement.

"**Term Loan Tranche 5 Commitment Termination Date**" means June 30, 2020.

"**Term Loan Tranche 5 Commitments**" means the sum of each Lender's Term Loan Tranche 5 Commitment Amount.

"**Third Party Payor**" means Medicare, Medicaid, TRICARE, and other state or federal health care program, Blue Cross and/or Blue Shield, private insurers, managed care plans and any other Person or entity which presently or in the future maintains Third Party Payor Programs.

"**Third Party Payor Programs**" means all payment and reimbursement programs, sponsored by a Third Party Payor, in which a Borrower participates.

"**Transaction Documents**" means the Purchase Agreement, including the exhibits and schedules thereto, and all agreements, documents and instruments executed and delivered pursuant thereto or in connection therewith.

"**TRICARE**" means the program administered pursuant to 10 U.S.C. Section 1071 et. seq), Sections 1320a-7 and 1320a-7a of Title 42 of the United States Code and the regulations promulgated pursuant to such statutes.

"**UCC**" means the Uniform Commercial Code of the State of New York or of any other state the laws of which are required to be applied in connection with the perfection of security interests in any Collateral.

"**Unfinanced Capital Expenditures**" means, for any fiscal period, Capital Expenditures made by Borrower and its consolidated Subsidiaries that are not funded by Debt for Money Borrowed (other than Loans made under the Affiliated Credit Agreement) or purchase money Debt, in each case incurred by Borrower and its Subsidiaries during such period.

"**United States**" means the United States of America.

"**U.S. Tax Compliance Certificate**" has the meaning set forth in Section 2.8(c)(i).

"**Withholding Agent**" means any Borrower or Agent.

Section 1.2 Accounting Terms and Determinations. Unless otherwise specified herein, all accounting terms used herein shall be interpreted, all accounting determinations hereunder (including, without limitation, determinations made pursuant to the exhibits hereto) shall be made, and all financial statements required to be delivered hereunder shall be prepared on a consolidated basis in accordance with GAAP applied on a basis consistent with the most recent audited consolidated financial statements of each Borrower and its Consolidated Subsidiaries delivered to Agent and each of the Lenders on or prior to the Closing Date. If at any time any change in GAAP would affect the computation of any financial ratio or financial requirement set forth in any Financing Document, and either Borrowers or the Required Lenders shall so request, Agent, the Lenders and Borrowers shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP (subject to the approval of the Required Lenders); *provided, however*, that until so amended, (a) such ratio or requirement shall continue to be computed in accordance with GAAP prior to such change therein and (b) Borrowers shall provide to Agent and the Lenders financial statements and other documents required under this Agreement which include a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP. Notwithstanding any other provision contained herein, all terms of an accounting or financial nature used herein shall be construed, and all computations of amounts and ratios referred to herein shall be made, without giving effect to any election under Statement of Financial Accounting Standards 159 (or any other Financial Accounting Standard having a similar result or effect) to value any Debt or other liabilities of any Credit Party or any Subsidiary of any Credit Party at "fair value", as defined therein.

Section 1.3 Other Definitional and Interpretive Provisions. References in this Agreement to "Articles", "Sections", "Annexes", "Exhibits", or "Schedules" shall be to Articles, Sections, Annexes, Exhibits or Schedules of or to this Agreement unless otherwise specifically provided. Any term defined herein may be used in the singular or plural. "Include", "includes" and "including" shall be deemed to be followed by "without limitation". Except as otherwise specified or limited herein, references to any Person include the successors and assigns of such Person. References "from" or "through" any date mean, unless otherwise specified, "from and including" or "through and including", respectively. Unless otherwise specified herein, the settlement of all payments and fundings hereunder between or among the parties hereto shall be made in lawful money of the United States and in immediately available funds. References to any statute or act shall include all related current regulations and all amendments and any successor statutes, acts and regulations. All amounts used for purposes of financial calculations required to be made herein shall be without duplication. References to any statute or act, without additional reference, shall be deemed to refer to federal statutes and acts of the United States. References to any agreement, instrument or document shall include all schedules, exhibits, annexes and other attachments thereto. As used in this Agreement, the meaning of the term "material" or the phrase "in all material respects" is intended to refer to an act, omission, violation or condition which reflects or could reasonably be expected to result in a Material Adverse Effect. References to capitalized terms that are not defined herein, but are defined in the UCC, shall have the meanings given them in the UCC. All references herein to times of day shall be references to daylight or standard time, as applicable.

Section 1.4 Time is of the Essence. Time is of the essence in Borrower's and each other Credit Party's performance under this Agreement and all other Financing Documents.

ARTICLE 2 - LOANS

Section 2.1 Loans.

(a) Term Loans.

(i) Term Loan Amounts.

(A) Under the Original Credit Agreement, the Lenders thereunder made term loans to Borrowers in the principal amounts of (1) Eight Million Five Hundred Thousand Dollars ($8,500,000) ("**Existing Term Loan 1**"), (2) Five Million Dollars ($5,000,000) ("**Existing Term Loan 2**") and (3) Three Million Dollars ($3,000,000) ("**Existing Term Loan 3**", and together with Existing Term Loan 1 and Existing Term Loan 2, the "**Existing Term Loans**") and, following the making of each such Existing Term Loan, the Term Loan Tranche 1 Commitment (as defined in the Original Credit Agreement), the Term Loan Tranche 2 Commitment (as defined in the Original Credit Agreement) and the Term Loan Tranche 3 Commitment (as defined in the Original Credit Agreement), as applicable, were reduced to zero ($0). Immediately prior to the effectiveness of this Agreement, the outstanding principal balance of the Existing Term Loan 1 is $8,500,000, which amount shall be deemed to have been, and hereby is, converted to the "**Term Loan Tranche 1**" under this Agreement, and hereby is deemed to be outstanding in the amount set forth with respect to each Lender's Term Loan Tranche 1 Commitment Amount hereto without constituting a novation. Immediately prior to the effectiveness of this Agreement, the outstanding principal balance of the Existing Term Loan 2 is $5,000,000, which amount shall be deemed to have been, and hereby is, converted to the "**Term Loan Tranche 2**" under this Agreement, and hereby is deemed to be outstanding in the amount set forth with respect to each Lender's Term Loan Tranche 2 Commitment Amount hereto without constituting a novation. Immediately prior to the effectiveness of this Agreement, the outstanding principal balance of the Existing Term Loan 3 is $3,000,000, which amount shall be deemed to have been, and hereby is, converted to the "**Term Loan Tranche 3**" under this Agreement, and hereby is deemed to be outstanding in the amount set forth with respect to each Lender's Term Loan Tranche 3 Commitment Amount hereto without constituting a novation. Each Borrower hereby (x) represents, warrants, agrees, covenants and reaffirms that it has no defense, set off, claim or counterclaim against the Agent and the Lenders with regard to its Obligations in respect of each such Existing Term Loan and (y) reaffirms its obligation to repay each of Term Loan Tranche 1, Term Loan Tranche 2 and Term Loan Tranche 3 in accordance with the terms and provisions of this Agreement and the other Financing Documents.

(B) On the terms and subject to the conditions set forth herein and in the other Financing Documents, each Lender with a Term Loan Tranche 4 Commitment severally hereby agrees to make to Borrowers a term loan on a Business Day occurring on or after the Term Loan Tranche 4 Activation Date and on or prior to the Term Loan Tranche 4 Commitment Termination Date (the "**Term Loan Tranche 4 Funding Date**") in an original aggregate principal amount equal to the Term Loan Tranche 4 Commitment (the "**Term Loan Tranche 4**"). Each such Lender's obligation to fund the Term Loan Tranche 4 shall be limited to such Lender's Term Loan Tranche 4 Commitment Percentage, and no Lender shall have any obligation to fund any portion of any Term Loan required to be funded by any other Lender, but not so funded. Unless previously terminated, upon the Term Loan Tranche 4 Commitment Termination Date, the Term Loan Tranche 4 Commitment shall thereupon automatically be terminated and the Term Loan Tranche 4 Commitment Amount of each Lender as of such date shall be reduced by such Lender's Pro Rata Share of such total reduction in the Term Loan Commitments. Without limiting the foregoing, until the Term Loan Tranche 4 Activation Date has occurred, no Borrower shall be entitled to request and no Lender shall be required to advance any principal amount in respect of the Term Loan Tranche 4.

(C) On the terms and subject to the conditions set forth herein and in the other Financing Documents, each Lender with a Term Loan Tranche 5 Commitment severally hereby agrees to make to Borrowers a term loan on or after the Term Loan Tranche 5 Activation Date and on or prior to the Term Loan Tranche 4 Commitment Termination Date in an original aggregate principal amount equal to the Term Loan Tranche 5 Commitment (the "**Term Loan Tranche 5**"). Each such Lender's obligation to fund the Term Loan Tranche 5 shall be limited to such Lender's Term Loan Tranche 5 Commitment Amount, and no Lender shall have any obligation to fund any portion of any Term Loan required to be funded by any other Lender, but not so funded. Without limiting the foregoing, until the Term Loan Tranche 5 Activation Date has occurred, no Borrower shall be entitled to request and no Lender shall be required to advance any principal amount in respect of the Term Loan Tranche 5.

(D) No Borrower shall have any right to reborrow any portion of the Term Loan that is repaid or prepaid from time to time. Borrowers shall deliver to Agent a Notice of Borrowing with respect to each proposed Term Loan advance, such Notice of Borrowing to be delivered, (i) in the case of a Term Loan Tranche 1, Term Loan Tranche 2 or Term Loan Tranche 3 borrowing, no later than 12:00 P.M. (Eastern time) on the Business Day prior to such proposed borrowing, (ii) in the case of a Term Loan Tranche 4 borrowing, no later than 12:00 P.M. (Eastern time) on the day of such proposed borrowing, or (iii) in the case of a Term Loan Tranche 5 borrowing, no later than 12:00 P.M. (Eastern time) on the day of such proposed borrowing.

(ii) Scheduled Repayments; Mandatory Prepayments; Optional Prepayments.

(A) There shall become due and payable, and Borrowers shall repay the Term Loan through, scheduled payments as set forth on Schedule 2.1 attached hereto. Notwithstanding the payment schedule set forth above, the outstanding principal amount of the Term Loan shall become immediately due and payable in full on the Termination Date.

(B) There shall become due and payable and Borrowers shall prepay the Term Loan in the following amounts and at the following times:

(i) Unless Agent shall otherwise consent in writing, on the date on which any Credit Party (or Agent as loss payee or assignee) receives any casualty proceeds in excess of $250,000 with respect to assets upon which Agent maintained a Lien, an amount equal to one hundred percent (100%) of such proceeds (net of out-of-pocket expenses and repayment of secured debt permitted under clause (c) of the definition of Permitted Debt and encumbering the property that suffered such casualty), or such lesser portion of such proceeds as Agent shall elect to apply to the Obligations;

(ii) an amount equal to any interest that is deemed to be in excess of the Maximum Lawful Rate (as defined below) and is required to be applied to the reduction of the principal balance of the Loans by any Lender as provided for in Section 2.7;

(iii) unless Agent shall otherwise consent in writing, upon receipt by any Credit Party of the proceeds of any Asset Disposition that is not made in the Ordinary Course of Business or that pertains to any Collateral upon which a Borrowing Base is calculated, an amount equal to one hundred percent (100%) of the net cash proceeds of such asset disposition (net of out-of-pocket expenses and repayment of secured debt permitted under clause (c) of the definition of Permitted Debt and encumbering such asset), or such lesser portion as Agent shall elect to apply to the Obligations; and

(iv) upon the termination of all Revolving Loan Commitments (as defined in the Affiliated Credit Agreement) and the payment of the then existing aggregate outstanding principal amount of the Revolving Loans, the aggregate outstanding Obligations.

Notwithstanding the foregoing and so long as no Event of Default or Default then exists: (1) any such casualty proceeds in excess of $250,000 (other than with respect to Inventory and any real property, unless Agent shall otherwise elect) may be used by Borrowers within one hundred eighty (180) days from the receipt of such proceeds to replace or repair any assets in respect of which such proceeds were paid so long as such proceeds are deposited into a Deposit Account that is subject to a Deposit Account Control Agreement promptly upon receipt by such Borrower; and (2) proceeds of personal property asset dispositions that are not made in the Ordinary Course of Business (other than Collateral upon which the Borrowing Base is calculated or Intellectual Property, unless Agent shall otherwise elect) may be used by Borrowers within one hundred eighty (180) days from the receipt of such proceeds to purchase new or replacement assets of comparable value, *provided*, *however*, that such proceeds are deposited into a Deposit Account that is subject to a Deposit Account Control Agreement promptly upon receipt by such Borrower. All sums held by Agent pending reinvestment as described in subsections (1) and (2) above shall be deemed additional collateral for the Obligations and may be commingled with the general funds of Agent.

(C) Borrowers may from time to time, with at least ten (10) Business Days prior written notice (which notice may be conditioned on the closing of a refinancing or other applicable transaction), prepay the Term Loan in whole but not in part (other than mandatory partial prepayments required under this Agreement); *provided*, *however*, that each such prepayment shall be accompanied by all prepayment fees, exit fees and any other applicable fees required hereunder.

(iii) All Prepayments. Except as this Agreement may specifically provide otherwise, all prepayments of the Term Loan shall be applied by Agent to the Obligations in inverse order of maturity. The monthly payments required under Schedule 2.1 shall continue in the same amount (for so long as the Term Loan and/or (if applicable) any advance thereunder shall remain outstanding) notwithstanding any partial prepayment, whether mandatory or optional, of the Term Loan. Notwithstanding anything to the contrary contained in the foregoing, in the event that there have been multiple advances under the Term Loan each of which such advances has a separate amortization schedule of principal payments under Schedule 2.1 attached hereto, each prepayment of the Term Loan shall be applied by Agent to reduce and prepay the principal balance of the earliest-made advance then outstanding in the inverse order of maturity of the scheduled payments with respect to such advance until such earliest-made advance is paid in full (and to the extent the total amount of any such partial prepayment shall exceed the outstanding principal balance of such earliest-made advance, the remainder of such prepayment shall be applied successively to the remaining advances under the Term Loan in the direct order of the respective advance dates in the manner provided for in this sentence).

(iv) LIBOR Rate.

(A) Except as provided in subsection (C) below, the Term Loan shall accrue interest at the LIBOR Rate *plus* the Applicable Margin.

(B) The LIBOR Rate may be adjusted by Agent with respect to any Lender on a prospective basis to take into account any additional or increased costs to such Lender of maintaining or obtaining any eurodollar deposits or increased costs, in each case, due to changes in applicable Law occurring subsequent to the commencement of the then applicable Interest Period, including changes in tax laws (except changes of general applicability in corporate income tax laws) and changes in the reserve requirements imposed by the Board of Governors of the Federal Reserve System (or any successor), which additional or increased costs would increase the cost of funding loans bearing interest based upon the LIBOR Rate; *provided, however,* that notwithstanding anything in this Agreement to the contrary, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (ii) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a "change in applicable Law", regardless of the date enacted, adopted or issued. In any such event, the affected Lender shall give Borrowers and Agent notice of such a determination and adjustment and Agent promptly shall transmit the notice to each other Lender and, upon its receipt of the notice from the affected Lender, Borrowers may, by notice to such affected Lender (I) require such Lender to furnish to Borrowers a statement setting forth the basis for adjusting such LIBOR Rate and the method for determining the amount of such adjustment, or (II) repay the Loans bearing interest based upon the LIBOR Rate with respect to which such adjustment is made.

(C) In the event that any change in market conditions or any law, regulation, treaty, or directive, or any change therein or in the interpretation of application thereof, shall at any time after the date hereof, in the reasonable opinion of any Lender, make it unlawful or impractical for such Lender to maintain Loans bearing interest based upon the LIBOR Rate or to continue such maintaining, or to determine or charge interest rates at the LIBOR Rate, such Lender shall give notice of such changed circumstances to Agent and Borrowers and Agent promptly shall transmit the notice to each other Lender, (I) in the case of the pro rata share of the Term Loan held by such Lender and then outstanding, the date specified in such Lender's notice shall be deemed to be the last day of the Interest Period of such portion of the Term Loan, and interest upon such portion thereafter shall accrue interest at the Base Rate *plus* the Applicable Margin, and (II) such portion of the Term Loan shall continue to accrue interest at the Base Rate *plus* the Applicable Margin until such Lender determines that it would no longer be unlawful or impractical to maintain such Term Loan at the LIBOR Rate.

(D) Anything to the contrary contained herein notwithstanding, neither Agent nor any Lender is required actually to acquire eurodollar deposits to fund or otherwise match fund any Obligation as to which interest accrues based on the LIBOR Rate.

(b) Reserved.

Section 2.2 Interest, Interest Calculations and Certain Fees.

(a) Interest. From and following the Closing Date, except as expressly set forth in this Agreement, Loans and the other Obligations shall bear interest at the sum of the LIBOR Rate *plus* the Applicable Margin. Interest on the Loans shall be paid in arrears on the first (1st) day of each month and on the maturity of such Loans, whether by acceleration or otherwise. Interest on all other Obligations shall be payable upon demand. The Borrowers hereby agree that all accrued and unpaid interest due and owing to the "Lenders" (as defined in the Original Credit Agreement) as of the Closing Date shall be paid in cash by the Borrowers to the Agent, for the benefit of such Lenders, on the first (1st) day of the first calendar month following the Closing Date. All Loans made under the Original Credit Agreement shall bear interest at the sum of the LIBOR Rate plus the Applicable Margin starting on and after the Closing Date.

(b) Reserved.

(c) Fee Letter. In addition to the other fees set forth herein, the Borrowers agree to pay Agent the fees set forth in the Fee Letter.

(d) Reserved.

(e) Reserved.

(f) Origination Fee. Contemporaneous with Borrowers' execution of this Agreement, Borrowers shall pay Agent, for the benefit of all Lenders committed to make Term Loans on the Closing Date, a fee in an amount equal to $42,500. The fee payable pursuant to this paragraph shall be deemed fully earned when due and payable and non-refundable as of the Closing Date.

(g) Reserved.

(h) Exit Fee. Borrowers shall pay to Agent, for the benefit of all Lenders committed to make Term Loan advances, as compensation for the costs of making funds available to Borrowers under this Agreement an exit fee (the "**Exit Fee**") calculated in accordance with this subsection and upon the date or dates required under this subsection. The Exit Fee shall be an amount equal to six and one half percent (6.50%) *multiplied by* the aggregate principal amount of all Term Loans advanced to Borrower under this Agreement. Upon any repayment of any portion of any Term Loan (whether by voluntary prepayment by Borrower, by mandatory prepayment by Borrower, by reason of the occurrence of an Event of Default or the acceleration of the Obligations (including any automatic acceleration due to the occurrence of an Event of Default described in Section 10.1(f)) or otherwise) other than scheduled amortization payments (if any) and the final payment of principal in respect of any tranche of any Term Loans, a portion of the Exit Fee shall be due in the following amount: that percentage which is obtained by dividing the amount prepaid by the then outstanding principal balance of such tranche of Term Loans. Any remaining unpaid amount of the Exit Fee shall be due and payable on the Termination Date. All fees payable pursuant to this paragraph shall be deemed fully accrued and earned as of the Closing Date.

(i) Prepayment Fee. If any advance under the Term Loan is prepaid at any time, in whole or in part, for any reason (whether by voluntary prepayment by Borrowers, by reason of the occurrence of an Event of Default or the acceleration of the Term Loan, or otherwise), or if the Term Loan shall become accelerated and due and payable in full, Borrowers shall pay to Agent, for the benefit of all Lenders committed to make Term Loan advances, as compensation for the costs of such Lenders making funds available to Borrowers under this Agreement, a prepayment fee (the "**Prepayment Fee**") calculated in accordance with this subsection. The Prepayment Fee in respect of each of Term Loan Tranche 1, Term Loan Tranche 2 or Term Loan Tranche 3 shall be equal to an amount determined by *multiplying* the amount being prepaid (or required to be prepaid, if such amount is greater) *by* the following applicable percentage amount: ((x) four percent (4.0%) for the first year following the Closing Date, (y) three percent (3.0%) for the second year following the Closing Date and (z) two percent (2.0%) thereafter. The Prepayment Fee in respect of Term Loan Tranche 4 shall be equal to an amount determined by *multiplying* the amount being prepaid (or required to be prepaid, if such amount is greater) *by* the following applicable percentage amount: (x) four percent (4.0%) for the first year following the Term Loan Tranche 4 Funding Date, (y) three percent (3.0%) for the second year following the Term Loan Tranche 4 Funding Date and (z) two percent (2.0%) thereafter. The Prepayment Fee in respect of Term Loan Tranche 5 shall be equal to an amount determined by *multiplying* the amount being prepaid (or required to be prepaid, if such amount is greater) *by* the following applicable percentage amount: (x) four percent (4.0%) for the first year following the Term Loan Tranche 5 Funding Date, (y) three percent (3.0%) for the second year following the Term Loan Tranche 5 Funding Date and (z) two percent (2.0%) thereafter. The Prepayment Fee shall not apply to or be assessed upon any prepayment made by Borrowers if such payments were required by Agent to be made pursuant to Section 2.1(a)(ii)(B) subpart (i) (relating to casualty proceeds), or subpart (ii) (relating to payments exceeding the Maximum Lawful Rate). All fees payable pursuant to this paragraph shall be deemed fully earned and non-refundable as of the Closing Date.

(j) Audit Fees. Borrowers shall pay to Agent, for its own account and not for the benefit of any other Lenders, all reasonable fees and expenses in connection with audits and inspections of Borrowers' books and records, audits, valuations or appraisals of the Collateral, audits of Borrowers' compliance with applicable Laws and such other matters as Agent shall deem appropriate, which shall be due and payable on the first Business Day of the month following the date of issuance by Agent of a written request for payment thereof to Borrowers.

(k) Wire Fees. Borrowers shall pay to Agent, for its own account and not for the account of any other Lenders, on written demand, fees for incoming and outgoing wires made for the account of Borrowers, such fees to be based on Agent's then current wire fee schedule (available upon written request of the Borrowers).

(l) Late Charges. If payments of principal (other than a final installment of principal upon the Termination Date), interest due on the Obligations, or any other amounts due hereunder or under the other Financing Documents are not timely made and remain overdue for a period of five (5) days, Borrowers, without notice or demand by Agent, promptly shall pay to Agent, for its own account and not for the benefit of any other Lenders, as additional compensation to Agent in administering the Obligations, an amount equal to five percent (5.0%) of each delinquent payment.

(m) Computation of Interest and Related Fees. All interest and fees under each Financing Document shall be calculated on the basis of a 360-day year for the actual number of days elapsed. The date of funding of a Loan shall be included in the calculation of interest. The date of payment of a Loan shall be excluded from the calculation of interest. If a Loan is repaid on the same day that it is made, one (1) day's interest shall be charged.

(n) Automated Clearing House Payments. If Agent (or its designated servicer or trustee on behalf of a securitization vehicle) so elects, monthly payments of principal, interest, fees, expenses or any other amounts due and owing from Borrower to Agent hereunder shall be paid to Agent by Automated Clearing House debit of immediately available funds from the financial institution account designated by Borrower Representative in the Automated Clearing House debit authorization executed by Borrowers or Borrower Representative in connection with this Agreement, and shall be effective upon receipt. Borrowers shall execute any and all forms and documentation necessary from time to time to effectuate such automatic debiting. In no event shall any such payments be refunded to Borrowers.

Section 2.3 Notes. The portion of the Loans made by each Lender shall be evidenced, if so requested by such Lender, by one or more promissory notes executed by Borrowers on a joint and several basis (each, a "**Note**") in an original principal amount equal to such Lender's Term Loan Commitments.

Section 2.4 Reserved.

Section 2.5 Reserved.

Section 2.6 General Provisions Regarding Payment; Loan Account.

(a) All payments to be made by each Borrower under any Financing Document, including payments of principal and interest made hereunder and pursuant to any other Financing Document, and all fees, expenses, indemnities and reimbursements, shall be made without set-off, recoupment or counterclaim. If any payment hereunder becomes due and payable on a day other than a Business Day, such payment shall be extended to the next succeeding Business Day and, with respect to payments of principal, interest thereon shall be payable at the then applicable rate during such extension (it being understood and agreed that, solely for purposes of calculating financial covenants and computations contained herein and determining compliance therewith, if payment is made, in full, on any such extended due date, such payment shall be deemed to have been paid on the original due date without giving effect to any extension thereto). Any payments received in the Payment Account before 12:00 Noon (Eastern time) on any date shall be deemed received by Agent on such date, and any payments received in the Payment Account at or after 12:00 Noon (Eastern time) on any date shall be deemed received by Agent on the next succeeding Business Day.

(b) Agent shall maintain a loan account (the "**Loan Account**") on its books to record Loans and other extensions of credit made by the Lenders hereunder or under any other Financing Document, and all payments thereon made by each Borrower. All entries in the Loan Account shall be made in accordance with Agent's customary accounting practices as in effect from time to time. The balance in the Loan Account, as recorded in Agent's books and records at any time shall be conclusive and binding evidence of the amounts due and owing to Agent by each Borrower absent manifest error; *provided, however*, that any failure to so record or any error in so recording shall not limit or otherwise affect any Borrower's duty to pay all amounts owing hereunder or under any other Financing Document. Agent shall endeavor to provide Borrowers with a monthly statement regarding the Loan Account (but neither Agent nor any Lender shall have any liability if Agent shall fail to provide any such statement). Unless any Borrower notifies Agent of any objection to any such statement (specifically describing the basis for such objection) within ninety (90) days after the date of receipt thereof, it shall be deemed final, binding and conclusive upon Borrowers in all respects as to all matters reflected therein.

Section 2.7 Maximum Interest. In no event shall the interest charged with respect to the Loans or any other Obligations of any Borrower under any Financing Document exceed the maximum amount permitted under the laws of the State of New York or of any other applicable jurisdiction. Notwithstanding anything to the contrary herein or elsewhere, if at any time the rate of interest payable hereunder or under any Note or other Financing Document (the "**Stated Rate**") would exceed the highest rate of interest permitted under any applicable law to be charged (the "**Maximum Lawful Rate**"), then for so long as the Maximum Lawful Rate would be so exceeded, the rate of interest payable shall be equal to the Maximum Lawful Rate; *provided*, *however*, that if at any time thereafter the Stated Rate is less than the Maximum Lawful Rate, each Borrower shall, to the extent permitted by law, continue to pay interest at the Maximum Lawful Rate until such time as the total interest received is equal to the total interest which would have been received had the Stated Rate been (but for the operation of this provision) the interest rate payable. Thereafter, the interest rate payable shall be the Stated Rate unless and until the Stated Rate again would exceed the Maximum Lawful Rate, in which event this provision shall again apply. In no event shall the total interest received by any Lender exceed the amount which it could lawfully have received had the interest been calculated for the full term hereof at the Maximum Lawful Rate. If, notwithstanding the prior sentence, any Lender has received interest hereunder in excess of the Maximum Lawful Rate, such excess amount shall be applied to the reduction of the principal balance of the Loans or to other amounts (other than interest) payable hereunder, and if no such principal or other amounts are then outstanding, such excess or part thereof remaining shall be paid to Borrowers. In computing interest payable with reference to the Maximum Lawful Rate applicable to any Lender, such interest shall be calculated at a daily rate equal to the Maximum Lawful Rate *divided by* the number of days in the year in which such calculation is made.

Section 2.8 Taxes; Capital Adequacy; Mitigation Obligations.

(a) All payments of principal and interest on the Loans and all other amounts payable hereunder shall be made free and clear of and without deduction for any present or future Taxes, except as required by applicable Law. If any applicable law (as determined in the good faith discretion of an applicable Withholding Agent) requires the deduction or withholding of any Tax from any such payment by a Withholding Agent, then the applicable Withholding Agent shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable Law and if any such withholding or deduction is in respect of any Indemnified Taxes, then the Borrowers shall pay such additional amount or amounts as is necessary to ensure that the net amount actually received by Agent and each Lender will equal the full amount Agent and such Lender would have received had no such withholding or deduction been required (including, without limitation, such withholdings and deductions applicable to additional sums payable under this Section 2.8). After payment of any Tax by a Borrower to a Governmental Authority pursuant to this Section 2.8, such Borrower shall promptly forward to Agent the original or a certified copy of an official receipt, a copy of the return reporting such payment, or other documentation satisfactory to Agent evidencing such payment to such authority. Borrowers shall timely pay to the relevant Governmental Authority in accordance with applicable Law, or at the option of Agent timely reimburse it for the payment of, any Other Taxes.

(b) The Borrowers shall indemnify Agent and Lenders, within ten (10) days after demand thereof, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section 2.8) payable or paid by Agent or any Lender or required to be withheld or deducted from a payment to Agent or any Lender and any expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes and Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate in reasonable detail as to the amount of such payment or liability delivered to Borrowers by a Lender (with a copy to Agent), or by Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.

(c) Any Lender that is entitled to an exemption from or reduction of withholding tax with respect to payments made under any Financing Document shall deliver to Borrower Representative and Agent, at the time or times prescribed by applicable Law or reasonably requested by Borrower Representative or Agent, such properly completed and executed documentation reasonably requested by Borrower Representative or Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by Borrower Representative or Agent, shall deliver such other documentation prescribed by applicable Law or reasonably requested by Borrowers or Agent as will enable Borrowers or Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in Sections 2.8(c)(i), 2.8(c)(ii) and 2.8(e) below) shall not be required if in such Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(i) Each Lender that is not a "United States person" (as such term is defined in Section 7701(a)(30) of the Code) for U.S. federal income tax purposes and is a party hereto on the Closing Date or purports to become an assignee of an interest pursuant to Section 11.17(a) after the Closing Date (unless such Lender was already a Lender hereunder immediately prior to such assignment) (each such Lender a "**Foreign Lender**") shall, to the extent permitted by Law, execute and deliver to Borrower Representative and Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower Representative or the Agent) whichever of the following is applicable: (A) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party, (x) with respect to payments of interest under any Financing Document, two (2) properly completed and executed originals of United States Internal Revenue Service ("**IRS**") Forms W-8BEN or W-8BEN-E (or successor form) establishing an exemption from, or reduction of, U.S. federal withholding tax pursuant to the "interest" article of such tax treaty and (y) with respect to any other applicable payments under any Financing Documents, two (2) properly completed and executed originals of IRS Forms W-8BEN or W-8BEN-E (or successor form) establishing an exemption from, or reduction of, U.S. federal withholding tax pursuant to the "business profits" or "other income" article of such tax treaty; (B) two (2) executed originals of Form W-8ECI (or successor form); (C) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate substantially in the form of Exhibit F-1 to the effect that such Foreign Lender is not a "bank" within the meaning of Section 881(c)(3)(A) of the Code, a "10 percent shareholder" of any Borrower within the meaning of Section 881(c)(3)(B) of the Code, or a "controlled foreign corporation" described in Section 881(c)(3)(C) of the Code (a "**U.S. Tax Compliance Certificate**") and (y) two (2) executed originals of IRS Forms W-8BEN or W-8BEN-E (or successor form); (D) to the extent a Foreign Lender is not the beneficial owner, two (2) executed originals of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN or W-8BEN-E (or successor form), a U.S. Tax Compliance Certificate substantially in the form of Exhibit F-2 or Exhibit F-3, IRS Form W-9 (or successor form), and/or other certification documents from each beneficial owner, as applicable; *provided* that if the Foreign Lender is a partnership and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a U.S. Tax Compliance Certificate substantially in the form of Exhibit F-4 on behalf of each such direct and indirect partner; or (E) other applicable forms, certificates or documents prescribed by the IRS. Each Lender agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify Borrower Representative and Agent in writing of its legal inability to do so. In addition, to the extent permitted by applicable Law, such forms shall be delivered by each Foreign Lender upon the obsolescence or invalidity of any form previously delivered by such Foreign Lender. Each Foreign Lender shall promptly notify Borrower Representative at any time it determines that it is no longer in a position to provide any previously delivered certificate to Borrower Representative (or any other form of certification adopted by the U.S. taxing authorities for such purpose).

(ii) Each Lender that is a "United States person" (as such term is defined in Section 7701(a)(30) of the Code) for U.S. federal income tax purposes and is a party hereto on the Closing Date or purports to become an assignee of an interest pursuant to Section 11.17(a) after the Closing Date (unless such Lender was already a Lender hereunder immediately prior to such assignment) shall, to the extent permitted by Law, provide to Borrower Representative and Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower Representative or the Agent), a properly completed and executed IRS Form W-9 or any successor form certifying as to such Lender's entitlement to an exemption from U.S. backup withholding and other applicable forms, certificates or documents prescribed by the IRS or reasonably requested by Borrower Representative or Agent. Each such Lender shall promptly notify Borrowers at any time it determines that any certificate previously delivered to Borrower Representative (or any other form of certification adopted by the U.S. governmental authorities for such purposes) is no longer valid.

(iii) Any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to Borrower Representative and the Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower Representative or the Agent), executed copies of any other form prescribed by applicable Law as a basis for claiming exemption from or a reduction in U.S. Federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by applicable law to permit Borrowers or Agent to determine the withholding or deduction required to be made.

(d) If any Lender determines, in its sole discretion exercised in good faith, that it has received a refund in respect of any Taxes as to which it has been indemnified by any Borrower pursuant to this Section 2.8 (including by the payment of additional amounts pursuant to this Section 2.8), then it shall promptly pay an amount equal to such refund to Borrowers, net of all reasonable out-of-pocket expenses of such Lender or of Agent with respect thereto, including any Taxes; *provided*, *however*, that Borrowers, upon the written request of such Lender or Agent, agree to repay any amount paid over to Borrowers to such Lender or to Agent (plus any related penalties, interest or other charges imposed by the relevant Governmental Authority) in the event such Lender or Agent is required, for any reason, to disgorge or otherwise repay such refund. Notwithstanding anything to the contrary in this Section 2.8, in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this Section 2.8(d) the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This Section 2.8 shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

(e) If a payment made to a Lender under any Financing Document would be subject to U.S. federal withholding tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to Borrower Representative and Agent at the time or times prescribed by Law and at such time or times reasonably requested by Borrower Representative or Agent such documentation prescribed by applicable Law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by Borrower Representative or Agent as may be necessary for Borrowers and Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (e), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

(f) Each Lender shall severally indemnify Agent, within ten (10) days after demand therefor, for (i) any Indemnified Taxes attributable to such Lender (but only to the extent that any Credit Party has not already indemnified Agent for such Indemnified Taxes and without limiting the obligation of the Credit Parties to do so), (ii) any Taxes attributable to such Lender's failure to comply with the provisions of Section 11.17 relating to the maintenance of a Participant Register and (iii) any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by Agent in connection with any Financing Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by Agent shall be conclusive absent manifest error. Each Lender hereby authorizes Agent to set off and apply any and all amounts at any time owing to such Lender under any Financing Document or otherwise payable by Agent to such Lender from any other source against any amount due to Agent under this paragraph (f).

(g) Each party's obligations under Section 2.8(a) through (f) shall survive the resignation or replacement of the Agent or any assignment of rights by, or the replacement of, a Lender, and the repayment, satisfaction or discharge of all Obligations hereunder.

(h) If any Lender shall reasonably determine that the adoption or taking effect of, or any change in, any applicable Law regarding capital adequacy, in each instance, after the Closing Date, or any change after the Closing Date in the interpretation, administration or application thereof by any Governmental Authority, central bank or comparable agency charged with the interpretation, administration or application thereof, or the compliance by any Lender or any Person controlling such Lender with any request, guideline or directive regarding capital adequacy (whether or not having the force of Law) of any such Governmental Authority, central bank or comparable agency adopted or otherwise taking effect after the Closing Date, has or would have the effect of reducing the rate of return on such Lender's or such controlling Person's capital as a consequence of such Lender's obligations hereunder to a level below that which such Lender or such controlling Person could have achieved but for such adoption, taking effect, change, interpretation, administration, application or compliance (taking into consideration such Lender's or such controlling Person's policies with respect to capital adequacy) then from time to time, upon demand by such Lender (which demand shall be accompanied by a certificate setting forth the basis for such demand and a calculation of the amount thereof in reasonable detail, a copy of which shall be furnished to Agent), Borrowers shall promptly pay to such Lender such additional amount as will compensate such Lender or such controlling Person for such reduction, so long as such amounts have accrued on or after the day which is two hundred seventy (270) days prior to the date on which such Lender first made demand therefor; *provided* that notwithstanding anything in this Agreement to the contrary, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (ii) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a "change in applicable Law", regardless of the date enacted, adopted or issued.

(i) If any Lender requests compensation under either Section 2.1(a)**(**iv) or Section 2.8(h), or requires Borrowers to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.8, then, upon the written request of Borrower Representative, such Lender shall use reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder (subject to the provisions of Section 11.17) to another of its offices, branches or affiliates, if, in the reasonable judgment of such Lender, such designation or assignment (i) would eliminate or materially reduce amounts payable pursuant to any such Section, as the case may be, in the future, (ii) would not subject such Lender to any unreimbursed cost or expense and (iii) would not otherwise be disadvantageous to such Lender (as determined in its sole good faith discretion). Without limitation of the provisions of Section 12.14, each Borrower hereby agrees to pay all reasonable and documented, out-of-pocket costs and expenses incurred by any Lender in connection with any such designation or assignment.

Section 2.9 Appointment of Borrower Representative.

(a) Each Borrower hereby irrevocably appoints and constitutes Borrower Representative as its agent and attorney-in-fact to request and receive Loans in the name or on behalf of such Borrower and any other Borrowers, deliver Notices of Borrowing, give instructions with respect to the disbursement of the proceeds of the Loans, give and receive all other notices and consents hereunder or under any of the other Financing Documents and taking all other actions (including in respect of compliance with covenants) in the name or on behalf of any Borrower or Borrowers pursuant to this Agreement and the other Financing Documents. Agent and Lenders may disburse the Loans to such bank account of Borrower Representative or a Borrower or otherwise make such Loans to a Borrower, in each case as Borrower Representative may designate or direct, without notice to any other Borrower. Notwithstanding anything to the contrary contained herein, Agent may at any time and from time to time require that Loans to or for the account of any Borrower be disbursed directly to an operating account of such Borrower.

(b) Borrower Representative hereby accepts the appointment by Borrowers to act as the agent and attorney-in-fact of Borrowers pursuant to this Section 2.9. Borrower Representative shall ensure that the disbursement of any Loans that are at any time requested by or to be remitted to or for the account of a Borrower, shall be remitted or issued to or for the account of such Borrower.

(c) Each Borrower hereby irrevocably appoints and constitutes Borrower Representative as its agent to receive statements on account and all other notices from Agent, Lenders with respect to the Obligations or otherwise under or in connection with this Agreement and the other Financing Documents.

(d) Any notice, election, representation, warranty, agreement or undertaking made or delivered by or on behalf of any Borrower by Borrower Representative shall be deemed for all purposes to have been made or delivered by such Borrower, as the case may be, and shall be binding upon and enforceable against such Borrower to the same extent as if made or delivered directly by such Borrower.

(e) No resignation by or termination of the appointment of Borrower Representative as agent and attorney-in-fact as aforesaid shall be effective, except after ten (10) Business Days' prior written notice to Agent. If the Borrower Representative resigns under this Agreement, Borrowers shall be entitled to appoint a successor Borrower Representative (which shall be a Borrower and shall be reasonably acceptable to Agent as such successor). Upon the acceptance of its appointment as successor Borrower Representative hereunder, such successor Borrower Representative shall succeed to all the rights, powers and duties of the retiring Borrower Representative and the term "Borrower Representative" means such successor Borrower Representative for all purposes of this Agreement and the other Financing Documents, and the retiring or terminated Borrower Representative's appointment, powers and duties as Borrower Representative shall be thereupon terminated.

Section 2.10 Joint and Several Liability; Rights of Contribution; Subordination and Subrogation.

(a) Borrowers are defined collectively to include all Persons named as one of the Borrowers herein; *provided, however*, that any references herein to "any Borrower", "each Borrower" or similar references, shall be construed as a reference to each individual Person named as one of the Borrowers herein. Each Person so named shall be jointly and severally liable for all of the obligations of Borrowers under this Agreement. Each Borrower, individually, expressly understands, agrees and acknowledges, that the credit facilities would not be made available on the terms herein in the absence of the collective credit of all of the Persons named as the Borrowers herein, the joint and several liability of all such Persons, and the cross-collateralization of the collateral of all such Persons. Accordingly, each Borrower individually acknowledges that the benefit to each of the Persons named as one of the Borrowers as a whole constitutes reasonably equivalent value, regardless of the amount of the credit facilities actually borrowed by, advanced to, or the amount of collateral provided by, any individual Borrower. In addition, each entity named as one of the Borrowers herein hereby acknowledges and agrees that all of the representations, warranties, covenants, obligations, conditions, agreements and other terms contained in this Agreement shall be applicable to and shall be binding upon and measured and enforceable individually against each Person named as one of the Borrowers herein as well as all such Persons when taken together. By way of illustration, but without limiting the generality of the foregoing, the terms of Section 10.1 of this Agreement are to be applied to each individual Person named as one of the Borrowers herein (as well as to all such Persons taken as a whole), such that the occurrence of any of the events described in Section 10.1 of this Agreement as to any Person named as one of the Borrowers herein shall constitute an Event of Default even if such event has not occurred as to any other Persons named as the Borrowers or as to all such Persons taken as a whole.

(b) Notwithstanding any provisions of this Agreement to the contrary, it is intended that the joint and several nature of the liability of each Borrower for the Obligations and the Liens granted by Borrowers to secure the Obligations, not constitute a Fraudulent Conveyance (as defined below). Consequently, Agent, Lenders and each Borrower agree that if the liability of a Borrower for the Obligations, or any Liens granted by such Borrower securing the Obligations would, but for the application of this sentence, constitute a Fraudulent Conveyance, the liability of such Borrower and the Liens securing such liability shall be valid and enforceable only to the maximum extent that would not cause such liability or such Lien to constitute a Fraudulent Conveyance, and the liability of such Borrower and this Agreement shall automatically be deemed to have been amended accordingly. For purposes hereof, the term "**Fraudulent Conveyance**" means a fraudulent conveyance under Section 548 of Chapter 11 of Title II of the Bankruptcy Code or a fraudulent conveyance or fraudulent transfer under the applicable provisions of any fraudulent conveyance or fraudulent transfer law or similar law of any state, nation or other governmental unit, as in effect from time to time.

(c) Agent is hereby authorized, without notice or demand (except as otherwise specifically required under this Agreement) and without affecting the liability of any Borrower hereunder, at any time and from time to time, to (i) renew, extend or otherwise increase the time for payment of the Obligations; (ii) with the written agreement of any Borrower, change the terms relating to the Obligations or otherwise modify, amend or change the terms of any Note or other agreement, document or instrument now or hereafter executed by any Borrower and delivered to Agent for any Lender; (iii) accept partial payments of the Obligations; (iv) take and hold any Collateral for the payment of the Obligations or for the payment of any guaranties of the Obligations and exchange, enforce, waive and release any such Collateral; (v) apply any such Collateral and direct the order or manner of sale thereof as Agent, in its sole discretion, may determine; and (vi) settle, release, compromise, collect or otherwise liquidate the Obligations and any Collateral therefor in any manner, all guarantor and surety defenses being hereby waived by each Borrower. Without limitations of the foregoing, with respect to the Obligations, each Borrower hereby makes and adopts each of the agreements and waivers set forth in each Guarantee, the same being incorporated hereby by reference. Except as specifically provided in this Agreement or any of the other Financing Documents, Agent shall have the exclusive right to determine the time and manner of application of any payments or credits, whether received from any Borrower or any other source, and such determination shall be binding on all Borrowers. All such payments and credits may be applied, reversed and reapplied, in whole or in part, to any of the Obligations that Agent shall determine, in its sole discretion, without affecting the validity or enforceability of the Obligations of the other Borrower.

(d) Each Borrower hereby agrees that, except as hereinafter provided, its obligations hereunder shall be unconditional, irrespective of (i) the absence of any attempt to collect the Obligations from any obligor or other action to enforce the same; (ii) the waiver or consent by Agent with respect to any provision of any instrument evidencing the Obligations, or any part thereof, or any other agreement heretofore, now or hereafter executed by a Borrower and delivered to Agent; (iii) failure by Agent to take any steps to perfect and maintain its security interest in, or to preserve its rights to, any security or collateral for the Obligations; (iv) the institution of any proceeding under the Bankruptcy Code, or any similar proceeding, by or against a Borrower or Agent's election in any such proceeding of the application of Section 1111(b)(2) of the Bankruptcy Code; (v) any borrowing or grant of a security interest by a Borrower as debtor-in-possession, under Section 364 of the Bankruptcy Code; (vi) the disallowance, under Section 502 of the Bankruptcy Code, of all or any portion of Agent's claim(s) for repayment of any of the Obligations; or (vii) any other circumstance other than payment in full of the Obligations which might otherwise constitute a legal or equitable discharge or defense of a guarantor or surety.

(e) Borrowers hereby agree, as between themselves, that to the extent that Agent, on behalf of Lenders, shall have received from any Borrower any Recovery Amount (as defined below), then the paying Borrower shall have a right of contribution against each other Borrower in an amount equal to such other Borrower's contributive share of such Recovery Amount; *provided*, *however*, that in the event any Borrower suffers a Deficiency Amount (as defined below), then the Borrower suffering the Deficiency Amount shall be entitled to seek and receive contribution from and against the other Borrowers in an amount equal to the Deficiency Amount; and *provided*, *further*, that in no event shall the aggregate amounts so reimbursed by reason of the contribution of any Borrower equal or exceed an amount that would, if paid, constitute or result in Fraudulent Conveyance. Until all Obligations have been paid and satisfied in full, no payment made by or for the account of a Borrower including, without limitation, (i) a payment made by such Borrower on behalf of the liabilities of any other Borrower, or (ii) a payment made by any other Guarantor under any Guarantee, shall entitle such Borrower, by subrogation or otherwise, to any payment from such other Borrower or from or out of such other Borrower's property. The right of each Borrower to receive any contribution under this Section 2.10(e) or by subrogation or otherwise from any other Borrower shall be subordinate in right of payment to the Obligations and such Borrower shall not exercise any right or remedy against such other Borrower or any property of such other Borrower by reason of any performance of such Borrower of its joint and several obligations hereunder, until the Obligations have been indefeasibly paid and satisfied in full, and no Borrower shall exercise any right or remedy with respect to this Section 2.10(e) until the Obligations have been indefeasibly paid and satisfied in full. As used in this Section 2.10(e), the term "**Recovery Amount**" means the amount of proceeds received by or credited to Agent from the exercise of any remedy of the Lenders under this Agreement or the other Financing Documents, including, without limitation, the sale of any Collateral. As used in this Section 2.10(e), the term "**Deficiency Amount**" means any amount that is less than the entire amount a Borrower is entitled to receive by way of contribution or subrogation from, but that has not been paid by, the other Borrowers in respect of any Recovery Amount attributable to the Borrower entitled to contribution, until the Deficiency Amount has been reduced to Zero Dollars ($0) through contributions and reimbursements made under the terms of this Section 2.10(e) or otherwise.

Section 2.11 Aziyo Med Controlled Account. Notwithstanding the foregoing or anything else to the contrary in this Agreement, all amounts owed to Aziyo Med in respect of Accounts that are subject to, or potentially subject to, a security interest of Ligand pursuant to the Ligand Royalty Agreement or any other funds constituting "Royalty Interests" (as defined in the Ligand Royalty Agreement) or the proceeds thereof shall be paid into a segregated Deposit Account owned solely by Aziyo Med that is subject to a "springing" Deposit Account Control Agreement (the "**Aziyo Med Controlled Account**"). Once per calendar week, Aziyo Med shall cause all amounts on deposit in the Aziyo Med Controlled Account required to be transferred by the Ligand Royalty Agreement, and permitted to be so transferred pursuant to the terms of the Ligand Intercreditor Agreement, to be transferred to the Permitted Ligand Account in order to pay the Ligand Royalty Payments in accordance with the terms of the Ligand Intercreditor Agreement. Once per calendar week (and, for the avoidance of doubt, on the same day as each transfer to the Permitted Ligand Account pursuant to the preceding sentence), Aziyo Med shall transfer all amounts on deposit in the Aziyo Med Controlled Account other than those necessary to pay the Ligand Royalty Payments, in accordance with the previous sentence, to the Lockbox Account or, following the payment in full of the Affiliated Obligations, to such other Deposit Account that is subject to a Deposit Account Control Agreement as Agent may direct.

Section 2.12 Termination; Restriction on Termination.

(a) Termination by Lenders. In addition to the rights set forth in Section 10.2, Agent may, and at the direction of Required Lenders shall, terminate this Agreement without notice upon or after the occurrence and during the continuance of an Event of Default.

(b) Termination by Borrowers. Upon at least ten (10) days' prior written notice and pursuant to payoff documentation in form and substance satisfactory to Agent and Lenders, Borrowers may, at its option, terminate this Agreement; *provided, however,* that no such termination shall be effective until Borrowers have complied with Section 2.2 and the terms of any fee letter. Any notice of termination given by Borrowers shall be irrevocable unless all Lenders otherwise agree in writing and no Lender shall have any obligation to make any Loans on or after the termination date stated in such notice. Borrowers may elect to terminate this Agreement in its entirety only. No section of this Agreement or type of Loan available hereunder may be terminated singly.

(c) Effectiveness of Termination. All of the Obligations shall be immediately due and payable upon the Termination Date. All undertakings, agreements, covenants, warranties and representations of Borrowers contained in the Financing Documents shall survive any such termination and Agent shall retain their Liens in the Collateral and Agent and each Lender shall retain all of its rights and remedies under the Financing Documents notwithstanding such termination until all Obligations and Affiliated Obligations have been discharged or paid, in full, in immediately available funds, including, without limitation, all Obligations under Section 2.2 and the terms of any fee letter resulting from such termination. Notwithstanding the foregoing or the payment in full of the Obligations, Agent shall not be required to terminate its Liens in the Collateral unless, with respect to any loss or damage Agent may incur as a result of dishonored checks or other items of payment received by Agent from Borrower or any Account Debtor and applied to the Obligations, Agent shall, at its option, (i) have received a written agreement satisfactory to Agent, executed by Borrowers and by any Person whose loans or other advances to Borrowers are used in whole or in part to satisfy the Obligations, indemnifying Agent and each Lender from any such loss or damage or (ii) have retained cash Collateral or other Collateral for such period of time as Agent, in its discretion, may deem necessary to protect Agent and each Lender from any such loss or damage.

ARTICLE 3 - REPRESENTATIONS AND WARRANTIES

To induce Agent and Lenders to enter into this Agreement and to make the Loans and other credit accommodations contemplated hereby, each Borrower hereby represents and warrants to Agent and each Lender that:

Section 3.1 Existence and Power. Each Credit Party (a) is an entity as specified on Schedule 3.1, (b) is duly organized, validly existing and in good standing under the laws of the jurisdiction specified on Schedule 3.1 and no other jurisdiction, (c) has the same legal name as it appears in such Credit Party's Organizational Documents and an organizational identification number (if any), in each case as specified on Schedule 3.1, (d) has all powers to own its assets and has powers and all Permits necessary or desirable in the operation of its business as presently conducted or as proposed to be conducted, except where the failure to have such Permits could not reasonably be expected to have a Material Adverse Effect, and (e) is qualified to do business as a foreign entity in each jurisdiction in which it is required to be so qualified, which jurisdictions as of the Closing Date are specified on Schedule 3.1, except where the failure to be so qualified could not reasonably be expected to have a Material Adverse Effect. Except as set forth on Schedule 3.1, no Credit Party (x) has had, over the five (5) year period preceding the Closing Date, any name other than its current name, or (y) was incorporated or organized under the laws of any jurisdiction other than its current jurisdiction of incorporation or organization.

Section 3.2 Organization and Governmental Authorization; No Contravention. The execution, delivery and performance by each Credit Party of the Operative Documents to which it is a party (a) are within its powers, (b) have been duly authorized by all necessary action pursuant to its Organizational Documents, (c) require no further action by or in respect of, or filing with, any Governmental Authority and (d) do not violate, conflict with or cause a breach or a default under (i) any Law applicable to any Credit Party, (ii) any of the Organizational Documents of any Credit Party, or (iii) any agreement or instrument binding upon it, except for such violations, conflicts, breaches or defaults as could not, with respect to this clause (iii), reasonably be expected to have a Material Adverse Effect.

Section 3.3 Binding Effect. Each of the Operative Documents to which any Credit Party is a party constitutes a valid and binding agreement or instrument of such Credit Party, enforceable against such Credit Party in accordance with its respective terms, except as the enforceability thereof may be limited by bankruptcy, insolvency or other similar laws relating to the enforcement of creditors' rights generally and by general equitable principles. Each Financing Document has been duly executed and delivered by each Credit Party party thereto.

Section 3.4 Capitalization. The authorized equity securities of each of the Credit Parties as of the Closing Date are as set forth on Schedule 3.4. All issued and outstanding equity securities of each of the Credit Parties are duly authorized and validly issued, fully paid, nonassessable, free and clear of all Liens other than Permitted Liens, and such equity securities were issued in compliance with all applicable Laws. The identity of the holders of the equity securities of each of the Credit Parties and the percentage of their fully-diluted ownership of the equity securities of each of the Credit Parties as of the Closing Date is set forth on Schedule 3.4. No shares of the capital stock or other equity securities of any Credit Party, other than those described above, are issued and outstanding as of the Closing Date. Except as set forth in the Equity Investment Documents, as of the Closing Date there are no preemptive or other outstanding rights, options, warrants, conversion rights or similar agreements or understandings for the purchase or acquisition from any Credit Party of any equity securities of any such entity.

Section 3.5 Financial Information. All financial statements delivered to Agent by any Credit Party fairly present in all material respects the financial position of such Credit Party as of such date and shall be in conformity with GAAP (and as to unaudited financial statements, subject to normal year-end adjustments and the absence of footnote disclosures). Since December 31, 2018, there has been no development or event that has had or could reasonably be expected to have a Material Adverse Effect. Since December 31, 2018, to the knowledge of any Borrower (after the exercise of reasonable due diligence) there has been no material adverse change in the business, operations, properties, prospects or condition (financial or otherwise) of any business, assets or entities being purchased by Borrowers pursuant to the Transaction Documents.

Section 3.6 Litigation. Except as set forth on Schedule 3.6 as of the Closing Date, and except as hereafter disclosed to Agent in writing, there is no Litigation pending against, or to such Borrower's knowledge threatened against, any Credit Party or, to such Borrower's knowledge, any party to any Operative Document other than a Credit Party. There is no Litigation pending in which an adverse decision could reasonably be expected to have a Material Adverse Effect or which in any manner draws into question the validity of any of the Operative Documents.

Section 3.7 Ownership of Property. Each Borrower and its Subsidiaries are the lawful sole owner of, has good and marketable title to and is in lawful possession of, or has valid leasehold interests in, all properties, accounts and other assets (real or personal, tangible, intangible or mixed) purported or reported to be owned or leased (as the case may be) by such Person.

Section 3.8 No Default. No Event of Default, or to such Borrower's knowledge, Default, has occurred and is continuing. No Credit Party is in breach or default under or with respect to any contract, agreement, lease or other instrument to which it is a party or by which its property is bound or affected, which breach or default could reasonably be expected to have a Material Adverse Effect.

Section 3.9 Labor Matters. As of the Closing Date, there are no strikes or other labor disputes pending or, to any Borrower's knowledge, threatened against any Credit Party. Except as could not reasonably be expected to result in a Material Adverse Effect, (a) hours worked and payments made to the employees of each Borrower and each of its Subsidiaries have not been in violation of the Fair Labor Standards Act or any other applicable Law dealing with such matters and (b) all payments due from each Borrower and each of its Subsidiaries, or for which any claim may be made against any of them, on account of wages and employee and retiree health and welfare insurance and other benefits have been paid or accrued as a liability on their books, as the case may be. The consummation of the transactions contemplated by the Financing Documents and the other Operative Documents will not give rise to a right of termination or right of renegotiation on the part of any union under any collective bargaining agreement to which any Borrower or any Subsidiary is a party or by which it is bound.

Section 3.10 Regulated Entities. No Credit Party is an "investment company" or a company "controlled" by an "investment company" or a "subsidiary" of an "investment company," all within the meaning of the Investment Company Act of 1940.

Section 3.11 Margin Regulations. None of the proceeds from the Loans have been or will be used, directly or indirectly, for the purpose of purchasing or carrying any "margin stock" (as defined in Regulation U of the Federal Reserve Board), for the purpose of reducing or retiring any indebtedness which was originally incurred to purchase or carry any "margin stock" or for any other purpose which might cause any of the Loans to be considered a "purpose credit" within the meaning of Regulation T, U or X of the Federal Reserve Board.

Section 3.12 Compliance With Laws; Anti-Terrorism Laws.

(a) Each Credit Party is in compliance with the requirements of all applicable Laws, except for such Laws the noncompliance with which could not reasonably be expected to have a Material Adverse Effect.

(b) None of the Credit Parties and, to the knowledge of the Credit Parties, none of their Affiliates (except for any Person that is an Affiliate of a Credit Party solely due to the fact that it is HighCape Portfolio Company) (i) is in violation of any Anti-Terrorism Law, (ii) engages in or conspires to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law, (iii) is a Blocked Person, or is controlled by a Blocked Person, (iv) is acting or will act for or on behalf of a Blocked Person, (v) is associated with, or will become associated with, a Blocked Person or (vi) is providing, or will provide, material, financial or technical support or other services to or in support of acts of terrorism of a Blocked Person. No Credit Party nor, to the knowledge of any Credit Party, any of its Affiliates (except for any Person that is an Affiliate of a Credit Party solely due to the fact that it is HighCape Portfolio Company) or agents acting or benefiting in any capacity in connection with the transactions contemplated by this Agreement, (A) conducts any business or engages in making or receiving any contribution of funds, goods or services to or for the benefit of any Blocked Person, or (B) deals in, or otherwise engages in any transaction relating to, any property or interest in property blocked pursuant to Executive Order No. 13224, any similar executive order or other Anti-Terrorism Law.

Section 3.13 Taxes. All federal, state and material local tax returns, reports and statements required to be filed by or on behalf of each Credit Party have been filed with the appropriate Governmental Authorities in all jurisdictions in which such returns, reports and statements are required to be filed and, except to the extent subject to a Permitted Contest, all Taxes (including real property Taxes) and other charges shown to be due and payable in respect thereof have been timely paid prior to the date on which any fine, penalty, interest, late charge or loss may be added thereto for nonpayment thereof. Except to the extent subject to a Permitted Contest, all material state and local sales and use Taxes required to be paid by each Credit Party have been paid. All federal and state returns have been filed by each Credit Party for all periods for which returns were due with respect to employee income tax withholding, social security and unemployment taxes, and, except to the extent subject to a Permitted Contest, the amounts shown thereon to be due and payable have been paid in full or adequate provisions therefor have been made.

Section 3.14 Compliance with ERISA.

(a) Each ERISA Plan (and the related trusts and funding agreements) complies in form and in operation with, has been administered in compliance with, and the terms of each ERISA Plan satisfy, the applicable requirements of ERISA and the Code in all material respects. Each ERISA Plan which is intended to be qualified under Section 401(a) of the Code is so qualified, and the United States Internal Revenue Service has issued a favorable determination letter with respect to each such ERISA Plan which may be relied on currently. No Credit Party has incurred liability for any material excise tax under any of Sections 4971 through 5000 of the Code.

(b) Except as could not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect, each Borrower and each Subsidiary is in compliance with the applicable provisions of ERISA and the provision of the Code relating to ERISA Plans and the regulations and published interpretations therein. During the thirty-six (36) month period prior to the Closing Date or the making of any Loan (i) no steps have been taken to terminate any Pension Plan, and (ii) no contribution failure has occurred with respect to any Pension Plan sufficient to give rise to a Lien under Section 303(k) of ERISA or Section 430(k) of the Code and no event has occurred that would give rise to a Lien under Section 4068 of ERISA. No condition exists or event or transaction has occurred with respect to any Pension Plan which could result in the incurrence by any Credit Party of any material liability, fine or penalty. No Credit Party has incurred liability to the PBGC (other than for current premiums) with respect to any employee Pension Plan. All contributions (if any) have been made on a timely basis to any Multiemployer Plan that are required to be made by any Credit Party or any other member of the Controlled Group under the terms of the plan or of any collective bargaining agreement or by applicable Law; no Credit Party nor any member of the Controlled Group has withdrawn or partially withdrawn from any Multiemployer Plan, incurred any withdrawal liability with respect to any such plan or received notice of any claim or demand for withdrawal liability or partial withdrawal liability from any such plan, and no condition has occurred which, if continued, could result in a withdrawal or partial withdrawal from any such plan, and no Credit Party nor any member of the Controlled Group has received any notice that any Multiemployer Plan is in reorganization, that increased contributions may be required to avoid a reduction in plan benefits or the imposition of any excise tax, that any such plan is or has been funded at a rate less than that required under Section 412 of the Code, that any such plan is or may be terminated, or that any such plan is or may become insolvent.

Section 3.15 Consummation of Operative Documents; Brokers. Except for fees payable to Agent and/or Lenders, no broker, finder or other intermediary has brought about the obtaining, making or closing of the transactions contemplated by the Operative Documents, and no Credit Party has or will have any obligation to any Person in respect of any finder's or brokerage fees, commissions or other expenses in connection herewith or therewith.

Section 3.16 Related Transactions. All transactions contemplated by the Operative Documents to be consummated on or prior to the date hereof have been so consummated (including, without limitation, the disbursement and transfer of all funds in connection therewith) in all material respects pursuant to the provisions of the applicable Operative Documents, true and complete copies of which have been delivered to Agent, and in compliance with all applicable Law, except for such Laws the noncompliance with which would not reasonably be expected to have a Material Adverse Effect.

Section 3.17 Material Contracts. Except for the Operative Documents and the other agreements set forth on Schedule 3.17, as of the Closing Date there are no Material Contracts. The consummation of the transactions contemplated by the Financing Documents will not give rise to a right of termination in favor of any party to any Material Contract (other than any Credit Party), except for such Material Contracts the noncompliance with which would not reasonably be expected to have a Material Adverse Effect.

Section 3.18 Compliance with Environmental Requirements; No Hazardous Materials. Except in each case as set forth on Schedule 3.18:

(a) no notice, notification, demand, request for information, citation, summons, complaint or order has been issued, no complaint has been filed, no penalty has been assessed and no investigation or review is pending, or to such Borrower's knowledge, threatened by any Governmental Authority or other Person with respect to any (i) alleged violation by any Credit Party of any Environmental Law, (ii) alleged failure by any Credit Party to have any Permits required in connection with the conduct of its business or to comply with the terms and conditions thereof, (iii) any generation, treatment, storage, recycling, transportation or disposal of any Hazardous Materials, or (iv) release of Hazardous Materials; and

(b) no property now owned or leased by any Credit Party and, to the knowledge of each Borrower, no such property previously owned or leased by any Credit Party, to which any Credit Party has, directly or indirectly, transported or arranged for the transportation of any Hazardous Materials, is listed or, to such Borrower's knowledge, proposed for listing, on the National Priorities List promulgated pursuant to CERCLA, or CERCLIS (as defined in CERCLA) or any similar state list or is the subject of federal, state or local enforcement actions or, to the knowledge of such Borrower, other investigations which may lead to claims against any Credit Party for clean-up costs, remedial work, damage to natural resources or personal injury claims, including, without limitation, claims under CERCLA.

For purposes of this Section 3.18, each Credit Party shall be deemed to include any business or business entity (including a corporation) that is, in whole or in part, a predecessor of such Credit Party.

Section 3.19 Intellectual Property and License Agreements. A list of all Registered Intellectual Property of each Credit Party and all material in-bound license or sublicense agreements, exclusive and material out-bound license or sublicense agreements, or other material rights of any Credit Party to use Intellectual Property (but excluding in-bound licenses of over-the-counter software that is commercially available to the public), as of the Closing Date and, as updated pursuant to Section 4.15, is set forth on Schedule 3.19. Except for Permitted Licenses, each Credit Party is the sole owner of its Intellectual Property free and clear of any Liens other than Permitted Liens. Each patent is valid and enforceable and no part of the Material Intangible Assets has been judged invalid or unenforceable, in whole or in part, and to the best of Borrower's knowledge, no claim has been made that any part of the Intellectual Property violates the rights of any third party.

Section 3.20 Solvency. Each Borrower is, and after giving effect to the Loan advance and the liabilities and obligations of each Borrower under the Operative Documents, will be, Solvent; and each other Credit Party together with Borrower and its Subsidiaries, taken as a whole, is Solvent.

Section 3.21 Full Disclosure. None of the material written information (financial or otherwise, but excluding any projections and forward-looking statements, estimates, budgets and industry data of a general nature) furnished by or on behalf of any Credit Party to Agent or any Lender in connection with the consummation of the transactions contemplated by the Operative Documents (in each case, taken as a whole and as modified or supplemented by other information so furnished promptly after the same becomes available) contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements contained herein or therein not misleading in light of the circumstances under which such statements were made. All financial projections and forward-looking statements delivered to Agent and the Lenders by the Borrowers have been prepared on the basis of the assumptions stated therein. Such projections represent the Borrowers' best estimate of the Borrowers' future financial performance as of the date of delivery and such assumptions are believed by the Borrowers to be fair and reasonable in light of current business conditions at the time of delivery to the Agent, *provided* that it being understood that such projections are subject to uncertainties and contingencies, many of which are beyond the control of the Borrowers, and the Borrowers can give no assurance that such projections will be attained, that actual results may differ in a material manner from such projections and any failure to meet such projections shall not be deemed to be a breach of any representation or covenant herein.

Section 3.22 Reserved.

Section 3.23 Subsidiaries. Borrowers do not own any stock, partnership interests, limited liability company interests or other equity securities or Subsidiaries except for Permitted Investments.

Section 3.24 Reserved.

Section 3.25 Regulatory Matters.

(a) All of Borrower's material Products and material Regulatory Required Permits as of the Closing Date are listed on Schedule 4.17.

(b) None of the Borrowers are in violation of any Healthcare Laws in any material respect.

(c) No Borrower is participating in any Third Party Payor Program.

(d) None of the Borrower's officers, directors, employees, shareholders, their agents or affiliates has made an untrue statement of material fact or fraudulent statement to the FDA or failed to disclose a material fact required to be disclosed to the FDA, committed an act, made a statement, or failed to make a statement that could reasonably be expected to provide a basis for the FDA to invoke its policy respecting "Fraud, Untrue Statements of Material Facts, Bribery, and Illegal Gratuities," set forth in 56 Fed. Regulation 46191 (September 10, 1991).

(e) No Borrower has received any written notice that any Governmental Authority, including without limitation the FDA, DEA, the Office of the Inspector General of HHS or the United States Department of Justice has commenced or threatened to initiate any action against a Credit Party, any action to enjoin a Credit Party, their officers, directors, employees, shareholders or their agents and Affiliates (except for any Person that is an Affiliate of a Credit Party solely due to the fact that it is HighCape Portfolio Company), from conducting their businesses at any facility owned or used by them or for any material civil penalty, injunction, seizure or criminal action.

(f) No Borrower has received from the FDA or the DEA, a Warning Letter, Form FDA-483, "Untitled Letter," other correspondence or notice setting forth allegedly objectionable observations or alleged violations of laws and regulations enforced by the FDA or the DEA, or any comparable correspondence from any state or local authority responsible for regulating drug products and establishments, or any comparable correspondence from any foreign counterpart of the FDA or DEA, or any comparable correspondence from any foreign counterpart of any state or local authority with regard to any Product or the manufacture, processing, packing, or holding thereof.

(g) No Borrower is subject to any proceeding, suit or, to Borrower's knowledge, investigation by any federal, state or local government or quasi-governmental body, agency, board or authority or any other administrative or investigative body which could result in the revocation, transfer, surrender, suspension or other impairment of the Permits of such Borrower.

(h) Borrower has not engaged in any Recalls, Market Withdrawals, or other forms of product retrieval from the marketplace of any Products.

(i) Each Product, to the extent applicable (a) is not adulterated or misbranded within the meaning of the FDCA; (b) is not an article prohibited from introduction into interstate commerce under the provisions of Sections 404, 505 or 512 of the FDCA; (c) has been, to Borrower's knowledge after due inquiry, prior to the Closing Date and, thereafter, shall be manufactured, imported, possessed, owned, warehoused, marketed, promoted, sold, labeled, furnished, distributed and marketed and each service has been conducted in accordance with all applicable Permits and Laws; and (d) has been, to Borrower's knowledge after due inquiry, prior to the Closing Date and, thereafter, shall be manufactured in accordance with Good Manufacturing Practices, except in each case as could not reasonably be expected to result in a Material Adverse Effect.

(j) No Borrower is subject to any proceeding, suit or, to Borrowers' knowledge, investigation by any federal, state or local government or quasi-governmental body, agency, board or authority or any other administrative or investigative body: (i) which may result in the imposition of a fine, alternative, interim or final sanction or which would have a Material Adverse Effect on any Borrower; or (ii) which would reasonably be expected to result in the revocation, transfer, surrender, suspension or other material impairment of any material Permits of Borrower.

Section 3.26 Accuracy of Schedules. All information set forth in the Schedules to this Agreement (including Schedule 3.19 and Schedule 4.17) is true, accurate and complete as of the Closing Date, the date of delivery of the last Compliance Certificate and any other subsequent date in which Borrower is requested to update such Schedules. All information set forth in the Perfection Certificate is true, accurate and complete as of the Closing Date and any other subsequent date in which Borrower is requested to update such certificate.

ARTICLE 4 - AFFIRMATIVE COVENANTS

Each Borrower agrees that, so long as any Credit Exposure exists:

Section 4.1 Financial Statements and Other Reports. Each Borrower will deliver to Agent:

(a) as soon as available, but no later than thirty (30) days after the last day of each month, a company prepared consolidated and consolidating balance sheet, cash flow and income statement covering Borrowers' and its Consolidated Subsidiaries' consolidated operations during the period, prepared under GAAP, consistently applied, certified by a Responsible Officer and in a form acceptable to Agent;

(b) [reserved];

(c) as soon as available, but no later than one hundred twenty (120) days after the last day of Borrower's fiscal year, audited consolidated and consolidating financial statements prepared under GAAP, consistently applied, together with an unqualified opinion on the financial statements from an independent certified public accounting firm acceptable to Agent in its reasonable discretion;

(d) within five (5) days of delivery or filing thereof, copies of all material statements, reports and notices made available to Borrower's security holders or to any holders of Subordinated Debt and copies of all reports and other filings made by Borrower with any stock exchange on which any securities of any Borrower are traded and/or the SEC;

(e) a prompt written report of any legal actions pending or threatened against any Borrower or any of its Subsidiaries that could reasonably be expected to result in damages or costs to any Borrower or any of its Subsidiaries of Fifty Thousand Dollars ($50,000) or more;

(f) prompt written notice of an event that materially and adversely affects the value of any Intellectual Property;

(g) within sixty (60) days after the start of each fiscal year, projections for the forthcoming two fiscal years, on a quarterly basis for the current year and on an annual basis for the subsequent year;

(h) promptly (and in any event within ten (10) days of any request therefor) such readily available other budgets, sales projections, operating plans and other financial information and information, reports or statements regarding the Borrowers, their business and the Collateral as Agent may from time to time reasonably request;

(i) written notice to Agent promptly, and in any event within five (5) Business Days of a Responsible Officer of a Borrower receiving, becoming aware of or determining that: (i) development, testing, and/or manufacturing of any Product that is material to Borrowers' business should cease, (ii) the marketing or sales of a Product, which is material to Borrowers' business and which has been approved for marketing and sale, should cease or such Product should be withdrawn from the marketplace, (iii) any Governmental Authority is conducting an investigation or review of any material Regulatory Required Permit or (iv) any material Regulatory Required Permit has been revoked or withdrawn;

(j) promptly, but in any event within three (3) Business Days, after any Responsible Officer of any Borrower obtains knowledge of the occurrence of any event or change (including, without limitation, any notice of any violation of Healthcare Laws) that has resulted or could reasonably be expected to result in, either in any case or in the aggregate, a Material Adverse Effect, a certificate of a Responsible Officer specifying the nature and period of existence of any such event or change, or specifying the notice given or action taken by such holder or Person and the nature of such event or change, and what action the applicable Credit Party or Subsidiary has taken, is taking or proposes to take with respect thereto; and

(k) within thirty (30) days after the last day of each month, a duly completed Compliance Certificate signed by a Responsible Officer setting forth calculations showing (i) cash and cash equivalents of Borrowers and Borrowers and their Consolidated Subsidiaries, and (ii) compliance with the financial covenants set forth in this Agreement.

Section 4.2 Payment and Performance of Obligations.

(a) Each Borrower (i) will pay and discharge, and cause each Subsidiary to pay and discharge, on a timely basis as and when due, all of their respective obligations and liabilities, except for such obligations and/or liabilities (A) that may be the subject of a Permitted Contest, and (B) the nonpayment or nondischarge of which could not reasonably be expected to have a Material Adverse Effect or result in a Lien against any Collateral, except for Permitted Liens, (ii) without limiting anything contained in the foregoing clause (i), pay all amounts due and owing in respect of Taxes (including without limitation, payroll and withholdings tax liabilities) on a timely basis as and when due, and in any case prior to the date on which any fine, penalty, interest, late charge or loss may be added thereto for nonpayment thereof, (iii) will maintain, and cause each Subsidiary to maintain, in accordance with GAAP, appropriate reserves for the accrual of all of their respective obligations and liabilities, and (iv) will not breach or permit any Subsidiary to breach, or permit to exist any default under, the terms of any lease, commitment, contract, instrument or obligation to which it is a party, or by which its properties or assets are bound, except for such breaches or defaults which could not reasonably be expected to have a Material Adverse Effect.

(b) Upon completion of any Permitted Contest, each Borrower shall, and will cause each Subsidiary to, promptly pay the amount due, if any, except where the failure to pay such amount could not reasonably be expected to have a Material Adverse Effect.

Section 4.3 Maintenance of Existence. Each Borrower will preserve, renew and keep in full force and effect, and will cause each Subsidiary to preserve, renew and keep in full force and effect, (a) their respective existence and (b) their respective rights, privileges and franchises necessary or desirable in the normal conduct of business, except with respect to clauses (a) and (b) above in connection with a transaction permitted under Section 5.6, and (c) their respective qualification to do business and good standing in each jurisdiction except, with respect to clause (b) and this clause (c), where the failure to be qualified or in good standing could not reasonably be expected to have a Material Adverse Effect.

Section 4.4 Maintenance of Property; Insurance.

(a) Each Borrower will keep, and will cause each Subsidiary to keep, all property useful and necessary in its business in good working order and condition, ordinary wear and tear excepted. If all or any part of the Collateral useful or necessary in its business becomes damaged or destroyed, each Borrower will, and will cause each Subsidiary to, promptly and completely repair and/or restore the affected Collateral in a good and workmanlike manner, regardless of whether Agent agrees to disburse insurance proceeds or other sums to pay costs of the work of repair or reconstruction.

(b) Upon completion of any Permitted Contest, Borrowers shall, and will cause each Subsidiary to, promptly pay the amount due, if any, and deliver to Agent proof of the completion of the contest and payment of the amount due, if any.

(c) Each Borrower will maintain (i) casualty insurance on all real and personal property on an all risks basis (including the perils of flood, windstorm and quake), covering the repair and replacement cost of all such property and coverage, business interruption and rent loss coverages with extended period of indemnity (for the period required by Agent from time to time) and indemnity for extra expense, in each case without application of coinsurance and with agreed amount endorsements, (ii) general and professional liability insurance (including products/completed operations liability coverage), and (iii) such other insurance coverage, in each case against loss or damage of the kinds customarily insured against by Persons engaged in the same or similar business, of such types and in such amounts as are customarily carried under similar circumstances by such other Persons; *provided*, *however*, that, in no event shall such insurance be in amounts or with coverage less than, or with carriers with qualifications inferior to, any of the insurance or carriers in existence as of the Closing Date (or required to be in existence after the Closing Date under a Financing Document). All such insurance shall be provided by insurers having an A.M. Best policyholders rating reasonably acceptable to Agent.

(d) On or prior to the Closing Date, and at all times thereafter, each Borrower will cause Agent to be named as an additional insured, assignee and lender loss payee, as applicable, on each insurance policy required to be maintained pursuant to this Section 4.4 pursuant to endorsements in form and substance acceptable to Agent. Borrowers shall deliver to Agent and the Lenders (i) on the Closing Date, a certificate from Borrowers' insurance broker dated such date showing the amount of coverage as of such date, and that such policies will include effective waivers (whether under the terms of any such policy or otherwise) by the insurer of all claims for insurance premiums against all loss payees and additional insureds and all rights of subrogation against all loss payees and additional insureds, and that if all or any part of such policy is canceled, terminated or expires, the insurer will forthwith give notice thereof to each additional insured, assignee and loss payee and that no cancellation, reduction in amount or material change in coverage thereof shall be effective until at least thirty (30) days after receipt by each additional insured, assignee and loss payee of written notice thereof, (ii) on an annual basis, and upon the request of any Lender through Agent from time to time full information as to the insurance carried, (iii) within five (5) days of receipt of notice from any insurer, a copy of any notice of cancellation, nonrenewal or material change in coverage from that existing on the date of this Agreement, (iv) forthwith, notice of any cancellation or nonrenewal of coverage by any Borrower, and (v) at least sixty (60) days prior to expiration of any policy of insurance, evidence of renewal of such insurance upon the terms and conditions herein required.

(e) In the event any Borrower fails to provide Agent with evidence of the insurance coverage required by this Agreement, Agent may purchase insurance at Borrowers' expense to protect Agent's interests in the Collateral. This insurance may, but need not, protect such Borrower's interests. The coverage purchased by Agent may not pay any claim made by such Borrower or any claim that is made against such Borrower in connection with the Collateral. Such Borrower may later cancel any insurance purchased by Agent, but only after providing Agent with evidence that such Borrower has obtained insurance as required by this Agreement. If Agent purchases insurance for the Collateral, Borrowers will be responsible for the costs of that insurance to the fullest extent provided by law, including interest and other charges imposed by Agent in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance may be added to the Obligations. The costs of the insurance may be more than the cost of insurance such Borrower is able to obtain on its own.

Section 4.5 Compliance with Laws and Material Contracts. Each Borrower will comply, and cause each Subsidiary to comply, with the requirements of all applicable Laws and Material Contracts, except to the extent that failure to so comply could not reasonably be expected to (a) have a Material Adverse Effect, or (b) result in any Lien upon either a material portion of the assets of any such Person in favor of any Governmental Authority.

Section 4.6 Inspection of Property, Books and Records. Each Borrower will keep, and will cause each Subsidiary to keep, proper books of record substantially in accordance with GAAP in which full, true and correct entries shall be made of all dealings and transactions in relation to its business and activities; and will permit, and will cause each Subsidiary to permit, at the sole cost of the applicable Borrower or any applicable Subsidiary, representatives of Agent and of any Lender to visit and inspect any of their respective properties, to examine and make abstracts or copies from any of their respective books and records, to conduct a collateral audit and analysis of their respective operations and the Collateral (each a "**Collateral Audit**"), to evaluate and make physical verifications and appraisals of the Inventory and other Collateral in any manner and through any medium that Agent considers advisable, to verify the amount and age of the Accounts, the identity and credit of the respective Account Debtors, to review the billing practices of Borrowers and to discuss their respective affairs, finances and accounts with their respective officers, employees and independent public accountants as often as may reasonably be desired. In the absence of a Default or an Event of Default, Agent or any Lender exercising any rights pursuant to this Section 4.6 shall give the applicable Borrower or any applicable Subsidiary commercially reasonable prior notice of such exercise. No notice shall be required during the existence and continuance of any Default or any time during which Agent reasonably believes a Default exists.

Section 4.7 Use of Proceeds. Borrowers shall use the proceeds of Loans solely for (a) transaction fees incurred in connection with the Financing Documents and the payment in full on the Closing Date of certain existing Debt of Borrower, (b) to make the "Acquiror Buydown Payments" (as defined in the Ligand Royalty Agreement), and (c) for working capital needs of Borrowers and their Subsidiaries.

Section 4.8 Estoppel Certificates. After written request by Agent, Borrowers, within fifteen (15) days and at their expense, will furnish Agent with a statement, duly acknowledged and certified, setting forth (a) the amount of the original principal amount of the Notes, and the unpaid principal amount of the Notes, (b) the rate of interest of the Notes, (c) the date payments of interest and/or principal were last paid, (d) any offsets or defenses to the payment of the Obligations, and if any are alleged, the nature thereof, (e) that the Notes and this Agreement have not been modified or if modified, giving particulars of such modification, and (f) that there has occurred and is then continuing no Default or if such Default exists, the nature thereof, the period of time it has existed, and the action being taken to remedy such Default. After written request by Agent, Borrowers, within fifteen (15) days and at their expense, will furnish Agent with a certificate, signed by a Responsible Officer of Borrowers, updating all of the representations and warranties contained in this Agreement and the other Financing Documents and certifying that all of the representations and warranties contained in this Agreement and the other Financing Documents, as updated pursuant to such certificate, are true, accurate and complete as of the date of such certificate.

Section 4.9 Notices of Material Contracts, Litigation and Defaults.

(a) Borrower shall provide (i) five (5) Business Days written notice to Agent after any Borrower or Subsidiary (1) executes and delivers any amendment, consent, waiver or other modification to any Material Contract which is material and adverse to (x) Agent or Lenders, (y) Borrowers or their Subsidiaries, or (z) which could reasonably be expected to have a Material Adverse Effect or (2) receives or delivers any notice of termination or default or similar notice in connection with any Material Contract and (ii) at such time as the Schedules are required to be updated pursuant to Section 4.15, notice of the execution of any new Material Contract and/or any new material amendment, consent, waiver or other modification to any Material Contract not previously disclosed (which, for the avoidance of doubt, may be included as an updated to Schedule 3.17).

(b) Borrowers shall promptly (but in any event within three (3) Business Days) provide written notice to Agent (i) of any litigation or governmental proceedings pending or threatened (in writing) against Borrowers or other Credit Party which would reasonably be expected to have a Material Adverse Effect with respect to Borrowers or any other Credit Party or which in any manner calls into question the validity or enforceability of any Financing Document, (ii) upon any Borrower becoming aware of the existence of any Default or Event of Default, (iii) of any strikes or other labor disputes pending or, to any Borrower's knowledge, threatened against any Credit Party, (iv) if there is any infringement or claim of infringement by any other Person with respect to any Intellectual Property rights of any Credit Party that could reasonably be expected to have a Material Adverse Effect, or if there is any claim by any other Person that any Credit Party in the conduct of its business is infringing on the Intellectual Property rights of others, and (v) of all returns, recoveries, disputes and claims that involve more than $50,000. Borrowers represent and warrant that Schedule 4.9 sets forth a complete list of all matters existing as of the Closing Date for which notice could be required under this Section and all litigation or governmental proceedings pending or threatened (in writing) against Borrowers or other Credit Party as of the Closing Date.

(c) Borrower shall, and shall cause each Credit Party, to provide such further information (including copies of such documentation) as Agent or any Lender shall reasonably request with respect to any of the events or notices described in clauses (a) and (b) above. From the date hereof and continuing through the termination of this Agreement, Borrower shall, and shall cause each Credit Party to, make available to Agent and each Lender, without expense to Agent or any Lender, each Credit Party's officers, employees and agents and books, to the extent that Agent or any Lender may deem them reasonably necessary to prosecute or defend any third-party suit or proceeding instituted by or against Agent or any Lender with respect to any Collateral or relating to a Credit Party.

Section 4.10 Hazardous Materials; Remediation.

(a) If any release or disposal of Hazardous Materials shall occur or shall have occurred on any real property or any other assets of any Borrower or any other Credit Party, such Borrower will cause, or direct the applicable Credit Party to cause, the prompt containment and removal of such Hazardous Materials and the remediation of such real property or other assets as is necessary to comply with all Environmental Laws and Healthcare Laws and to preserve the value of such real property or other assets. Without limiting the generality of the foregoing, each Borrower shall, and shall cause each other Credit Party to, comply with each Environmental Law and Healthcare Law requiring the performance at any real property by any Borrower or any other Credit Party of activities in response to the release or threatened release of a Hazardous Material.

(b) Borrowers will provide Agent within thirty (30) days after written demand therefor with a bond, letter of credit or similar financial assurance evidencing to the reasonable satisfaction of Agent that sufficient funds are available to pay the cost of removing, treating and disposing of any Hazardous Materials or Hazardous Materials Contamination and discharging any assessment which may be established on any property as a result thereof, such demand to be made, if at all, upon Agent's reasonable business determination that the failure to remove, treat or dispose of any Hazardous Materials or Hazardous Materials Contamination, or the failure to discharge any such assessment could reasonably be expected to have a Material Adverse Effect.

Section 4.11 Further Assurances.

(a) Each Borrower will, and will cause each Subsidiary to, at its own cost and expense, promptly and duly take, execute, acknowledge and deliver all such further acts, documents and assurances as may from time to time be necessary or as Agent or the Required Lenders may from time to time reasonably request in order to carry out the intent and purposes of the Financing Documents and the transactions contemplated thereby, including all such actions to (i) establish, create, preserve, protect and perfect a first priority Lien (subject only to the Affiliated Intercreditor Agreement and to Permitted Liens) in favor of Agent for itself and for the benefit of the Lenders on the Collateral (including Collateral acquired after the Original Closing Date), and (ii) unless Agent shall agree otherwise in writing, cause all Subsidiaries of Borrowers to be jointly and severally obligated with the other Borrowers under all covenants and obligations under this Agreement, including the obligation to repay the Obligations.

(b) Upon receipt of an affidavit (which shall contain customary indemnification provisions in favor of Borrower) of an authorized representative of Agent or a Lender as to the loss, theft, destruction or mutilation of any Note or any other Financing Document which is not of public record, and, in the case of any such mutilation, upon surrender and cancellation of such Note or other applicable Financing Document, Borrowers will issue, in lieu thereof, a replacement Note or other applicable Financing Document, dated the date of such lost, stolen, destroyed or mutilated Note or other Financing Document in the same principal amount thereof and otherwise of like tenor.

(c) Upon the request of Agent, Borrowers shall obtain a landlord's agreement or mortgagee agreement, as applicable, from the lessor of each leased property or mortgagee of owned property with respect to any business location where any portion of the Collateral with an aggregate value in excess of $250,000, or the records relating to such Collateral and/or software and equipment relating to such records or Collateral, is stored or located, which agreement or letter shall be reasonably satisfactory in form and substance to Agent, Borrowers and such landlord. Borrowers shall timely and fully pay and perform its obligations under all leases and other agreements with respect to each leased location where any Collateral, or any records related thereto, is or may be located.

(d) Borrower shall provide Agent with at least ten (10) days (or such shorter period as Agent may accept in its sole discretion) prior written notice of its intention to create (or to the extent permitted under this Agreement, acquire) a new Subsidiary. Upon the formation (or to the extent permitted under this Agreement, acquisition) of a new Subsidiary, Borrowers shall promptly (but in any event within ten (10) Business Days of such formation): (i) pledge, have pledged or cause or have caused to be pledged to Agent pursuant to a pledge agreement in form and substance satisfactory to Agent, all of the outstanding shares of equity interests or other equity interests of such new Subsidiary owned directly or indirectly by any Borrower, along with undated stock or equivalent powers for such certificates, executed in blank; (ii) unless Agent shall agree otherwise in writing, cause the new Subsidiary to take such other actions (including entering into or joining any Security Documents) as are necessary or advisable in the reasonable opinion of Agent in order to grant Agent, acting on behalf of the Lenders, a first priority Lien (subject to the Affiliated Intercreditor Agreement) on all real and personal property of such Subsidiary in existence as of such date and in all after acquired property, which first priority Liens are required to be granted pursuant to this Agreement; (iii) unless Agent shall agree otherwise in writing, cause such new Subsidiary to either (at the election of Agent) become a Borrower hereunder with joint and several liability for all obligations of Borrowers hereunder and under the other Financing Documents pursuant to a joinder agreement or other similar agreement in form and substance satisfactory to Agent or to become a Guarantor of the obligations of Borrowers hereunder and under the other Financing Documents pursuant to a guaranty and suretyship agreement in form and substance satisfactory to Agent; and (iv) cause the new Subsidiary to deliver certified copies of such Subsidiary's certificate or articles of incorporation, together with good standing certificates, by-laws (or other operating agreement or governing documents), resolutions of the Board of Directors or other governing body, approving and authorizing the execution and delivery of the Security Documents, incumbency certificates and to execute and/or deliver such other documents and legal opinions or to take such other actions as may be requested by Agent, in each case, in form and substance satisfactory to Agent.

Section 4.12 Reserved.

Section 4.13 Power of Attorney. Each of the authorized representatives of Agent is hereby irrevocably made, constituted and appointed the true and lawful attorney for Borrowers (without requiring any of them to act as such) with full power of substitution to do the following: (a) after the occurrence and during the continuance of an Event of Default ,endorse the name of Borrowers upon any and all checks, drafts, money orders, and other instruments for the payment of money that are payable to Borrowers and constitute collections on Borrowers' Accounts; (b) if an Event of Default has occurred and is continuing and so long as Agent has provided not less than three (3) Business Days' prior written notice to Borrower to perform the same and Borrower has failed to take such action, execute in the name of Borrowers any schedules, assignments, instruments, documents, and statements that Borrowers are obligated to give Agent under this Agreement; (c) after the occurrence and during the continuance of an Event of Default, take any action Borrowers are required to take under this Agreement; (d) so long as Agent has provided not less than three (3) Business Days' prior written notice to Borrower to perform the same and Borrower has failed to take such action, do such other and further acts and deeds in the name of Borrowers that Agent may deem necessary or desirable to enforce any Account or other Collateral or perfect Agent's security interest or Lien in any Collateral; and (e) after the occurrence and during the continuance of an Event of Default, do such other and further acts and deeds in the name of Borrowers that Agent may deem necessary or desirable to enforce its rights with regard to any Account or other Collateral. This power of attorney shall be irrevocable and coupled with an interest.

Section 4.14 Reserved.

Section 4.15 Schedule Updates. At, or within two (2) Business Days following each Collateral Audit (but in no event more than once per calendar quarter), Borrower shall deliver to Agent updates to the Schedules correcting all information that has become outdated, inaccurate, incomplete or misleading in any material respects; provided, however, (i) with respect to any proposed updates to the Schedules involving Permitted Liens, Permitted Debt or Permitted Investments, Agent will replace the respective Schedule attached hereto with such proposed update only if such updated information is consistent with the definitions of and limitations herein pertaining to Permitted Liens, Permitted Debt or Permitted Investments and (ii) with respect to any proposed updates to such Schedules involving other matters, Agent will replace the applicable portion of such Schedules attached hereto with such proposed update upon Agent's approval thereof.

Section 4.16 Intellectual Property and Licensing.

(f) Together with each Compliance Certificate required to be delivered pursuant to Section 4.1 to the extent (i) Borrower acquires and/or develops any new Registered Intellectual Property, (ii) Borrower enters into or becomes bound by any additional material in-bound license or sublicense agreement, any additional material exclusive out-bound license or sublicense agreement or other material agreement with respect to rights in Intellectual Property (other than over-the-counter software that is commercially available to the public), or (iii) there occurs any other material change in Borrower's Registered Intellectual Property, in-bound licenses or sublicenses or exclusive out-bound licenses or sublicenses from that listed on Schedule 3.19 together with such Compliance Certificate, deliver to Agent an updated Schedule 3.19 reflecting such updated information. With respect to any updates to Schedule 3.19 involving exclusive out-bound licenses or sublicenses, such licenses shall be consistent with the definitions of and limitations herein pertaining to Permitted Licenses.

(g) If Borrower obtains any Registered Intellectual Property (other than copyrights, mask works and related applications, which are addressed below), Borrower shall promptly notify Agent and execute such documents and provide such other information (including, without limitation, copies of applications) and take such other actions as Agent shall request in its good faith business judgment to perfect and maintain a first priority perfected security interest in favor of Agent, for the ratable benefit of Lenders, in such Registered Intellectual Property.

(h) Borrower shall take such steps as Agent requests to obtain the consent of, or waiver by, any person whose consent or waiver is necessary for (x) all licenses or agreements to be deemed "Collateral" and for Agent to have a security interest in it that might otherwise be restricted or prohibited by Law or by the terms of any such license or agreement, whether now existing or entered into in the future, and (y) Agent to have the ability in the event of a liquidation of any Collateral to dispose of such Collateral in accordance with Agent's rights and remedies under this Agreement and the other Financing Documents.

(i) Borrower shall own, or be licensed to use or otherwise have the right to use, all Material Intangible Assets. Borrower shall cause all Registered Intellectual Property to be duly and properly registered, filed or issued in the appropriate office and jurisdictions for such registrations, filings or issuances, except where the failure to do so would not reasonably be expected to result in a Material Adverse Effect. Borrower shall at all times conduct its business without infringement or claim of infringement of any Intellectual Property rights of others. Borrower shall (i) protect, defend and maintain the validity and enforceability of its Material Intangible Assets (ii) promptly advise Agent in writing of material infringements of its Material Intangible Assets, or of a material claim of infringement by Borrower on the Intellectual Property rights of others; and (iii) not allow any of Borrower's Material Intangible Assets to be abandoned, invalidated, forfeited or dedicated to the public or to become unenforceable. Borrower shall not become a party to, nor become bound by, any material license or other agreement with respect to which Borrower is the licensee that prohibits or otherwise restricts Borrower from granting a security interest in Borrower's interest in such license or agreement or other property.

Section 4.17 Regulatory Covenants.

(a) Borrowers shall have, and shall ensure that it and each of its Subsidiaries has, each material Permit and other rights from, and have made all declarations and filings with, all applicable Governmental Authorities, all self-regulatory authorities and all courts and other tribunals necessary to engage in the ownership, management and operation of the business or the assets of any Borrower. Borrower shall ensure that all such Permits are valid and in full force and effect and Borrowers are in material compliance with the terms and conditions of all such Permits in all material respects.

(b) Borrower will maintain in full force and effect, and free from restrictions, probations, conditions or known conflicts which would materially impair the use or operation of Borrowers' business and assets, all material Permits necessary under Healthcare Laws to carry on the business of Borrowers as it is conducted on the Closing Date in all material respects.

(c) In connection with the development, testing, manufacture, marketing or sale of each and any material Product by any Borrower, Borrower shall comply in all material respects with all material Regulatory Required Permits at all times issued by any Governmental Authority, specifically including the FDA, with respect to such development, testing, manufacture, marketing or sales of such Product by Borrower as such activities are at any such time being conducted by Borrower.

(d) Borrower will timely file or caused to be timely filed (after giving effect to any extension duly obtained), all material notifications, reports, submissions, Permit renewals and reports required by Healthcare Laws (which reports will be materially accurate and complete in all respects and not misleading in any respect and shall not remain open or unsettled).

(j) If, after the Closing Date, Borrower determines to manufacture, sell, develop, test or market any new material Product or obtains any new material Regulatory Required Permit, Borrower shall deliver prior written notice to Agent of such determination (which shall include a brief description of such Product or Regulatory Required Permit) and, at such time as the Schedules are required to be updated pursuant to Section 4.15, shall provide an updated Schedule 4.17 (and copies of such Permits as Agent may request) reflecting updates related to such determination.

Section 4.18 Aziyo Med. Since the date of its formation and at all times on and after the date thereof, Aziyo Med has complied with and shall at all times after the date hereof comply with the following requirements:

(k) Aziyo Med does not have and will not have any assets other than (i) the assets acquired by it and its rights under the Purchase Agreement, including all Accounts generated through the sale of Products acquired under such Purchase Agreement and payments made to Aziyo Med in respect thereof (the "**Aziyo Med Purchased Assets**"), (ii) its rights under a Ligand Royalty Agreement and (iii) de minimis cash necessary to pay fees and costs associated with maintaining its legal existence and good standing in its respective jurisdiction of formation, each in accordance with Section 4.2 of this Agreement;

(l) Aziyo Med is not engaged and will not engage in any business unrelated to (i) the performance of its obligations under the Purchase Agreement, (ii) its ownership and operation of the Aziyo Med Purchased Assets, and (iii) the performance of its obligations under the Ligand Royalty Agreement, and (iv) the performance of its obligations under the Financing Documents and the Affiliated Financing Documents;

(m) Aziyo Med has not entered into and will not enter into any contract or agreement with any Affiliate of such entity, any constituent party of such entity or any Affiliate of any constituent party, except upon terms and conditions, that have been, are and shall be intrinsically fair and substantially similar to those that would be available on an arms-length basis with third parties other than any such party;

(n) Aziyo Med has not incurred and will not incur any Debt or Contingent Obligations other than the Obligations incurred under the Financing Documents, the Affiliated Obligations and its obligations under the Ligand Royalty Agreement;

(o) Aziyo Med has not made and will not make any loans or advances to any third party (including any affiliate or constituent party or any affiliate of any constituent party) and has not and shall not acquire obligations or securities of its Affiliates or any constituent party;

(p) Aziyo Med has done or caused to be done and will do all things necessary to observe organizational formalities and preserve its existence and will not, nor will such entity permit any constituent party to, amend, modify or otherwise change the organizational documents of such entity or such constituent party without the prior written consent of Agent;

(q) Aziyo Med has been and will be, and at all times has held itself out and will hold itself out to the public as, a legal entity separate and distinct from any other entity (including any Affiliate of such entity, any constituent party of such entity or any Affiliate of any constituent party), shall correct any known misunderstanding regarding its status as a separate entity, shall conduct business in its own name, shall not identify itself or any of its Affiliates as a division or part of the other;

(r) Aziyo Med has not engaged, sought or consented to and will not engage in, seek or consent to any dissolution, winding up, liquidation, consolidation, merger, sale of all or substantially all of its assets, transfer of its equity interests or amendment of its operating documents with respect to the matters set forth in this Section 4.18;

(s) except as expressly provided in Section 2.11 with respect to payments made from the Aziyo Med Controlled Account to the Lockbox Account, Aziyo Med has not commingled and will not commingle its funds and other assets with those of any Affiliate or constituent party, or any Affiliate of any constituent party, or any other person;

(t) Aziyo Med will not own or maintain any Deposit Accounts or Securities Accounts other than the Aziyo Med Controlled Account, the Permitted Ligand Account, the Aziyo Med Operating Account, and any other Deposit Account or Securities Account that has been opened with the consent of Agent; *provided, however,* that Aziyo Med shall not hold funds in the Aziyo Med Operating Account in excess of the amount necessary to fund its current operating expenses (taking into account their revenue from other sources) incurred in connection with its business as permitted to be undertaken pursuant to this Section 4.18.

(u) Aziyo Med has and will maintain its assets in such a manner that it will not be costly or difficult to segregate, ascertain or identify its individual assets from those of any Affiliate or constituent party, or any Affiliate of any constituent party, or any other Person and has held and will hold its assets in its own name;

(v) Aziyo Med has not and will not assume or guarantee or become obligated for the debts of any other Person or hold out its credit as being available to satisfy the obligations of any other Person except as permitted pursuant to this Agreement;

(w) Aziyo Med has maintained and will maintain its financial statements, accounting records and other entity documents separate from any other Person and has not permitted and will not permit its assets to be listed as assets on the financial statement of any other entity except as required by GAAP;

(x) Aziyo Med has not pledged and will not pledge its assets for the benefit of any other Person, except as permitted pursuant to this Agreement; and

(y) Aziyo Med has not identified and will not identify its partners, members or shareholders, or any Affiliate of any of them, as a division or part of it and has not identified itself and shall not identify itself as a division of any other Person.

ARTICLE 5 - NEGATIVE COVENANTS

Each Borrower agrees that, so long as any Credit Exposure exists:

Section 5.1 Debt; Contingent Obligations. No Borrower will, or will permit any Subsidiary to, directly or indirectly, create, incur, assume, guarantee or otherwise become or remain directly or indirectly liable with respect to, any Debt, except for Permitted Debt. No Borrower will, or will permit any Subsidiary to, directly or indirectly, create, assume, incur or suffer to exist any Contingent Obligations, except for Permitted Contingent Obligations.

Section 5.2 Liens. No Borrower will, or will permit any Subsidiary to, directly or indirectly, create, assume or suffer to exist any Lien on any asset now owned or hereafter acquired by it, except for Permitted Liens.

Section 5.3 Distributions. No Borrower will, or will permit any Subsidiary to, directly or indirectly, declare, order, pay, make or set apart any sum for any Distribution, except for Permitted Distributions.

Section 5.4 Restrictive Agreements. No Borrower will, or will permit any Subsidiary to, directly or indirectly (a) enter into or assume any agreement (other than the Financing Documents, the Affiliated Financing Documents, and any agreements for purchase money debt permitted under clause (c) of the definition of Permitted Debt) prohibiting the creation or assumption of any Lien upon its properties or assets, whether now owned or hereafter acquired, or (b) create or otherwise cause or suffer to exist or become effective any consensual encumbrance or restriction of any kind (except as provided by the Financing Documents and the Affiliated Financing Documents) on the ability of any Subsidiary to: (i) pay or make Distributions to any Borrower or any Subsidiary; (ii) pay any Debt owed to any Borrower or any Subsidiary; (iii) make loans or advances to any Borrower or any Subsidiary; or (iv) transfer any of its property or assets to any Borrower or any Subsidiary; *provided* that (1) the foregoing shall not apply to restrictions or conditions imposed by Law, by this Agreement or any other Financing Document, (2) restrictions or conditions imposed by any agreement relating to secured Debt permitted by this Agreement if such restrictions and conditions apply only to the property or assets securing such Debt, (3) customary provisions in leases and subleases restricting the assignment thereof or the assets governed thereby and (4) any agreement in connection with an Asset Disposition permitted by Section 5.6 pending consummation of such Asset Disposition solely to the extent it relates only to property being sold in such Permitted Asset Disposition.

Section 5.5 Payments and Modifications of Subordinated Debt. No Borrower will, or will permit any Subsidiary to, directly or indirectly:

(z) declare, pay, make or set aside any amount for payment in respect of Subordinated Debt, except for payments made in full compliance with and expressly permitted under any applicable Subordination Agreement;

(aa) declare, pay, make or set aside any amount for payment in respect of Ligand Royalty Payments or otherwise pursuant to the Ligand Royalty Agreement or the Ligand Parent Guaranty except, in each case, in accordance with the terms of the Ligand Royalty Agreement and the Ligand Intercreditor Agreement;

(bb) amend or otherwise modify the terms of any Subordinated Debt, except for amendments or modifications made in full compliance with any applicable Subordination Agreement;

(cc) declare, pay, make or set aside any amount for payment in respect of any Debt hereinafter incurred that, by its terms, or by separate agreement, is subordinated to the Obligations (including Subordinated Debt), except for payments made in full compliance with and expressly permitted under the subordination provisions applicable thereto and any applicable Subordination Agreement;

(dd) prior to making any payment to the holders of Subordinated Debt that are permitted under the Debt Subordination Agreement (Donor Network West) and solely to the extent requested by Agent, Agent shall have received a certificate from a Responsible Officer of Borrower setting for the amount of such payments and certifying that the conditions payment in Section 5 of the Debt Subordination Agreement (Donor Network West), as applicable, have been satisfied and providing such detail as to the financial calculations set forth therein as Agent may reasonable request; or

(ee) unless provided otherwise in any applicable Subordination Agreement, amend or otherwise modify the terms of any such Debt if the effect of such amendment or modification is to (i) increase the interest rate or fees on, or change the manner or timing of payment of, such Debt, (ii) accelerate or shorten the dates upon which payments of principal or interest are due on, or the principal amount of, such Debt, (iii) change in a manner adverse to any Credit Party or Agent any event of default or add or make more restrictive any covenant with respect to such Debt, (iv) change the prepayment provisions of such Debt or any of the defined terms related thereto, (v) change the subordination provisions thereof (or the subordination terms of any guaranty thereof), or (vi) change or amend any other term if such change or amendment would materially increase the obligations of the obligor or confer additional material rights on the holder of such Debt in a manner adverse to Borrowers, any Subsidiaries, Agent or Lenders. Borrowers shall, prior to entering into any such amendment or modification, deliver to Agent reasonably in advance of the execution thereof, any final or execution form copy thereof.

Section 5.6 Consolidations, Mergers and Sales of Assets; Change in Control.

(a) No Borrower will, or will permit any Subsidiary to, directly or indirectly (i) consolidate or merge or amalgamate with or into any other Person other than (A) consolidations or mergers among Borrowers (other than Aziyo Med), (B) consolidations or mergers among a Guarantor and a Borrower (other than Aziyo Med) so long as the Borrower is the surviving entity, (C) consolidations or mergers among Guarantors, and (D) consolidations or mergers among Subsidiaries that are not Credit Parties, or (ii) consummate any Asset Dispositions other than Permitted Asset Dispositions.

(b) Prior to the termination of the Ligand Royalty Agreement and the Ligand Parent Guaranty, Aziyo Med shall not transfer any of its assets to Aziyo except for cash and cash equivalents (i) constituting Permitted Distributions, (ii) that are permitted or required to be transferred by Aziyo Med to Aziyo pursuant to Section 2.11, or (iii) constituting Excluded Costs (as such term is defined in the Ligand Royalty Agreement).

(c) No Borrower will suffer or permit to occur any Change in Control with respect to itself, any Subsidiary or any Guarantor.

Section 5.7 Purchase of Assets, Investments. No Borrower will, or will permit any Subsidiary to, directly or indirectly:

(ff) (i) make any Acquisition or enter into any agreement to make an Acquisition other than a Permitted Investment or (ii) acquire or own or enter into any agreement to acquire or own any other Investment other than Permitted Investments,

(gg) without limiting clause (a), otherwise acquire or enter into any agreement to acquire any assets other than (i) in the Ordinary Course of Business, (ii) constituting capital expenditures, and (iii) constituting replacement assets purchased with proceeds of property insurance policies, awards or other compensation with respect to any eminent domain, condemnation or similar proceeding and for which the requirements set forth in Section 2.2(a)(ii)(B) have been satisfied; or

(hh) engage or enter into any agreement to engage in any joint venture or partnership with any other Person.

Section 5.8 Transactions with Affiliates. Except (a) as otherwise disclosed on Schedule 5.8, (b) for Permitted Distributions, and (c) for transactions that are disclosed to Agent in advance of being entered into, are not prohibited by Section 4.18 and which contain terms that are no less favorable to the applicable Borrower or any Subsidiary, as the case may be, than those which might be obtained from a third party not an Affiliate of any Credit Party, no Borrower will, or will permit any Subsidiary to, directly or indirectly, enter into or permit to exist any transaction (including the purchase, sale, lease or exchange of any property or the rendering of any service) with any Affiliate of any Borrower.

Section 5.9 Modification of Organizational Documents. No Borrower will, or will permit any Subsidiary to, directly or indirectly, amend or otherwise modify any Organizational Documents of such Person, except for Permitted Modifications.

Section 5.10 Modification of Certain Agreements. No Borrower will, or will permit any Subsidiary to, directly or indirectly, (i) amend or otherwise modify any Material Contract, which amendment or modification in any case: (a) is contrary to the terms of this Agreement or any other Financing Document or (b) could reasonably be expected to be adverse to the rights, interests or privileges of Agent or the Lenders or their ability to enforce the same; or (ii) without the prior written consent of Agent, amend or otherwise modify any Affiliated Financing Document. Each Borrower shall, prior to entering into any amendment or other modification of any of the foregoing documents, deliver to Agent reasonably in advance of the execution thereof, any final or execution form copy of amendments or other modifications to such documents, and such Borrower agrees not to take, nor permit any of its Subsidiaries to take, any such action with respect to any such documents without obtaining such approval from Agent.

Section 5.11 Conduct of Business. No Borrower will, or will permit any Subsidiary to, directly or indirectly, engage in any line of business other than those businesses engaged in on the Closing Date and businesses reasonably related thereto. No Borrower will, or will permit any Subsidiary to, other than in the Ordinary Course of Business, change its normal billing payment and reimbursement policies and procedures with respect to its Accounts (including, without limitation, the amount and timing of finance charges, fees and write-offs).

Section 5.12 Lease Payments. No Borrower will, or will permit any Subsidiary to, directly or indirectly, incur or assume (whether pursuant to a Guarantee or otherwise) any liability for rental payments except in the Ordinary Course of Business.

Section 5.13 Limitation on Sale and Leaseback Transactions. No Borrower will, or will permit any Subsidiary to, directly or indirectly, enter into any arrangement with any Person whereby, in a substantially contemporaneous transaction, any Borrower or any Subsidiaries sells or transfers all or substantially all of its right, title and interest in an asset and, in connection therewith, acquires or leases back the right to use such asset.

Section 5.14 Deposit Accounts and Securities Accounts; Payroll and Benefits Accounts.

(a) No Borrower will, or will permit any Subsidiary to, directly or indirectly, establish any new Deposit Account or Securities Account without prior written notice to Agent, and unless Agent, such Borrower or such Subsidiary and the bank, financial institution or securities intermediary at which the account is to be opened enter into a Deposit Account Control Agreement or Securities Account Control Agreement prior to or concurrently with the establishment of such Deposit Account or Securities Account.

(b) Borrowers represent and warrant that Schedule 5.14 lists all of the Deposit Accounts and Securities Accounts of each Borrower. The provisions of this Section requiring Deposit Account Control Agreements shall not apply to (i) Deposit Accounts exclusively used for payroll, payroll taxes and other employee wage and benefit payments to or for the benefit of Borrowers' employees and identified to Agent by Borrowers as such (each, a "**Payroll Account**"); *provided*, *however*, that the aggregate balance in such accounts does not exceed the amount necessary to make the immediately succeeding payroll, payroll tax or benefit payment (or such minimum amount as may be required by any requirement of Law with respect to such accounts) and (ii) the Permitted Ligand Account(the Deposit Accounts referred to in clauses (i)-(ii), collectively, the "**Excluded Accounts**").

(c) At all times that any Obligations or Affiliated Obligations remain outstanding following the date that is thirty (30) days following the Closing Date, Borrower shall maintain one or more separate Payroll Accounts to hold any and all amounts to be used for payroll, payroll taxes and other employee wage and benefit payments, and shall not commingle any monies allocated for such purposes with funds in any other Deposit Account.

Section 5.15 Compliance with Anti-Terrorism Laws. Agent hereby notifies Borrowers that pursuant to the requirements of Anti-Terrorism Laws, and Agent's policies and practices, Agent is required to obtain, verify and record certain information and documentation that identifies Borrowers and its principals, which information includes the name and address of each Borrower and its principals and such other information that will allow Agent to identify such party in accordance with Anti-Terrorism Laws. No Borrower will, or will permit any Subsidiary to, directly or indirectly, knowingly enter into any Material Contracts with any Blocked Person or any Person listed on the OFAC Lists. Each Borrower shall immediately notify Agent if such Borrower has knowledge that any Borrower, any additional Credit Party or any of their respective Affiliates (except for any Person that is an Affiliate of a Credit Party solely due to the fact that it is HighCape Portfolio Company) or agents acting or benefiting in any capacity in connection with the transactions contemplated by this Agreement is or becomes a Blocked Person or (a) is convicted on, (b) pleads nolo contendere to, (c) is indicted on, or (d) is arraigned and held over on charges involving money laundering or predicate crimes to money laundering. No Borrower will, or will permit any Subsidiary to, directly or indirectly, (i) conduct any business or engage in any transaction or dealing with any Blocked Person, including, without limitation, the making or receiving of any contribution of funds, goods or services to or for the benefit of any Blocked Person, (ii) deal in, or otherwise engage in any transaction relating to, any property or interests in property blocked pursuant to Executive Order No. 13224, any similar executive order or other Anti-Terrorism Law, or (iii) engage in or conspire to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in Executive Order No. 13224 or other Anti-Terrorism Law.

Section 5.16 Change in Accounting. No Borrower shall, and no Borrower shall suffer or permit any of its Subsidiaries to, (i) make any significant change in accounting treatment or reporting practices, except as required by GAAP or as otherwise consented to be Agent (in its reasonable discretion) or (ii) change the fiscal year or method for determining fiscal quarters of any Credit Party or of any consolidated Subsidiary of any Credit Party.

Section 5.17 Management Fees. No Borrower shall, nor shall it permit any Subsidiary to, directly or indirectly, pay or become obligated to pay any management, consulting, professional or similar advisory fees or other amounts to or for the account of any holder of equity interests in such Borrower of Subsidiary or any or any Affiliate thereof, except the payment of management fees to HighCape pursuant to the Management Agreement solely to the extent constituting a Permitted Distribution.

ARTICLE 6 - FINANCIAL COVENANTS

Section 6.1 Minimum Net Product Revenue. Borrower shall not permit its consolidated Net Product Revenue for any Defined Period, as tested monthly, to be less than the minimum amount set forth on Schedule 6.1 for such Defined Period. A breach of a financial covenant contained in this Section 6.1 shall be deemed to have occurred as of any date of determination by Agent or as of the last day of any specified Defined Period, regardless of when the financial statements reflecting such breach are delivered to Agent.

Section 6.2 Evidence of Compliance. Borrowers shall furnish to Agent, as required by Section 4.1, a Compliance Certificate as evidence of (x) the monthly cash and cash equivalents of Borrowers and Borrowers and their Consolidated Subsidiaries, (y) as applicable, of Borrowers' compliance with the covenants in this Article, and (z) that no Event of Default specified in this Article has occurred. The Compliance Certificate shall include, without limitation, (a) a statement and report, in form and substance reasonably satisfactory to Agent, detailing Borrowers' calculations, and (b) if requested by Agent, back-up documentation (including, without limitation, bank statements, invoices, receipts and other evidence of costs incurred during such quarter as Agent shall reasonably require) evidencing the propriety of the calculations.

ARTICLE 7 - CONDITIONS

Section 7.1 Conditions to Closing. The obligation of each Lender to make the initial Loans on the Closing Date shall be subject to the receipt by Agent of each agreement, document and instrument set forth on the closing checklist prepared by Agent or its counsel, each in form and substance satisfactory to Agent, and such other closing deliverables reasonably requested by Agent and Lenders, and to the satisfaction of the following conditions precedent, each to the satisfaction of Agent and Lenders and their respective counsel in their sole discretion:

(a) the receipt by Agent of executed counterparts of this Agreement, the other Financing Documents and the Affiliated Financing Documents;

(b) the payment of all fees, expenses and other amounts due and payable under each Financing Document;

(c) since December 31, 2018, the absence of any material adverse change in any aspect of the business, operations, properties, prospects or condition (financial or otherwise) of any Credit Party or any Seller, or any event or condition which could reasonably be expected to result in such a material adverse change; and

Each Lender, by delivering its signature page to this Agreement, shall be deemed to have acknowledged receipt of, and consented to and approved, each Financing Document, each additional Operative Document and each other document, agreement and/or instrument required to be approved by Agent, Required Lenders or Lenders, as applicable, on the Closing Date.

Section 7.2 Conditions to Each Loan. The obligation of the Lenders to make a Loan or an advance in respect of any Loan, is subject to the satisfaction of the following additional conditions:

(a) receipt by Agent of a Notice of Borrowing;

(b) the fact that, immediately before and after such advance, no Default or Event of Default shall have occurred and be continuing;

(c) for Loans made on the Closing Date, the fact that the representations and warranties of each Credit Party contained in the Financing Documents shall be true, correct and complete on and as of the Closing Date, except to the extent that any such representation or warranty relates to a specific date in which case such representation or warranty shall be true and correct as of such earlier date;

(d) for Loans made after the Closing Date, the fact that the representations and warranties of each Credit Party contained in the Financing Documents shall be true, correct and complete in all material respects on and as of the date of such borrowing or issuance, except to the extent that any such representation or warranty relates to a specific date in which case such representation or warranty shall be true and correct in all material respects as of such earlier date; provided, however, in each case, such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof;

(e) the fact that no adverse change in the condition (financial or otherwise), properties, business or operations of Borrowers or any other Credit Party shall have occurred and be continuing with respect to Borrowers or any Credit Party since the date of this Agreement; and

(f) in the case of any borrowing of the Term Loan Tranche 4, Agent has received a duly executed Notice of Borrowing on the day of such proposed borrowing;

(g) in the case of any borrowing of the Term Loan Tranche 4, the Term Loan Tranche 4 Activation Date shall have occurred, and Agent shall have received such document, agreement and/or instrument, opinions and certificates as it may have reasonably requested prior to funding;

(h) in the case of any borrowing of the Term Loan Tranche 5, Agent has received a duly executed Notice of Borrowing no later than 12:00 P.M. (Eastern time) on the day prior to such proposed borrowing; and

(i) in the case of any borrowing of the Term Loan Tranche 5, the Term Loan Tranche 5 Activation Date shall have occurred, and Agent shall have received such documents, agreements and/or instruments, opinions and certificates as it may have reasonably requested prior to funding.

Each giving of a Notice of Borrowing hereunder and each acceptance by any Borrower of the proceeds of any Loan made hereunder shall be deemed to be (y) a representation and warranty by each Borrower on the date of such notice or acceptance as to the facts specified in this Section, and (z) a restatement by each Borrower that each and every one of the representations made by it in any of the Financing Documents is true and correct as of such date (except to the extent that such representations and warranties expressly relate solely to an earlier date).

Section 7.3 Searches. Before the Closing Date, and thereafter (as and when determined by Agent in its discretion), Agent shall have the right to perform, all at Borrowers' expense, the searches described in clauses (a), (b), and (c) below against Borrowers and any other Credit Party, the results of which are to be consistent with Borrowers' representations and warranties under this Agreement and the satisfactory results of which shall be a condition precedent to all advances of Loan proceeds: (a) UCC searches with the Secretary of State of the jurisdiction in which the applicable Person is organized; (b) judgment, pending litigation, federal tax lien, personal property tax lien, and corporate and partnership tax lien searches, in each jurisdiction searched under clause (a) above; and (c) searches of applicable corporate, limited liability company, partnership and related records to confirm the continued existence, organization and good standing of the applicable Person and the exact legal name under which such Person is organized.

Section 7.4 Post-Closing Requirements. Borrowers shall complete each of the post-closing obligations and/or provide to Agent each of the documents, instruments, agreements and information listed on Schedule 7.4 attached hereto on or before the date set forth for each such item thereon, each of which shall be completed or provided in form and substance satisfactory to Agent.

ARTICLE 8 – RESERVED

ARTICLE 9 - SECURITY AGREEMENT

Section 9.1 Generally. As security for the payment and performance of the Obligations, and for the payment and performance of all obligations under the Affiliated Financing Documents (if any) and without limiting any other grant of a Lien and security interest in any Security Document, Borrowers hereby assign and grant to Agent, for the benefit of itself and Lenders, and, subject only to the Affiliated Intercreditor Agreement and Permitted Liens (if applicable), a continuing first priority Lien on and security interest in, upon, and to the personal property set forth on Schedule 9.1 attached hereto and made a part hereof.

Section 9.2 Representations and Warranties and Covenants Relating to Collateral.

(a) The security interest granted pursuant to this Agreement constitutes a valid and, to the extent such security interest is required to be perfected by this Agreement and any other Financing Document, continuing perfected security interest in favor of Agent in all Collateral subject, for the following Collateral, to the occurrence of the following: (i) in the case of all Collateral in which a security interest may be perfected by filing a financing statement under the UCC, the completion of the filings and other actions specified on Schedule 9.2(b) (which, in the case of all filings and other documents referred to on such schedule, have been delivered to Agent in completed and duly authorized form), (ii) with respect to any Deposit Account, the execution of Deposit Account Control Agreements, (iii) in the case of letter-of-credit rights that are not supporting obligations of Collateral, the execution of a contractual obligation granting control to Agent over such letter-of-credit rights, (iv) in the case of electronic chattel paper, the completion of all steps necessary to grant control to Agent over such electronic chattel paper, (v) in the case of all certificated stock, debt instruments and investment property, the delivery thereof to Agent of such certificated stock, debt instruments and investment property consisting of instruments and certificates, in each case properly endorsed for transfer to Agent or in blank, (vi) in the case of all investment property not in certificated form, the execution of control agreements with respect to such investment property and (vii) in the case of all other instruments and tangible chattel paper that are not certificated stock, debt instructions or investment property, the delivery thereof to Agent of such instruments and tangible chattel paper. Such security interest shall be prior to all other Liens on the Collateral except for Permitted Liens. Except to the extent not required pursuant to the terms of this Agreement, all actions by each Credit Party necessary or desirable to protect and perfect the Lien granted hereunder on the Collateral have been duly taken.

(b) Schedule 9.2(b) sets forth (i) each chief executive office and principal place of business of each Borrower and each of their respective Subsidiaries, and (ii) all of the addresses (including all warehouses) at which any of the Collateral is located and/or books and records of Borrowers regarding any Collateral or any of Borrower's assets, liabilities, business operations or financial condition are kept, which such Schedule 9.2(b) indicates in each case which Borrower(s) have Collateral and/or books located at such address, and, in the case of any such address not owned by one or more of the Borrowers(s), indicates the nature of such location (e.g., leased business location operated by Borrower(s), third party warehouse, consignment location, processor location, etc.) and the name and address of the third party owning and/or operating such location.

(c) Without limiting the generality of Section 3.2, except as indicated on Schedule 3.19 with respect to any rights of any Borrower as a licensee under any license of Intellectual Property owned by another Person, and except for the filing of financing statements under the UCC, no authorization, approval or other action by, and no notice to or filing with, any Governmental Authority or consent of any other Person is required for (i) the grant by each Borrower to Agent of the security interests and Liens in the Collateral provided for under this Agreement and the other Security Documents (if any), or (ii) the exercise by Agent of its rights and remedies with respect to the Collateral provided for under this Agreement and the other Security Documents or under any applicable Law, including the UCC and neither any such grant of Liens in favor of Agent or exercise of rights by Agent shall violate or cause a default under any agreement between any Borrower and any other Person relating to any such collateral, including any license to which a Borrower is a party, whether as licensor or licensee, with respect to any Intellectual Property, whether owned by such Borrower or any other Person.

(d) As of the Closing Date, except as set forth on Schedule 9.2(d), no Borrower has any ownership interest in any Chattel Paper (as defined in Article 9 of the UCC), letter of credit rights, commercial tort claims, Instruments, documents or investment property (other than equity interests in any Subsidiaries of such Borrower disclosed on Schedule 3.4), and Borrowers shall give notice to Agent promptly (but in any event not later than the delivery by Borrowers of the next Compliance Certificate required pursuant to Section 4.1 above) upon the acquisition by any Borrower of any such Chattel Paper, letter of credit rights, commercial tort claims, Instruments, documents, investment property. No Person other than Agent or (if applicable) any Lender has "control" (as defined in Article 9 of the UCC) over any Deposit Account, investment property (including Securities Accounts and commodities account), letter of credit rights or electronic chattel paper in which any Borrower has any interest (except for such control arising by operation of law in favor of any bank or securities intermediary or commodities intermediary with whom any Deposit Account, Securities Account or commodities account of Borrowers is maintained).

(e) Borrowers shall not, and shall not permit any Credit Party to, take any of the following actions or make any of the following changes unless Borrowers have given at least five (5) Business Days' prior written notice to Agent of Borrowers' intention to take any such action (which such written notice shall include an updated version of any Schedule impacted by such change) and have executed any and all documents, instruments and agreements and taken any other actions which Agent may request after receiving such written notice in order to protect and preserve the Liens, rights and remedies of Agent with respect to the Collateral: (i) change the legal name or organizational identification number of any Borrower as it appears in official filings in the jurisdiction of its organization, (ii) change the jurisdiction of incorporation or formation of any Borrower or Credit Party or allow any Borrower or Credit Party to designate any jurisdiction as an additional jurisdiction of incorporation for such Borrower or Credit Party, or change the type of entity that it is, or (iii) change its chief executive office, principal place of business, or the location of its books and records or move any Collateral to or place any Collateral on any location that is not then listed on the Schedules and/or establish any business location at any location that is not then listed on the Schedules.

(f) Borrowers shall not adjust, settle or compromise the amount or payment of any Account, or release wholly or partly any Account Debtor, or allow any credit or discount thereon (other than adjustments, settlements, compromises, credits and discounts in the Ordinary Course of Business and made while no Default exists) without the prior written consent of Agent. Without limiting the generality of this Agreement or any other provisions of any of the Financing Documents relating to the rights of Agent after the occurrence and during the continuance of an Event of Default, Agent shall have the right at any time after the occurrence and during the continuance of an Event of Default to: (i) exercise the rights of Borrowers with respect to the obligation of any Account Debtor to make payment or otherwise render performance to Borrowers and with respect to any property that secures the obligations of any Account Debtor or any other Person obligated on the Collateral, and (ii) adjust, settle or compromise the amount or payment of such Accounts.

(g) Without limiting the generality of Sections 9.2(c) and 9.2(e):

(i) Borrowers shall deliver to Agent all tangible Chattel Paper and all Instruments and documents owned by any Borrower and constituting part of the Collateral duly endorsed and accompanied by duly executed instruments of transfer or assignment, all in form and substance satisfactory to Agent. Borrowers shall provide Agent with "control" (as defined in Article 9 of the UCC) of all electronic Chattel Paper owned by any Borrower and constituting part of the Collateral by having Agent identified as the assignee on the records pertaining to the single authoritative copy thereof and otherwise complying with the applicable elements of control set forth in the UCC. Borrowers also shall deliver to Agent all security agreements securing any such Chattel Paper and securing any such Instruments. Borrowers will mark conspicuously all such Chattel Paper and all such Instruments and documents with a legend, in form and substance satisfactory to Agent, indicating that such Chattel Paper and such instruments and documents are subject to the security interests and Liens in favor of Agent created pursuant to this Agreement and the Security Documents. Borrowers shall comply with all the provisions of Section 5.14 with respect to the Deposit Accounts and Securities Accounts of Borrowers.

(ii) Borrowers shall deliver to Agent all letters of credit on which any Borrower is the beneficiary and which give rise to letter of credit rights owned by such Borrower which constitute part of the Collateral in each case duly endorsed and accompanied by duly executed instruments of transfer or assignment, all in form and substance satisfactory to Agent. Borrowers shall take any and all actions as may be necessary or desirable, or that Agent may request, from time to time, to cause Agent to obtain exclusive "control" (as defined in Article 9 of the UCC) of any such letter of credit rights in a manner acceptable to Agent.

(iii) Borrowers shall promptly advise Agent upon any Borrower becoming aware that it has any interests in any commercial tort claim that constitutes part of the Collateral, which such notice shall include descriptions of the events and circumstances giving rise to such commercial tort claim and the dates such events and circumstances occurred, the potential defendants with respect such commercial tort claim and any court proceedings that have been instituted with respect to such commercial tort claims, and Borrowers shall, with respect to any such commercial tort claim, execute and deliver to Agent such documents as Agent shall request to perfect, preserve or protect the Liens, rights and remedies of Agent with respect to any such commercial tort claim.

(iv) Except for Accounts and Inventory in an aggregate amount of $25,000, no Accounts or Inventory or other Collateral and no books and records and/or software and equipment of the Borrowers regarding any of the Collateral or any of the Borrower's assets, liabilities, business operations or financial condition shall at any time be located at any leased location or in the possession or control of any warehouse, consignee, bailee or any of Borrowers' agents or processors, without prior written notice to Agent and the receipt by Agent, of warehouse receipts, consignment agreements, landlord waivers, or bailee waivers (as applicable) satisfactory to Agent prior to the commencement of such lease or of such possession or control (as applicable). Borrower has notified Agent that Collateral and books and records are currently located at the locations set forth on Schedule 9.2(b). Borrowers shall, upon the request of Agent, notify any such landlord, warehouse, consignee, bailee, agent or processor of the security interests and Liens in favor of Agent created pursuant to this Agreement and the Security Documents, instruct such Person to hold all such Collateral for Agent's account subject to Agent's instructions and shall obtain an acknowledgement from such Person that such Person holds the Collateral for Agent's benefit.

(v) Borrowers shall cause all equipment and other tangible Personal Property other than Inventory to be maintained and preserved in the same condition, repair and in working order as when new, ordinary wear and tear excepted, and shall promptly make or cause to be made all repairs, replacements and other improvements in connection therewith that are necessary or desirable to such end. Upon request of Agent, Borrowers shall promptly deliver to Agent any and all certificates of title, applications for title or similar evidence of ownership of all such tangible Personal Property and shall cause Agent to be named as lienholder on any such certificate of title or other evidence of ownership. Borrowers shall not permit any such tangible Personal Property to become fixtures to real estate unless such real estate is subject to a Lien in favor of Agent.

(vi) Each Borrower hereby authorizes Agent to file without the signature of such Borrower one or more UCC financing statements relating to liens on personal property relating to all or any part of the Collateral, which financing statements may list Agent as the "secured party" and such Borrower as the "debtor" and which describe and indicate the collateral covered thereby as all or any part of the Collateral under the Financing Documents (including an indication of the collateral covered by any such financing statement as "all assets" of such Borrower now owned or hereafter acquired), in such jurisdictions as Agent from time to time determines are appropriate, and to file without the signature of such Borrower any continuations of or corrective amendments to any such financing statements, in any such case in order for Agent to perfect, preserve or protect the Liens, rights and remedies of Agent with respect to the Collateral. Each Borrower also ratifies its authorization for Agent to have filed in any jurisdiction any initial financing statements or amendments thereto if filed prior to the date hereof.

(vii) As of the Closing Date, no Borrower holds, and after the Closing Date Borrowers shall promptly notify Agent in writing upon creation or acquisition by any Borrower of, any Collateral which constitutes a claim against any Governmental Authority, including, without limitation, the federal government of the United States or any instrumentality or agency thereof, the assignment of which claim is restricted by any applicable Law, including, without limitation, the federal Assignment of Claims Act and any other comparable Law. Upon the request of Agent, Borrowers shall take such steps as may be necessary or desirable, or that Agent may request, to comply with any such applicable Law.

(viii) Borrowers shall furnish to Agent from time to time any statements and schedules further identifying or describing the Collateral and any other information, reports or evidence concerning the Collateral as Agent may reasonably request from time to time.

(h) Any obligation of any Credit Party in this Agreement that requires (or any representation or warranty hereunder to the extent that it would have the effect of requiring) delivery of Collateral (including any endorsements related thereto) to, or the possession of Collateral with, Agent shall be deemed complied with and satisfied (or, in the case of any representation or warranty hereunder, shall be deemed to be true) if such delivery of Collateral is made to, or such possession of Collateral is with, the Affiliated Financing Agent.

ARTICLE 10 - EVENTS OF DEFAULT

Section 10.1 Events of Default. For purposes of the Financing Documents, the occurrence of any of the following conditions and/or events, whether voluntary or involuntary, by operation of law or otherwise, shall constitute an "**Event of Default**":

(a) (i) any Credit Party shall fail to pay when due any principal, interest, premium or fee under any Financing Document or any other amount payable under any Financing Document, or (ii) there shall occur any default in the performance of or compliance with any of the following sections of this Agreement: Section 2.11, Section 4.1, Section 4.2(b), Section 4.4(c), Section 4.6, 4.9, 4.16, 4.17, 4.18, Article 5, Article 6 or Section 7.4;

(b) any Credit Party defaults in the performance of or compliance with any term contained in this Agreement or in any other Financing Document (other than occurrences described in other provisions of this Section 10.1 for which a different grace or cure period is specified or for which no grace or cure period is specified and thereby constitute immediate Events of Default) and such default is not remedied by the Credit Party or waived by Agent within fifteen (15) days after the earlier of (i) receipt by Borrower Representative of notice from Agent or Required Lenders of such default, or (ii) actual knowledge of any Borrower or any other Credit Party of such default;

(c) any representation, warranty, certification or statement made by any Credit Party or any other Person in any Financing Document or in any certificate, financial statement or other document delivered pursuant to any Financing Document is incorrect in any respect (or in any material respect if such representation, warranty, certification or statement is not by its terms already qualified as to materiality) when made (or deemed made);

(d) (i) failure of any Credit Party to pay when due or within any applicable grace period any principal, interest or other amount on Debt (other than the Loans), or the occurrence of any breach, default, condition or event with respect to any Debt (other than the Loans), if the effect of such failure or occurrence is to cause or to permit the holder or holders of any such Debt, or to cause, Debt or other liabilities having an individual principal amount in excess of $250,000 or having an aggregate principal amount in excess of $250,000 to become or be declared due prior to its stated maturity, or (ii) the occurrence of any breach or default under any terms or provisions of any Subordinated Debt Document or under any agreement subordinating the Subordinated Debt to all or any portion of the Obligations or the occurrence of any event requiring the prepayment of any Subordinated Debt;

(e) any Credit Party or any Subsidiary of a Borrower shall commence a voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to itself or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its property, or shall consent to any such relief or to the appointment of or taking possession by any such official in an involuntary case or other proceeding commenced against it, or shall make a general assignment for the benefit of creditors, or shall fail generally to pay its debts as they become due, or shall take any corporate action to authorize any of the foregoing;

(f) an involuntary case or other proceeding shall be commenced against any Credit Party or any Subsidiary of a Borrower seeking liquidation, reorganization or other relief with respect to it or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its property, and such involuntary case or other proceeding shall remain undismissed and unstayed for a period of forty-five (45) days; or an order for relief shall be entered against any Credit Party or any Subsidiary of a Borrower under applicable federal bankruptcy, insolvency or other similar law in respect of (i) bankruptcy, liquidation, winding-up, dissolution or suspension of general operations, (ii) composition, rescheduling, reorganization, arrangement or readjustment of, or other relief from, or stay of proceedings to enforce, some or all of the debts or obligations, or (iii) possession, foreclosure, seizure or retention, sale or other disposition of, or other proceedings to enforce security over, all or any substantial part of the assets of such Credit Party or Subsidiary;

(g) (i) institution of any steps by any Person to terminate a Pension Plan if as a result of such termination any Credit Party or any member of the Controlled Group could be required to make a contribution to such Pension Plan, or could incur a liability or obligation to such Pension Plan, in excess of $250,000, (ii) a contribution failure occurs with respect to any Pension Plan sufficient to give rise to a Lien under Section 303(k) of ERISA or Section 430(k) of the Code or an event occurs that could reasonably be expected to give rise to a Lien under Section 4068 of ERISA, or (iii) there shall occur any withdrawal or partial withdrawal from a Multiemployer Plan and the withdrawal liability (without unaccrued interest) to Multiemployer Plans as a result of such withdrawal (including any outstanding withdrawal liability that any Credit Party or any member of the Controlled Group have incurred on the date of such withdrawal) exceeds $250,000;

(h) one or more judgments or orders for the payment of money (not paid or fully covered by insurance maintained in accordance with the requirements of this Agreement and as to which the relevant insurance company has acknowledged coverage) aggregating in excess of $250,000 shall be rendered against any or all Credit Parties and either (i) enforcement proceedings shall have been commenced by any creditor upon any such judgments or orders, or (ii) there shall be any period of twenty (20) consecutive days during which a stay of enforcement of any such judgments or orders, by reason of a pending appeal, bond or otherwise, shall not be in effect;

(i) any Lien created by any of the Security Documents shall at any time fail to constitute a valid and perfected Lien on all of the Collateral purported to be encumbered thereby, subject to no prior or equal Lien except Permitted Liens, or any Credit Party shall so assert;

(j) the institution by any Governmental Authority of criminal proceedings against any Credit Party;

(k) a default or event of default occurs under any Guarantee of any portion of the Obligations;

(l) any Borrower makes any payment on account of any Debt that has been subordinated to any of the Obligations, other than payments specifically permitted by the terms of such subordination;

(m) if any Borrower is or becomes an entity whose equity is registered with the SEC, and/or is publicly traded on and/or registered with a public securities exchange, such Borrower's equity fails to remain registered with the SEC in good standing, and/or such equity fails to remain publicly traded on and registered with a public securities exchange;

(n) the occurrence of a Material Adverse Effect;

(o) (i) the voluntary withdrawal or institution of any action or proceeding by the FDA or similar Governmental Authority to order the withdrawal of any Product or Product category from the market or to enjoin Borrower, its Subsidiaries or any representative of Borrower or its Subsidiaries from manufacturing, marketing, selling or distributing any Product or Product category, (ii) the institution of any action or proceeding by any FDA or any other Governmental Authority to revoke, suspend, reject, withdraw, limit, or restrict any Regulatory Required Permit held by Borrower, its Subsidiaries or any representative of Borrower or its Subsidiaries, which, in each case, has or could reasonably be expected to result in Material Adverse Effect, (iii) the commencement of any enforcement action against Borrower, its Subsidiaries or any representative of Borrower or its Subsidiaries (with respect to the business of Borrower or its Subsidiaries) by FDA or any other Governmental Authority which has or could reasonably be expected to result in a Material Adverse Effect, or (iv) the occurrence of adverse test results in connection with a Product which could result in Material Adverse Effect;

(p) any Credit Party materially breaches, or otherwise materially defaults under, (i) the Cook License Agreement, the Cook Supply Agreement or Cross License Agreement or (ii) any other Material Contract (after any applicable grace period contained therein) the loss of which could be reasonably expected to result in a Material Adverse Effect, or any such Material Contract referred to in clauses (i) or (ii) shall be terminated by a third party or parties party thereto prior to the expiration thereof;

(q) any Credit Party breaches, or defaults under, the Ligand Royalty Agreement or the Ligand Parent Guaranty or there occurs any Remedies Event (as defined in the Ligand Royalty Agreement);

(r) there shall occur any default or event of default under the Affiliated Financing Documents;

(s) the introduction of, or any change in, any law or regulation governing or affecting the healthcare industry, including, without limitation, any Healthcare Laws, which could reasonably be expected to have a material adverse effect on Borrowers' business, condition (financial or otherwise), prospects or properties; or

(t) any of the Operative Documents shall for any reason fail to constitute the valid and binding agreement of any party thereto, or any Credit Party shall so assert, in each case, unless such Operative Document terminates pursuant to the terms and conditions thereof without any breach or default thereunder by any Credit Party thereto.

All cure periods provided for in this Section 10.1 shall run concurrently with any cure period provided for in any applicable Financing Documents under which the default occurred.

Section 10.2 Acceleration and Suspension or Termination of Term Loan Commitment. Upon the occurrence and during the continuance of an Event of Default, Agent may, and shall if requested by Required Lenders, (a) by notice to Borrower Representative suspend or terminate the Term Loan Commitment and the obligations of Agent and the Lenders with respect thereto, in whole or in part (and, if in part, each Lender's Term Loan Commitment shall be reduced in accordance with its Pro Rata Share), and/or (b) by notice to Borrower Representative declare all or any portion of the Obligations to be, and the Obligations shall thereupon become, immediately due and payable, with accrued interest thereon, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by each Borrower and Borrowers will pay the same; *provided*, *however*, that in the case of any of the Events of Default specified in Section 10.1(e) or 10.1(f) above, without any notice to any Borrower or any other act by Agent or the Lenders, the Term Loan Commitment and the obligations of Agent and the Lenders with respect thereto shall thereupon immediately and automatically terminate and all of the Obligations shall become immediately and automatically due and payable without presentment, demand, protest or other notice of any kind, all of which are hereby waived by each Borrower and Borrowers will pay the same.

Section 10.3 UCC Remedies.

(a) Upon the occurrence of and during the continuance of an Event of Default under this Agreement or the other Financing Documents, Agent, in addition to all other rights, options, and remedies granted to Agent under this Agreement or at law or in equity, may exercise, either directly or through one or more assignees or designees, all rights and remedies granted to it under all Financing Documents and under the UCC in effect in the applicable jurisdiction(s) and under any other applicable law; including, without limitation:

(i) the right to take possession of, send notices regarding, and collect directly the Collateral, with or without judicial process;

(ii) the right to (by its own means or with judicial assistance) enter any of Borrowers' premises and take possession of the Collateral, or render it unusable, or to render it usable or saleable, or dispose of the Collateral on such premises in compliance with subsection (iii) below and to take possession of Borrowers' original books and records, to obtain access to Borrowers' data processing equipment, computer hardware and software relating to the Collateral and to use all of the foregoing and the information contained therein in any manner Agent deems appropriate, without any liability for rent, storage, utilities, or other sums, and Borrowers shall not resist or interfere with such action (if Borrowers' books and records are prepared or maintained by an accounting service, contractor or other third party agent, Borrowers hereby irrevocably authorize such service, contractor or other agent, upon notice by Agent to such Person that an Event of Default has occurred and is continuing, to deliver to Agent or its designees such books and records, and to follow Agent's instructions with respect to further services to be rendered);

(iii) the right to require Borrowers at Borrowers' expense to assemble all or any part of the Collateral and make it available to Agent at any place designated by Lender;

(iv) the right to notify postal authorities to change the address for delivery of Borrowers' mail to an address designated by Agent and to receive, open and dispose of all mail addressed to any Borrower; and/or

(v) the right to enforce Borrowers' rights against Account Debtors and other obligors, including, without limitation, (i) the right to collect Accounts directly in Agent's own name (as agent for Lenders) and to charge the collection costs and expenses, including attorneys' fees, to Borrowers, and (ii) the right, in the name of Agent or any designee of Agent or Borrowers, to verify the validity, amount or any other matter relating to any Accounts by mail, telephone, telegraph or otherwise, including, without limitation, verification of Borrowers' compliance with applicable Laws. Borrowers shall cooperate fully with Agent in an effort to facilitate and promptly conclude such verification process. Such verification may include contacts between Agent and applicable federal, state and local regulatory authorities having jurisdiction over the Borrowers' affairs, all of which contacts Borrowers hereby irrevocably authorize.

(b) Each Borrower agrees that a notice received by it at least ten (10) days before the time of any intended public sale, or the time after which any private sale or other disposition of the Collateral is to be made, shall be deemed to be reasonable notice of such sale or other disposition. If permitted by applicable law, any perishable Collateral which threatens to speedily decline in value or which is sold on a recognized market may be sold immediately by Agent without prior notice to Borrowers. At any sale or disposition of Collateral, Agent may (to the extent permitted by applicable law) purchase all or any part of the Collateral, free from any right of redemption by Borrowers, which right is hereby waived and released. Each Borrower covenants and agrees not to interfere with or impose any obstacle to Agent's exercise of its rights and remedies with respect to the Collateral. Agent shall have no obligation to clean-up or otherwise prepare the Collateral for sale. Agent may comply with any applicable state or federal law requirements in connection with a disposition of the Collateral and compliance will not be considered to adversely affect the commercial reasonableness of any sale of the Collateral. Agent may sell the Collateral without giving any warranties as to the Collateral. Agent may specifically disclaim any warranties of title or the like. This procedure will not be considered to adversely affect the commercial reasonableness of any sale of the Collateral. If Agent sells any of the Collateral upon credit, Borrowers will be credited only with payments actually made by the purchaser, received by Agent and applied to the indebtedness of the purchaser. In the event the purchaser fails to pay for the Collateral, Agent may resell the Collateral and Borrowers shall be credited with the proceeds of the sale. Borrowers shall remain liable for any deficiency if the proceeds of any sale or disposition of the Collateral are insufficient to pay all Obligations.

(c) Without restricting the generality of the foregoing and for the purposes aforesaid, each Borrower hereby appoints and constitutes Agent its lawful attorney-in-fact with full power of substitution in the Collateral, upon the occurrence and during the continuance of an Event of Default, to (i) use unadvanced funds remaining under this Agreement or which may be reserved, escrowed or set aside for any purposes hereunder at any time, or to advance funds in excess of the face amount of the Notes, (ii) pay, settle or compromise all existing bills and claims, which may be Liens or security interests, or to avoid such bills and claims becoming Liens against the Collateral, (iii) execute all applications and certificates in the name of such Borrower and to prosecute and defend all actions or proceedings in connection with the Collateral, and (iv) do any and every act which such Borrower might do in its own behalf; it being understood and agreed that this power of attorney in this subsection (c) shall be a power coupled with an interest and cannot be revoked.

(d) Agent and each Lender is hereby granted a non-exclusive, royalty-free license or other right to use, without charge, Borrowers' labels, mask works, rights of use of any name, any other Intellectual Property and advertising matter, and any similar property as it pertains to the Collateral, in completing production of, advertising for sale, and selling any Collateral and, in connection with Agent's exercise of its rights under this Article, Borrowers' rights under all licenses (whether as licensor or licensee) and all franchise agreements inure to Agent's and each Lender's benefit.

Section 10.4 Reserved.

Section 10.5 Default Rate of Interest. At the election of Agent or Required Lenders, after the occurrence of an Event of Default and for so long as it continues, the Loans and other Obligations shall bear interest at rates that are four percent (4.0%) per annum in excess of the rates otherwise payable under this Agreement; *provided*, *however*, that in the case of any Event of Default specified in Section 10.1(e) or 10.1(f) above, such default rates shall apply immediately and automatically without the need for any election or action of any kind on the part of Agent or any Lender.

Section 10.6 Setoff Rights. During the continuance of any Event of Default, each Lender is hereby authorized by each Borrower at any time or from time to time, with reasonably prompt subsequent notice to such Borrower (any prior or contemporaneous notice being hereby expressly waived) to set off and to appropriate and to apply any and all (a) balances held by such Lender or any of such Lender's Affiliates at any of its offices for the account of such Borrower or any of its Subsidiaries (regardless of whether such balances are then due to such Borrower or its Subsidiaries), and (b) other property at any time held or owing by such Lender to or for the credit or for the account of such Borrower or any of its Subsidiaries, against and on account of any of the Obligations; except that no Lender shall exercise any such right without the prior written consent of Agent. Any Lender exercising a right to set off shall purchase for cash (and the other Lenders shall sell) interests in each of such other Lender's Pro Rata Share of the Obligations as would be necessary to cause all Lenders to share the amount so set off with each other Lender in accordance with their respective Pro Rata Share of the Obligations. Each Borrower agrees, to the fullest extent permitted by law, that any Lender and any of such Lender's Affiliates may exercise its right to set off with respect to the Obligations as provided in this Section 10.6.

Section 10.7 Application of Proceeds.

(a) Notwithstanding anything to the contrary contained in this Agreement, upon the occurrence and during the continuance of an Event of Default, each Borrower irrevocably waives the right to direct the application of any and all payments at any time or times thereafter received by Agent from or on behalf of such Borrower or any Guarantor of all or any part of the Obligations, and, as between Borrowers on the one hand and Agent and Lenders on the other, Agent shall have the continuing and exclusive right to apply and to reapply any and all payments received against the Obligations in such manner as Agent may deem advisable notwithstanding any previous application by Agent.

(b) Following the occurrence and continuance of an Event of Default, but absent the occurrence and continuance of an Acceleration Event, Agent shall apply any and all payments received by Agent in respect of the Obligations, and any and all proceeds of Collateral received by Agent, in such order as Agent may from time to time elect.

(c) Notwithstanding anything to the contrary contained in this Agreement, if an Acceleration Event shall have occurred, and so long as it continues, Agent shall apply any and all payments received by Agent in respect of the Obligations, and any and all proceeds of Collateral received by Agent, in the following order: *first*, to all fees, costs, indemnities, liabilities, obligations and expenses incurred by or owing to Agent with respect to this Agreement, the other Financing Documents or the Collateral; *second*, to all fees, costs, indemnities, liabilities, obligations and expenses incurred by or owing to any Lender with respect to this Agreement, the other Financing Documents or the Collateral; *third*, to accrued and unpaid interest on the Obligations (including any interest which, but for the provisions of the Bankruptcy Code, would have accrued on such amounts); *fourth*, to the principal amount of the Obligations outstanding; and *fifth* to any other indebtedness or obligations of Borrowers owing to Agent or any Lender under the Financing Documents. Any balance remaining shall be delivered to Borrowers or to whomever may be lawfully entitled to receive such balance or as a court of competent jurisdiction may direct. In carrying out the foregoing, (y) amounts received shall be applied in the numerical order provided until exhausted prior to the application to the next succeeding category, and (z) each of the Persons entitled to receive a payment in any particular category shall receive an amount equal to its Pro Rata Share of amounts available to be applied pursuant thereto for such category.

Section 10.8 Waivers.

(a) Except as otherwise provided for in this Agreement and to the fullest extent permitted by applicable law, each Borrower waives: (i) presentment, demand and protest, and notice of presentment, dishonor, intent to accelerate, acceleration, protest, default, nonpayment, maturity, release, compromise, settlement, extension or renewal of any or all Financing Documents, the Notes or any other notes, commercial paper, accounts, contracts, documents, Instruments, Chattel Paper and Guarantees at any time held by Lenders on which any Borrower may in any way be liable, and hereby ratifies and confirms whatever Lenders may do in this regard; (ii) all rights to notice and a hearing prior to Agent's or any Lender's taking possession or control of, or to Agent's or any Lender's replevy, attachment or levy upon, any Collateral or any bond or security which might be required by any court prior to allowing Agent or any Lender to exercise any of its remedies; and (iii) the benefit of all valuation, appraisal and exemption Laws. Each Borrower acknowledges that it has been advised by counsel of its choices and decisions with respect to this Agreement, the other Financing Documents and the transactions evidenced hereby and thereby.

(b) Each Borrower for itself and all its successors and assigns, (i) agrees that its liability shall not be in any manner affected by any indulgence, extension of time, renewal, waiver, or modification granted or consented to by Lender; (ii) consents to any indulgences and all extensions of time, renewals, waivers, or modifications that may be granted by Agent or any Lender with respect to the payment or other provisions of the Financing Documents, and to any substitution, exchange or release of the Collateral, or any part thereof, with or without substitution, and agrees to the addition or release of any Borrower, endorsers, guarantors, or sureties, or whether primarily or secondarily liable, without notice to any other Borrower and without affecting its liability hereunder; (iii) agrees that its liability shall be unconditional and without regard to the liability of any other Borrower, Agent or any Lender for any tax on the indebtedness; and (iv) to the fullest extent permitted by law, expressly waives the benefit of any statute or rule of law or equity now provided, or which may hereafter be provided, which would produce a result contrary to or in conflict with the foregoing.

(c) To the extent that Agent or any Lender may have acquiesced in any noncompliance with any requirements or conditions precedent to the closing of the Loans or to any subsequent disbursement of Loan proceeds, such acquiescence shall not be deemed to constitute a waiver by Agent or any Lender of such requirements with respect to any future disbursements of Loan proceeds and Agent may at any time after such acquiescence require Borrowers to comply with all such requirements. Any forbearance by Agent or Lender in exercising any right or remedy under any of the Financing Documents, or otherwise afforded by applicable law, including any failure to accelerate the maturity date of the Loans, shall not be a waiver of or preclude the exercise of any right or remedy nor shall it serve as a novation of the Notes or as a reinstatement of the Loans or a waiver of such right of acceleration or the right to insist upon strict compliance of the terms of the Financing Documents. Agent's or any Lender's acceptance of payment of any sum secured by any of the Financing Documents after the due date of such payment shall not be a waiver of Agent's and such Lender's right to either require prompt payment when due of all other sums so secured or to declare a default for failure to make prompt payment. The procurement of insurance or the payment of taxes or other Liens or charges by Agent as the result of an Event of Default shall not be a waiver of Agent's right to accelerate the maturity of the Loans, nor shall Agent's receipt of any condemnation awards, insurance proceeds, or damages under this Agreement operate to cure or waive any Credit Party's default in payment of sums secured by any of the Financing Documents.

(d) Without limiting the generality of anything contained in this Agreement or the other Financing Documents, each Borrower agrees that if an Event of Default is continuing (i) Agent and Lenders shall not be subject to any "one action" or "election of remedies" law or rule, and (ii) all Liens and other rights, remedies or privileges provided to Agent or Lenders shall remain in full force and effect until Agent or Lenders have exhausted all remedies against the Collateral and any other properties owned by Borrowers and the Financing Documents and other security instruments or agreements securing the Loans have been foreclosed, sold and/or otherwise realized upon in satisfaction of Borrowers' obligations under the Financing Documents.

(e) Nothing contained herein or in any other Financing Document shall be construed as requiring Agent or any Lender to resort to any part of the Collateral for the satisfaction of any of Borrowers' obligations under the Financing Documents in preference or priority to any other Collateral, and Agent may seek satisfaction out of all of the Collateral or any part thereof, in its absolute discretion in respect of Borrowers' obligations under the Financing Documents. In addition, Agent shall have the right from time to time to partially foreclose upon any Collateral in any manner and for any amounts secured by the Financing Documents then due and payable as determined by Agent in its sole discretion, including, without limitation, the following circumstances: (i) in the event any Borrower defaults beyond any applicable grace period in the payment of one or more scheduled payments of principal and/or interest, Agent may foreclose upon all or any part of the Collateral to recover such delinquent payments, or (ii) in the event Agent elects to accelerate less than the entire outstanding principal balance of the Loans, Agent may foreclose all or any part of the Collateral to recover so much of the principal balance of the Loans as Lender may accelerate and such other sums secured by one or more of the Financing Documents as Agent may elect. Notwithstanding one or more partial foreclosures, any unforeclosed Collateral shall remain subject to the Financing Documents to secure payment of sums secured by the Financing Documents and not previously recovered.

(f) To the fullest extent permitted by law, each Borrower, for itself and its successors and assigns, waives in the event of foreclosure of any or all of the Collateral any equitable right otherwise available to any Credit Party which would require the separate sale of any of the Collateral or require Agent or Lenders to exhaust their remedies against any part of the Collateral before proceeding against any other part of the Collateral; and further in the event of such foreclosure each Borrower does hereby expressly consent to and authorize, at the option of Agent, the foreclosure and sale either separately or together of each part of the Collateral.

Section 10.9 Injunctive Relief. The parties acknowledge and agree that, in the event of a breach or threatened breach of any Credit Party's obligations under any Financing Documents, Agent and Lenders may have no adequate remedy in money damages and, accordingly, shall be entitled to an injunction (including, without limitation, a temporary restraining order, preliminary injunction, writ of attachment, or order compelling an audit) against such breach or threatened breach, including, without limitation, maintaining any cash management and collection procedure described herein. However, no specification in this Agreement of a specific legal or equitable remedy shall be construed as a waiver or prohibition against any other legal or equitable remedies in the event of a breach or threatened breach of any provision of this Agreement. Each Credit Party waives, to the fullest extent permitted by law, the requirement of the posting of any bond in connection with such injunctive relief. By joining in the Financing Documents as a Credit Party, each Credit Party specifically joins in this Section as if this Section were a part of each Financing Document executed by such Credit Party.

Section 10.10 Marshalling; Payments Set Aside. Neither Agent nor any Lender shall be under any obligation to marshal any assets in payment of any or all of the Obligations. To the extent that Borrower makes any payment or Agent enforces its Liens or Agent or any Lender exercises its right of set-off, and such payment or the proceeds of such enforcement or set-off is subsequently invalidated, declared to be fraudulent or preferential, set aside, or required to be repaid by anyone, then to the extent of such recovery, the Obligations or part thereof originally intended to be satisfied, and all Liens, rights and remedies therefor, shall be revived and continued in full force and effect as if such payment had not been made or such enforcement or set-off had not occurred.

Section 10.11 Transfer of Licenses. In the event any Permit is terminated or in the event of foreclosure or other acquisition of any location owned or leased by Borrower, any Inventory or other Collateral by Agent or its designee or any purchaser at a foreclosure sale, Borrower shall cooperate with Agent to cause all Permits to be reissued or transferred to Agent or Agent's designee, including, without limitation, any subsequent purchaser.

ARTICLE 11 - AGENT

Section 11.1 Appointment and Authorization. Each Lender hereby irrevocably appoints and authorizes Agent to enter into each of the Financing Documents to which it is a party (other than this Agreement) on its behalf and to take such actions as Agent on its behalf and to exercise such powers under the Financing Documents as are delegated to Agent by the terms thereof, together with all such powers as are reasonably incidental thereto. Subject to the terms of Section 11.16 and to the terms of the other Financing Documents, Agent is authorized and empowered to amend, modify, or waive any provisions of this Agreement or the other Financing Documents on behalf of Lenders. The provisions of this Article 11 are solely for the benefit of Agent and Lenders and neither any Borrower nor any other Credit Party shall have any rights as a third party beneficiary of any of the provisions hereof. In performing its functions and duties under this Agreement, Agent shall act solely as agent of Lenders and does not assume and shall not be deemed to have assumed any obligation toward or relationship of agency or trust with or for any Borrower or any other Credit Party. Agent may perform any of its duties hereunder, or under the Financing Documents, by or through its agents, servicers, trustees, investment managers or employees.

Section 11.2 Agent and Affiliates. Agent shall have the same rights and powers under the Financing Documents as any other Lender and may exercise or refrain from exercising the same as though it were not Agent, and Agent and its Affiliates may lend money to, invest in and generally engage in any kind of business with each Credit Party or Affiliate of any Credit Party as if it were not Agent hereunder.

Section 11.3 Action by Agent. The duties of Agent shall be mechanical and administrative in nature. Agent shall not have by reason of this Agreement a fiduciary relationship in respect of any Lender. Nothing in this Agreement or any of the Financing Documents is intended to or shall be construed to impose upon Agent any obligations in respect of this Agreement or any of the Financing Documents except as expressly set forth herein or therein.

Section 11.4 Consultation with Experts. Agent may consult with legal counsel, independent public accountants and other experts selected by it and shall not be liable for any action taken or omitted to be taken by it in good faith in accordance with the advice of such counsel, accountants or experts.

Section 11.5 Liability of Agent. Neither Agent nor any of its directors, officers, agents, trustees, investment managers, servicers or employees shall be liable to any Lender for any action taken or not taken by it in connection with the Financing Documents, except that Agent shall be liable with respect to its specific duties set forth hereunder but only to the extent of its own gross negligence or willful misconduct in the discharge thereof as determined by a final non-appealable judgment of a court of competent jurisdiction. Neither Agent nor any of its directors, officers, agents, trustees, investment managers, servicers or employees shall be responsible for or have any duty to ascertain, inquire into or verify (a) any statement, warranty or representation made in connection with any Financing Document or any borrowing hereunder; (b) the performance or observance of any of the covenants or agreements specified in any Financing Document; (c) the satisfaction of any condition specified in any Financing Document; (d) the validity, effectiveness, sufficiency or genuineness of any Financing Document, any Lien purported to be created or perfected thereby or any other instrument or writing furnished in connection therewith; (e) the existence or non-existence of any Default or Event of Default; or (f) the financial condition of any Credit Party. Agent shall not incur any liability by acting in reliance upon any notice, consent, certificate, statement, or other writing (which may be a bank wire, facsimile or electronic transmission or similar writing) believed by it to be genuine or to be signed by the proper party or parties. Agent shall not be liable for any apportionment or distribution of payments made by it in good faith and if any such apportionment or distribution is subsequently determined to have been made in error the sole recourse of any Lender to whom payment was due but not made, shall be to recover from other Lenders any payment in excess of the amount to which they are determined to be entitled (and such other Lenders hereby agree to return to such Lender any such erroneous payments received by them).

Section 11.6 Indemnification. Each Lender shall, in accordance with its Pro Rata Share, indemnify Agent (to the extent not reimbursed by Borrowers) upon demand against any cost, expense (including counsel fees and disbursements), claim, demand, action, loss or liability (except such as result from Agent's gross negligence or willful misconduct as determined by a final non-appealable judgment of a court of competent jurisdiction) that Agent may suffer or incur in connection with the Financing Documents or any action taken or omitted by Agent hereunder or thereunder. If any indemnity furnished to Agent for any purpose shall, in the opinion of Agent, be insufficient or become impaired, Agent may call for additional indemnity and cease, or not commence, to do the acts indemnified against even if so directed by Required Lenders until such additional indemnity is furnished.

Section 11.7 Right to Request and Act on Instructions. Agent may at any time request instructions from Lenders with respect to any actions or approvals which by the terms of this Agreement or of any of the Financing Documents Agent is permitted or desires to take or to grant, and if such instructions are promptly requested, Agent shall be absolutely entitled to refrain from taking any action or to withhold any approval and shall not be under any liability whatsoever to any Person for refraining from any action or withholding any approval under any of the Financing Documents until it shall have received such instructions from Required Lenders or all or such other portion of the Lenders as shall be prescribed by this Agreement. Without limiting the foregoing, no Lender shall have any right of action whatsoever against Agent as a result of Agent acting or refraining from acting under this Agreement or any of the other Financing Documents in accordance with the instructions of Required Lenders (or all or such other portion of the Lenders as shall be prescribed by this Agreement) and, notwithstanding the instructions of Required Lenders (or such other applicable portion of the Lenders), Agent shall have no obligation to take any action if it believes, in good faith, that such action would violate applicable Law or exposes Agent to any liability for which it has not received satisfactory indemnification in accordance with the provisions of Section 11.6.

Section 11.8 Credit Decision. Each Lender acknowledges that it has, independently and without reliance upon Agent or any other Lender, and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender also acknowledges that it will, independently and without reliance upon Agent or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking any action under the Financing Documents.

Section 11.9 Collateral Matters. Lenders irrevocably authorize Agent, at its option and in its discretion, to (a) release any Lien granted to or held by Agent under any Security Document (i) upon termination of the Term Loan Commitment and payment in full of all Obligations; or (ii) constituting property sold or disposed of as part of or in connection with any disposition permitted under any Financing Document (it being understood and agreed that Agent may conclusively rely without further inquiry on a certificate of a Responsible Officer as to the sale or other disposition of property being made in full compliance with the provisions of the Financing Documents); and (b) subordinate any Lien granted to or held by Agent under any Security Document to a Permitted Lien that is allowed to have priority over the Liens granted to or held by Agent pursuant to the definition of "Permitted Liens". Upon request by Agent at any time, Lenders will confirm Agent's authority to release and/or subordinate particular types or items of Collateral pursuant to this Section 11.9.

Section 11.10 Agency for Perfection. Agent and each Lender hereby appoint each other Lender as agent for the purpose of perfecting Agent's security interest in assets which, in accordance with the Uniform Commercial Code in any applicable jurisdiction, can be perfected by possession or control. Should any Lender (other than Agent) obtain possession or control of any such assets, such Lender shall notify Agent thereof, and, promptly upon Agent's request therefor, shall deliver such assets to Agent or in accordance with Agent's instructions or transfer control to Agent in accordance with Agent's instructions. Each Lender agrees that it will not have any right individually to enforce or seek to enforce any Security Document or to realize upon any Collateral for the Loan unless instructed to do so by Agent (or consented to by Agent), it being understood and agreed that such rights and remedies may be exercised only by Agent.

Section 11.11 Notice of Default. Agent shall not be deemed to have knowledge or notice of the occurrence of any Default or Event of Default except with respect to defaults in the payment of principal, interest and fees required to be paid to Agent for the account of Lenders, unless Agent shall have received written notice from a Lender or a Borrower referring to this Agreement, describing such Default or Event of Default and stating that such notice is a "notice of default". Agent will notify each Lender of its receipt of any such notice. Agent shall take such action with respect to such Default or Event of Default as may be requested by Required Lenders (or all or such other portion of the Lenders as shall be prescribed by this Agreement) in accordance with the terms hereof. Unless and until Agent has received any such request, Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Default or Event of Default as it shall deem advisable or in the best interests of Lenders.

Section 11.12 Assignment by Agent; Resignation of Agent; Successor Agent.

(a) Agent may at any time assign its rights, powers, privileges and duties hereunder to (i) another Lender or an Affiliate of Agent or any Lender or any Approved Fund, or (ii) any Person to whom Agent, in its capacity as a Lender, has assigned (or will assign, in conjunction with such assignment of agency rights hereunder) 50% or more of its Loan, in each case without the consent of the Lenders or Borrowers. Following any such assignment, Agent shall endeavor to give notice to the Lenders and Borrowers. Failure to give such notice shall not affect such assignment in any way or cause the assignment to be ineffective. An assignment by Agent pursuant to this subsection (a) shall not be deemed a resignation by Agent for purposes of subsection (b) below.

(b) Without limiting the rights of Agent to designate an assignee pursuant to subsection (a) above, Agent may at any time give notice of its resignation to the Lenders and Borrowers. Upon receipt of any such notice of resignation, Required Lenders shall have the right to appoint a successor Agent. If no such successor shall have been so appointed by Required Lenders and shall have accepted such appointment within ten (10) Business Days after the retiring Agent gives notice of its resignation, then the retiring Agent may on behalf of the Lenders, appoint a successor Agent; *provided*, *however*, that if Agent shall notify Borrowers and the Lenders that no Person has accepted such appointment, then such resignation shall nonetheless become effective in accordance with such notice from Agent that no Person has accepted such appointment and, from and following delivery of such notice, (i) the retiring Agent shall be discharged from its duties and obligations hereunder and under the other Financing Documents, and (ii) all payments, communications and determinations provided to be made by, to or through Agent shall instead be made by or to each Lender directly, until such time as Required Lenders appoint a successor Agent as provided for above in this paragraph.

(c) Upon (i) an assignment permitted by subsection (a) above, or (ii) the acceptance of a successor's appointment as Agent pursuant to subsection (b) above, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or retired) Agent, and the retiring Agent shall be discharged from all of its duties and obligations hereunder and under the other Financing Documents (if not already discharged therefrom as provided above in this paragraph). The fees payable by Borrowers to a successor Agent shall be the same as those payable to its predecessor unless otherwise agreed between Borrowers and such successor. After the retiring Agent's resignation hereunder and under the other Financing Documents, the provisions of this Article and Section 11.12 shall continue in effect for the benefit of such retiring Agent and its sub-agents in respect of any actions taken or omitted to be taken by any of them while the retiring Agent was acting or was continuing to act as Agent.

Section 11.13 Payment and Sharing of Payment.

(a) Reserved.

(b) Term Loan Payments. Payments of principal, interest and fees in respect of the Term Loans will be settled on the date of receipt if received by Agent on the last Business Day of a month or on the Business Day immediately following the date of receipt if received on any day other than the last Business Day of a month.

(c) Return of Payments.

(i) If Agent pays an amount to a Lender under this Agreement in the belief or expectation that a related payment has been or will be received by Agent from a Borrower and such related payment is not received by Agent, then Agent will be entitled to recover such amount from such Lender on demand without setoff, counterclaim or deduction of any kind, together with interest accruing on a daily basis at the Federal Funds Rate.

(ii) If Agent determines at any time that any amount received by Agent under this Agreement must be returned to any Borrower or paid to any other Person pursuant to any insolvency law or otherwise, then, notwithstanding any other term or condition of this Agreement or any other Financing Document, Agent will not be required to distribute any portion thereof to any Lender. In addition, each Lender will repay to Agent on demand any portion of such amount that Agent has distributed to such Lender, together with interest at such rate, if any, as Agent is required to pay to any Borrower or such other Person, without setoff, counterclaim or deduction of any kind.

(d) Defaulted Lenders. The failure of any Defaulted Lender to make any payment required by it hereunder shall not relieve any other Lender of its obligations to make payment, but neither any other Lender nor Agent shall be responsible for the failure of any Defaulted Lender to make any payment required hereunder. Notwithstanding anything set forth herein to the contrary, a Defaulted Lender shall not have any voting or consent rights under or with respect to any Financing Document or constitute a "Lender" (or be included in the calculation of "Required Lenders" hereunder) for any voting or consent rights under or with respect to any Financing Document.

(e) Sharing of Payments. If any Lender shall obtain any payment or other recovery (whether voluntary, involuntary, by application of setoff or otherwise) on account of any Loan (other than pursuant to the terms of Section 2.8(d)) in excess of its Pro Rata Share of payments entitled pursuant to the other provisions of this Section 11.13, such Lender shall purchase from the other Lenders such participations in extensions of credit made by such other Lenders (without recourse, representation or warranty) as shall be necessary to cause such purchasing Lender to share the excess payment or other recovery ratably with each of them; *provided*, *however*, that if all or any portion of the excess payment or other recovery is thereafter required to be returned or otherwise recovered from such purchasing Lender, such portion of such purchase shall be rescinded and each Lender which has sold a participation to the purchasing Lender shall repay to the purchasing Lender the purchase price to the ratable extent of such return or recovery, without interest. Each Borrower agrees that any Lender so purchasing a participation from another Lender pursuant to this clause (e) may, to the fullest extent permitted by law, exercise all its rights of payment (including pursuant to Section 10.6) with respect to such participation as fully as if such Lender were the direct creditor of Borrowers in the amount of such participation). If under any applicable bankruptcy, insolvency or other similar law, any Lender receives a secured claim in lieu of a setoff to which this clause (e) applies, such Lender shall, to the extent practicable, exercise its rights in respect of such secured claim in a manner consistent with the rights of the Lenders entitled under this clause (e) to share in the benefits of any recovery on such secured claim.

Section 11.14 Right to Perform, Preserve and Protect. If any Credit Party fails to perform any obligation hereunder or under any other Financing Document, Agent itself may, but shall not be obligated to, cause such obligation to be performed at Borrowers' expense. Agent is further authorized by Borrowers and the Lenders to make expenditures from time to time which Agent, in its reasonable business judgment, deems necessary or desirable to (a) preserve or protect the business conducted by Borrowers, the Collateral, or any portion thereof, and/or (b) enhance the likelihood of, or maximize the amount of, repayment of the Loan and other Obligations. Each Borrower hereby agrees to reimburse Agent on demand for any and all costs, liabilities and obligations incurred by Agent pursuant to this Section 11.14. Each Lender hereby agrees to indemnify Agent upon demand for any and all costs, liabilities and obligations incurred by Agent pursuant to this Section 11.14, in accordance with the provisions of Section 11.6.

Section 11.15 Additional Titled Agents. Except for rights and powers, if any, expressly reserved under this Agreement to any bookrunner, arranger or to any titled agent named on the cover page of this Agreement, other than Agent (collectively, the "**Additional Titled Agents**"), and except for obligations, liabilities, duties and responsibilities, if any, expressly assumed under this Agreement by any Additional Titled Agent, no Additional Titled Agent, in such capacity, has any rights, powers, liabilities, duties or responsibilities hereunder or under any of the other Financing Documents. Without limiting the foregoing, no Additional Titled Agent shall have nor be deemed to have a fiduciary relationship with any Lender. At any time that any Lender serving as an Additional Titled Agent shall have transferred to any other Person (other than any Affiliates) all of its interests in the Loan, such Lender shall be deemed to have concurrently resigned as such Additional Titled Agent.

Section 11.16 Amendments and Waivers.

(a) No provision of this Agreement or any other Financing Document may be amended, waived or otherwise modified unless such amendment, waiver or other modification is in writing and is signed or otherwise approved by Borrowers, the Required Lenders and any other Lender to the extent required under Section 11.16(b); *provided*, *however*, any Fee Letter may be amended, or rights or privileges thereunder waived, in a writing executed only by the parties thereto.

(b) In addition to the required signatures under Section 11.16(a), no provision of this Agreement or any other Financing Document may be amended, waived or otherwise modified unless such amendment, waiver or other modification is in writing and is signed or otherwise approved by the following Persons:

(i) if any amendment, waiver or other modification would increase a Lender's funding obligations in respect of any Loan, by such Lender; and/or

(ii) if the rights or duties of Agent are affected thereby, by Agent;

provided, *however*, that, in each of (i) and (ii) above, no such amendment, waiver or other modification shall, unless signed or otherwise approved in writing by all the Lenders directly affected thereby, (A) reduce the principal of, rate of interest on or any fees with respect to any Loan or forgive any principal, interest (other than default interest) or fees (other than late charges) with respect to any Loan; (B) postpone the date fixed for, or waive, any payment (other than any mandatory prepayment pursuant to Section 2.1(a)(ii)) of principal of any Loan, or of interest on any Loan (other than default interest) or any fees provided for hereunder (other than late charges) or postpone the date of termination of any commitment of any Lender hereunder; (C) change the definition of the term Required Lenders or the percentage of Lenders which shall be required for Lenders to take any action hereunder; (D) release all or substantially all of the Collateral, authorize any Borrower to sell or otherwise dispose of all or substantially all of the Collateral, release any Guarantor of all or any portion of the Obligations or its Guarantee obligations with respect thereto, or consent to a transfer of any of the Intellectual Property, except, in each case with respect to this clause (D), as otherwise may be provided in this Agreement or the other Financing Documents (including in connection with any disposition permitted hereunder); (E) amend, waive or otherwise modify this Section 11.16(b) or the definitions of the terms used in this Section 11.16(b) insofar as the definitions affect the substance of this Section 11.16(b); (F) consent to the assignment, delegation or other transfer by any Credit Party of any of its rights and obligations under any Financing Document or release any Borrower of its payment obligations under any Financing Document, except, in each case with respect to this clause (F), pursuant to a merger or consolidation permitted pursuant to this Agreement; or (G) amend any of the provisions of Section 10.7 or amend any of the definitions Pro Rata Share, Term Loan Commitment, Term Loan Tranche 1 Commitments, Term Loan Tranche 2 Commitments, Term Loan Tranche 4 Commitments, Term Loan Tranche 5 Commitments Term Loan Commitment Amount, Term Loan Tranche 1 Commitment Amount, Term Loan Tranche 2 Commitment Amount, Term Loan Tranche 3 Commitment Amount, Term Loan Tranche 4 Commitment Amount, Term Loan Tranche 5 Commitment Amount, Term Loan Commitment Percentage, Term Loan Tranche 1 Commitment Percentage, Term Loan Tranche 2 Commitment Percentage, Term Loan Tranche 3 Commitment Percentage, Term Loan Tranche 4 Commitment Percentage, Term Loan Tranche 5 Commitment Percentage or that provide for the Lenders to receive their Pro Rata Shares of any fees, payments, setoffs or proceeds of Collateral hereunder. It is hereby understood and agreed that all Lenders shall be deemed directly affected by an amendment, waiver or other modification of the type described in the preceding clauses (C), (D), (E), (F) and (G) of the preceding sentence.

Section 11.17 Assignments and Participations.

(a) Assignments.

(i) Any Lender may at any time assign to one or more Eligible Assignees all or any portion of such Lender's Loan together with all related obligations of such Lender hereunder. Except as Agent may otherwise agree, the amount of any such assignment (determined as of the date of the applicable Assignment Agreement or, if a "Trade Date" is specified in such Assignment Agreement, as of such Trade Date) shall be in a minimum aggregate amount equal to $1,000,000 or, if less, the assignor's entire interests in the outstanding Loan; *provided*, *however,* that, in connection with simultaneous assignments to two or more related Approved Funds, such Approved Funds shall be treated as one assignee for purposes of determining compliance with the minimum assignment size referred to above. Borrowers and Agent shall be entitled to continue to deal solely and directly with such Lender in connection with the interests so assigned to an Eligible Assignee until Agent shall have received and accepted an effective Assignment Agreement executed, delivered and fully completed by the applicable parties thereto and a processing fee of $3,500 to be paid by the assigning Lender; *provided*, *however,* that only one processing fee shall be payable in connection with simultaneous assignments to two or more related Approved Funds.

(ii) From and after the date on which the conditions described above have been met, (A) such Eligible Assignee shall be deemed automatically to have become a party hereto and, to the extent of the interests assigned to such Eligible Assignee pursuant to such Assignment Agreement, shall have the rights and obligations of a Lender hereunder, and (B) the assigning Lender, to the extent that rights and obligations hereunder have been assigned by it pursuant to such Assignment Agreement, shall be released from its rights and obligations hereunder (other than those that survive termination pursuant to Section 12.1). Upon the request of the Eligible Assignee (and, as applicable, the assigning Lender) pursuant to an effective Assignment Agreement, each Borrower shall execute and deliver to Agent for delivery to the Eligible Assignee (and, as applicable, the assigning Lender) Notes in the aggregate principal amount of the Eligible Assignee's Loan (and, as applicable, Notes in the principal amount of that portion of the principal amount of the Loan retained by the assigning Lender). Upon receipt by the assigning Lender of such Note, the assigning Lender shall return to Borrower Representative any prior Note held by it.

(iii) Agent, acting solely for this purpose as an agent of Borrower, shall maintain at the office of its servicer located in Bethesda, Maryland a copy of each Assignment Agreement delivered to it and a register for the recordation of the names and addresses of each Lender, and the commitments of, and principal amount of the Loan owing to, such Lender pursuant to the terms hereof (the "**Register**"). The entries in such Register shall be conclusive, absent manifest effort, and Borrower, Agent and Lenders may treat each Person whose name is recorded therein pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. Such Register shall be available for inspection by Borrower and any Lender, at any reasonable time upon reasonable prior notice to Agent. Each Lender that sells a participation shall, acting solely for this purpose as an agent of Borrower maintain a register on which it enters the name and address of each participant and the principal amounts (and stated interest) of each participant's interest in the Obligations (each, a "Participant Register"). The entries in the Participant Registers shall be conclusive, absent manifest error. Each Participant Register shall be available for inspection by Borrower and Agent at any reasonable time upon reasonable prior notice to the applicable Lender; provided, that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans, letters of credit or its other obligations under any Financing Document) to any Person (including Borrower) except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. For the avoidance of doubt, Agent (in its capacity as Agent) shall have no responsibility for maintaining a participant register.

(iv) Notwithstanding the foregoing provisions of this Section 11.17(a) or any other provision of this Agreement, any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; *provided*, *however*, that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(v) Notwithstanding the foregoing provisions of this Section 11.17(a) or any other provision of this Agreement, Agent has the right, but not the obligation, to effectuate assignments of Loan via an electronic settlement system acceptable to Agent as designated in writing from time to time to the Lenders by Agent (the "**Settlement Service**"). At any time when Agent elects, in its sole discretion, to implement such Settlement Service, each such assignment shall be effected by the assigning Lender and proposed assignee pursuant to the procedures then in effect under the Settlement Service, which procedures shall be consistent with the other provisions of this Section 11.17(a). Each assigning Lender and proposed Eligible Assignee shall comply with the requirements of the Settlement Service in connection with effecting any assignment of Loan pursuant to the Settlement Service. With the prior written approval of Agent, Agent's approval of such Eligible Assignee shall be deemed to have been automatically granted with respect to any transfer effected through the Settlement Service. Assignments and assumptions of the Loan shall be effected by the provisions otherwise set forth herein until Agent notifies Lenders of the Settlement Service as set forth herein.

(b) Participations. Any Lender may at any time, without the consent of, or notice to, any Borrower or Agent, sell to one or more Persons (other than any Borrower or any Borrower's Affiliates) participating interests in its Loan, commitments or other interests hereunder (any such Person, a "**Participant**"). In the event of a sale by a Lender of a participating interest to a Participant, (i) such Lender's obligations hereunder shall remain unchanged for all purposes, (ii) Borrowers and Agent shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations hereunder, and (iii) all amounts payable by each Borrower shall be determined as if such Lender had not sold such participation and shall be paid directly to such Lender. Each Borrower agrees that if amounts outstanding under this Agreement are due and payable (as a result of acceleration or otherwise), each Participant shall be deemed to have the right of set-off in respect of its participating interest in amounts owing under this Agreement to the same extent as if the amount of its participating interest were owing directly to it as a Lender under this Agreement; *provided, however*, that such right of set-off shall be subject to the obligation of each Participant to share with Lenders, and Lenders agree to share with each Participant, as provided in Section 11.5.

(c) Replacement of Lenders. Within thirty (30) days after: (i) receipt by Agent of notice and demand from any Lender for payment of additional costs as provided in Section 2.8(d), which demand shall not have been revoked, (ii) any Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.8(a), (iii) any Lender is a Defaulted Lender, and the circumstances causing such status shall not have been cured or waived; or (iv) any failure by any Lender to consent to a requested amendment, waiver or modification to any Financing Document in which Required Lenders have already consented to such amendment, waiver or modification but the consent of each Lender, or each Lender affected thereby, is required with respect thereto (each relevant Lender in the foregoing clauses (i) through (iv) being an "**Affected Lender**") each of Borrower Representative and Agent may, at its option, notify such Affected Lender and, in the case of Borrowers' election, Agent, of such Person's intention to obtain, at Borrowers' expense, a replacement Lender ("**Replacement Lender**") for such Lender, which Replacement Lender shall be an Eligible Assignee and, in the event the Replacement Lender is to replace an Affected Lender described in the preceding clause (iv), such Replacement Lender consents to the requested amendment, waiver or modification making the replaced Lender an Affected Lender. In the event Borrowers or Agent, as applicable, obtains a Replacement Lender within ninety (90) days following notice of its intention to do so, the Affected Lender shall sell, at par, and assign all of its Loan and funding commitments hereunder to such Replacement Lender in accordance with the procedures set forth in Section 11.17(a); *provided, however,* that (A) Borrowers shall have reimbursed such Lender for its increased costs and additional payments for which it is entitled to reimbursement under Section 2.8(a) or Section 2.8(d), as applicable, of this Agreement through the date of such sale and assignment, and (B) Borrowers shall pay to Agent the $3,500 processing fee in respect of such assignment. In the event that a replaced Lender does not execute an Assignment Agreement pursuant to Section 11.17(a) within five (5) Business Days after receipt by such replaced Lender of notice of replacement pursuant to this Section 11.17(c) and presentation to such replaced Lender of an Assignment Agreement evidencing an assignment pursuant to this Section 11.17(c), such replaced Lender shall be deemed to have consented to the terms of such Assignment Agreement, and any such Assignment Agreement executed by Agent, the Replacement Lender and, to the extent required pursuant to Section 11.17(a), Borrowers, shall be effective for purposes of this Section 11.17(c) and Section 11.17(a). Upon any such assignment and payment, such replaced Lender shall no longer constitute a "**Lender**" for purposes hereof, other than with respect to such rights and obligations that survive termination as set forth in Section 12.1.

(d) Credit Party Assignments. No Credit Party may assign, delegate or otherwise transfer any of its rights or other obligations hereunder or under any other Financing Document without the prior written consent of Agent and each Lender.

Section 11.18 Funding and Settlement Provisions Applicable When Non-Funding Lenders Exist. So long as Agent has not waived the conditions to the funding of Loans set forth in Section 7.2 or Section 2.1, any Lender may deliver a notice to Agent stating that such Lender shall cease making Term Loans due to the non-satisfaction of one or more conditions to funding Loans set forth in Section 7.2 or Section 2.1, and specifying any such non-satisfied conditions. Any Lender delivering any such notice shall become a non-funding Lender (a "**Non-Funding Lender**") for purposes of this Agreement commencing on the Business Day following receipt by Agent of such notice, and shall cease to be a Non-Funding Lender on the date on which such Lender has either revoked the effectiveness of such notice or acknowledged in writing to each of Agent the satisfaction of the condition(s) specified in such notice, or Required Lenders waive the conditions to the funding of such Loans giving rise to such notice by Non-Funding Lender. Each Non-Funding Lender shall remain a Lender for purposes of this Agreement to the extent that such Non-Funding Lender has Term Loans outstanding in excess of Zero Dollars ($0); *provided, however,* that during any period of time that any Non-Funding Lender exists, and notwithstanding any provision to the contrary set forth herein, the following provisions shall apply:

(a) For purposes of determining the Pro Rata Share of each Lender under clause (c) of the definition of such term, each Non-Funding Lender shall be deemed to have a Term Loan Commitment Amount as in effect immediately before such Lender became a Non-Funding Lender.

(b) Except as provided in clause (a) above, the Term Loan Commitment Amount of each Non-Funding Lender shall be deemed to be Zero Dollars ($0).

(c) The Term Loan Commitment at any date of determination during such period shall be deemed to be equal to the sum of (i) the aggregate Term Loan Commitment Amounts of all Lenders, other than the Non-Funding Lenders as of such date *plus* (ii) the aggregate principal amount outstanding under the Term Loans of all Non-Funding Lenders as of such date.

ARTICLE 12 - MISCELLANEOUS

Section 12.1 Survival. All agreements, representations and warranties made herein and in every other Financing Document shall survive the execution and delivery of this Agreement and the other Financing Documents and the other Operative Documents. The provisions of Section 2.10 and Articles 11 and 12 shall survive the payment of the Obligations (both with respect to any Lender and all Lenders collectively) and any termination of this Agreement and any judgment with respect to any Obligations, including any final foreclosure judgment with respect to any Security Document, and no unpaid or unperformed, current or future, Obligations will merge into any such judgment.

Section 12.2 No Waivers. No failure or delay by Agent or any Lender in exercising any right, power or privilege under any Financing Document shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies herein and therein provided shall be cumulative and not exclusive of any rights or remedies provided by law. Any reference in any Financing Document to the "continuing" nature of any Event of Default shall not be construed as establishing or otherwise indicating that any Borrower or any other Credit Party has the independent right to cure any such Event of Default, but is rather presented merely for convenience should such Event of Default be waived in accordance with the terms of the applicable Financing Documents.

Section 12.3 Notices.

(a) All notices, requests and other communications to any party hereunder shall be in writing (including prepaid overnight courier, facsimile transmission or similar writing) and shall be given to such party at its address, facsimile number or e-mail address set forth on the signature pages hereof (or, in the case of any such Lender who becomes a Lender after the date hereof, in an assignment agreement or in a notice delivered to Borrower Representative and Agent by the assignee Lender forthwith upon such assignment) or at such other address, facsimile number or e-mail address as such party may hereafter specify for the purpose by notice to Agent and Borrower Representative; *provided*, *however*, that notices, requests or other communications shall be permitted by electronic means only in accordance with the provisions of Section 12.3(b) and (c). Each such notice, request or other communication shall be effective (i) if given by facsimile, when such notice is transmitted to the facsimile number specified by this Section and the sender receives a confirmation of transmission from the sending facsimile machine, or (ii) if given by mail, prepaid overnight courier or any other means, when received or when receipt is refused at the applicable address specified by this Section 12.3(a).

(b) Notices and other communications to the parties hereto may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved from time to time by Agent, *provided*, *however*, that the foregoing shall not apply to notices sent directly to any Lender if such Lender has notified Agent that it is incapable of receiving notices by electronic communication. Agent or Borrower Representative may, in their discretion, agree to accept notices and other communications to them hereunder by electronic communications pursuant to procedures approved by it, *provided*, *however*, that approval of such procedures may be limited to particular notices or communications.

(c) Unless Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgment from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgment), and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor, *provided*, *however*, that if any such notice or other communication is not sent or posted during normal business hours, such notice or communication shall be deemed to have been sent at the opening of business on the next Business Day.

Section 12.4 Severability. In case any provision of or obligation under this Agreement or any other Financing Document shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

Section 12.5 Headings. Headings and captions used in the Financing Documents (including the Exhibits, Schedules and Annexes hereto and thereto) are included for convenience of reference only and shall not be given any substantive effect.

Section 12.6 Confidentiality.

(a) Each Credit Party agrees (i) not to transmit or disclose provisions of any Financing Document to any Person (other than to Borrowers' advisors, directors and officers on a need-to-know basis or as otherwise may be required by Law) without Agent's prior written consent, (ii) to inform all Persons of the confidential nature of the Financing Documents and to direct them not to disclose the same to any other Person and to require each of them to be bound by these provisions.

(b) Agent and each Lender shall hold all non-public information regarding the Credit Parties and their respective businesses identified as such by Borrowers and obtained by Agent or any Lender pursuant to the requirements hereof in accordance with such Person's customary and reasonable procedures for handling information of such nature, except that disclosure of such information may be made (i) to their respective agents, employees, Subsidiaries, Affiliates, attorneys, auditors, professional consultants, rating agencies, insurance industry associations and portfolio management services, (ii) to prospective transferees or purchasers of any interest in the Loans, Agent or a Lender, *provided*, *however*, that any such Persons are bound by obligations of confidentiality, (iii) as required by Law, subpoena, judicial order or similar order and in connection with any litigation, (iv) as may be required in connection with the examination, audit or similar investigation of such Person, and (v) to a Person that is a trustee, investment advisor or investment manager, collateral manager, servicer, noteholder or secured party in a Securitization (as hereinafter defined) in connection with the administration, servicing and reporting on the assets serving as collateral for such Securitization. For the purposes of this Section, "**Securitization**" means (A) the pledge of the Loans as collateral security for loans to a Lender, or (B) a public or private offering by a Lender or any of its Affiliates or their respective successors and assigns, of securities which represent an interest in, or which are collateralized, in whole or in part, by the Loans. Confidential information shall include only such information identified as such at the time provided to Agent and shall not include information that either: (y) is in the public domain, or becomes part of the public domain after disclosure to such Person through no fault of such Person, or (z) is disclosed to such Person by a Person other than a Credit Party, *provided*, *however*, Agent does not have actual knowledge that such Person is prohibited from disclosing such information. The obligations of Agent and Lenders under this Section 12.6 shall supersede and replace the obligations of Agent and Lenders under any confidentiality agreement in respect of this financing executed and delivered by Agent or any Lender prior to the date hereof.

Section 12.7 Waiver of Consequential and Other Damages. To the fullest extent permitted by applicable law, no Borrower shall assert, and each Borrower hereby waives, any claim against any Indemnitee (as defined below), on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of this Agreement, any other Financing Document or any agreement or instrument contemplated hereby or thereby, the transactions contemplated hereby or thereby, any Loan or the use of the proceeds thereof. No Indemnitee shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Financing Documents or the transactions contemplated hereby or thereby.

Section 12.8 GOVERNING LAW; SUBMISSION TO JURISDICTION.

(a) THIS AGREEMENT, EACH NOTE AND EACH OTHER FINANCING DOCUMENT, AND ALL DISPUTES AND OTHER MATTERS RELATING HERETO OR THERETO OR ARISING THEREFROM (WHETHER SOUNDING IN CONTRACT LAW, TORT LAW OR OTHERWISE), SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO CONFLICTS OF LAWS PRINCIPLES (OTHER THAN SECTION 5-1401 OF THE GENERAL OBLIGATIONS LAW). EACH BORROWER HEREBY CONSENTS TO THE JURISDICTION OF ANY STATE OR FEDERAL COURT LOCATED IN THE STATE OF NEW YORK IN THE CITY OF NEW YORK, BOROUGH OF MANHATTAN AND IRREVOCABLY AGREES THAT, SUBJECT TO AGENT'S ELECTION, ALL ACTIONS OR PROCEEDINGS ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE OTHER FINANCING DOCUMENTS SHALL BE LITIGATED IN SUCH COURTS. EACH BORROWER EXPRESSLY SUBMITS AND CONSENTS TO THE JURISDICTION OF THE AFORESAID COURTS AND WAIVES ANY DEFENSE OF FORUM NON CONVENIENS. EACH BORROWER HEREBY WAIVES PERSONAL SERVICE OF ANY AND ALL PROCESS AND AGREES THAT ALL SUCH SERVICE OF PROCESS MAY BE MADE UPON SUCH BORROWER BY CERTIFIED OR REGISTERED MAIL, RETURN RECEIPT REQUESTED, ADDRESSED TO SUCH BORROWER AT THE ADDRESS SET FORTH IN THIS AGREEMENT AND SERVICE SO MADE SHALL BE COMPLETE TEN (10) DAYS AFTER THE SAME HAS BEEN POSTED.

(b) Each Borrower, Agent and each Lender agree that each Loan (including those made on the Closing Date) shall be deemed to be made in, and the transactions contemplated hereunder and in any other Financing Document shall be deemed to have been performed in, the State of Maryland.

Section 12.9 **WAIVER OF JURY TRIAL**.

(a) EACH BORROWER, AGENT AND THE LENDERS HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THE FINANCING DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED THEREBY AND AGREES THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY. EACH BORROWER, AGENT AND EACH LENDER ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO A BUSINESS RELATIONSHIP, THAT EACH HAS RELIED ON THE WAIVER IN ENTERING INTO THIS AGREEMENT AND THE OTHER FINANCING DOCUMENTS, AND THAT EACH WILL CONTINUE TO RELY ON THIS WAIVER IN THEIR RELATED FUTURE DEALINGS. EACH BORROWER, AGENT AND EACH LENDER WARRANTS AND REPRESENTS THAT IT HAS HAD THE OPPORTUNITY OF REVIEWING THIS JURY WAIVER WITH LEGAL COUNSEL, AND THAT IT KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS.

(b) **In the event any such action or proceeding is brought or filed in any United States federal court sitting in the State of California or in any state court of the State of California, and the waiver of jury trial set forth in Section 12.9(a) hereof is determined or held to be ineffective or unenforceable, the parties agree that all actions or proceedings shall be resolved by reference to a private judge sitting without a jury, pursuant to California Code of Civil Procedure Section 638, before a mutually acceptable referee or, if the parties cannot agree, a referee selected by the Presiding Judge of the Los Angeles County, California. Such proceeding shall be conducted in Los Angeles County, California, with California rules of evidence and discovery applicable to such proceeding. In the event any actions or proceedings are to be resolved by judicial reference, any party may seek from any court having jurisdiction thereover any prejudgment order, writ or other relief and have such prejudgment order, writ or other relief enforced to the fullest extent permitted by Law notwithstanding that all actions or proceedings are otherwise subject to resolution by judicial reference.**

Section 12.10 Publication; Advertisement.

(a) Publication. No Credit Party will directly or indirectly publish, disclose or otherwise use in any public disclosure, advertising material, promotional material, press release or interview, any reference to the name, logo or any trademark of MCF or any of its Affiliates or any reference to this Agreement or the financing evidenced hereby, in any case except (i) as required by Law, subpoena or judicial or similar order, in which case the applicable Credit Party shall give Agent prior written notice of such publication or other disclosure, or (ii) with MCF's prior written consent.

(b) Advertisement. Each Lender and each Credit Party hereby authorizes MCF to publish the name of such Lender and Credit Party, the existence of the financing arrangements referenced under this Agreement, the primary purpose and/or structure of those arrangements, the amount of credit extended under each facility, the title and role of each party to this Agreement, and the total amount of the financing evidenced hereby in any "tombstone", comparable advertisement or press release which MCF elects to submit for publication. In addition, each Lender and each Credit Party agrees that MCF may provide lending industry trade organizations with information necessary and customary for inclusion in league table measurements after the Closing Date. With respect to any of the foregoing, MCF shall provide Borrowers with an opportunity to review and confer with MCF regarding the contents of any such tombstone, advertisement or information, as applicable, prior to its submission for publication and, following such review period, MCF may, from time to time, publish such information in any media form desired by MCF, until such time that Borrowers shall have requested MCF cease any such further publication.

Section 12.11 Counterparts; Integration. This Agreement and the other Financing Documents may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument. Signatures by facsimile or by electronic mail delivery of an electronic version of any executed signature page shall bind the parties hereto. This Agreement and the other Financing Documents constitute the entire agreement and understanding among the parties hereto and supersede any and all prior agreements and understandings, oral or written, relating to the subject matter hereof.

Section 12.12 No Strict Construction. The parties hereto have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties hereto and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provisions of this Agreement.

Section 12.13 Lender Approvals. Unless expressly provided herein to the contrary, any approval, consent, waiver or satisfaction of Agent or Lenders with respect to any matter that is the subject of this Agreement, the other Financing Documents may be granted or withheld by Agent and Lenders in their sole and absolute discretion and credit judgment.

Section 12.14 Expenses; Indemnity

(a) Borrowers hereby agree to promptly pay (i) all costs and expenses of Agent (including, without limitation, the fees, costs and expenses of counsel to, and independent appraisers and consultants retained by Agent) in connection with the examination, review, due diligence investigation, documentation, negotiation, closing and syndication of the transactions contemplated by the Financing Documents, in connection with the performance by Agent of its rights and remedies under the Financing Documents and in connection with the continued administration of the Financing Documents including (A) any amendments, modifications, consents and waivers to and/or under any and all Financing Documents, and (B) any periodic public record searches conducted by or at the request of Agent (including, without limitation, title investigations, UCC searches, fixture filing searches, judgment, pending litigation and tax lien searches and searches of applicable corporate, limited liability, partnership and related records concerning the continued existence, organization and good standing of certain Persons); (ii) without limitation of the preceding clause (i), all costs and expenses of Agent in connection with the creation, perfection and maintenance of Liens pursuant to the Financing Documents; (iii) without limitation of the preceding clause (i), all costs and expenses of Agent in connection with (A) protecting, storing, insuring, handling, maintaining or selling any Collateral, (B) any litigation, dispute, suit or proceeding relating to any Financing Document, and (C) any workout, collection, bankruptcy, insolvency and other enforcement proceedings under any and all of the Financing Documents; (iv) without limitation of the preceding clause (i), all costs and expenses of Agent in connection with Agent's reservation of funds in anticipation of the funding of the initial Loans to be made hereunder; and (v) all costs and expenses incurred by Lenders in connection with any litigation, dispute, suit or proceeding relating to any Financing Document and in connection with any workout, collection, bankruptcy, insolvency and other enforcement proceedings under any and all Financing Documents, whether or not Agent or Lenders are a party thereto. If Agent or any Lender uses in-house counsel for any of these purposes, Borrowers further agree that the Obligations include reasonable charges for such work commensurate with the fees that would otherwise be charged by outside legal counsel selected by Agent or such Lender for the work performed.

(b) Each Borrower hereby agrees to indemnify, pay and hold harmless Agent and Lenders and the officers, directors, employees, trustees, agents, investment advisors and investment managers, collateral managers, servicers, and counsel of Agent and Lenders (collectively called the "**Indemnitees**") from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, claims, costs, expenses and disbursements of any kind or nature whatsoever (including the fees and disbursements of counsel for such Indemnitee) in connection with any investigative, response, remedial, administrative or judicial matter or proceeding, whether or not such Indemnitee shall be designated a party thereto and including any such proceeding initiated by or on behalf of a Credit Party, and the reasonable expenses of investigation by engineers, environmental consultants and similar technical personnel and any commission, fee or compensation claimed by any broker (other than any broker retained by Agent or Lenders) asserting any right to payment for the transactions contemplated hereby, which may be imposed on, incurred by or asserted against such Indemnitee as a result of or in connection with the transactions contemplated hereby or by the other Operative Documents (including (i)(A) as a direct or indirect result of the presence on or under, or escape, seepage, leakage, spillage, discharge, emission or release from, any property now or previously owned, leased or operated by Borrower, any Subsidiary or any other Person of any Hazardous Materials, (B) arising out of or relating to the offsite disposal of any materials generated or present on any such property, or (C) arising out of or resulting from the environmental condition of any such property or the applicability of any governmental requirements relating to Hazardous Materials, whether or not occasioned wholly or in part by any condition, accident or event caused by any act or omission of Borrower or any Subsidiary, and (ii) proposed and actual extensions of credit under this Agreement) and the use or intended use of the proceeds of the Loans, except that Borrower shall have no obligation hereunder to an Indemnitee with respect to any liability resulting from the gross negligence or willful misconduct of such Indemnitee, as determined by a final non-appealable judgment of a court of competent jurisdiction. To the extent that the undertaking set forth in the immediately preceding sentence may be unenforceable, Borrower shall contribute the maximum portion which it is permitted to pay and satisfy under applicable Law to the payment and satisfaction of all such indemnified liabilities incurred by the Indemnitees or any of them.

(c) Notwithstanding any contrary provision in this Agreement, the obligations of Borrowers under this Section 12.14 shall survive the payment in full of the Obligations and the termination of this Agreement. NO INDEMNITEE SHALL BE RESPONSIBLE OR LIABLE TO THE BORROWERS OR TO ANY OTHER PARTY TO ANY FINANCING DOCUMENT, ANY SUCCESSOR, ASSIGNEE OR THIRD PARTY BENEFICIARY OR ANY OTHER PERSON ASSERTING CLAIMS DERIVATIVELY THROUGH SUCH PARTY, FOR INDIRECT, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES WHICH MAY BE ALLEGED AS A RESULT OF CREDIT HAVING BEEN EXTENDED, SUSPENDED OR TERMINATED UNDER THIS AGREEMENT OR ANY OTHER FINANCING DOCUMENT OR AS A RESULT OF ANY OTHER TRANSACTION CONTEMPLATED HEREUNDER OR THEREUNDER.

(d) **Each Borrower for itself and all endorsers, guarantors and sureties and their heirs, legal representatives, successors and assigns, hereby further specifically waives any rights that it may have under Section 1542 of the California Civil Code (to the extent applicable), which provides as follows: "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR," and further waives any similar rights under applicable Laws.**

Section 12.15 Reinstatement. This Agreement shall remain in full force and effect and continue to be effective should any petition or other proceeding be filed by or against any Credit Party for liquidation or reorganization, should any Credit Party become insolvent or make an assignment for the benefit of any creditor or creditors or should an interim receiver, receiver, receiver and manager or trustee be appointed for all or any significant part of any Credit Party's assets, and shall continue to be effective or to be reinstated, as the case may be, if at any time payment and performance of the Obligations, or any part thereof, is, pursuant to applicable law, rescinded or reduced in amount, or must otherwise be restored or returned by any obligee of the Obligations, whether as a fraudulent preference reviewable transaction or otherwise, all as though such payment or performance had not been made. In the event that any payment, or any part thereof, is rescinded, reduced, restored or returned, the Obligations shall be reinstated and deemed reduced only by such amount paid and not so rescinded, reduced, restored or returned.

Section 12.16 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of Borrowers and Agent and each Lender and their respective successors and permitted assigns.

Section 12.17 USA PATRIOT Act Notification. Agent (for itself and not on behalf of any Lender) and each Lender hereby notifies Borrowers that pursuant to the requirements of the USA PATRIOT Act, it is required to obtain, verify and record certain information and documentation that identifies Borrowers, which information includes the name and address of Borrower and such other information that will allow Agent or such Lender, as applicable, to identify Borrowers in accordance with the USA PATRIOT Act.

Section 12.18 Cross Default and Cross Collateralization.

(ii) Cross-Default. As stated under Section 10.1 hereof, an Event of Default under any of the Affiliated Financing Documents shall be an Event of Default under this Agreement. In addition, a Default or Event of Default under any of the Financing Documents shall be a Default under the Affiliated Financing Documents.

(jj) Cross Collateralization. Borrowers acknowledge and agree that the Collateral securing this Loan, also secures the Affiliated Obligations.

(kk) Consent. Each Borrower authorizes Agent, without giving notice to any Borrower or obtaining the consent of any Borrower and without affecting the liability of any Borrower for the Affiliated Obligations directly incurred by the Borrowers, from time to time to:

(i) compromise, settle, renew, extend the time for payment, change the manner or terms of payment, discharge the performance of, decline to enforce, or release all or any of the Affiliated Obligations; grant other indulgences to any Borrowers in respect thereof; or modify in any manner any documents relating to the Affiliated Obligations;

(ii) declare all Affiliated Obligations due and payable upon the occurrence and during the continuance of an Event of Default;

(iii) take and hold security for the performance of the Affiliated Obligations of any Borrowers and exchange, enforce, waive and release any such security;

(iv) apply and reapply such security and direct the order or manner of sale thereof as Agent, in its sole discretion, may determine;

(v) release, surrender or exchange any deposits or other property securing the Affiliated Obligations or on which Agent at any time may have a Lien; release, substitute or add any one or more endorsers or guarantors of the Affiliated Obligations of any Borrowers; or compromise, settle, renew, extend the time for payment, discharge the performance of, decline to enforce, or release all or any obligations of any such endorser or guarantor or other Person who is now or may hereafter be liable on any Affiliated Obligations or release, surrender or exchange any deposits or other property of any such Person;

(vi) apply payments received by Lender from Borrower to any Obligations or Affiliated Obligations, as permitted in accordance with the terms of this Agreement and in such order as Lender shall determine, in its sole discretion; and

(vii) assign the Affiliated Financing Documents in whole or in part

Section 12.19 Existing Agreements Superseded; Exhibits and Schedules.

(a) The Original Credit Agreement, including the schedules thereto, is superseded by this Agreement, including the schedules hereto, which has been executed in amendment, restatement and modification of, but not in novation or extinguishment of, the obligations under the Original Credit Agreement. It is the express intention of the parties hereto to reaffirm the indebtedness and other obligations created under the Original Credit Agreement. Any and all outstanding amounts under the Original Credit Agreement including, but not limited to principal, accrued interest, fees (except as otherwise provided herein) and other charges, as of the Closing Date shall be carried over and deemed outstanding under this Agreement.

(b) Each Credit Party reaffirms its obligations under each Financing Document to which it is a party, including but not limited to the Security Documents and the schedules thereto.

(c) Each Credit Party acknowledges and confirms that (i) the Liens and security interests granted pursuant to the Financing Documents secure the indebtedness, liabilities and obligations of the Borrowers and the other Credit Parties to Agent and the Lenders under the Original Credit Agreement, as amended and restated hereby, and that the term "Obligations" as used in the Financing Documents (or any other term used therein to describe or refer to the indebtedness, liabilities and obligations of the Borrowers to Agent and the Lenders) includes, without limitation, the indebtedness, liabilities and obligations of the Borrowers under this Agreement and the Notes to be delivered hereunder, if any, and under the Original Credit Agreement, as amended and restated hereby, as the same further may be amended, restated, supplemented and/or modified from time to time, and (ii) the grants of Liens under and pursuant to the Financing Documents shall continue unaltered, and each other Financing Document shall continue in full force and effect in accordance with its terms unless otherwise amended by the parties thereto, and the parties hereto hereby ratify and confirm the terms thereof as being in full force and effect and unaltered by this Agreement and all references in the any of the Financing Documents to the "Credit Agreement" shall be deemed to refer to this Amended and Restated Credit Agreement.

(d) Nothing herein contained shall be construed as a substitution or novation of the obligations outstanding under the Original Credit Agreement or the other Financing Documents. Nothing in this Agreement shall be construed as a release or other discharge of any Borrower or any other Credit Party from its obligations and liabilities under the Original Credit Agreement or the other Financing Documents. On the Closing Date, any and all references in any Financing Documents to the Original Credit Agreement shall be deemed to be amended to refer to this Agreement.

[SIGNATURES APPEAR ON FOLLOWING PAGES]

IN WITNESS WHEREOF, intending to be legally bound, each of the parties have caused this Agreement to be executed day and year first above mentioned.

BORROWERS:

AZIYO BIOLOGICS, INC.

By: /s/ Jeffrey Hamet
Name: Jeffrey Hamet
Title: Treasurer

AZIYO MED, LLC

By: /s/ Jeffrey Hamet
Name: Jeffrey Hamet
Title: Treasurer

Address for Borrowers:

c/o Aziyo Biologics, Inc.
12510 Prosperity Drive, Suite 370
Silver Spring, Maryland 20904
Attn: [XXX]
Facsimile:
E-
mail: [XXX]

with a copy to:

Shipman & Goodwin LLP
One Constitution Plaza
Hartford, Connecticut 06103
Attn: [XXX]
Facsimile: 860-251-5311
E-
mail: [XXX]

AGENT:

MIDCAP FINANCIAL TRUST

By: Apollo Capital Management, L.P.,
its investment manager

By: Apollo Capital Management GP, LLC,
its general partner

By: /s/ Maurice Amsellem
Name: Maurice Amsellem
Title: Authorized Signatory

Address:

c/o MidCap Financial Services, LLC, as servicer
7255 Woodmont Avenue, Suite 200
Bethesda, Maryland 20814
Attn: Account Manager for Aziyo transaction
Facsimile: 301-941-1450
E-mail: notices@midcapfinancial.com

with a copy to:

c/o MidCap Financial Services, LLC, as servicer
7255 Woodmont Avenue, Suite 200
Bethesda, Maryland 20814
Attn: General Counsel
Facsimile: 301-941-1450
E-mail: legalnotices@midcapfinancial.com

Payment Account Designation:

SunTrust Bank, N.A.
ABA #: [XXX]
Account Name: MidCap Financial Trust – Collections
Account #: [XXX]
Attention: Aziyo Facility

LENDER:

MIDCAP FINANCIAL TRUST

By: Apollo Capital Management, L.P.,
its investment manager

By: Apollo Capital Management GP, LLC,
its general partner

By: /s/ Maurice Amsellem
Name: Maurice Amsellem
Title: Authorized Signatory

Address:

c/o MidCap Financial Services, LLC, as servicer
7255 Woodmont Avenue, Suite 200
Bethesda, Maryland 20814
Attn: Account Manager for Aziyo transaction
Facsimile: 301-941-1450
E-mail: notices@midcapfinancial.com

with a copy to:

c/o MidCap Financial Services, LLC, as servicer
7255 Woodmont Avenue, Suite 200
Bethesda, Maryland 20814
Attn: General Counsel
Facsimile: 301-941-1450
E-mail: legalnotices@midcapfinancial.com

LENDER:

FLEXPOINT MCLS SPV LLC

By: /s/ Daniel Edelman
Name: Daniel Edelman
Title: Vice President

Address:

Flexpoint MCLS SPV, LLC
c/o MidCap Financial Services, LLC, as servicer
7255 Woodmont Avenue, Suite 200
Bethesda, Maryland 20814
Attn: Account Manager for Aziyo transaction
Facsimile: 301-941-1450
E-mail: notices@midcapfinancial.com

with a copy to:

Flexpoint MCLS SPV, LLC
c/o MidCap Financial Services, LLC, as servicer
7255 Woodmont Avenue, Suite 200
Bethesda, Maryland 20814
Attn: General Counsel
Facsimile: 301-941-1450
E-mail: legalnotices@midcapfinancial.com

ANNEXES, EXHIBITS AND SCHEDULES

ANNEXES

Annex A	Commitment Annex

EXHIBITS

Exhibit A	[Reserved]
Exhibit B	Form of Compliance Certificate
Exhibit C	[Reserved]
Exhibit D	Form of Notice of Borrowing
Exhibit F-1	Form of U.S. Tax Compliance Certificate
Exhibit F-2	Form of U.S. Tax Compliance Certificate
Exhibit F-3	Form of U.S. Tax Compliance Certificate
Exhibit F-4	Form of U.S. Tax Compliance Certificate

SCHEDULES

Schedule 2.1	Scheduled Principal Payments for Term Loan
Schedule 3.1	Existence, Organizational ID Numbers, Foreign Qualification, Prior Names
Schedule 3.4	Capitalization
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Schedule 9.1	Collateral
Schedule 9.2(b)	Location of Collateral
Schedule 9.2(d)	Chattel Paper, Letter of Credit Rights, Commercial Tort Claims, Instruments, Documents, Investment Property

Annex A to Credit Agreement (Commitment Annex)

Lender	Term Loan Tranche 1 Commitment Amount	Term Loan Tranche 1 Commitment Percentage	Term Loan Tranche 2 Commitment Amount	Term Loan Tranche 2 Commitment Percentage	Term Loan Tranche 3 Commitment Amount	Term Loan Tranche 3 Commitment Percentage	Term Loan Tranche 4 Commitment Amount	Term Loan Tranche 4 Commitment Percentage	Term Loan Tranche 5 Commitment Amount	Term Loan Tranche 5 Commitment Percentage
MidCap Financial Trust	$ 0	0%	$ 0	0%	$ 0	0%	$ 3,252,083.33	92.92%	$ 4,645,833.33	92.92%
Elm 2018-2 Trust	$ 3,497,916.67	41.15%	$ 0	0%	$ 2,787,500	92.92%	$ 0	0%	$ 0	0%
Flexpoint MCLS SPV LLC	$ 602,083.33	7.08%	$ 354,166.67	7.08%	$ 212,500	7.08%	$ 247,916.67	7.08%	$ 354,166.67	7.08%
Elm 2016-1 Trust	$ 4,400,000	51.76%	$ 4,645,833.33	92.92%	$ 0	0%	$ 0	0%	$ 0	0%
TOTALS	**$ 8,500,000.00**	**100%**	**$ 5,000,000**	**100%**	**$ 3,000,000**	**100%**	**$ 3,500,000.00**	**100%**	**$ 5,000,000**	**100%**

Exhibit A to Credit Agreement (Reserved)

Exhibit B to Credit Agreement (Form of Compliance Certificate)

COMPLIANCE CERTIFICATE

This Compliance Certificate is given by _____, a Responsible Officer of Aziyo Biologics, Inc. (the "**Borrower Representative**"), pursuant to that certain Amended and Restated Credit and Security Agreement (Term Loan) dated as of July 15, 2019 among the Borrower Representative and any additional Borrower that may hereafter be added thereto (collectively, "**Borrowers**"), MidCap Financial Trust, individually as a Lender and as Agent, and the financial institutions or other entities from time to time parties hereto, each as a Lender (as such agreement may have been amended, restated, supplemented or otherwise modified from time to time, the "**Credit Agreement**"). Capitalized terms used herein without definition shall have the meanings set forth in the Credit Agreement.

The undersigned Responsible Officer hereby certifies to Agent and Lenders that:

(a) the financial statements delivered with this certificate in accordance with Section 4.1 of the Credit Agreement fairly present in all material respects the results of operations and financial condition of Borrowers and their Consolidated Subsidiaries as of the dates and the accounting period covered by such financial statements;

(b) the representations and warranties of each Credit Party contained in the Financing Documents are true, correct and complete in all material respects on and as of the date hereof, except to the extent that any such representation or warranty relates to a specific date in which case such representation or warranty shall be true and correct in all material respects as of such earlier date; provided, however, in each case, such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof;

(c) I have reviewed the terms of the Credit Agreement and have made, or caused to be made under my supervision, a review in reasonable detail of the transactions and conditions of Borrowers and their Consolidated Subsidiaries during the accounting period covered by such financial statements, and such review has not disclosed the existence during or at the end of such accounting period, and I have no knowledge of the existence as of the date hereof, of any condition or event that constitutes a Default or an Event of Default, except as set forth in **Schedule 1** hereto, which includes a description of the nature and period of existence of such Default or an Event of Default and what action Borrowers have taken, are undertaking and propose to take with respect thereto;

(d) except as noted on **Schedule 2** attached hereto, Schedule 9.2(b) to the Credit Agreement contains a complete and accurate list of all business locations of Borrowers and Guarantors and all names under which Borrowers and Guarantors currently conduct business; Schedule 2 specifically notes any changes in the names under which any Borrower or Guarantors conduct business;

(e) except as noted on **Schedule 3** attached hereto, the undersigned has no knowledge of (i) any federal or state tax liens having been filed against any Borrower, Guarantor or any Collateral, or (ii) any failure of any Borrower or any Guarantors to make required payments of withholding or other tax obligations of any Borrower or any Guarantors during the accounting period to which the attached statements pertain or any subsequent period;

(f) Schedule 5.14 to the Credit Agreement contains a complete and accurate statement of all deposit accounts or investment accounts maintained by Borrowers and Guarantors;

(g) except as noted on **Schedule 4** attached hereto and Schedule 3.6 to the Credit Agreement, the undersigned has no knowledge of any current, pending or threatened: (i) litigation against the Borrowers or any Guarantors, (ii) inquiries, investigations or proceedings concerning the business affairs, practices, licensing or reimbursement entitlements of Borrowers or any Guarantors, or (iii) default by Borrowers or any Guarantors under any Material Contract to which it is a party;

(h) except as noted on **Schedule 5** attached hereto, no Borrower or Guarantor has acquired, by purchase, by the approval or granting of any application for registration (whether or not such application was previously disclosed to Agent by Borrowers) or otherwise, any Intellectual Property that is registered with any United States or foreign Governmental Authority, or has filed with any such United States or foreign Governmental Authority, any new application for the registration of any Intellectual Property, or acquired rights under a license as a licensee with respect to any such registered Intellectual Property (or any such application for the registration of Intellectual Property) owned by another Person, that has not previously been reported to Agent on Schedule 3.17 to the Credit Agreement or any **Schedule 5** to any previous Compliance Certificate delivered by Borrower to Agent;

(i) except as noted on **Schedule 6** attached hereto, no Borrower or Guarantor has acquired, by purchase or otherwise, any Chattel Paper, Letter of Credit Rights, Instruments, Documents or Investment Property that has not previously been reported to Agent on any **Schedule 6** to any previous Compliance Certificate delivered by Borrower Representative to Agent;

(j) except as noted on Schedule 7 attached hereto, no Borrower or Guarantor is aware of any commercial tort claim that has not previously been reported to Agent on any Schedule 7 to any previous Compliance Certificate delivered by Borrower Representative to Agent;

(k) Borrowers and Guarantor are in compliance with the covenants contained in Article 6 of the Credit Agreement, and in any Guarantee constituting a part of the Financing Documents, as demonstrated by the calculation of such covenants below, except as set forth below; in determining such compliance, the following calculations have been made: [See attached worksheets]. Such calculations and the certifications contained therein are true, correct and complete;

(l) [Fixed Charge Coverage Ratio for the Defined Period ending [_____] is [___]:[___]][1];

(m) [Liquidity as of the date hereof is $[_____]][2].

The foregoing certifications and computations are made as of _____, 20__ (end of month) and as of _____, 20__.

---

[1] Solely to the extent required for Aziyo to make a payment to DNW or HighCape.

[2] Solely to the extent required for Aziyo to make a payment to DNW or HighCape.

Sincerely,

AZIYO BIOLOGICS, INC.

By: _____
Name: _____
Title: _____

Exhibit C

[Reserved]

Exhibit D to Credit Agreement (Form of Notice of Borrowing)

NOTICE OF BORROWING

This Notice of Borrowing is given by _____, a Responsible Officer of Aziyo Biologics, Inc. (the "**Borrower Representative**"), pursuant to that certain Amended and Restated Credit and Security Agreement (Term Loan) dated as of July 15, 2019 among the Borrower Representative, and any additional Borrower that may hereafter be added thereto (collectively, "**Borrowers**"), MidCap Financial Trust, individually as a Lender and as Agent, and the financial institutions or other entities from time to time parties hereto, each as a Lender (as such agreement may have been amended, restated, supplemented or otherwise modified from time to time, the "**Credit Agreement**"). Capitalized terms used herein without definition shall have the meanings set forth in the Credit Agreement.

The undersigned Responsible Officer hereby gives notice to Agent of Borrower Representative's request to borrow $_____ of Term Loans on _____, 20__.

The undersigned officer hereby certifies that, both before and after giving effect to the request above (a) each of the conditions precedent set forth in Section 7.2 have been satisfied, (b) all of the representations and warranties contained in the Credit Agreement and the other Financing Documents are true, correct and complete in all material respects as of the date hereof, except to the extent such representation or warranty relates to a specific date, in which case such representation or warranty is true, correct and complete in all material respects as of such earlier date; provided, however, in each case, such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof, and (c) no Default or Event of Default has occurred and is continuing on the date hereof.

IN WITNESS WHEREOF, the undersigned officer has executed and delivered this Notice of Borrowing this ____ day of _____, 20__.

Sincerely,

AZIYO BIOLOGICS, INC.

By: _____
Name: _____
Title: _____

Exhibit F-1 to Credit Agreement (Form of U.S. Tax Compliance Certificate)

U.S. TAX COMPLIANCE CERTIFICATE

(For Foreign Lenders That Are Not Partnerships For U.S. Federal Income Tax Purposes)

This U.S. Tax Compliance Certificate is given by _____, a Responsible Officer of _____ (the "**Borrower Representative**"), pursuant to that certain Amended and Restated Credit and Security Agreement (Term Loan) dated as of _____, 20__ among the Borrower Representative, _____ and any additional Borrower that may hereafter be added thereto (collectively, "**Borrowers**"), MidCap Financial Trust, individually as a Lender and as Agent, and the financial institutions or other entities from time to time parties hereto, each as a Lender (as such agreement may have been amended, restated, supplemented or otherwise modified from time to time, the "**Credit Agreement**"). Capitalized terms used herein without definition shall have the meanings set forth in the Credit Agreement.

Pursuant to the provisions of Section 2.8(c) of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record and beneficial owner of the Loan(s) (as well as any Note(s) evidencing such Loan(s)) in respect of which it is providing this certificate, (ii) it is not a bank within the meaning of Section 881(c)(3)(A) of the Code, (iii) it is not a ten percent shareholder of any Borrower within the meaning of Section 871(h)(3)(B) of the Code and (iv) it is not a controlled foreign corporation related to any Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished the Agent and the Borrower Representative with a certificate of its non-U.S. Person status on IRS Form W-8BEN. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform the Borrower Representative and the Agent, and (2) the undersigned shall have at all times furnished the Borrower Representative and the Agent with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

[NAME OF LENDER]

By: _____
Name:
Title:

Date: _____ __, 20[ ]

Exhibit F-2 to Credit Agreement (Form of U.S. Tax Compliance Certificate)

U.S. TAX COMPLIANCE CERTIFICATE

(For Foreign Participants That Are Not Partnerships For U.S. Federal Income Tax Purposes)

This U.S. Tax Compliance Certificate is given by _____, a Responsible Officer of _____ (the "**Borrower Representative**"), pursuant to that certain Amended and Restated Credit and Security Agreement (Term Loan) dated as of _____, 20__ among the Borrower Representative, _____ and any additional Borrower that may hereafter be added thereto (collectively, "**Borrowers**"), MidCap Financial Trust, individually as a Lender and as Agent, and the financial institutions or other entities from time to time parties hereto, each as a Lender (as such agreement may have been amended, restated, supplemented or otherwise modified from time to time, the "**Credit Agreement**"). Capitalized terms used herein without definition shall have the meanings set forth in the Credit Agreement.

Pursuant to the provisions of Section 2.8(c) of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record and beneficial owner of the participation in respect of which it is providing this certificate, (ii) it is not a bank within the meaning of Section 881(c)(3)(A) of the Code, (iii) it is not a ten percent shareholder of any Borrower within the meaning of Section 871(h)(3)(B) of the Code, and (iv) it is not a controlled foreign corporation related to any Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished its participating Lender with a certificate of its non-U.S. Person status on IRS Form W-8BEN. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform such Lender in writing, and (2) the undersigned shall have at all times furnished such Lender with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

[NAME OF PARTICIPANT]

By: _____
Name:
Title:

Date: _____ __, 20[ ]

Exhibit F-3 to Credit Agreement (Form of U.S. Tax Compliance Certificate)

U.S. TAX COMPLIANCE CERTIFICATE

(For Foreign Participants That Are Partnerships For U.S. Federal Income Tax Purposes)

This U.S. Tax Compliance Certificate is given by _____, a Responsible Officer of _____ (the "**Borrower Representative**"), pursuant to that certain Amended and Restated Credit and Security Agreement (Term Loan) dated as of _____, 20__ among the Borrower Representative, _____ and any additional Borrower that may hereafter be added thereto (collectively, "**Borrowers**"), MidCap Financial Trust, individually as a Lender and as Agent, and the financial institutions or other entities from time to time parties hereto, each as a Lender (as such agreement may have been amended, restated, supplemented or otherwise modified from time to time, the "**Credit Agreement**"). Capitalized terms used herein without definition shall have the meanings set forth in the Credit Agreement.

Pursuant to the provisions of Section 2.8(c) of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record owner of the participation in respect of which it is providing this certificate, (ii) its direct or indirect partners/members are the sole beneficial owners of such participation, (iii) with respect such participation, neither the undersigned nor any of its direct or indirect partners/members is a bank extending credit pursuant to a loan agreement entered into in the ordinary course of its trade or business within the meaning of Section 881(c)(3)(A) of the Code, (iv) none of its direct or indirect partners/members is a ten percent shareholder of any Borrower within the meaning of Section 871(h)(3)(B) of the Code and (v) none of its direct or indirect partners/members is a controlled foreign corporation related to any Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished its participating Lender with IRS Form W-8IMY accompanied by one of the following forms from each of its partners/members that is claiming the portfolio interest exemption: (i) an IRS Form W-8BEN or (ii) an IRS Form W-8IMY accompanied by an IRS Form W-8BEN from each of such partner's/member's beneficial owners that is claiming the portfolio interest exemption. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform such Lender and (2) the undersigned shall have at all times furnished such Lender with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

[NAME OF PARTICIPANT]

By: _____
Name:
Title:

Date: _____ __, 20[ ]

Exhibit F-4 to Credit Agreement (Form of U.S. Tax Compliance Certificate)

U.S. TAX COMPLIANCE CERTIFICATE

(For Foreign Lenders That Are Partnerships For U.S. Federal Income Tax Purposes)

This U.S. Tax Compliance Certificate is given by _____, a Responsible Officer of _____ (the "**Borrower Representative**"), pursuant to that certain Amended and Restated Credit and Security Agreement (Term Loan) dated as of _____, 20__ among the Borrower Representative, _____ and any additional Borrower that may hereafter be added thereto (collectively, "**Borrowers**"), MidCap Financial Trust, individually as a Lender and as Agent, and the financial institutions or other entities from time to time parties hereto, each as a Lender (as such agreement may have been amended, restated, supplemented or otherwise modified from time to time, the "**Credit Agreement**"). Capitalized terms used herein without definition shall have the meanings set forth in the Credit Agreement.

Pursuant to the provisions of Section 2.8(c) of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record owner of the Loan(s) (as well as any Note(s) evidencing such Loan(s)) in respect of which it is providing this certificate, (ii) its direct or indirect partners/members are the sole beneficial owners of such Loan(s) (as well as any Note(s) evidencing such Loan(s)), (iii) with respect to the extension of credit pursuant to this Credit Agreement or any other Financing Document, neither the undersigned nor any of its direct or indirect partners/members is a bank extending credit pursuant to a loan agreement entered into in the ordinary course of its trade or business within the meaning of Section 881(c)(3)(A) of the Code, (iv) none of its direct or indirect partners/members is a ten percent shareholder of any Borrower within the meaning of Section 871(h)(3)(B) of the Code and (v) none of its direct or indirect partners/members is a controlled foreign corporation related to any Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished the Agent and the Borrower Representative with IRS Form W-8IMY accompanied by one of the following forms from each of its partners/members that is claiming the portfolio interest exemption: (i) an IRS Form W-8BEN or (ii) an IRS Form W-8IMY accompanied by an IRS Form W-8BEN from each of such partner's/member's beneficial owners that is claiming the portfolio interest exemption. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform the Borrower Representative and the Agent, and (2) the undersigned shall have at all times furnished the Borrower Representative and the Agent with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

[NAME OF LENDER]

By: _____
Name: _____
Title: _____

Date: _____ __, 20[ ]

Schedule 2.1 – Amortization

Commencing on February 1, 2021 (the "**Initial Amortization Start Date**") and continuing on the first day of each calendar month thereafter, Borrower shall pay to Agent as a principal payment on the Term Loan(s) an amount equal to the total principal amount of the Term Loan(s) made to Borrower *divided by* forty-two (42), for a forty-two (42) month straight-line amortization of equal monthly principal payments; *provided, however*, Borrower Representative may, on any Business Day during the period beginning on December 1, 2020 and ending on the date that is fifteen (15) days prior to the Initial Amortization Start Date, request in writing that Agent and the Lenders extend the Initial Amortization Start Date (an "**IO Extension Request**") by six (6) months, and if the IO Extension Conditions (as defined below) are satisfied to Agent's and each Lender's reasonable satisfaction, then the Initial Amortization Start Date shall be extended to August 1, 2021 and the principal payments to be made in respect of the Term Loan(s) shall be in an amount equal to the total principal amount of the Term Loan(s) made to Borrower *divided by* thirty-six (36), for a thirty-six (36) month straight-line amortization of equal monthly principal payments.

For purposes hereof, the "**IO Extension Conditions**" means the satisfaction of each of the following conditions: (i) the Agent has received evidence satisfactory to it that the Borrower Representative has consummated a Qualified IPO, and (ii) as of the date of the IO Extension Request and the Initial Amortization Start Date (without giving effect to any extension thereof), no Default or Event of Default has occurred and is continuing.

Notwithstanding anything to the contrary contained in the foregoing, the entire remaining outstanding principal balance under the Term Loans shall mature and be due and payable upon the Termination Date.

Schedule 3.1 – Existence, Organizational ID Numbers, Foreign Qualification, Prior Names

Schedule 3.4 – Capitalization

Schedule 3.6 – Litigation

Schedule 3.17 – Material Contracts

Schedule 3.18 – Environmental Compliance

Schedule 3.19 – Intellectual Property

Patents

US Patents - Aziyo Med, LLC

Schedule 4.9 – Litigation, Governmental Proceedings and Other Notice Events

Schedule 5.1 – Debt; Contingent Obligations

Schedule 5.2 – Liens

Schedule 5.7 – Permitted Investments

Schedule 5.8 – Affiliate Transactions

Schedule 5.14 – Deposit Accounts and Securities Accounts

Schedule 6.1– Minimum Net Product Revenue

Defined Period Ending	Minimum Net Product Revenue Amount
June 30, 2019	$25,300,000
July 31, 2019	$25,400,000
August 31, 2019	$25,500,000
September 30, 2019	$26,100,000
October 31, 2019	$26,200,000
November 30, 2019	$26,400,000
December 31, 2019	$28,500,000
January 31, 2020	$28,800,000
February 29, 2020	$29,000,000
March 31, 2020	$29,200,000
April 30, 2020	$29,500,000
May 31, 2020	$30,200,000
June 30, 2020	$30,700,000
July 31, 2020	$31,200,000
August 31, 2020	$31,900,000
September 30, 2020	$32,500,000
October 31, 2020	$33,800,000
November 30, 2020	$34,500,000
December 31, 2020	$35,000,000
January 31, 2021	$35,500,000
February 28, 2021	$35,700,000
March 31, 2021	$36,000,000
April 30, 2021	$36,500,000
May 31, 2021	$37,100,000
June 30, 2021	$37,600,000
July 31, 2021	$37,900,000
August 31, 2021	$38,200,000
September 30, 2021	$38,500,000
October 31, 2021	$38,600,000
November 30, 2021	$38,800,000
December 31, 2021	$40,000,000
January 31, 2022	$40,400,000
February 28, 2022	$40,800,000
March 31, 2022	$41,200,000
April 30, 2022	$41,600,000
May 31, 2022	$42,000,000
June 30, 2022	$42,400,000
July 31, 2022	$42,800,000
August 31, 2022	$43,200,000
September 30, 2022	$43,600,000
October 31, 2022	$44,000,000
November 30, 2022	$44,400,000
December 31, 2022	$44,800,000
January 31, 2023	$45,000,000
February 28, 2023	$45,200,000
March 31, 2023	$45,400,000
April 30, 2023	$45,600,000
May 31, 2023	$45,800,000
June 30, 2023	$46,000,000
July 31, 2023	$46,200,000
August 31, 2023	$46,400,000
September 30, 2023	$46,600,000
October 31, 2023	$46,800,000
November 30, 2023	$47,000,000
December 31, 2023	$47,200,000
January 31, 2024	$47,400,000
February 29, 2024	$47,600,000
March 31, 2024	$47,800,000
April 30, 2024	$48,000,000
May 31, 2024	$48,200,000
June 30, 2024	$48,200,000

Schedule 7.4 – Post-Closing Requirements

Borrowers shall satisfy and complete each of the following obligations, or provide Agent each of the items listed below, as applicable, on or before the date indicated below, all to the satisfaction of Agent in its sole and absolute discretion:

None.

Borrower's failure to complete and satisfy any of the above obligations on or before the date indicated above, or Borrower's failure to deliver any of the above listed items on or before the date indicated above, shall constitute an immediate an automatic Event of Default.

Schedule 9.1 – Collateral

The Collateral consists of all of each Borrower's assets, including without limitation, all of each Borrower's right, title and interest in and to the following, whether now owned or hereafter created, acquired or arising:

(a) all goods, Accounts (including health-care insurance receivables), equipment, Inventory, contract rights or rights to payment of money, leases, license agreements, franchise agreements, General Intangibles, commercial tort claims (including each such claim listed on Schedule 9.2(d)), documents, instruments (including any promissory notes), chattel paper (whether tangible or electronic), cash, deposit accounts, securities accounts, fixtures, letter of credit rights (whether or not the letter of credit is evidenced by a writing), securities, and all other investment property, supporting obligations, and financial assets, whether now owned or hereafter acquired, wherever located;

(b) all of Borrowers' books and records relating to any of the foregoing; and

(c) any and all claims, rights and interests in any of the above and all substitutions for, additions, attachments, accessories, accessions and improvements to and replacements, products, proceeds and insurance proceeds of any or all of the foregoing.

Schedule 9.2(b) – Collateral Information

Aziyo Biologics, Inc.

12510 Prosperity Drive, Suite 370, Silver Spring, MD 20904 (principal place of business)

880 Harbour Way South, Suite 100, Richmond, CA 94804

Certain collateral is located at various hospital locations in accordance with consignment or other agreements entered in the ordinary course of business

Aziyo Med, LLC

12510 Prosperity Drive, Suite 370, Silver Spring, MD 20904 (principal place of business)

1100 Old Ellis Rd, Suite 1200, Roswell, GA 30076

Certain collateral is located at various hospital locations in accordance with consignment or other agreements entered in the ordinary course of business

Schedule 9.2(d) – Chattel Paper, Letter of Credit Rights, Commercial Tort Claims, Instruments, Documents, Investment Property

None.

AMENDMENT NO. 1 TO AMENDED AND RESTATED CREDIT AND SECURITY AGREEMENT (REVOLVING LOAN)

This AMENDMENT NO. 1 TO AMENDED AND RESTATED CREDIT AND SECURITY AGREEMENT (REVOLVING LOAN) (this "**Agreement**") is made as of September **26**, 2020, by and among **AZIYO BIOLOGICS, INC.**, a Delaware corporation ("**Aziyo**"), **AZIYO MED, LLC**, a Delaware limited liability company ("**Aziyo Med**", and Aziyo Med, together with Aziyo, each individually, a "**Borrower**" and collectively, the "**Borrowers**"), **MIDCAP FUNDING IV TRUST**, a Delaware statutory trust, as Agent (in such capacity, together with its successors and assigns, "**Agent**") and the other financial institutions or other entities from time to time parties to the Credit Agreement referenced below, each as a Lender.

RECITALS

A. Agent, Lenders and Borrowers have entered into that certain Amended and Restated Credit and Security Agreement (Revolving Loan), dated as of July 15, 2019 (as amended, modified, supplemented and restated prior to the date hereof, the "**Original Credit Agreement**" and as the same is amended hereby and as it may be further amended, modified, supplemented and restated from time to time, the "**Credit Agreement**"), pursuant to which the Lenders have agreed to make certain advances of money and to extend certain financial accommodations to Borrowers in the amounts and manner set forth in the Credit Agreement.

B. Borrowers have requested, and Agent and Lenders constituting at least the Required Lenders have agreed, to amend certain provisions of the Original Credit Agreement, in each case, in accordance with the terms and subject to the conditions set forth herein.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing, the terms and conditions set forth in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Agent, Required Lenders and Borrowers hereby agree as follows:

1. **Recitals**. This Agreement shall constitute a Financing Document and the Recitals and each reference to the Credit Agreement, unless otherwise expressly noted, will be deemed to reference the Credit Agreement as amended hereby. Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Credit Agreement (including those capitalized terms used in the Recitals hereto).

2. **Amendments to Original Credit Agreement**. Subject to the satisfaction of the conditions to effectiveness set forth in Section 4 below, the Original Credit Agreement is hereby amended as follows:

(a) Clause (b) of the definition of "Permitted Modifications" in Section 1.1 of the Original Credit Agreement is hereby amended by adding the words "(or, in the case of any such amendment, consent, waiver or other modification to an Organizational Document in connection with a Qualified IPO, materially adversely)" immediately following the word "adversely" contained therein.

(b) The definition of "Qualified IPO" in Section 1.1 of the Original Credit Agreement is hereby amended and restated in its entirety as follows:

"**Qualified IPO**" means the issuance and sale by Aziyo of its common stock in an underwritten public offering (other than a public offering pursuant to a registration statement on Form S-8) pursuant to an effective registration statement (whether alone or in connection with a secondary public offering) filed with the SEC in accordance with the Securities Act of 1933, as amended, following which Aziyo's common stock is listed on a nationally-recognized stock exchange in the United States and in respect of which Aziyo has delivered evidence satisfactory to Agent that Aziyo has received net cash proceeds of not less than (x) solely for purposes of determining whether a Change of Control has occurred, $30,000,000 or (y) for purposes of all other determinations under this Agreement, $40,000,000 (in each case, subject to no clawback, escrow or other terms limiting the Aziyo's ability to freely use such proceeds)."

(c) Sections 4.9(a)(i)(1) and 5.10(b) of the Original Credit Agreement are each hereby amended by adding the words "(or, in the case of any such amendment, consent, waiver or other modification to a Material Contract in connection with a Qualified IPO, materially adverse)" immediately following the word "adverse" contained therein.

3. **Representations and Warranties; Reaffirmation of Security Interest.**

(a) Each Borrower hereby confirms that each of the representations and warranties set forth in the Credit Agreement is true and correct in all material respects (without duplication of any materiality qualifier in the text of such representation or warranty) with respect to such Borrower as of the date hereof except to the extent that any such representation or warranty relates to a specific date in which case such representation or warranty shall be true and correct in all material respects as of such earlier date (without duplication of any materiality qualifier in the text of such representation or warranty). All information set forth in the Schedules to the Credit Agreement is true, accurate and complete in all material respects as of the date of delivery of the last Compliance Certificate except to the extent that any such Schedule relates to the Closing Date only in which case such Schedule shall be true and correct in all material respects as of the Closing Date.

(b) Each Borrower hereby confirms that, other than that certain Amended and Restated Certificate of Incorporation of Aziyo Biologics, Inc., filed with the Secretary of State of the State of Delaware on September 14, 2020, since the Closing Date, there have been no amendments or other modifications to any Borrower's Organizational Documents.

(c) Each Borrower confirms and agrees that all security interests and Liens granted to Agent continue in full force and effect, and that all Collateral remains free and clear of any Liens, other than Permitted Liens. Nothing herein is intended to impair or limit the validity, priority or extent of Agent's security interests in and Liens on the Collateral. Each Borrower acknowledges and agrees that the Credit Agreement, the other Financing Documents and this Agreement constitute the legal, valid and binding obligation of such Borrower, and are enforceable against such Borrower in accordance with their terms, except as the enforceability thereof may be limited by bankruptcy, insolvency or other similar laws relating to the enforcement of creditors' rights generally and by general equitable principles.

4. **Conditions to Effectiveness.** This Agreement shall become effective as of the date on which each of the following conditions has been satisfied (or waived in writing by the Agent and the Lenders), as determined by Agent in its sole discretion:

(a) Borrowers and the Required Lenders shall each have delivered to Agent this Agreement, executed by an authorized officer of each such Person;

(b) Agent shall have received a fully executed copy of Amendment No. 1 to Amended and Restated Credit and Security Agreement (Term Loan), dated as of the date hereof, by and among Borrowers, Agent and the Lenders (as each term is defined in the Affiliated Credit Agreement), executed by an authorized officer of each party thereto;

(c) all representations and warranties of Borrowers contained herein shall be true and correct in all material respects (without duplication of any materiality qualifier in the text of such representation or warranty) as of the date hereof except to the extent that any such representation or warranty relates to a specific date in which case such representation or warranty shall be true and correct in all material respects as of such earlier date (without duplication of any materiality qualifier in the text of such representation or warranty) (and such parties' delivery of their respective signatures hereto shall be deemed to be its certification thereof);

(d) prior to and after giving effect to the agreements set forth herein, no Default or Event of Default shall exist under any of the Financing Documents; and

(e) Borrowers shall have delivered such other documents, information, certificates, records, permits, and filings as the Agent may reasonably request in connection with this Agreement.

5. **Release**. In consideration of the agreements of Agent and Required Lenders contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Borrower, voluntarily, knowingly, unconditionally and irrevocably, with specific and express intent, for and on behalf of itself and all of its respective parents, subsidiaries, affiliates, members, managers, predecessors, successors, and assigns, and each of their respective current and former directors, officers, shareholders, agents, and employees, and each of their respective predecessors, successors, heirs, and assigns (individually and collectively, the "**Releasing Parties**") does hereby fully and completely release, acquit and forever discharge each of Agent, Lenders, and each their respective parents, subsidiaries, affiliates, members, managers, shareholders, directors, officers and employees, and each of their respective predecessors, successors, heirs, and assigns (individually and collectively, the "**Released Parties**"), of and from any and all actions, causes of action, suits, debts, disputes, damages, claims, obligations, liabilities, costs, expenses and demands of any kind whatsoever, at law or in equity, whether matured or unmatured, liquidated or unliquidated, vested or contingent, choate or inchoate, known or unknown that the Releasing Parties (or any of them) has against the Released Parties or any of them (whether directly or indirectly) based in whole or in part on facts, whether or not now known, existing on or before the date hereof. Each Borrower acknowledges that the foregoing release is a material inducement to Agent's and each Required Lender's decision to enter into this Agreement and agree to the modifications contemplated hereunder, and has been relied upon by Agent and Required Lenders in connection therewith.

6. **No Waiver or Novation.** The execution, delivery and effectiveness of this Agreement shall not, except as expressly provided in this Agreement, operate as a waiver of any right, power or remedy of Agent, nor constitute a waiver of any provision of the Credit Agreement, the Financing Documents or any other documents, instruments and agreements executed or delivered in connection with any of the foregoing. Nothing herein is intended or shall be construed as a waiver of any existing Defaults or Events of Default under the Credit Agreement or the other Financing Documents or any of Agent's rights and remedies in respect of such Defaults or Events of Default. This Agreement (together with any other document executed in connection herewith) is not intended to be, nor shall it be construed as, a novation of the Credit Agreement.

7. **Affirmation.** Except as specifically amended pursuant to the terms hereof, each Borrower hereby acknowledges and agrees that the Credit Agreement and all other Financing Documents (and all covenants, terms, conditions and agreements therein) shall remain in full force and effect, and are hereby ratified and confirmed in all respects by such Borrower. Each Borrower covenants and agrees to comply with all of the terms, covenants and conditions of the Credit Agreement and the Financing Documents, notwithstanding any prior course of conduct, waivers, releases or other actions or inactions on Agent's or any Lender's part which might otherwise constitute or be construed as a waiver of or amendment to such terms, covenants and conditions.

8. **Miscellaneous**.

(a) Reference to the Effect on the Credit Agreement. Upon the effectiveness of this Agreement, each reference in the Credit Agreement to "this Agreement," "hereunder," "hereof," "herein," or words of similar import shall mean and be a reference to the Credit Agreement, as amended by this Agreement.

(b) Incorporation of Credit Agreement Provisions. The provisions contained in Section 11.6 (Indemnification) of the Credit Agreement are incorporated herein by reference to the same extent as if reproduced herein in their entirety.

(c) THIS AGREEMENT AND ALL DISPUTES AND OTHER MATTERS RELATING HERETO OR THERETO OR ARISING THEREFROM (WHETHER SOUNDING IN CONTRACT LAW, TORT LAW OR OTHERWISE), SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO CONFLICTS OF LAWS PRINCIPLES (OTHER THAN SECTION 5-1401 OF THE GENERAL OBLIGATIONS LAW).

(d) EACH BORROWER HEREBY CONSENTS TO THE JURISDICTION OF ANY STATE OR FEDERAL COURT LOCATED IN THE STATE OF NEW YORK IN THE CITY OF NEW YORK, BOROUGH OF MANHATTAN AND IRREVOCABLY AGREES THAT, SUBJECT TO AGENT'S ELECTION, ALL ACTIONS OR PROCEEDINGS ARISING OUT OF OR RELATING TO THIS AGREEMENT SHALL BE LITIGATED IN SUCH COURTS. EACH BORROWER EXPRESSLY SUBMITS AND CONSENTS TO THE JURISDICTION OF THE AFORESAID COURTS AND WAIVES ANY DEFENSE OF FORUM NON CONVENIENS. EACH BORROWER HEREBY WAIVES PERSONAL SERVICE OF ANY AND ALL PROCESS AND AGREES THAT ALL SUCH SERVICE OF PROCESS MAY BE MADE UPON SUCH BORROWER BY CERTIFIED OR REGISTERED MAIL, RETURN RECEIPT REQUESTED, ADDRESSED TO SUCH BORROWER AT THE ADDRESS SET FORTH IN THIS AGREEMENT AND SERVICE SO MADE SHALL BE COMPLETE TEN (10) DAYS AFTER THE SAME HAS BEEN POSTED.

(e) EACH BORROWER, AGENT AND THE LENDERS HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY AND AGREES THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY. EACH BORROWER, AGENT AND EACH LENDER ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO A BUSINESS RELATIONSHIP, THAT EACH HAS RELIED ON THE WAIVER IN ENTERING INTO THIS AGREEMENT, AND THAT EACH WILL CONTINUE TO RELY ON THIS WAIVER IN THEIR RELATED FUTURE DEALINGS. EACH BORROWER, AGENT AND EACH LENDER WARRANTS AND REPRESENTS THAT IT HAS HAD THE OPPORTUNITY OF REVIEWING THIS JURY WAIVER WITH LEGAL COUNSEL, AND THAT IT KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS.

(f) Headings. Section headings in this Agreement are included for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

(g) Counterparts. This Agreement may be signed in any number of counterparts, each of which shall be deemed an original and all of which when taken together shall constitute one and the same instrument. Delivery of an executed counterpart of this Agreement by facsimile or by electronic mail delivery of an electronic version (e.g., .pdf or .tif file) of an executed signature page shall be effective as delivery of an original executed counterpart hereof and shall bind the parties hereto.

(h) Entire Agreement. This Agreement constitutes the entire agreement and understanding among the parties hereto and supersedes any and all prior agreements and understandings, oral or written, relating to the subject matter hereof.

(i) Severability. In case any provision of or obligation under this Agreement shall be invalid, illegal or unenforceable in any applicable 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.

(j) Successors/Assigns. This Agreement shall bind, and the rights hereunder shall inure to, the respective successors and assigns of the parties hereto, subject to the provisions of the Credit Agreement and the other Financing Documents.

[SIGNATURES APPEAR ON FOLLOWING PAGES]

IN WITNESS WHEREOF, intending to be legally bound, the undersigned have executed this Agreement as of the day and year first hereinabove set forth.

AGENT:

MIDCAP FUNDING IV TRUST

By: Apollo Capital Management, L.P.,
its investment manager

By: Apollo Capital Management GP, LLC,
its general partner

By: /s/ Maurice Amsellem
Name: Maurice Amsellem
Title: Authorized Signatory

LENDER:

MIDCAP FUNDING IV TRUST

By: Apollo Capital Management, L.P.,
its investment manager

By: Apollo Capital Management GP, LLC,
its general partner

By:/ s/ Maurice Amsellem
Name: Maurice Amsellem
Title: Authorized Signatory

BORROWERS:

AZIYO BIOLOGICS, INC.

By: /s/ Jeffrey Hamet
Name: Jeffrey Hamet
Title: Treasurer

AZIYO MED, LLC

By: /s/ Jeffrey Hamet
Name: Jeffrey Hamet
Title: Treasurer

Execution Version

AMENDED AND RESTATED CREDIT AND SECURITY AGREEMENT (REVOLVING LOAN)

dated as of July 15, 2019

by and among

AZIYO BIOLOGICS, INC.,

AZIYO MED, LLC

and any additional borrower that hereafter becomes party hereto, each as Borrower, and collectively as Borrowers,

and

MIDCAP FUNDING IV TRUST,

as Agent and as a Lender,

and

THE ADDITIONAL LENDERS

FROM TIME TO TIME PARTY HERETO

TABLE OF CONTENTS

AMENDED AND RESTATED CREDIT AND SECURITY AGREEMENT (REVOLVING LOAN)

This **AMENDED AND RESTATED CREDIT AND SECURITY AGREEMENT (REVOLVING LOAN)** (as the same may be amended, supplemented, restated or otherwise modified from time to time, the "**Agreement**") is dated as of July 15, 2019 by and among **AZIYO BIOLOGICS, INC.**, a Delaware corporation ("**Aziyo**"), **AZIYO MED, LLC**, a Delaware limited liability company ("**Aziyo Med**") and any additional borrower that may hereafter be added to this Agreement (individually as a "**Borrower**", and collectively with any entities that become party hereto as Borrower and each of their successors and permitted assigns, the "**Borrowers**"), **MIDCAP FUNDING IV TRUST,** a Delaware statutory trust, individually as a Lender, and as Agent, and the financial institutions or other entities from time to time parties hereto, each as a Lender.

RECITALS

WHEREAS, Agent, Lenders and Borrowers have entered into that certain Credit and Security Agreement (Revolving Loan), dated as of May 31, 2017 (as amended by that certain Amendment No. 1 and Limited Waiver to Credit and Security Agreement (Term Loan), dated as of December 14, 2017 and as further amended, modified, supplemented and restated prior to the date hereof, the "**Original Credit Agreement**" and as the same is amended hereby and as it may be further amended, modified, supplemented and restated from time to time, the "**Credit Agreement**"), pursuant to which the Lenders have agreed to make certain advances of money and to extend certain financial accommodations to Borrowers in the amounts and manner set forth in the Credit Agreement;

WHEREAS, in connection with the continued working capital and other needs of the Borrowers, Borrowers have requested, among other things, that Agent and Lenders amend certain economic terms, covenants and other provisions of the Original Credit Agreement; and

WHEREAS, Agent and Lenders have agreed to the requests of Borrowers on the terms and conditions set forth herein and in the other Financing Documents.

AGREEMENT

NOW, THEREFORE, in consideration of the premises and the agreements, provisions and covenants herein contained, the receipt and sufficiency of which are hereby acknowledged, Borrowers, Lenders and Agent agree to amend and restate the Original Credit Agreement as follows:

ARTICLE 1 - DEFINITIONS

Section 1.1 Certain Defined Terms. The following terms have the following meanings:

"**Acceleration Event**" means the occurrence of an Event of Default (a) in respect of which Agent has declared all or any portion of the Obligations to be immediately due and payable pursuant to Section 10.2, (b) pursuant to Section 10.1(a), and in respect of which Agent has suspended or terminated the Revolving Loan Commitment pursuant to Section 10.2, and/or (c) pursuant to either Section 10.1(e) and/or Section 10.1(f).

"**Account Debtor**" means "account debtor", as defined in Article 9 of the UCC, and any other obligor in respect of an Account.

"**Accounts**" means, collectively, (a) any right to payment of a monetary obligation, whether or not earned by performance, (b) without duplication, any "account" (as defined in the UCC), any accounts receivable (whether in the form of payments for services rendered or goods sold, rents, license fees or otherwise), any "health-care-insurance receivables" (as defined in the UCC), any "payment intangibles" (as defined in the UCC) and all other rights to payment and/or reimbursement of every kind and description, whether or not earned by performance, (c) all accounts, "general intangibles" (as defined in the UCC), Intellectual Property, rights, remedies, Guarantees, "supporting obligations" (as defined in the UCC), "letter-of-credit rights" (as defined in the UCC) and security interests in respect of the foregoing, all rights of enforcement and collection, all books and records evidencing or related to the foregoing, and all rights under the Financing Documents in respect of the foregoing, (d) all information and data compiled or derived by any Borrower or to which any Borrower is entitled in respect of or related to the foregoing, and (e) all proceeds of any of the foregoing.

"**Additional Titled Agents**" has the meaning set forth in Section 11.15.

"**Additional Tranche**" means an additional amount of Revolving Loan Commitment equal to $2,000,000.

"**Affiliate**" means, with respect to any Person, (a) any Person that directly or indirectly controls such Person, (b) any Person which is controlled by or is under common control with such controlling Person, and (c) each of such Person's (other than, with respect to any Lender, any Lender's) officers or directors (or Persons functioning in substantially similar roles) and the spouses, parents, descendants and siblings of such officers, directors or other Persons. As used in this definition, the term "control" of a Person means the possession, directly or indirectly, of the power to vote five percent (5%) or more of any class of voting securities of such Person or to direct or cause the direction of the management or policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

"**Affiliated Credit Agreement**" means that certain Amended and Restated Credit and Security Agreement (Term Loan) (as the same may be amended, restated, supplemented or otherwise modified from time to time), among MCF, as Agent and a lender, the other lenders party thereto and Borrowers pursuant to which such Agent and lenders have extended a term credit facility to Borrowers.

"**Affiliated Financing Agent**" means the "Agent" under and as defined in the Affiliated Credit Agreement.

"**Affiliated Financing Documents**" means the "**Financing Documents**" as defined in the Affiliated Credit Agreement.

"**Affiliated Intercreditor Agreement**" means that certain Intercreditor Agreement dated as of the Original Closing Date between Agent and the Affiliated Financing Agent, as the same may be amended, restated, supplemented or otherwise modified from time to time.

"**Affiliated Obligations**" means all "Obligations", as such term is defined in the Affiliated Financing Documents.

"**Agent**" means MidCap Funding IV Trust, in its capacity as administrative agent for itself and for Lenders hereunder, as such capacity is established in, and subject to the provisions of, Article 11, and the successors and assigns of MidCap Funding IV Trust in such capacity.

"**Anti-Terrorism Laws**" means any Laws relating to terrorism or money laundering, including, without limitation, Executive Order No. 13224 (effective September 24, 2001), the USA PATRIOT Act, the Laws comprising or implementing the Bank Secrecy Act, and the Laws administered by OFAC.

"**Applicable Margin**" means four and ninety five one hundredths percent (4.95%).

"**Approved Fund**" means any (a) investment company, fund, trust, securitization vehicle or conduit that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the Ordinary Course of Business, or (b) any Person (other than a natural person) which temporarily warehouses loans for any Lender or any entity described in the preceding clause (a) and that, with respect to each of the preceding clauses (a) and (b), is administered or managed by (i) a Lender, (ii) an Affiliate of a Lender, or (iii) a Person (other than a natural person) or an Affiliate of a Person (other than a natural person) that administers or manages a Lender.

"**Asset Disposition**" means any sale, lease, license, transfer, assignment or other consensual disposition by any Credit Party or any Subsidiary thereof of any asset.

"**Assignment Agreement**" means an assignment agreement in form and substance acceptable to Agent.

"**Aziyo**" has the meaning set forth in the introductory paragraph hereto.

"**Aziyo Med**" has the meaning set forth in the introductory paragraph hereto.

"**Aziyo Med Operating Account**" means the Deposit Account maintained by Aziyo Med at Silicon Valley Bank with account number [XXX] in accordance with the terms of Section 4.18.

"**Aziyo Med Controlled Account**" has the meaning set forth in Section 2.11(b).

"**Bankruptcy Code**" means Title 11 of the United States Code entitled "Bankruptcy", as the same may be amended, modified or supplemented from time to time, and any successor statute thereto.

"**Base LIBOR Rate**" means, for each Interest Period, the rate per annum, determined by Agent in accordance with its customary procedures, and utilizing such electronic or other quotation sources as it considers appropriate (rounded upwards, if necessary, to the next 1/100%), to be the rate at which Dollar deposits (for delivery on the first day of such Interest Period or, if such day is not a Business Day on the preceding Business Day) in the amount of $1,000,000 are offered to major banks in the London interbank market on or about 11:00 a.m. (London, England time) two (2) Business Days prior to the commencement of such Interest Period, for a term comparable to such Interest Period, which determination shall be conclusive in the absence of manifest error; *provided*, *however*, that Agent may, upon prior written notice to Borrower Representative, choose a reasonably comparable index or source to use as the basis for Base LIBOR Rate.

"**Base Rate**" means a per annum rate of interest equal to the greater of (a) two and one-quarter percent (2.25%) per annum and (b) the rate of interest announced, from time to time, within Wells Fargo Bank, National Association ("**Wells Fargo**") at its principal office in San Francisco as its "prime rate," with the understanding that the "prime rate" is one of Wells Fargo's base rates (not necessarily the lowest of such rates) and serves as the basis upon which effective rates of interest are calculated for those loans making reference thereto and is evidenced by the recording thereof after its announcement in such internal publications as Wells Fargo may designate; *provided*, *however,* that Agent may, upon prior written notice to Borrower, choose a reasonably comparable index or source to use as the basis for the Base Rate.

"**Blocked Person**" means any Person: (a) listed in the annex to, or is otherwise subject to the provisions of, Executive Order No. 13224, (b) owned or controlled by, or acting for or on behalf of, any Person that is listed in the annex to, or is otherwise subject to the provisions of, Executive Order No. 13224, (c) with which any Lender is prohibited from dealing or otherwise engaging in any transaction by any Anti-Terrorism Law, (d) that commits, threatens or conspires to commit or supports "terrorism" as defined in Executive Order No. 13224, or (e) that is named a "specially designated national" or "blocked person" on the most current list published by OFAC or other similar list or is named as a "listed person" or "listed entity" on other lists made under any Anti-Terrorism Law.

"**Borrower**" and "**Borrowers**" has the meaning set forth in the introductory paragraph hereto. If there is more than one Person that constitutes a Borrower, then the term "Borrower" shall mean, on a joint and several basis, the singular and the collective reference to any or all entities constituting or comprising Borrower, as the context may require.

"**Borrower Representative**" means Aziyo, in its capacity as Borrower Representative pursuant to the provisions of Section 2.9, or any successor Borrower Representative selected by Borrowers and approved by Agent.

"**Borrowing Base**" means:

(a) the product of (i) eighty-five percent (85%) *multiplied by* (ii) the aggregate net amount at such time of the Eligible Accounts; *plus*

(b) the product of (i) fifty percent (50%) *multiplied by* (ii) the value of the Eligible Inventory, valued at the lower of first-in-first-out cost or market cost, and after factoring in all rebates, discounts and other incentives or rewards associated with the purchase of the applicable Inventory; *provided* that the Borrowing Base will be automatically adjusted down, if necessary, such that the aggregate availability from Eligible Inventory shall never exceed the lesser of (x) an amount equal to forty percent (40%) of the Borrowing Base and (y) $2,000,000; *minus*

(c) the amount of any reserves and/or adjustments provided for in this Agreement.

"**Borrowing Base Certificate**" means a certificate, duly executed by a Responsible Officer of Borrower Representative, appropriately completed and in the form attached to this Agreement as Exhibit C.

"**Business Day**" means any day except a Saturday, Sunday or other day on which either the New York Stock Exchange is closed, or on which commercial banks in New York City are authorized by Law to close and, in the case of a Business Day which relates to a Loan bearing interest at a rate based on the LIBOR Rate, a day on which dealings are carried on in the London interbank eurodollar market.

"**Capital Expenditures**" means all liabilities incurred or expenditures made by Borrower or any of its Subsidiaries for the acquisition of fixed assets, or any improvements, substitutions or additions thereto with a useful life of more than one year.

"**CERCLA**" means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C.A. § 9601 *et seq*., as the same may be amended from time to time.

"**Change in Control**" means any event, transaction, or occurrence as a result of which: (a) the owners of the voting and economic interests of the equity interests of Aziyo as of the Original Closing Date shall collectively cease to, directly or indirectly, own and control at least (i) fifty-one percent (51%) of the voting and economic interests of the equity interests of Aziyo (other than by the sale of Aziyo's common stock in or following a Qualified IPO; *provided* that upon the consummation of a Qualified IPO, a Change in Control under this clause (a)(i) shall occur when any "person" (as such term is defined in Sections 3(a)(9) and 13(d)(3) of the Exchange Act), other than the owners of the voting and economic interests of the equity interests of Aziyo as of the Original Closing Date, is or becomes a beneficial owner (within the meaning Rule 13d-3 promulgated under the Exchange Act), directly or indirectly, of equity securities of Aziyo, representing thirty-five percent (35%) or more of the combined voting power of Aziyo's then outstanding securities) and/or (ii) that percentage of the outstanding voting equity interests of Aziyo necessary at all times to elect a majority of the board of directors (or similar governing body) of Aziyo and to direct the management policies and decisions of Aziyo; (b) during any period of twelve consecutive calendar months, individuals who at the beginning of such period constituted the board of directors or board of managers or similar governing Person(s) of each Borrower (together with any new directors or managers whose election by the board of directors or board of managers or similar governing Person(s) of each Borrower was approved by a vote of not less than two-thirds of the directors or managers then still in office who either were directors or managers at the beginning of such period or whose election or nomination for election was previously so approved) cease for any reason other than death or disability to constitute a majority of the directors or managers then in office; (c) any Credit Party ceases to own and control, directly or indirectly, all of the economic and voting rights associated with the outstanding securities of each of its Subsidiaries; or (d) the occurrence of any "Change of Control", "Change in Control", or terms of similar import under any document or instrument governing or relating to Debt of or equity in such Person. As used herein, "beneficial ownership" shall have the meaning provided in Rule 13d-3 of the Securities and Exchange Commission under the Securities Exchange Act of 1934. For the avoidance of doubt, a Qualified IPO shall not constitute a Change in Control.

"**Closing Date**" means the date of this Agreement.

"**Code**" means the Internal Revenue Code of 1986, as amended from time to time, any successor statutes thereto, and applicable U.S. Department of Treasury regulations issued pursuant thereto in temporary or final form.

"**Collateral**" means all property, now existing or hereafter acquired, mortgaged or pledged to, or purported to be subjected to a Lien in favor of, Agent, for the benefit of Agent and Lenders, pursuant to this Agreement and the Security Documents, including, without limitation, all of the property described in Schedule 9.1 hereto.

"**Commitment Annex**" means Annex A to this Agreement.

"**Compliance Certificate**" means a certificate, duly executed by a Responsible Officer of Borrower Representative, appropriately completed and substantially in the form of Exhibit B hereto.

"**Consolidated Subsidiary**" means, at any date, any Subsidiary the accounts of which would be consolidated with those of "parent" Borrower (or any other Person, as the context may require hereunder) in its consolidated financial statements if such statements were prepared as of such date.

"**Contingent Obligation**" means, with respect to any Person, any direct or indirect liability of such Person: (a) with respect to any Debt of another Person (a "**Third Party Obligation**") if the purpose or intent of such Person incurring such liability, or the effect thereof, is to provide assurance to the obligee of such Third Party Obligation that such Third Party Obligation will be paid or discharged, or that any agreement relating thereto will be complied with, or that any holder of such Third Party Obligation will be protected, in whole or in part, against loss with respect thereto; (b) with respect to any undrawn portion of any letter of credit issued for the account of such Person or as to which such Person is otherwise liable for the reimbursement of any drawing; (c) under any Swap Contract, to the extent not yet due and payable; (d) to make take-or-pay or similar payments if required regardless of nonperformance by any other party or parties to an agreement; or (e) for any obligations of another Person pursuant to any Guarantee or pursuant to any agreement to purchase, repurchase or otherwise acquire any obligation or any property constituting security therefor, to provide funds for the payment or discharge of such obligation or to preserve the solvency, financial condition or level of income of another Person. The amount of any Contingent Obligation shall be equal to the amount of the obligation so Guaranteed or otherwise supported or, if not a fixed and determinable amount, the maximum amount so Guaranteed or otherwise supported.

"**Controlled Group**" means all members of a group of corporations and all members of a group of trades or businesses (whether or not incorporated) under common control which, together with any Borrower, are treated as a single employer under Section 414(b), (c), (m) or (o) of the Code or Section 4001(b) of ERISA and, solely for purposes of Section 412 and 436 of the Code, Section 414(m) or (o) of the Code.

"**Cook License Agreement**" means that certain License Agreement, dated as of the Original Closing Date, among Cook Biotech Incorporated and Aziyo Med, as amended, supplemented or otherwise modified from time to time following the Original Closing Date in accordance with the terms of the Financing Documents.

"**Cook Supply Agreement**" means that certain Material Supply Agreement, dated as of the Original Closing Date, among Cook Biotech Incorporated and Aziyo Med, as amended, supplemented or otherwise modified from time to time following the Original Closing Date in accordance with the terms of the Financing Documents.

"**CorMatrix**" means CorMatrix Cardiovascular, Inc., a Georgia corporation.

"**Correction**" means repair, modification, adjustment, relabeling, destruction or inspection (including patient monitoring) of a product without its physical removal to some other location.

"**Credit Exposure**" means, at any time, any portion of the Revolving Loan Commitment and of any other Obligations that remains outstanding; *provided*, *however*, that no Credit Exposure shall be deemed to exist solely due to the existence of contingent indemnification liability, absent the assertion of a claim, or the known existence of a claim reasonably likely to be asserted, with respect thereto.

"**Credit Party**" means each Borrower and each Guarantor; and "**Credit Parties**" means all such Persons, collectively.

"**Cross License Agreement**" means that certain License Agreement, dated as of the Original Closing Date, by and between CorMatrix and Aziyo Med, as amended, supplemented or otherwise modified from time to time following the Original Closing Date in accordance with the terms of the Financing Documents.

"**DEA**" means the Drug Enforcement Administration of the United States of America, any comparable state or local Governmental Authority, any comparable Governmental Authority in any non-United States jurisdiction, and any successor agency of any of the foregoing.

"**Debt**" of a Person means at any date, without duplication, (a) all obligations of such Person for borrowed money, (b) all obligations of such Person evidenced by bonds, debentures, notes or other similar instruments, (c) all obligations of such Person to pay the deferred purchase price of property or services, except trade accounts payable arising and paid on a timely basis and in the Ordinary Course of Business, (d) all capital leases of such Person, (e) all non-contingent obligations of such Person to reimburse any bank or other Person in respect of amounts paid under a letter of credit, banker's acceptance or similar instrument, (f) all equity securities of such Person subject to repurchase or redemption other than at the sole option of such Person, (g) all obligations secured by a Lien on any asset of such Person, whether or not such obligation is otherwise an obligation of such Person, (h) "earnouts", purchase price adjustments, profit sharing arrangements, deferred purchase money amounts and similar payment obligations or continuing obligations of any nature of such Person arising out of purchase and sale contracts, (i) all Debt of others Guaranteed by such Person, and (j) off-balance sheet liabilities and/or Pension Plan or Multiemployer Plan liabilities of such Person. Without duplication of any of the foregoing, Debt of Borrowers shall include any and all Loans.

"**Default**" means any condition or event which with the giving of notice or lapse of time or both would, unless cured or waived, become an Event of Default.

"**Defaulted Lender**" means, so long as such failure shall remain in existence and uncured, any Lender which shall have failed to make any Loan or other credit accommodation, disbursement, settlement or reimbursement required pursuant to the terms of any Financing Document.

"**Defined Period**" means for any given calendar month or date of determination, the twelve (12) month period ending on the last day of such calendar month or if such date of determination is not the last day of a calendar month, the twelve (12) month period immediately preceding any such date of determination.

"**Deposit Account**" means a "deposit account" (as defined in Article 9 of the UCC), an investment account, or other account in which funds are held or invested for credit to or for the benefit of any Borrower.

"**Deposit Account Control Agreement**" means an agreement, in form and substance satisfactory to Agent, among Agent, any Borrower and each financial institution in which such Borrower maintains a Deposit Account, which agreement provides that (a) such financial institution shall comply with instructions originated by Agent directing disposition of the funds in such Deposit Account without further consent by the applicable Borrower, and (b) such financial institution shall agree that it shall have no Lien on, or right of setoff or recoupment against, such Deposit Account or the contents thereof, other than in respect of usual and customary service fees and returned items for which Agent has been given value, in each such case expressly consented to by Agent, and containing such other terms and conditions as Agent may require, including as to any such agreement pertaining to any Lockbox Account, providing that such financial institution shall wire, or otherwise transfer, in immediately available funds, on a daily basis to the Payment Account (or, prior to the time of the initial borrowing of the Revolving Loans, such Deposit Account of Borrower, as Agent may direct in its sole discretion) all funds received or deposited into such Lockbox or Lockbox Account.

"**Distribution**" means as to any Person (a) any dividend or other distribution (whether in cash, securities or other property) on any equity interest in such Person (except those payable solely in its equity interests of the same class), (b) any payment by such Person on account of (i) the purchase, redemption, retirement, defeasance, surrender, cancellation, termination or acquisition of any equity interests in such Person or any claim respecting the purchase or sale of any equity interest in such Person, or (ii) any option, warrant or other right to acquire any equity interests in such Person, (c) any management fees, salaries or other fees or compensation to any Person holding an equity interest in a Borrower or a Subsidiary of a Borrower (other than reasonable and customary (i) payments of salaries to individuals, (ii) directors fees, and (iii) advances and reimbursements to employees or directors, all in the Ordinary Course of Business), an Affiliate of a Borrower or an Affiliate of any Subsidiary of a Borrower, (d) any lease or rental payments to an Affiliate or Subsidiary of a Borrower, or (e) repayments of or debt service on loans or other indebtedness held by any Person holding an equity interest in a Borrower or a Subsidiary of a Borrower, an Affiliate of a Borrower or an Affiliate of any Subsidiary of a Borrower unless permitted under and made pursuant to a Subordination Agreement applicable to such loans or other indebtedness.

"**Dollars**" or "**$**" means the lawful currency of the United States of America.

"**Donor Network West**" means Donor Network West, a California nonprofit corporation.

"**Donor Network West Note**" means that certain Promissory Note issued by Aziyo in favor of Donor Network West, dated as of March 2, 2017 in the original principal amount of $2,068,492.00.

"**Drug Application**" means a new drug application, an abbreviated drug application, or a product license application for any Product, as appropriate, as those terms are defined in the FDCA.

"**EBITDA**" means, for any period, determined on a consolidated basis for Borrower and its Subsidiaries, net income, calculated before interest expense, provision for income taxes, depreciation and amortization expense, gains or losses arising from the sale of capital assets, gains arising from the write-up of assets, any extraordinary gains and any non-cash equity compensation (in each case, to the extent included in determining net income) *plus* (a) extraordinary losses of Borrower and its Subsidiaries approved by Agent in its sole discretion, and (b) the "Acquiror Buydown Payments" (as defined in the Ligand Royalty Agreement) made pursuant to the terms of the Ligand Royalty Agreement during such period to the extent included in the determination of net income for such period.

"**Eligible Account**" means, subject to the criteria below, an account receivable of a Borrower, which was generated in the Ordinary Course of Business, which was generated originally in the name of a Borrower and not acquired via assignment or otherwise, and which Agent, in its good faith credit judgment and discretion, deems to be an Eligible Account. The net amount of an Eligible Account at any time shall be (a) the face amount of such Eligible Account as originally billed *minus* all cash collections and other proceeds of such Account received from or on behalf of the Account Debtor thereunder as of such date and any and all returns, rebates, discounts (which may, at Agent's option, be calculated on shortest terms), credits, allowances or excise taxes of any nature at any time issued, owing, claimed by Account Debtors, granted, outstanding or payable in connection with such Accounts at such time, and (b) adjusted by applying percentages (known as "**liquidity factors**") by payor and/or payor class based upon the applicable Borrower's actual recent collection history for each such payor and/or payor class in a manner consistent with Agent's underwriting practices and procedures. Such liquidity factors may be adjusted by Agent from time to time as warranted by Agent's underwriting practices and procedures and using Agent's good faith credit judgment. Without limiting the generality of the foregoing, no Account shall be an Eligible Account if:

(a) the Account remains unpaid more than ninety (90) days past the claim or invoice date;

(b) the Account is subject to any defense, set-off, recoupment, counterclaim, deduction, discount, credit, chargeback, freight claim, allowance, or adjustment of any kind (but only to the extent of such defense, set-off, recoupment, counterclaim, deduction, discount, credit, chargeback, freight claim, allowance, or adjustment), or the applicable Borrower is not able to bring suit or otherwise enforce its remedies against the Account Debtor through judicial process;

(c) if the Account arises from the sale of goods, any part of any goods the sale of which has given rise to the Account has been returned, rejected, lost, or damaged (but only to the extent that such goods have been so returned, rejected, lost or damaged);

(d) if the Account arises from the sale of goods, the sale was not an absolute, bona fide sale, or the sale was made on consignment or on approval or on a sale-or-return or bill-and-hold or progress billing basis, or the sale was made subject to any other repurchase or return agreement, or the goods have not been shipped to the Account Debtor or its designee or the sale was not made in compliance with applicable Laws;

(e) if the Account arises from the performance of services, the services have not actually been performed or the services were undertaken in violation of any law (including, without limitation, the National Organ Transplant Act) or the Account represents a progress billing for which services have not been fully and completely rendered;

(f) to the extent that the Account is not owned by a Borrower (including by reason of its prior sale to Ligand) or such Account or the proceeds thereof constitutes a "Royalty Interest" (as defined in the Ligand Royalty Agreement);

(g) the Account is subject to a Lien (other than Liens in favor of Agent or Liens that have been expressly subordinated to the Liens of Agent);

(h) Agent does not have a first priority, perfected Lien on such Account;

(i) the Account is evidenced by Chattel Paper or an Instrument of any kind, or has been reduced to judgment, unless such Chattel Paper or Instrument has been delivered to Agent;

(j) the Account Debtor is an Affiliate or Subsidiary of a Credit Party, or if the Account Debtor holds any Debt of a Credit Party;

(k) more than fifty percent (50%) of the aggregate balance of all Accounts owing from the Account Debtor obligated on the Account are ineligible under subclause (a) above (in which case all Accounts from such Account Debtor shall be ineligible);

(l) without limiting the provisions of clause (k) above, fifty percent (50%) or more of the aggregate unpaid Accounts from the Account Debtor obligated on the Account are not deemed Eligible Accounts under this Agreement for any reason;

(m) the total unpaid Accounts of the Account Debtor obligated on the Account exceed (i) with respect to Osiris Therapeutics Inc. and all Affiliates of such Account Debtor exceed (A) prior to September 30, 2017, sixty percent (60%) of the net amount of all Eligible Accounts owing from all Account Debtors, (B) between October 1, 2017 and December 31, 2017, fifty percent (50%) of the net amount of all Eligible Accounts owing from all Account Debtors or (C) from and after January 1, 2018 forty percent (40%) of the net amount of all Eligible Accounts owing from all Account Debtors (but only the amount of the Accounts of such Account Debtor exceeding such 60%, 50% or 40% limitation, as applicable, shall be considered ineligible); and (ii) with respect to all other Account Debtors, thirty percent (30%) of the net amount of all Eligible Accounts owing from all Account Debtors (but only the amount of the Accounts of such Account Debtor exceeding such thirty percent (30%) limitation shall be considered ineligible);

(n) any covenant, representation or warranty contained in the Financing Documents with respect to such Account has been breached in any respect;

(o) the Account is unbilled or has not been invoiced to the Account Debtor in accordance with the procedures and requirements of the applicable Account Debtor;

(p) the Account is an obligation of an Account Debtor that is the federal, state or local government or any political subdivision thereof, unless Agent has agreed to the contrary in writing and Agent has received from the Account Debtor the acknowledgement of Agent's notice of assignment of such obligation pursuant to this Agreement;

(q) the Account is an obligation of an Account Debtor that has suspended business, made a general assignment for the benefit of creditors, is unable to pay its debts as they become due or as to which a petition has been filed (voluntary or involuntary) under any law relating to bankruptcy, insolvency, reorganization or relief of debtors,

(r) the Account is an Account as to which any facts, events or occurrences exist which could reasonably be expected to impair the validity, enforceability or collectability of such Account or reduce the amount payable or delay payment thereunder, including, without limitation, the failure of a Borrower to provide goods or services giving rise to such Account a manner that complies in all material respects with all Laws applicable to the payment therefore, or such Accounts have been generated in violation of the National Organ Transplant Act;

(s) the Account Debtor has its principal place of business or executive office outside the United States, except to the extent that the applicable Account is supported or secured by a letter of credit or credit insurance acceptable to Agent;

(t) the Account is payable in a currency other than United States dollars;

(u) the Account Debtor is an individual;

(v) the Borrower owning such Account has not signed and delivered to Agent notices, in the form requested by Agent, directing the Account Debtors to make payment to the applicable Lockbox Account or the Aziyo Med Controlled Account;

(w) the Account includes late charges or finance charges (but only such portion of the Account shall be ineligible);

(x) the Account arises out of the sale of any Inventory upon which any other Person holds, claims or asserts a Lien (other than Liens in favor of Agent or the Affiliated Financing Agent); or

(y) the Account or Account Debtor fails to meet such other specifications and requirements which may from time to time be established by Agent in its good faith credit judgment and discretion.

"**Eligible Assignee**" means (a) a Lender, (b) an Affiliate of a Lender, (c) an Approved Fund, and (d) any other Person (other than a natural person) approved by Agent; *provided*, *however*, that notwithstanding the foregoing, (x) "**Eligible Assignee**" shall not include any Borrower or any of a Borrower's Affiliates, and (y) no proposed assignee intending to assume all or any portion of the Revolving Loan Commitment shall be an Eligible Assignee unless such proposed assignee either already holds a portion of such Revolving Loan Commitment, or has been approved as an Eligible Assignee by Agent.

"**Eligible Inventory**" means Inventory owned by a Borrower and acquired and dispensed by such Borrower in the Ordinary Course of Business that Agent, in its good faith credit judgment and discretion, deems to be Eligible Inventory. Without limiting the generality of the foregoing, no Inventory shall be Eligible Inventory if:

(a) such Inventory is not owned by a Borrower free and clear of all Liens and rights of any other Person (including (i) the rights of a purchaser that has made progress payments and the rights of a surety that has issued a bond to assure such Borrower's performance with respect to that Inventory and (ii) liens favor of Ligand pursuant to the terms of the Ligand Royalty Agreement;) except for Agent and Affiliated Financing Agent;

(b) such Inventory is placed on consignment or is in transit;

(c) such Inventory is covered by a negotiable document of title, unless such document has been delivered to Agent with all necessary endorsements, free and clear of all Liens except those in favor of Agent;

(d) such Inventory is excess, obsolete, unsalable, shopworn, seconds, damaged, unfit for sale, unfit for further processing, is of substandard quality or is not of good and merchantable quality, free from any defects;

(e) such Inventory consists of raw materials, marketing materials, display items or packing or shipping materials, manufacturing supplies or Work-In-Process;

(f) such Inventory is not subject to a first priority Lien in favor of Agent;

(g) such Inventory consists of goods that can be transported or sold only with licenses that are not readily available;

(h) such Inventory consists of substances defined or designated as hazardous or toxic waste, hazardous or toxic material, hazardous or toxic substance, or similar term, by any environmental law or any Governmental Authority applicable to Borrowers or their business, operations or assets;

(i) such Inventory is not covered by casualty insurance acceptable to Agent;

(j) any covenant, representation or warranty contained in the Financing Documents with respect to such Inventory has been breached in any material respect;

(k) such Inventory is located (i) outside of the continental United States or (ii) on premises where the aggregate amount of all Inventory (valued at cost) of Borrowers located thereon is less than $10,000;

(l) such Inventory is located on premises with respect to which Agent has not received a landlord, warehouseman, bailee or mortgagee letter acceptable in form and substance to Agent;

(m) such Inventory consists of (A) discontinued items, (B) slow-moving or excess items held in inventory, or (C) used items held for resale;

(n) such Inventory does not consist of finished goods;

(o) such Inventory does not meet all standards imposed by any applicable Law (including, without limitation, the National Organ Transportation Act) or by any applicable Governmental Authority, including with respect to its production, distribution, pricing, acquisition or importation (as the case may be);

(p) such Inventory has a remaining shelf life of less than twelve (12) months;

(q) such Inventory is held for rental or lease by or on behalf of Borrowers;

(r) such Inventory is subject to any licensing, patent, royalty, trademark, trade name or copyright agreement with any third parties, which agreement restricts the ability of Agent or any Lender to sell or otherwise dispose of such Inventory (except to the extent such restriction is unenforceable under applicable Law); or

(s) such Inventory fails to meet such other specifications and requirements which may from time to time be established by Agent in its good faith credit judgment. Agent and Borrowers agree that Inventory shall be subject to periodic appraisal by Agent and that valuation of Inventory shall be subject to adjustment pursuant to the results of such appraisal. Notwithstanding the foregoing, the valuation of Inventory shall be subject to any legal limitations on sale and transfer of such Inventory.

"**Environmental Laws**" means any and all Laws pertaining to the environment, natural resources, pollution, Hazardous Materials, or, to the extent relating to exposure to substances that are harmful or detrimental to the environment, employee health or safety, including any environmental clean-up Laws which pertain to or impose liability or standards of conduct concerning medical waste or medical products, equipment or supplies.

"**Equity Investment Documents**" means, collectively, (i) the Series A Preferred Stock Purchase Agreement, dated as of the Original Closing Date among Aziyo, HighCape and/or certain Affiliates of HighCape and the other parties thereto (the "**Series A Purchase Agreement**"), pursuant to which Borrower received $10,500,000 from HighCape and such Affiliates in exchange for issuing equity interests pursuant thereto on or prior to the Original Closing Date and an additional $1,500,000 thereafter, (ii) the Joinder and Acknowledgement Agreement, dated as of the Original Closing Date among Aziyo, MCF and/or certain Affiliates of MCF, pursuant to which MCF and/or such Affiliates joined and became a party to such Series A Purchase Agreement, the Investor Rights Agreement (as defined in the Series A Purchase Agreement) and the ROFR Agreement (as defined in the Series A Purchase Agreement), (iii) the Investor Rights Agreement (as defined in the Series A Purchase Agreement) and (iv) the ROFR Agreement (as defined in the Series A Purchase Agreement).

"**ERISA**" means the Employee Retirement Income Security Act of 1974, as the same may be amended, modified or supplemented from time to time, and any successor statute thereto, and any and all rules or regulations promulgated from time to time thereunder.

"**ERISA Plan**" means any "employee benefit plan", as such term is defined in Section 3(3) of ERISA (other than a Multiemployer Pension Plan), which any Credit Party or any Subsidiary maintains, sponsors or contributes to, or, in the case of an employee benefit plan which is subject to Section 412 of the Code or Title IV of ERISA, to which any Credit Party or any Subsidiary has any liability, including on account of any member of the Controlled Group, including any liability by reason of having been a substantial employer within the meaning of Section 4063 of ERISA, or by reason of being deemed to be a contributing sponsor under Section 4069 of ERISA.

"**Event of Default**" has the meaning set forth in Section 10.1.

"**Excluded Accounts**" has the meaning set forth in Section 5.14(b).

"**Excluded Taxes**" means any of the following Taxes imposed on or with respect to Agent, any Lender or any other recipient of any payment to be made by or on behalf of any obligation of Credit Parties hereunder or the Obligations or required to be withheld or deducted from a payment to Agent, such Lender or such recipient (including any interest and penalties thereon): (a) Taxes to the extent imposed on or measured by Agent's, any Lender's or such recipient's net income (however denominated), branch profits Taxes, and franchise Taxes and similar Taxes, in each case, (i) imposed by the jurisdiction (or any political subdivision thereof) under which Agent, such Lender or such recipient is organized, has its principal office or conducts business with respect to entering into any of the Financing Documents or taking any action thereunder or (ii) that are Other Connection Taxes; (b) in the case of a Lender, United States withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in the Loans pursuant to a Law in effect on the date on which (i) such Lender becomes a party to this Agreement other than as a result of an assignment requested by a Credit Party under the terms hereof or (ii) such Lender changes its lending office for funding its Loan, except in each case to the extent that, pursuant to Section 2.8, amounts with respect to such Taxes were payable either to such Lender's assignor immediately before such Lender acquired the applicable interest in a Loan or Revolving Loan Commitment or to such Lender immediately before it changed its lending office; (c) Taxes attributable to such Lender's failure to comply with Section 2.8(c); and (d) any U.S. federal withholding taxes imposed in respect of a Lender under FATCA.

"**FATCA**" means Sections 1471 through 1474 of the Code as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future U.S. Treasury regulations or official interpretations thereof and any agreement entered into pursuant to the implementation of Section 1471(b)(1) of the Code, and any intergovernmental agreement between the United States Internal Revenue Service, the U.S. Government and any governmental or taxation authority under any other jurisdiction which agreement's principal purposes deals with the implement such sections of the Code.

"**FDA**" means the Food and Drug Administration of the United States of America, any comparable state or local Governmental Authority, any comparable Governmental Authority in any non-United States jurisdiction, and any successor agency of any of the foregoing.

"**FDCA**" means the Federal Food, Drug and Cosmetic Act, as amended, 21 U.S.C. Section 301 et seq., and all regulations promulgated thereunder.

"**Federal Funds Rate**" means, for any day, the rate of interest per annum (rounded upwards, if necessary, to the nearest whole multiple of 1/100 of 1%) equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day, *provided*, *however*, that (a) if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day, and (b) if no such rate is so published on such next preceding Business Day, the Federal Funds Rate for such day shall be the average rate quoted to Agent on such day on such transactions as determined by Agent.

"**Financing Documents**" means this Agreement, any Notes, the Security Documents, the Affiliated Intercreditor Agreement, each subordination or intercreditor agreement pursuant to which any Debt and/or any Liens securing such Debt is subordinated to all or any portion of the Obligations and all other documents, instruments and agreements related to the Obligations and heretofore executed, executed concurrently with the Original Credit Agreement or executed at any time and from time to time thereafter, as any or all of the same may be amended, supplemented, restated or otherwise modified from time to time.

"**Fixed Charge Coverage Ratio**" means, for any period, the quotient obtained by dividing (a) the difference between (i) EBITDA for such period, minus (ii) without duplication, the sum of (A) all of Borrower's Unfinanced Capital Expenditures made in such period, and (B) any Distributions paid by Borrower in such period, and (C) cash Taxes paid by Borrower in such period (without benefit of any refund), *divided* (b) the sum of (i) principal payments on Debt for Money Borrowed in such period plus (ii) cash interest payments paid by Borrower in such period.

"**Foreign Lender**" has the meaning set forth in Section 2.8(c)(i).

"**GAAP**" means generally accepted accounting principles set forth from time to time in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board (or agencies with similar functions of comparable stature and authority within the United States accounting profession), which are applicable to the circumstances as of the date of determination.

"**General Intangible**" means any "general intangible" as defined in Article 9 of the UCC, and any personal property, including things in action, other than accounts, chattel paper, commercial tort claims, deposit accounts, documents, goods, instruments, investment property, letter-of-credit rights, letters of credit, money, and oil, gas or other minerals before extraction, but including payment intangibles and software.

"**Good Manufacturing Practices**" means current good manufacturing practices, as set forth in 21 C.F.R. Parts 210 and 211.

"**Governmental Authority**" means any nation or government, any state, local or other political subdivision thereof, and any agency, department or Person exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government and any corporation or other Person owned or controlled (through stock or capital ownership or otherwise) by any of the foregoing, whether domestic or foreign.

"**Guarantee**" by any Person means any obligation, contingent or otherwise, of such Person directly or indirectly guaranteeing any Debt or other obligation of any other Person and, without limiting the generality of the foregoing, any obligation, direct or indirect, contingent or otherwise, of such Person (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Debt or other obligation (whether arising by virtue of partnership arrangements, by agreement to keep-well, to purchase assets, goods, securities or services, to take-or-pay, or to maintain financial statement conditions or otherwise), or (b) entered into for the purpose of assuring in any other manner the obligee of such Debt or other obligation of the payment thereof or to protect such obligee against loss in respect thereof (in whole or in part), *provided*, *however*, that the term Guarantee shall not include endorsements for collection or deposit in the Ordinary Course of Business. The term "**Guarantee**" used as a verb has a corresponding meaning.

"**Guarantor**" means any Credit Party that has executed or delivered, or shall in the future execute or deliver, any Guarantee of any portion of the Obligations.

"**Hazardous Materials**" means (a) any "hazardous substance" as defined in CERCLA, (b) any "hazardous waste" as defined by the Resource Conservation and Recovery Act, (c) asbestos, (d) polychlorinated biphenyls, (e) petroleum and its derivatives, by-products and other hydrocarbons, and (f) any other pollutant, toxic, radioactive, caustic or otherwise hazardous substance regulated under Environmental Laws.

"**Hazardous Materials Contamination**" means contamination (whether now existing or hereafter occurring) of the improvements, buildings, facilities, personalty, soil, groundwater, air or other elements on or of the relevant property by Hazardous Materials, or any derivatives thereof, or on or of any other property as a result of Hazardous Materials, or any derivatives thereof, generated on, emanating from or disposed of in connection with the relevant property.

"**Healthcare Laws**" means all applicable Laws relating to the procurement, development, provision, clinical and non-clinical evaluation or investigation, product approval or clearance, manufacture, production, analysis, distribution, dispensing, importation, exportation, use, handling, quality, reimbursement, sale, labeling, advertising, promotion, or postmarket requirements of any drug, medical device, food, dietary supplement, or other product (including, without limitation, any ingredient or component of, or accessory to, the foregoing products) subject to regulation under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. et seq.), and similar state or foreign laws, controlled substances laws, pharmacy laws, consumer product safety laws, the National Organ Transplant Act or any regulations promulgated thereunder or any state laws and/or regulations of similar import, Medicare, Medicaid, and all laws, policies, procedures, requirements and regulations pursuant to which Permits are issued, in each case, as the same may be amended from time to time.

"**HighCape**" means, collectively, HighCape Partners QP, L.P., its Affiliates and their respective related funds and management entities.

"**HighCape Portfolio Company**" means any operating portfolio company of HighCape.

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

"**Instrument**" means "instrument", as defined in Article 9 of the UCC.

"**Intellectual Property**" means all copyright rights, copyright applications, copyright registrations and like protections in each work of authorship and derivative work, whether published or unpublished, any patents, patent applications and like protections, including improvements, divisions, continuations, renewals, reissues, extensions, and continuations-in-part of the same, trademarks, trade names, service marks, mask works, rights of use of any name, domain names, or any other similar rights, any applications therefor, whether registered or not, know-how, operating manuals, trade secret rights, clinical and non-clinical data, rights to unpatented inventions, and any claims for damage by way of any past, present, or future infringement of any of the foregoing.

"**Interest Period**" means any period commencing on the first day of a calendar month and ending on the last day of such calendar month.

"**Inventory**" means "inventory" as defined in Article 9 of the UCC, whether now existing or hereafter arising.

"**Investment**" means, with respect to any Person, directly or indirectly, (a) to purchase or acquire any stock or stock equivalents, or any obligations or other securities of, or any interest in, any Person, including the establishment or creation of a Subsidiary, (b) to make or commit to make any acquisition (including through licensing) of (i) of all or substantially all of the assets of another Person, or (ii) any business, business line or product line, division or other unit operation of any Person or any Product or Intellectual Property of any Person (in each case, an "**Acquisition**") or (c) make or purchase any advance, loan, extension of credit or capital contribution to, or any other investment in, any Person. The amount of any Investment shall be the original cost of such Investment plus the cost of all additions thereto, without any adjustments for increases or decreases in value, or write-ups, write-downs or write-offs with respect thereto.

"**Investment Company Act**" means the Investment Company Act of 1940, as amended.

"**IRS**" has the meaning set forth in Section 2.8(c)(i).

"**Laws**" means any and all federal, state, provincial, territorial, local and foreign statutes, laws, judicial decisions, regulations, ordinances, rules, judgments, orders, decrees, codes, injunctions, permits, governmental agreements and governmental restrictions, whether now or hereafter in effect, which are applicable to any Credit Party in any particular circumstance. "**Laws**" includes, without limitation, Healthcare Laws and Environmental Laws.

"**Lender**" means each of (a) Midcap Funding IV Trust, in its capacity as a lender hereunder, (b) each other Person party hereto in its capacity as a lender hereunder, (c) each other Person that becomes a party hereto as Lender pursuant to Section 11.17, and (d) the respective successors of all of the foregoing, and "**Lenders**" means all of the foregoing.

"**LIBOR Rate**" means, for each Loan, a per annum rate of interest equal to the greater of (a) two and one-quarter percent (2.25%) and (b) the rate determined by Agent (rounded upwards, if necessary, to the next 1/100th%) by *dividing* (i) the Base LIBOR Rate for the Interest Period, *by* (ii) the sum of one *minus* the daily average during such Interest Period of the aggregate maximum reserve requirement (expressed as a decimal) then imposed under Regulation D of the Board of Governors of the Federal Reserve System (or any successor thereto) for "Eurocurrency Liabilities" (as defined therein).

"**Lien**" means, with respect to any asset, any mortgage, lien, pledge, charge, security interest or encumbrance of any kind, in respect of such asset. For the purposes of this Agreement and the other Financing Documents, any Borrower or any Subsidiary shall be deemed to own subject to a Lien any asset which it has acquired or holds subject to the interest of a vendor or lessor under any conditional sale agreement, capital lease or other title retention agreement relating to such asset.

"**Ligand**" means Ligand Pharmaceuticals Incorporated, a Delaware corporation.

"**Ligand Intercreditor Agreement**" means that certain Intercreditor Agreement, dated as of the Original Closing Date, among Ligand, Agent, Affiliated Financing Agent and Borrowers, as amended, supplemented or otherwise modified from time to time in accordance with the terms thereof.

"**Ligand Parent Guaranty**" means that certain Guaranty Agreement, dated as of the Original Closing Date, entered into between Aziyo and Ligand in respect of certain of Aziyo Med's obligations under the Ligand Royalty Agreement, as amended, supplemented or otherwise modified from time to time in accordance with the terms of this Agreement and the Ligand Intercreditor Agreement.

"**Ligand Royalty Agreement**" means that certain Royalty Agreement, dated as of the Original Closing Date, by and among Aziyo Med and Ligand, pursuant to which Ligand has the right to receive certain payments from Aziyo Med on the terms and conditions set forth therein as amended, supplemented or otherwise modified from time to time on or prior to the Original Closing Date or following the Original Closing Date in accordance with the terms of the Financing Documents.

"**Ligand Royalty Payments**" means the regularly scheduled payments by Aziyo Med to Ligand on a non-accelerated basis pursuant to Section 2.02 of the Ligand Royalty Agreement.

"**Litigation**" means any action, suit or proceeding before any court, mediator, arbitrator or Governmental Authority.

"**Liquidity**" means, as of any date of calculation, the *sum* of (a) Borrower's cash and cash equivalents and (b) the Revolving Loan Availability.

"**Loan Account**" has the meaning set forth in Section 2.6(b).

"**Loan(s)**" means the Revolving Loans.

"**Lockbox**" has the meaning set forth in Section 2.11.

"**Lockbox Account**" means an account or accounts maintained at the Lockbox Bank into which collections of Accounts are paid, which account or accounts shall be, if requested by Agent, opened in the name of Agent (or a nominee of Agent).

"**Lockbox Bank**" has the meaning set forth in Section 2.11.

"**Management Agreement**" means that certain Management Services Agreement, dated as of January 1, 2016, between HighCape Partners Management, L.P. and Aziyo, as amended from time to time prior to the Closing Date.

"**Market Withdrawal**" means a Person's Removal or Correction of a distributed product which involves a minor violation that would not be subject to legal action by the FDA or which involves no violation, e.g., normal stock rotation practices, routine equipment adjustments and repairs, etc.

"**Material Adverse Effect**" means with respect to any event, act, condition or occurrence of whatever nature (including any adverse determination in any litigation, arbitration, or governmental investigation or proceeding), whether singly or in conjunction with any other event or events, act or acts, condition or conditions, occurrence or occurrences, whether or not related, a material adverse change in, or a material adverse effect upon, any of (a) the condition (financial or otherwise), operations, business or properties of any of the Credit Parties, (b) the rights and remedies of Agent or Lenders under any Financing Document, or the ability of any Credit Party to perform any of its obligations under any Financing Document to which it is a party, (c) the legality, validity or enforceability of any Financing Document, (d) the existence, perfection or priority of any security interest granted in any Financing Document, (e) the value of any material Collateral, or (f) a material impairment of the prospect of repayment of any portion of the Obligations.

"**Material Contracts**" means (a) the Operative Documents, including the Ligand Royalty Agreement, the Ligand Parent Guaranty and each Subordinated Debt Document, (b) the agreements listed on Schedule 3.17, including the Cook License Agreement , the Cook Supply Agreement and the Cross License Agreement, and (c) (i) each agreement or contract to which a Credit Party is a party relating to Material Intangible Assets or development of Products or Intellectual Property, (ii) any agreement with respect to any Product, the loss of which would materially impair Borrower's ability to sell or market such Product, and (iii) any agreement or contract to which such Credit Party or its Subsidiaries is a party the termination of which could reasonably be expected to result in a Material Adverse Effect.

"**Material Intangible Assets**" means all of (a) Borrower's Intellectual Property and (b) license or sublicense agreements or other agreements with respect to rights in Intellectual Property, in each case that are material to the condition (financial or other), business or operations of Borrower, as determined by Agent.

"**Maturity Date**" means July 15, 2024.

"**Maximum Lawful Rate**" has the meaning set forth in Section 2.7.

"**MCF**" means MidCap Financial Trust, a Delaware statutory trust, and its successors and assigns.

"**Medicaid**" means, collectively, the healthcare assistance program established by Title XIX of the Social Security Act (42 U.S.C. §§ 1396 *et seq*.) and any statutes succeeding thereto, all state statutes and plans for medical assistance enacted in connection with such program, and all laws, rules, regulations, manuals, orders, guidelines or requirements (whether or not having the force of Law) pertaining to such program, in each case as the same may be amended, supplemented or otherwise modified from time to time.

"**Medicare**" means, collectively, the health insurance program for the aged and disabled established by Title XVIII of the Social Security Act (42 U.S.C. §§ 1395 *et seq*.) and any statutes succeeding thereto, and all laws, rules, regulations, manuals, orders or guidelines (whether or not having the force of Law) pertaining to such program, in each case as the same may be amended, supplemented or otherwise modified from time to time.

"**Minimum Balance**" means, at any time, an amount that equals the product of: (a) the average Borrowing Base (or, if less on any given day, the Revolving Loan Commitment) during the immediately preceding month *multiplied by* (b) the Minimum Balance Percentage for such month.

"**Minimum Balance Fee**" means a fee equal to (a) the positive difference, if any, remaining after subtracting (i) the average end-of-day principal balance of Revolving Loans outstanding during the immediately preceding month (without giving effect to the clearance day calculations referenced above or in Section 2.2(a) from (ii) the Minimum Balance *multiplied by* (b) the highest interest rate applicable to the Revolving Loans during such month (or, during the existence of an Event of Default, the default rate of interest set forth in Section 10.5(a)).

"**Minimum Balance Percentage**" means forty percent (40%).

"**Money Borrowed**" means, as applied to any Credit Party, without duplication: (a) Debt arising from the lending of money by any other Person to such Credit Party; (b) Debt, whether or not in any such case arising from the lending of money by another Person to such Credit Party, (i) which is represented by notes payable or drafts accepted that evidence extensions of credit, (ii) which constitutes obligations evidenced by bonds, debentures, notes or similar instruments, or (iii) upon which interest charges are customarily paid (other than accounts payable) or that was issued or assumed as full or partial payment for property; (c) Debt under a lease that is required to be capitalized for financial reporting purposes in accordance with GAAP; (d) reimbursement obligations with respect to letters of credit or guarantees relating thereto; and (e) Debt of such Credit Party under any guaranty of obligations that would constitute Debt for Money Borrowed under clauses (a) through (d) hereof, if owed directly by such Credit Party.

"**Multiemployer Plan**" means a multiemployer plan within the meaning of Section 4001(a)(3) of ERISA to which any Borrower or any other member of the Controlled Group (or any Person who in the last five years was a member of the Controlled Group) is making or accruing an obligation to make contributions or has within the preceding five plan years (as determined on the applicable date of determination) made contributions.

"**National Organ Transplant Act**" means the National Organ Transplant Act of 1984 ("NOTA") 42 U.S.C. § 274e, as amended.

"**Net Product Revenue**" means, for any period, (a) the consolidated gross revenues of Borrowers and their Subsidiaries generated solely through the commercial sale of all Products by Borrowers and their Subsidiaries in the Ordinary Course of Business during such period, less (b) (i) sales of Products whose specifications are owned by the customer and are sold through a contract manufacturing services agreement, (ii) sales of sports medicine, cancellous bone and cervical spacer Products, (iii) trade, quantity and cash discounts allowed by Borrower or its Subsidiaries, (iv) discounts, refunds, rebates, charge backs, retroactive price adjustments and any other allowances which effectively reduce net selling price, (v) product returns and allowances, (vi) allowances for shipping or other distribution expenses, (vii) set-offs and counterclaims, and (viii) any other similar and customary deductions used by Borrower or its Subsidiaries in determining net revenues, all, in respect of (a) and (b), as determined in accordance with GAAP and in the Ordinary Course of Business.

"**Notes**" has the meaning set forth in Section 2.3.

"**Notice of Borrowing**" means a notice of a Responsible Officer of Borrower Representative, appropriately completed and substantially in the form of Exhibit D hereto.

"**Obligations**" means all obligations, liabilities and indebtedness (monetary (including, without limitation, the payment of interest and other amounts arising after the commencement of any case with respect to any Credit Party under the Bankruptcy Code or any similar statute which would accrue and become due but for the commencement of such case, whether or not such amounts are allowed or allowable in whole or in part in such case) or otherwise) of each Credit Party under this Agreement or any other Financing Document, in each case howsoever created, arising or evidenced, whether direct or indirect, absolute or contingent, now or hereafter existing, or due or to become due. "**Obligations**" does not include obligations under any warrants issued to Agent or a Lender.

"**OFAC**" means the U.S. Department of Treasury Office of Foreign Assets Control.

"**OFAC Lists**" means, collectively, the Specially Designated Nationals and Blocked Persons List maintained by OFAC pursuant to Executive Order No. 13224, 66 Fed. Reg. 49079 (Sept. 25, 2001) and/or any other list of terrorists or other restricted Persons maintained pursuant to any of the rules and regulations of OFAC or pursuant to any other applicable Executive Orders.

"**Operative Documents**" means the Financing Documents, the Equity Investment Documents, the Subordinated Debt Documents and the Transaction Documents.

"**Ordinary Course of Business**" means, in respect of any transaction involving any Credit Party, the ordinary course of business of such Credit Party, as conducted by such Credit Party in accordance with past practices.

"**Organizational Documents**" means, with respect to any Person other than a natural person, the documents by which such Person was organized (such as a certificate of incorporation, certificate of limited partnership or articles of organization, and including, without limitation, any certificates of designation for preferred stock or other forms of preferred equity) and which relate to the internal governance of such Person (such as by-laws, a partnership agreement or an operating agreement, joint venture agreement, limited liability company agreement or members agreement), including any and all shareholder agreements or voting agreements relating to the capital stock or other equity interests of such Person.

"**Original Closing Date**" means May 31, 2017.

"**Original Credit Agreement**" has the meaning set forth in the recitals hereto.

"**Other Connection Taxes**" means taxes imposed as a result of a present or former connection between Agent or any Lender and the jurisdiction imposing such tax (other than connections arising from Agent or such Lender having executed, delivered, become a party to, performed its obligations under, received payments under, engaged in any other transaction pursuant to or enforced any Financing Document, or sold or assigned an interest in any Loans or any Financing Document).

"**Other Taxes**" means all present or future stamp, court or documentary, intangible, recording, filing or similar taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Financing Document, except any such taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 2.8(i)).

"**Participant**" has the meaning set forth in Section 11.17(b).

"**Participant Register**" has the meaning set forth in Section 11.17(a)(iii).

"**Payment Account**" means the account specified on the signature pages hereof into which all payments by or on behalf of each Borrower to Agent under the Financing Documents shall be made, or such other account as Agent shall from time to time specify by notice to Borrower Representative.

"**Payroll Account**" has the meaning set forth in Section 5.14(b).

"**PBGC**" means the Pension Benefit Guaranty Corporation and any Person succeeding to any or all of its functions under ERISA.

"**Pension Plan**" means any ERISA Plan that is subject to Section 412 of the Code or Title IV of ERISA.

"**Perfection Certificate**" means the Perfection Certificate delivered to Agent as of the Closing Date, together with any amendments thereto required under this Agreement.

"**Permit**" means all licenses, certificates, accreditations, product clearances or approvals, provider numbers or provider authorizations, supplier numbers, marketing authorizations, drug or device authorizations and approvals, other authorizations, franchises, qualifications, accreditations, registrations, permits, consents and approvals of a Credit Party issued or required under Laws applicable to the business of Borrower or any of its Subsidiaries or necessary in the manufacturing, importing, exporting, possession, ownership, warehousing, marketing, promoting, sale, labeling, furnishing, distribution or delivery of goods or services under Laws applicable to the business of Borrower or any of its Subsidiaries. Without limiting the generality of the foregoing, "**Permit**" includes any Regulatory Required Permit.

"**Permitted Asset Dispositions**" means the following Asset Dispositions; *provided*, however, that at the time of such Asset Disposition, no Default or Event of Default exists or would result from such Asset Disposition:

(a) dispositions of (i) Inventory in the Ordinary Course of Business and not pursuant to any bulk sale and (ii) equipment that is obsolete, worn out, replaced, is no longer used or useful, unmerchantable, or unsaleable, in each case, in the Ordinary Course of Business;

(b) abandonment or lapse of Intellectual Property (other than any Material Intangible Asset) that is, in the reasonable good faith judgment of a Credit Party, no longer useful in the conduct of the business of the Credit Parties or any of their Subsidiaries;

(c) sales, forgiveness or discounting, on a non-recourse basis and in the Ordinary Course of Business, of past due Accounts (other than Eligible Accounts included in the Borrowing Base) in connection with the collection or compromise thereof of the settlement of delinquent Accounts or in connection with the bankruptcy or reorganization of suppliers or customers in accordance with the applicable terms of this Agreement;

(d) Permitted Licenses;

(e) Permitted Distributions; and

(f) other dispositions approved by Agent from time to time in its sole discretion.

"**Permitted Contest**" means a contest maintained in good faith by appropriate proceedings promptly instituted and diligently conducted and with respect to which such reserve or other appropriate provision, if any, as shall be required in conformity with GAAP shall have been made; *provided* that compliance with the obligation that is the subject of such contest is effectively stayed during such challenge.

"**Permitted Contingent Obligations**" means

(a) Contingent Obligations arising in respect of the Debt under the Financing Documents;

(b) Contingent Obligations resulting from endorsements for collection or deposit in the Ordinary Course of Business;

(c) Contingent Obligations outstanding on the date of this Agreement and set forth on Schedule 5.1 (but not including any refinancings, extensions, increases or amendments to the indebtedness underlying such Contingent Obligations other than extensions of the maturity thereof without any other change in terms);

(d) Contingent Obligations incurred in the Ordinary Course of Business with respect to surety and appeal bonds, performance bonds and other similar obligations not to exceed $250,000 in the aggregate at any time outstanding;

(e) Contingent Obligations arising under indemnity agreements with title insurers to cause such title insurers to issue to Agent mortgagee title insurance policies;

(f) Contingent Obligations arising with respect to customary indemnification obligations in favor of purchasers in connection with dispositions of personal property assets permitted under Section 5.6;

(g) so long as there exists no Event of Default both immediately before and immediately after giving effect to any such transaction, Contingent Obligations existing or arising under any Swap Contract, *provided*, *however*, that such obligations are (or were) entered into by Borrower or an Affiliate in the Ordinary Course of Business for the purpose of directly mitigating risks associated with liabilities, commitments, investments, assets, or property held or reasonably anticipated by such Person and not for purposes of speculation;

(h) Guarantees by any Credit Party of any Permitted Debt of any Subsidiary that is a Credit Party provided that (x) any such Contingent Obligation is subordinated to the Obligations to the same extent as the Debt to which it relates is subordinated to the Obligations, (y) no Credit Party may incur Contingent Obligations under this clause (h) in respect of Debt incurred by any Person that is not a Borrower or Guarantor and (z) no guaranties shall be provided by Aziyo in respect of the Aziyo Med's obligations under the Ligand Royalty Agreement; and

(i) other Contingent Obligations not permitted by clauses (a) through (h) above, not to exceed $250,000 in the aggregate at any time outstanding.

"**Permitted Debt**" means:

(a) Borrowers' and its Subsidiaries' Debt to Agent and each Lender under this Agreement and the other Financing Documents;

(b) Debt incurred as a result of endorsing negotiable instruments received in the Ordinary Course of Business;

(c) purchase money Debt not to exceed $250,000 in the aggregate at any time (whether in the form of a loan or a lease) used solely to acquire equipment used in the Ordinary Course of Business and secured only by such equipment;

(d) Debt existing on the date of this Agreement and described on Schedule 5.1 (but not including any refinancings, extensions, increases or amendments to such Debt other than extensions of the maturity thereof without any other change in terms);

(e) so long as there exists no Event of Default both immediately before and immediately after giving effect to any such transaction, Debt existing or arising under any Swap Contract, *provided, however*, that such obligations are (or were) entered into by Borrower or an Affiliate in the Ordinary Course of Business for the purpose of directly mitigating risks associated with liabilities, commitments, investments, assets, or property held or reasonably anticipated by such Person and not for purposes of speculation;

(f) Debt not to exceed $250,000 in the aggregate at any time outstanding owed to any Person providing property, casualty, liability, or other insurance to the Credit Parties, including to finance insurance premiums, so long as the amount of such Debt is not in excess of the amount of the unpaid cost of, and shall be incurred only to defer the cost of, such insurance for the policy year in which such Debt is incurred and such Debt is outstanding only during such policy year;

(g) trade accounts payable arising and paid on a timely basis and in the Ordinary Course of Business;

(h) Debt of the Credit Parties incurred under the Affiliated Financing Documents; and

(i) Subordinated Debt (including the Ligand Royalty Payments).

"**Permitted Distributions**" means the following Distributions:

(a) dividends by any Subsidiary of any Borrower to such parent Borrower;

(b) dividends payable solely in common stock;

(c) repurchases of stock of former employees, directors or consultants pursuant to stock purchase agreements so long as an Event of Default does not exist at the time of such repurchase and would not exist after giving effect to such repurchase, *provided, however,* that such repurchase does not exceed $50,000 in the aggregate per fiscal year;

(d) so long as (i) no Event of Default exists at the time of such payment or would exist after giving effect thereto, (ii) Borrower is in pro forma compliance with all of its Obligations hereunder after the making of any such payment, (iii) the payment of such management fees is subordinated to the payment of the Obligations pursuant to the terms of a management fee subordination agreement reasonably satisfactory to Lender and (iv) either (x) the pro forma Fixed Charge Coverage Ratio is greater than 1.20 to 1.00 or (y) Liquidity is greater than $5,000,000, in each case, computed on a pro forma basis as of the last day of the most recent month for which Lender should have received monthly financial statements in accordance with Section 4.1(a) (hereinafter such last day shall be referred to as the "**Management Fee Computation Date**"), with such pro forma calculation being made for the twelve (12) month period ending as of the Management Fee Computation Date and with the amount of any such payment being included in such computation and being deemed to have been made on the Management Fee Computation Date, payment by Aziyo of, the accrued and unpaid management fees owing to HighCape pursuant to the terms of the Management Agreement in an aggregate amount not to exceed $250,000 per fiscal year.

"**Permitted Investments**" means:

(a) [reserved];

(b) Investments shown on Schedule 5.7 and existing on the Closing Date;

(c) Investments consisting of cash and cash equivalents;

(d) Investments consisting of the endorsement of negotiable instruments for deposit or collection or similar transactions in the Ordinary Course of Business;

(e) Investments consisting of (i) travel advances and employee relocation loans and other employee loans and advances in the Ordinary Course of Business, and (ii) loans to employees, officers or directors relating to the purchase of equity securities of Borrowers or their Subsidiaries pursuant to employee stock purchase plans or agreements approved by Borrowers' Board of Directors (or other governing body), but the aggregate of all such loans outstanding may not exceed $250,000 at any time;

(f) Investments (including debt obligations) received in connection with the bankruptcy or reorganization of customers or suppliers and in settlement of delinquent obligations of, and other disputes with, customers or suppliers arising in the Ordinary Course of Business;

(g) Investments consisting of notes receivable of, or prepaid royalties and other credit extensions, to customers and suppliers who are not Affiliates, in the Ordinary Course of Business, *provided*, *however*, that this subpart (g) shall not apply to Investments of Borrowers in any Subsidiary;

(h) deposits required to be made in the Ordinary Course of Business made to a landlord in the Ordinary Course of Business to secure or support obligations of any Credit Party or any Subsidiary under a lease of real property;

(i) Investments consisting of Deposit Accounts in which Agent has received a Deposit Account Control Agreement;

(j) Investments of cash and cash equivalents by any Borrower in any Subsidiary now owned or hereafter created by such Borrower, which Subsidiary is a Borrower or has provided a Guarantee of the Obligations of the Borrowers which Guarantee is secured by a Lien granted by such Subsidiary to Agent in all or substantially all of its property of the type described in Schedule 9.1 hereto and otherwise made in compliance with Section 4.11(d); *provided* that no Borrower shall make any Investment in Aziyo Med so long as any obligations of Borrowers under the Ligand Royalty Agreement or obligations of Aziyo under the Ligand Parent Guaranty remain outstanding without Agent's prior consent; and

(k) so long as no Event of Default exists at the time of such Investment or after giving effect to such Investment, other Investments of cash and cash equivalents in an amount not exceeding $250,000 in the aggregate.

"**Permitted License**" means (a) the licenses of patent rights granted by Aziyo Med to CorMatrix on the Closing Date pursuant to the Cross License Agreement, and (b) any non-exclusive license of patent rights of Borrower or its Subsidiaries so long as all such Permitted Licenses are granted to third parties in the Ordinary Course of Business, do not result in a legal transfer of title to the licensed property, and have been granted in exchange for fair consideration.

"**Permitted Liens**" means:

(a) (i) Liens and encumbrances in favor of Agent under the Financing Documents and (ii) Liens and encumbrances in favor of the holders of the Affiliated Financing Documents;

(b) Liens, other than on Collateral that is part of the Borrowing Base, existing on the date hereof and set forth on Schedule 5.2;

(c) Liens on equipment securing Debt permitted under subpart (c) of the definition of Permitted Debt, *provided*, *however*, that such Lien attaches concurrently with or within twenty (20) days after the acquisition thereof;

(d) deposits or pledges of cash to secure obligations under workmen's compensation, social security or similar laws, or under unemployment insurance (but excluding Liens arising under ERISA or, with respect to any Pension Plan or Multiemployer Plan, the Code) pertaining to a Borrower's or its Subsidiary's employees, if any;

(e) deposits or pledges of cash to secure bids, tenders, contracts (other than contracts for the payment of money or the deferred purchase price of property or services), leases, statutory obligations, surety and appeal bonds and other obligations of like nature arising in the Ordinary Course of Business;

(f) carrier's, warehousemen's, mechanic's, workmen's, materialmen's or other like Liens on Collateral, other than any Collateral which is part of the Borrowing Base, arising in the Ordinary Course of Business with respect to obligations which are not due, or which are being contested pursuant to a Permitted Contest;

(g) Liens for taxes, assessments or other governmental charges (i) not at the time delinquent or thereafter payable without penalty or (ii) which are the subject of a Permitted Contest;

(h) attachments, appeal bonds, judgments and other similar Liens on Collateral, other than on Collateral that is part of the Borrowing Base, for sums not exceeding $100,000 in the aggregate arising in connection with court proceedings; *provided*, *however*, that the execution or other enforcement of such Liens is effectively stayed and the claims secured thereby are the subject of a Permitted Contest;

(i) easements, zoning restrictions, rights of way, restrictions, minor defects or irregularities in title and other similar Liens on real property not interfering in any material respect with the ordinary conduct of the business of any Credit Party or any Subsidiary; and Liens of landlords and mortgagees of landlords (i) arising by statute or under any lease or related contractual obligation entered into in the Ordinary Course of Business, (ii) on fixtures and movable tangible property located on the real property leased or subleased from such landlord and (iii) for amounts not yet due or that are subject to a Permitted Contest;

(j) Liens that are rights of set-off, bankers' liens or similar non-consensual Liens relating to deposit or securities accounts in favor of banks, other depositary institutions and securities intermediaries arising in the Ordinary Course of Business;

(k) purported Liens evidenced by the filing of precautionary UCC financing statements relating solely to operating leases or consignments of personal property entered into the Ordinary Course of Business;

(l) any Lien arising under conditional sale, title retention, consignment or similar arrangements for the sale of goods in the Ordinary Course of Business; *provided* that such Lien attaches only to the goods subject to such sale, title retention, consignment or similar arrangement;

(m) Liens (i) of a collection bank on items in the course of collection arising under Section 4-210 of the UCC or (ii) in favor of a banking or other financial institution arising in the ordinary course of business encumbering deposits or other funds maintained with such financial institution (including the right of setoff) and that are within the general parameters customary in the banking industry (and not securing any Debt for borrowed money);

(n) Liens granted in the Ordinary Course of Business on the unearned portion of insurance premiums securing the financing of insurance premiums to the extent the financing is permitted clause (f) of the definition of Permitted Debt;

(o) Liens in favor of customs and revenue authorities arising as a matter of Law to secure payment of customs duties in connection with the importation of goods;

(p) to the extent constituting a Lien, the granting of a Permitted License; and

(q) Liens granted by Aziyo Med in favor of Ligand under the Ligand Royalty Agreement (as the same is in effect on the Closing Date) to secure Aziyo Med's obligations under the Ligand Royalty Agreement, including on the Permitted Ligand Account, so long as such Liens remain subject to the Ligand Intercreditor Agreement at all times following the Closing Date.

"**Permitted Ligand Account**" means a Deposit Account maintained by Aziyo Med at Silicon Valley Bank with account number [XXX] so long as such Deposit Account is the "Special Account" under the Ligand Royalty Agreement and is used solely for the purpose of holding amounts in respect of regularly scheduled payments due and owing on a non-accelerated basis under the Ligand Royalty Agreement and permitted to be paid pursuant to this Agreement and the Ligand Intercreditor Agreement and holding and distributing to a Credit Party amounts constituting "Excluded Costs" (as defined in the Ligand Royalty Agreement).

"**Permitted Modifications**" means (a) such amendments or other modifications to a Borrower's or Subsidiary's Organizational Documents as are required under this Agreement or by applicable Law and disclosed to Agent within thirty (30) days after such amendments or modifications have become effective, and (b) such amendments or modifications to a Borrower's or Subsidiary's Organizational Documents (other than those involving a change in the name of a Borrower or Subsidiary or involving a reorganization of a Borrower or Subsidiary under the laws of a different jurisdiction) that would not adversely affect the rights and interests of Agent or Lenders and are disclosed to Agent within thirty (30) days after such amendments or modifications have become effective.

"**Person**" means any natural person, corporation, limited liability company, professional association, limited partnership, general partnership, joint stock company, joint venture, association, company, trust, bank, trust company, land trust, business trust or other organization, whether or not a legal entity, and any Governmental Authority.

"**Products**" means, from time to time, any products currently manufactured, sold, developed, tested or marketed by any Borrower or any of its Subsidiaries, including without limitation, those products set forth on Schedule 4.17 (as updated from time to time in accordance with Section 4.15); provided, that, for the avoidance of doubt, any new Product not disclosed on Schedule 4.17 shall still constitute a "Product" as herein defined.

"**Pro Rata Share**" means (a) with respect to a Lender's obligation to make Revolving Loans, the Revolving Loan Commitment Percentage of such Lender, (b) with respect to a Lender's right to receive payments of principal and interest with respect to Revolving Loans, such Lender's Revolving Loan Exposure with respect thereto; and (c) for all other purposes (including, without limitation, the indemnification obligations arising under Section 11.6) with respect to any Lender, the percentage obtained by *dividing* (i) the Revolving Loan Commitment Amount of such Lender (or, in the event the Revolving Loan Commitment shall have been terminated, such Lender's then existing Revolving Loan Outstandings), *by* (ii) the sum of the Revolving Loan Commitment (or, in the event the Revolving Loan Commitment shall have been terminated, the then existing Revolving Loan Outstandings) of all Lenders.

"**Purchase Agreement**" means that certain Asset Purchase Agreement, dated as of the Original Closing Date, by and among Borrowers, as purchasers, and CorMatrix and certain subsidiaries thereof as sellers (collectively, "**Seller**"), pursuant to which Borrower has purchased certain commercial assets from Seller on the terms and conditions as set forth therein.

"**Qualified IPO**" means the issuance and sale by Aziyo of its common stock in an underwritten public offering (other than a public offering pursuant to a registration statement on Form S-8) pursuant to an effective registration statement (whether alone or in connection with a secondary public offering) filed with the SEC in accordance with the Securities Act of 1933, as amended, following which Aziyo's common stock is listed on a nationally-recognized stock exchange in the United States and in respect of which Aziyo has delivered evidence satisfactory to Agent that Aziyo has received net cash proceeds of not less than $40,000,000 (subject to no clawback, escrow or other terms limiting the Aziyo's ability to freely use such proceeds).

"**Recall**" means a Person's Removal or Correction of a marketed product that the FDA considers to be in violation of the laws it administers and against which the FDA would initiate legal action, e.g., seizure.

"**Registered Intellectual Property**" means any patent, registered trademark or servicemark, registered copyright, registered mask work, or any pending application for any of the foregoing.

"**Regulatory Required Permit**" means any and all licenses, approvals and permits issued by the FDA, DEA or any other applicable Governmental Authority, including without limitation Drug Applications, necessary for the testing, manufacture, marketing or sale of any Product by any applicable Borrower(s) and its Subsidiaries as such activities are being conducted by such Borrower and its Subsidiaries with respect to such Product at such time and any drug listings and drug establishment registrations under 21 U.S.C. Section 510, registrations issued by DEA under 21 U.S.C. Section 823 (if applicable to any Product), and those issued by State or local governments for the conduct of Borrower's or any Subsidiary's business, including without limitation, all licenses, approvals and permits necessary in connection with the removal, transportation, implantation, processing, preservation, quality control, and storage of human tissue.

"**Removal**" means the physical removal of a product from its point of use to some other location for repair, modification, adjustment, relabeling, destruction, or inspection.

"**Required Lenders**" means at any time Lenders holding (a) sixty percent (60%) or more of the sum of the Revolving Loan Commitment (taken as a whole), or (b) if the Revolving Loan Commitment has been terminated, sixty percent (60%) or more of the then aggregate outstanding principal balance of the Loans.

"**Responsible Officer**" means any of the Chief Executive Officer, Chief Financial Officer, Treasurer or any other officer of the applicable Borrower acceptable to Agent.

"**Revolving Lender**" means each Lender having a Revolving Loan Commitment Amount in excess of Zero Dollars ($0) (or, in the event the Revolving Loan Commitment shall have been terminated at any time, each Lender at such time having Revolving Loan Outstandings in excess of Zero Dollars ($0)).

"**Revolving Loan Availability**" means, at any time, the Revolving Loan Limit *minus* the Revolving Loan Outstandings.

"**Revolving Loan Commitment**" means, as of any date of determination, the aggregate Revolving Loan Commitment Amounts of all Lenders as of such date.

"**Revolving Loan Commitment Amount**" means, as to any Lender, the dollar amount set forth opposite such Lender's name on the Commitment Annex under the column "Revolving Loan Commitment Amount" (if such Lender's name is not so set forth thereon, then the dollar amount on the Commitment Annex for the Revolving Loan Commitment Amount for such Lender shall be deemed to be Zero Dollars ($0)), as such amount may be adjusted from time to time by (a) any amounts assigned (with respect to such Lender's portion of Revolving Loans outstanding and its commitment to make Revolving Loans) pursuant to the terms of any and all effective assignment agreements to which such Lender is a party and (b) any Additional Tranche(s) activated by Borrowers in accordance with the terms of this Agreement. For the avoidance of doubt, the aggregate Revolving Loan Commitment Amount of all Lenders on the Closing Date shall be $ 8,000,000 and if the Additional Tranche is fully activated by Borrowers pursuant to the terms of the Agreement such amount shall increase to $10,000,000.

"**Revolving Loan Commitment Percentage**" means, as to any Lender, (a) on the Closing Date, the percentage set forth opposite such Lender's name on the Commitment Annex under the column "Revolving Loan Commitment Percentage" (if such Lender's name is not so set forth thereon, then, on the Closing Date, such percentage for such Lender shall be deemed to be zero), and (b) on any date following the Closing Date, the percentage equal to the Revolving Loan Commitment Amount of such Lender on such date *divided by* the Revolving Loan Commitment on such date.

"**Revolving Loan Exposure**" means, with respect to any Lender on any date of determination, the percentage equal to the amount of such Lender's Revolving Loan Outstandings on such date *divided by* the aggregate Revolving Loan Outstandings of all Lenders on such date.

"**Revolving Loan Limit**" means, at any time, the lesser of (a) the Revolving Loan Commitment and (b) the Borrowing Base.

"**Revolving Loan Outstandings**" means, at any time of calculation, (a) the then existing aggregate outstanding principal amount of Revolving Loans, and (b) when used with reference to any single Lender, the then existing outstanding principal amount of Revolving Loans advanced by such Lender.

"**Revolving Loans**" has the meaning set forth in Section 2.1(b).

"**SEC**" means the United States Securities and Exchange Commission.

"**Securities Account**" means a "securities account" (as defined in Article 9 of the UCC), an investment account, or other account in which investment property or securities are held or invested for credit to or for the benefit of any Borrower.

"**Securities Account Control Agreement**" means an agreement, in form and substance satisfactory to Agent, among Agent, any applicable Borrower and each securities intermediary in which such Borrower maintains a Securities Account pursuant to which Agent shall obtain "control" (as defined in Article 9 of the UCC) over such Securities Account.

"**Security Document**" means this Agreement and any other agreement, document or instrument executed concurrently with the Original Credit Agreement or at any time thereafter pursuant to which one or more Credit Parties or any other Person either (a) Guarantees payment or performance of all or any portion of the Obligations, and/or (b) provides, as security for all or any portion of the Obligations, a Lien on any of its assets in favor of Agent for its own benefit and the benefit of the Lenders, as any or all of the same may be amended, supplemented, restated or otherwise modified from time to time.

"**Solvent**" means, with respect to any Person, that such Person (a) owns and will own assets the fair saleable value of which are (i) greater than the total amount of its debts and liabilities (including subordinated and Contingent Obligations), and (ii) greater than the amount that will be required to pay the probable liabilities of its then existing debts as they become absolute and matured considering all financing alternatives and potential asset sales reasonably available to it; (b) has capital that is not unreasonably small in relation to its business as presently conducted or after giving effect to any contemplated transaction; and (c) does not intend to incur and does not believe that it will incur debts beyond its ability to pay such debts as they become due.

"**Stated Rate**" has the meaning set forth in Section 2.7.

"**Subordinated Debt**" means the (a) the Debt or Contingent Obligations (as applicable) under the (i) Ligand Royalty Agreement, (ii) the Ligand Parent Guaranty, and (iii) the Donor Network West Note, and (b) any other Debt of Borrowers incurred pursuant to the terms of the Subordinated Debt Documents and with the prior written consent of Agent, all of which documents must be in form and substance acceptable to Agent in its sole discretion.

"**Subordinated Debt Documents**" means (a) the Ligand Royalty Agreement, (b) the Ligand Parent Guaranty, (c) the Donor Network West Note and (d) any other documents evidencing and/or securing Debt governed by a Subordination Agreement, all of which documents must be in form and substance acceptable to Agent in its sole discretion.

"**Subordination Agreements**" means (a) the Ligand Intercreditor Agreement, (b) that certain Debt Subordination Agreement (Donor Network West), dated as of the date hereof, by and among Donor Network West and Agent, as amended, supplemented, restated or otherwise modified from time to time in accordance with the terms of the Financing Documents (the "**Debt Subordination Agreement (Donor Network West)**"), and (c) each other agreement between Agent and another creditor of Borrowers, as the same may be amended, supplemented, restated or otherwise modified from time to time in accordance with the terms thereof, pursuant to which the Debt owing from any Borrower(s) and/or the Liens securing such Debt granted by any Borrower(s) to such creditor are subordinated in any way to the Obligations and the Liens created under the Security Documents, the terms and provisions of such Subordination Agreements to have been agreed to by and be acceptable to Agent in the exercise of its sole discretion.

"**Subsidiary**" means, with respect to any Person, (a) any corporation of which an aggregate of more than fifty percent (50%) of the outstanding capital stock having ordinary voting power to elect a majority of the board of directors of such corporation (irrespective of whether, at the time, capital stock of any other class or classes of such corporation shall have or might have voting power by reason of the happening of any contingency) is at the time, directly or indirectly, owned legally or beneficially by such Person or one or more Subsidiaries of such Person, or with respect to which any such Person has the right to vote or designate the vote of more than fifty percent (50%) of such capital stock whether by proxy, agreement, operation of law or otherwise, and (b) any partnership or limited liability company in which such Person and/or one or more Subsidiaries of such Person shall have an interest (whether in the form of voting or participation in profits or capital contribution) of more than fifty percent (50%) or of which any such Person is a general partner or may exercise the powers of a general partner. Unless the context otherwise requires, each reference to a Subsidiary shall be a reference to a Subsidiary of a Borrower.

"**Swap Contract**" means any "swap agreement", as defined in Section 101 of the Bankruptcy Code, that is obtained by Borrower to provide protection against fluctuations in interest or currency exchange rates, but only if Agent provides its prior written consent to the entry into such "swap agreement".

"**Taxes**" means all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

"**Termination Date**" means the earlier to occur of (a) the Maturity Date, (b) any date on which Agent accelerates the maturity of the Loans pursuant to Section 10.2, or (c) the termination date stated in any notice of termination of this Agreement provided by Borrowers in accordance with Section 2.12.

"**Term Loan**" has the meaning set forth in the Affiliated Credit Agreement.

"**Third Party Payor**" means Medicare, Medicaid, TRICARE, and other state or federal health care program, Blue Cross and/or Blue Shield, private insurers, managed care plans and any other Person or entity which presently or in the future maintains Third Party Payor Programs.

"**Third Party Payor Programs**" means all payment and reimbursement programs, sponsored by a Third Party Payor, in which a Borrower participates.

"**Transaction Documents**" means the Purchase Agreement, including the exhibits and schedules thereto, and all agreements, documents and instruments executed and delivered pursuant thereto or in connection therewith.

"**TRICARE**" means the program administered pursuant to 10 U.S.C. Section 1071 et. seq), Sections 1320a-7 and 1320a-7a of Title 42 of the United States Code and the regulations promulgated pursuant to such statutes.

"**UCC**" means the Uniform Commercial Code of the State of New York or of any other state the laws of which are required to be applied in connection with the perfection of security interests in any Collateral.

"**Unfinanced Capital Expenditures**" means, for any fiscal period, Capital Expenditures made by Borrower and its consolidated Subsidiaries that are not funded by Debt for Money Borrowed (other than Loans made hereunder) or purchase money Debt, in each case incurred by Borrower and its Subsidiaries during such period.

"**United States**" means the United States of America.

"**U.S. Tax Compliance Certificate**" has the meaning set forth in Section 2.8(c)(i).

"**Withholding Agent**" means any Borrower or Agent.

"**Work-In-Process**" means Inventory that is not a product that is finished and approved by a Borrower in accordance with applicable Laws and such Borrower's normal business practices for release and delivery to customers.

Section 1.2 Accounting Terms and Determinations

. Unless otherwise specified herein, all accounting terms used herein shall be interpreted, all accounting determinations hereunder (including, without limitation, determinations made pursuant to the exhibits hereto) shall be made, and all financial statements required to be delivered hereunder shall be prepared on a consolidated basis in accordance with GAAP applied on a basis consistent with the most recent audited consolidated financial statements of each Borrower and its Consolidated Subsidiaries delivered to Agent and each of the Lenders on or prior to the Closing Date. If at any time any change in GAAP would affect the computation of any financial ratio or financial requirement set forth in any Financing Document, and either Borrowers or the Required Lenders shall so request, Agent, the Lenders and Borrowers shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP (subject to the approval of the Required Lenders); *provided*, *however*, that until so amended, (a) such ratio or requirement shall continue to be computed in accordance with GAAP prior to such change therein and (b) Borrowers shall provide to Agent and the Lenders financial statements and other documents required under this Agreement which include a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP. Notwithstanding any other provision contained herein, all terms of an accounting or financial nature used herein shall be construed, and all computations of amounts and ratios referred to herein shall be made, without giving effect to any election under Statement of Financial Accounting Standards 159 (or any other Financial Accounting Standard having a similar result or effect) to value any Debt or other liabilities of any Credit Party or any Subsidiary of any Credit Party at "fair value", as defined therein.

Section 1.3 Other Definitional and Interpretive Provisions. References in this Agreement to "Articles", "Sections", "Annexes", "Exhibits", or "Schedules" shall be to Articles, Sections, Annexes, Exhibits or Schedules of or to this Agreement unless otherwise specifically provided. Any term defined herein may be used in the singular or plural. "Include", "includes" and "including" shall be deemed to be followed by "without limitation". Except as otherwise specified or limited herein, references to any Person include the successors and assigns of such Person. References "from" or "through" any date mean, unless otherwise specified, "from and including" or "through and including", respectively. Unless otherwise specified herein, the settlement of all payments and fundings hereunder between or among the parties hereto shall be made in lawful money of the United States and in immediately available funds. References to any statute or act shall include all related current regulations and all amendments and any successor statutes, acts and regulations. All amounts used for purposes of financial calculations required to be made herein shall be without duplication. References to any statute or act, without additional reference, shall be deemed to refer to federal statutes and acts of the United States. References to any agreement, instrument or document shall include all schedules, exhibits, annexes and other attachments thereto. As used in this Agreement, the meaning of the term "material" or the phrase "in all material respects" is intended to refer to an act, omission, violation or condition which reflects or could reasonably be expected to result in a Material Adverse Effect. References to capitalized terms that are not defined herein, but are defined in the UCC, shall have the meanings given them in the UCC. All references herein to times of day shall be references to daylight or standard time, as applicable.

Section 1.4 Time is of the Essence. Time is of the essence in Borrower's and each other Credit Party's performance under this Agreement and all other Financing Documents.

ARTICLE 2 - LOANS

Section 2.1 Loans.

(a) Reserved.

(b) Revolving Loans.

(i) Revolving Loans and Borrowings. On the terms and subject to the conditions set forth herein, each Lender severally agrees to make loans to Borrowers from time to time as set forth herein (each a "**Revolving Loan**", and collectively, "**Revolving Loans**") equal to such Lender's Revolving Loan Commitment Percentage of Revolving Loans requested by Borrowers hereunder, *provided*, *however*, that after giving effect thereto, the Revolving Loan Outstandings shall not exceed the Revolving Loan Limit. Borrowers shall deliver to Agent a Notice of Borrowing with respect to each proposed borrowing of a Revolving Loan, such Notice of Borrowing to be delivered before 1:00 p.m. (Eastern time) two (2) Business Days (or such shorter time as Agent may reasonably agree) prior to the date of such proposed borrowing. Each Borrower and each Revolving Lender hereby authorizes Agent to make Revolving Loans on behalf of Revolving Lenders, at any time in its sole discretion, to pay principal owing in respect of the Loans and interest, fees, expenses and other charges payable by any Credit Party from time to time arising under this Agreement or any other Financing Document. The Borrowing Base shall be determined by Agent based on the most recent Borrowing Base Certificate delivered to Agent in accordance with this Agreement and such other information as may be available to Agent. Without limiting any other rights and remedies of Agent hereunder or under the other Financing Documents, the Revolving Loans shall be subject to Agent's continuing right to withhold from the Borrowing Base reserves, and to increase and decrease such reserves from time to time, if and to the extent that in Agent's good faith credit judgment and discretion, such reserves are necessary. Immediately prior to the effectiveness of this Agreement, the outstanding principal balance of the Revolving Loans under the Original Credit Agreement is $3,422,089.46, which amount shall be deemed to have been, and hereby is, converted into a portion of the outstanding principal amount of the Revolving Loans hereunder in like amount without constituting a novation. Each Borrower hereby (x) represents, warrants, agrees, covenants and reaffirms that it has no defense, set off, claim or counterclaim against the Agent and the Lenders with regard to its Obligations in respect of such Revolving Loans and (y) reaffirms its obligation to repay such Revolving Loans in accordance with the terms and provisions of this Agreement and the other Financing Documents.

(ii) Mandatory Revolving Loan Repayments and Prepayments.

(A) The Revolving Loan Commitment shall terminate on the Termination Date. On such Termination Date, there shall become due, and Borrowers shall pay, the entire outstanding principal amount of each Revolving Loan, together with accrued and unpaid Obligations pertaining thereto incurred to, but excluding the Termination Date; *provided, however,* that such payment is made not later than 12:00 12:00 P.M (Eastern time) on the Termination Date.

(B) If at any time the Revolving Loan Outstandings exceed the Revolving Loan Limit, then, on the next succeeding Business Day, Borrowers shall repay the Revolving Loans, in an aggregate amount equal to such excess.

(C) Principal payable on account of Revolving Loans shall be payable by Borrowers to Agent (I) immediately upon the receipt by any Borrower or Agent of any payments on or proceeds from any of the Accounts, to the extent of such payments or proceeds, as further described in Section 2.11 below, and (II) in full on the Termination Date.

(iii) Optional Prepayments. Borrowers may from time to time prepay the Revolving Loans in whole or in part; *provided*, *however*, that any such partial prepayment shall be in an amount equal to $100,000 or a higher integral multiple of $25,000. For the avoidance of doubt, nothing in this clause shall permit termination of the Revolving Loan Commitment by Borrower other than in accordance with Section 2.12(b).

(iv) LIBOR Rate.

(A) Except as provided in subsection (C) below, Revolving Loans shall accrue interest at the LIBOR Rate *plus* the Applicable Margin.

(B) The LIBOR Rate may be adjusted by Agent with respect to any Lender on a prospective basis to take into account any additional or increased costs to such Lender of maintaining or obtaining any eurodollar deposits or increased costs, in each case, due to changes in applicable Law occurring subsequent to the commencement of the then applicable Interest Period, including changes in tax laws (except changes of general applicability in corporate income tax laws) and changes in the reserve requirements imposed by the Board of Governors of the Federal Reserve System (or any successor), which additional or increased costs would increase the cost of funding loans bearing interest based upon the LIBOR Rate; *provided, however,* that notwithstanding anything in this Agreement to the contrary, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (ii) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a "change in applicable Law", regardless of the date enacted, adopted or issued. In any such event, the affected Lender shall give Borrowers and Agent notice of such a determination and adjustment and Agent promptly shall transmit the notice to each other Lender and, upon its receipt of the notice from the affected Lender, Borrowers may, by notice to such affected Lender (I) require such Lender to furnish to Borrowers a statement setting forth the basis for adjusting such LIBOR Rate and the method for determining the amount of such adjustment, or (II) repay the Loans bearing interest based upon the LIBOR Rate with respect to which such adjustment is made.

(C) In the event that any change in market conditions or any law, regulation, treaty, or directive, or any change therein or in the interpretation of application thereof, shall at any time after the date hereof, in the reasonable opinion of any Lender, make it unlawful or impractical for such Lender to fund or maintain Loans bearing interest based upon the LIBOR Rate or to continue such funding or maintaining, or to determine or charge interest rates at the LIBOR Rate, such Lender shall give notice of such changed circumstances to Agent and Borrowers and Agent promptly shall transmit the notice to each other Lender and (I) in the case of any outstanding Loans of such Lender bearing interest based upon the LIBOR Rate, the date specified in such Lender's notice shall be deemed to be the last day of the Interest Period of such Loans, and interest upon such Lender's Loans thereafter shall accrue interest at Base Rate *plus* the Applicable Margin, and (II) such Loans shall continue to accrue interest at Base Rate *plus* the Applicable Margin until such Lender determines that it would no longer be unlawful or impractical to maintain such Loans at the LIBOR Rate.

(D) Anything to the contrary contained herein notwithstanding, neither Agent nor any Lender is required actually to acquire eurodollar deposits to fund or otherwise match fund any Obligation as to which interest accrues based on the LIBOR Rate.

(v) Restriction on Termination. Notwithstanding any prepayment of the Revolving Loan Outstandings or any other termination of Lenders' Credit Exposure under this Agreement, Agent and Lenders shall have no obligation to release any of the Collateral securing the Obligations under this Agreement while any portion of the Affiliated Obligations shall remain outstanding.

(c) Additional Tranche. After the Closing Date, so long as no Default or Event of Default exists and subject to the terms of this Agreement, with the prior written consent of Agent and each of the Required Lenders, the Revolving Loan Commitment may be increased upon the written request of Borrower Representative (which such request shall state the aggregate amount of the Additional Tranche requested and shall be made at least thirty (30) days prior to the proposed effective date of such Additional Tranche) to Agent to activate the Additional Tranche; *provided*, *however*, that Agent and Lenders shall have no obligation whatsoever to consent to any requested activation of the Additional Tranche and the written consent of Agent and each of the Required Lenders shall be required in order to activate the Additional Tranche. Upon activating the Additional Tranche, each Lender's Commitment shall increase by a proportionate amount so as to maintain the same Pro Rata Share of the Revolving Loan Commitment as such Lender held immediately prior to such activation.

Section 2.2 Interest, Interest Calculations and Certain Fees.

(a) Interest. From and following the Closing Date, except as expressly set forth in this Agreement, Loans and the other Obligations shall bear interest at the sum of the LIBOR Rate *plus* the Applicable Margin. Interest on the Loans shall be paid in arrears on the first (1st) day of each month and on the maturity of such Loans, whether by acceleration or otherwise. Interest on all other Obligations shall be payable upon demand. For purposes of calculating interest, all funds transferred to the Payment Account for application to any Revolving Loans shall be subject to a five (5) Business Day clearance period and all interest accruing on such funds during such clearance period shall accrue for the benefit of Agent, and not for the benefit of the Lenders. The Borrowers hereby agree that all accrued and unpaid interest, unused line fees, minimum balance fees and collateral management fees due and owing to the "Lenders" or "Agent" (each, as defined in the Original Credit Agreement) as of the Closing Date shall be paid in cash by the Borrowers to the Agent, for the benefit of such Lenders or Agent, on the first (1st) day of the first calendar month following the Closing Date. All Loans made under the Original Credit Agreement shall bear interest at the sum of the LIBOR Rate plus the Applicable Margin starting on and after the Closing Date.

(b) Unused Line Fee. From and following the Closing Date, Borrowers shall pay Agent, for the benefit of all Lenders committed to make Revolving Loans, in accordance with their respective Pro Rata Shares, a fee in an amount equal to (1) if the average daily balance of the sum of the Revolving Loan Outstandings during the preceding month is greater than or equal to the Minimum Balance: (i) (A) the Revolving Loan Commitment minus (B) the average daily balance of the sum of the Revolving Loan Outstandings during the preceding month, multiplied by (ii) one half of one percent (0.5%) per annum or (2) if the Minimum Balance is greater than the average daily balance of the sum of the Revolving Loan Outstandings during the preceding month: (i) (A) the Revolving Loan Commitment minus (B) the Minimum Balance, multiplied by (ii) one half of one percent (0.5%) per annum; provided that, notwithstanding the foregoing, no Defaulted Lender shall be entitled to receive its Pro Rata Share of the fee payable in accordance with this Section 2.2(b) and the fee payable by Borrowers pursuant to this subsection shall be reduced by an amount equal to such Defaulted Lender's Pro Rata Share thereof. The unused line fee shall be paid monthly in arrears on the first day of each month and shall be deemed fully earned when due and payable and, once paid, shall be non-refundable.

(c) Reserved.

(d) Minimum Balance Fee. On the first day of each month, the Borrowers agree to pay to Agent, for the ratable benefit of all Lenders, the sum of the Minimum Balance Fees due for the prior month. The Minimum Balance Fee shall be deemed fully earned when due and payable and, once paid, shall be non-refundable.

(e) Collateral Management Fee. From and following the Closing Date, Borrowers shall pay Agent, for its own account and not for the benefit of any other Lenders, a fee in an amount equal to the product obtained by *multiplying* (i) the greater of (A) the average end-of-day principal balance of Revolving Loans outstanding during the immediately preceding month and (B) the Minimum Balance, *by* (ii) one half of one percent (0.5%) per annum. For purposes of calculating the average end-of-day principal balance of Revolving Loans, all funds paid into the Payment Account (or which were required to be paid into the Payment Account hereunder) or otherwise received by Agent for the account of Borrowers shall be subject to a five (5) Business Day clearance period. The collateral management fee shall be payable monthly in arrears on the first day of each calendar month and shall be deemed fully earned when due and payable and, once paid, shall be non-refundable.

(f) [Reserved].

(g) Deferred Revolving Loan Origination Fee. If Lenders' funding obligations in respect of the Revolving Loan Commitment under this Agreement terminate or are permanently reduced for any reason whether by voluntary termination by Borrowers, by reason of the occurrence of an Event of Default or the automatic termination of the Revolving Loan Commitments (including any automatic termination due to the occurrence of an Event of Default described in Section 10.1(f)) or otherwise) prior to the Maturity Date, Borrowers shall pay to Agent on the date of such reduction, for the benefit of all Lenders committed to make Revolving Loans on the Closing Date, a fee as compensation for the costs of such Lenders being prepared to make funds available to Borrowers under this Agreement, equal to an amount determined by *multiplying* the amount of the Revolving Loan Commitment so terminated or permanently reduced *by* the following applicable percentage amount: four percent (4.0%) for the first year following the Closing Date, three percent (3.0%) for the second year following the Closing Date, and two percent (2.0%) thereafter. All fees payable pursuant to this paragraph shall be deemed fully-earned and non-refundable as of the Closing Date.

(h) Reserved.

(i) Reserved.

(j) Audit Fees. Borrowers shall pay to Agent, for its own account and not for the benefit of any other Lenders, all reasonable fees and expenses in connection with audits and inspections of Borrowers' books and records, audits, valuations or appraisals of the Collateral, audits of Borrowers' compliance with applicable Laws and such other matters as Agent shall deem appropriate, which shall be due and payable on the first Business Day of the month following the date of issuance by Agent of a written request for payment thereof to Borrowers.

(k) Wire Fees. Borrowers shall pay to Agent, for its own account and not for the account of any other Lenders, on written demand, fees for incoming and outgoing wires made for the account of Borrowers, such fees to be based on Agent's then current wire fee schedule (available upon written request of the Borrowers).

(l) Late Charges. If payments of principal (other than a final installment of principal upon the Termination Date), interest due on the Obligations, or any other amounts due hereunder or under the other Financing Documents are not timely made and remain overdue for a period of five (5) days, Borrowers, without notice or demand by Agent, promptly shall pay to Agent, for its own account and not for the benefit of any other Lenders, as additional compensation to Agent in administering the Obligations, an amount equal to five percent (5.0%) of each delinquent payment.

(m) Computation of Interest and Related Fees. All interest and fees under each Financing Document shall be calculated on the basis of a 360-day year for the actual number of days elapsed. The date of funding of a Loan shall be included in the calculation of interest. The date of payment of a Loan shall be excluded from the calculation of interest. If a Loan is repaid on the same day that it is made, one (1) day's interest shall be charged.

(n) Automated Clearing House Payments. If Agent (or its designated servicer or trustee on behalf of a securitization vehicle) so elects, monthly payments of principal, interest, fees, expenses or any other amounts due and owing from Borrower to Agent hereunder shall be paid to Agent by Automated Clearing House debit of immediately available funds from the financial institution account designated by Borrower Representative in the Automated Clearing House debit authorization executed by Borrowers or Borrower Representative in connection with this Agreement, and shall be effective upon receipt. Borrowers shall execute any and all forms and documentation necessary from time to time to effectuate such automatic debiting. In no event shall any such payments be refunded to Borrowers.

Section 2.3 Notes. The portion of the Loans made by each Lender shall be evidenced, if so requested by such Lender, by one or more promissory notes executed by Borrowers on a joint and several basis (each, a "**Note**") in an original principal amount equal to such Lender's Revolving Loan. Upon activation of the Additional Tranche in accordance with Section 2.1(c) hereof, Borrowers shall deliver to each Lender to whom Borrowers previously delivered a Note, a restated Note evidencing such Lender's Revolving Loan Commitment Amount.

Section 2.4 Reserved.

Section 2.5 Reserved.

Section 2.6 General Provisions Regarding Payment; Loan Account.

(a) All payments to be made by each Borrower under any Financing Document, including payments of principal and interest made hereunder and pursuant to any other Financing Document, and all fees, expenses, indemnities and reimbursements, shall be made without set-off, recoupment or counterclaim. If any payment hereunder becomes due and payable on a day other than a Business Day, such payment shall be extended to the next succeeding Business Day and, with respect to payments of principal, interest thereon shall be payable at the then applicable rate during such extension (it being understood and agreed that, solely for purposes of calculating financial covenants and computations contained herein and determining compliance therewith, if payment is made, in full, on any such extended due date, such payment shall be deemed to have been paid on the original due date without giving effect to any extension thereto). Any payments received in the Payment Account before 12:00 P.M (Eastern time) on any date shall be deemed received by Agent on such date, and any payments received in the Payment Account at or after 12:00 P.M (Eastern time) on any date shall be deemed received by Agent on the next succeeding Business Day.

(b) Agent shall maintain a loan account (the "**Loan Account**") on its books to record Loans and other extensions of credit made by the Lenders hereunder or under any other Financing Document, and all payments thereon made by each Borrower. All entries in the Loan Account shall be made in accordance with Agent's customary accounting practices as in effect from time to time. The balance in the Loan Account, as recorded in Agent's books and records at any time shall be conclusive and binding evidence of the amounts due and owing to Agent by each Borrower absent manifest error; *provided*, *however*, that any failure to so record or any error in so recording shall not limit or otherwise affect any Borrower's duty to pay all amounts owing hereunder or under any other Financing Document. Agent shall endeavor to provide Borrowers with a monthly statement regarding the Loan Account (but neither Agent nor any Lender shall have any liability if Agent shall fail to provide any such statement). Unless any Borrower notifies Agent of any objection to any such statement (specifically describing the basis for such objection) within ninety (90) days after the date of receipt thereof, it shall be deemed final, binding and conclusive upon Borrowers in all respects as to all matters reflected therein.

Section 2.7 Maximum Interest. In no event shall the interest charged with respect to the Loans or any other Obligations of any Borrower under any Financing Document exceed the maximum amount permitted under the laws of the State of New York or of any other applicable jurisdiction. Notwithstanding anything to the contrary herein or elsewhere, if at any time the rate of interest payable hereunder or under any Note or other Financing Document (the "**Stated Rate**") would exceed the highest rate of interest permitted under any applicable law to be charged (the "**Maximum Lawful Rate**"), then for so long as the Maximum Lawful Rate would be so exceeded, the rate of interest payable shall be equal to the Maximum Lawful Rate; *provided*, *however*, that if at any time thereafter the Stated Rate is less than the Maximum Lawful Rate, each Borrower shall, to the extent permitted by law, continue to pay interest at the Maximum Lawful Rate until such time as the total interest received is equal to the total interest which would have been received had the Stated Rate been (but for the operation of this provision) the interest rate payable. Thereafter, the interest rate payable shall be the Stated Rate unless and until the Stated Rate again would exceed the Maximum Lawful Rate, in which event this provision shall again apply. In no event shall the total interest received by any Lender exceed the amount which it could lawfully have received had the interest been calculated for the full term hereof at the Maximum Lawful Rate. If, notwithstanding the prior sentence, any Lender has received interest hereunder in excess of the Maximum Lawful Rate, such excess amount shall be applied to the reduction of the principal balance of the Loans or to other amounts (other than interest) payable hereunder, and if no such principal or other amounts are then outstanding, such excess or part thereof remaining shall be paid to Borrowers. In computing interest payable with reference to the Maximum Lawful Rate applicable to any Lender, such interest shall be calculated at a daily rate equal to the Maximum Lawful Rate *divided by* the number of days in the year in which such calculation is made.

Section 2.8 Taxes; Capital Adequacy; Mitigation Obligations.

(a) All payments of principal and interest on the Loans and all other amounts payable hereunder shall be made free and clear of and without deduction for any present or future Taxes, except as required by applicable Law. If any applicable law (as determined in the good faith discretion of an applicable Withholding Agent) requires the deduction or withholding of any Tax from any such payment by a Withholding Agent, then the applicable Withholding Agent shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable Law and if any such withholding or deduction is in respect of any Indemnified Taxes, then the Borrowers shall pay such additional amount or amounts as is necessary to ensure that the net amount actually received by Agent and each Lender will equal the full amount Agent and such Lender would have received had no such withholding or deduction been required (including, without limitation, such withholdings and deductions applicable to additional sums payable under this Section 2.8). After payment of any Tax by a Borrower to a Governmental Authority pursuant to this Section 2.8, such Borrower shall promptly forward to Agent the original or a certified copy of an official receipt, a copy of the return reporting such payment, or other documentation satisfactory to Agent evidencing such payment to such authority. Borrowers shall timely pay to the relevant Governmental Authority in accordance with applicable Law, or at the option of Agent timely reimburse it for the payment of, any Other Taxes.

(b) The Borrowers shall indemnify Agent and Lenders, within ten (10) days after demand thereof, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section 2.8) payable or paid by Agent or any Lender or required to be withheld or deducted from a payment to Agent or any Lender and any expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes and Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate in reasonable detail as to the amount of such payment or liability delivered to Borrowers by a Lender (with a copy to Agent), or by Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.

(c) Any Lender that is entitled to an exemption from or reduction of withholding tax with respect to payments made under any Financing Document shall deliver to Borrower Representative and Agent, at the time or times prescribed by applicable Law or reasonably requested by Borrower Representative or Agent, such properly completed and executed documentation reasonably requested by Borrower Representative or Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by Borrower Representative or Agent, shall deliver such other documentation prescribed by applicable Law or reasonably requested by Borrowers or Agent as will enable Borrowers or Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in Sections 2.8(c)(i), 2.8(c)(ii) and 2.8(e) below) shall not be required if in such Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(i) Each Lender that is not a "United States person" (as such term is defined in Section 7701(a)(30) of the Code) for U.S. federal income tax purposes and is a party hereto on the Closing Date or purports to become an assignee of an interest pursuant to Section 11.17(a) after the Closing Date (unless such Lender was already a Lender hereunder immediately prior to such assignment) (each such Lender a "**Foreign Lender**") shall, to the extent permitted by Law, execute and deliver to Borrower Representative and Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower Representative or the Agent) whichever of the following is applicable: (A) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party, (x) with respect to payments of interest under any Financing Document, two (2) properly completed and executed originals of United States Internal Revenue Service ("**IRS**") Forms W-8BEN or W-8BEN-E (or successor form) establishing an exemption from, or reduction of, U.S. federal withholding tax pursuant to the "interest" article of such tax treaty and (y) with respect to any other applicable payments under any Financing Documents, two (2) properly completed and executed originals of IRS Forms W-8BEN or W-8BEN-E (or successor form) establishing an exemption from, or reduction of, U.S. federal withholding tax pursuant to the "business profits" or "other income" article of such tax treaty; (B) two (2) executed originals of Form W-8ECI (or successor form); (C) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate substantially in the form of Exhibit F-1 to the effect that such Foreign Lender is not a "bank" within the meaning of Section 881(c)(3)(A) of the Code, a "10 percent shareholder" of any Borrower within the meaning of Section 881(c)(3)(B) of the Code, or a "controlled foreign corporation" described in Section 881(c)(3)(C) of the Code (a "**U.S. Tax Compliance Certificate**") and (y) two (2) executed originals of IRS Forms W-8BEN or W-8BEN-E (or successor form); (D) to the extent a Foreign Lender is not the beneficial owner, two (2) executed originals of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN or W-8BEN-E (or successor form), a U.S. Tax Compliance Certificate substantially in the form of Exhibit F-2 or Exhibit F-3, IRS Form W-9 (or successor form), and/or other certification documents from each beneficial owner, as applicable; *provided* that if the Foreign Lender is a partnership and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a U.S. Tax Compliance Certificate substantially in the form of Exhibit F-4 on behalf of each such direct and indirect partner; or (E) other applicable forms, certificates or documents prescribed by the IRS. Each Lender agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify Borrower Representative and Agent in writing of its legal inability to do so. In addition, to the extent permitted by applicable Law, such forms shall be delivered by each Foreign Lender upon the obsolescence or invalidity of any form previously delivered by such Foreign Lender. Each Foreign Lender shall promptly notify Borrower Representative at any time it determines that it is no longer in a position to provide any previously delivered certificate to Borrower Representative (or any other form of certification adopted by the U.S. taxing authorities for such purpose).

(ii) Each Lender that is a "United States person" (as such term is defined in Section 7701(a)(30) of the Code) for U.S. federal income tax purposes and is a party hereto on the Closing Date or purports to become an assignee of an interest pursuant to Section 11.17(a) after the Closing Date (unless such Lender was already a Lender hereunder immediately prior to such assignment) shall, to the extent permitted by Law, provide to Borrower Representative and Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower Representative or the Agent), a properly completed and executed IRS Form W-9 or any successor form certifying as to such Lender's entitlement to an exemption from U.S. backup withholding and other applicable forms, certificates or documents prescribed by the IRS or reasonably requested by Borrower Representative or Agent. Each such Lender shall promptly notify Borrowers at any time it determines that any certificate previously delivered to Borrower Representative (or any other form of certification adopted by the U.S. governmental authorities for such purposes) is no longer valid.

(iii) Any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to Borrower Representative and the Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower Representative or the Agent), executed copies of any other form prescribed by applicable Law as a basis for claiming exemption from or a reduction in U.S. Federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by applicable law to permit Borrowers or Agent to determine the withholding or deduction required to be made.

(d) If any Lender determines, in its sole discretion exercised in good faith, that it has received a refund in respect of any Taxes as to which it has been indemnified by any Borrower pursuant to this Section 2.8 (including by the payment of additional amounts pursuant to this Section 2.8), then it shall promptly pay an amount equal to such refund to Borrowers, net of all reasonable out-of-pocket expenses of such Lender or of Agent with respect thereto, including any Taxes; *provided, however*, that Borrowers, upon the written request of such Lender or Agent, agree to repay any amount paid over to Borrowers to such Lender or to Agent (plus any related penalties, interest or other charges imposed by the relevant Governmental Authority) in the event such Lender or Agent is required, for any reason, to disgorge or otherwise repay such refund. Notwithstanding anything to the contrary in this Section 2.8, in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this Section 2.8(d) the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This Section 2.8 shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

(e) If a payment made to a Lender under any Financing Document would be subject to U.S. federal withholding tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to Borrower Representative and Agent at the time or times prescribed by Law and at such time or times reasonably requested by Borrower Representative or Agent such documentation prescribed by applicable Law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by Borrower Representative or Agent as may be necessary for Borrowers and Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (e), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

(f) Each Lender shall severally indemnify Agent, within ten (10) days after demand therefor, for (i) any Indemnified Taxes attributable to such Lender (but only to the extent that any Credit Party has not already indemnified Agent for such Indemnified Taxes and without limiting the obligation of the Credit Parties to do so), (ii) any Taxes attributable to such Lender's failure to comply with the provisions of Section 11.17 relating to the maintenance of a Participant Register and (iii) any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by Agent in connection with any Financing Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by Agent shall be conclusive absent manifest error. Each Lender hereby authorizes Agent to set off and apply any and all amounts at any time owing to such Lender under any Financing Document or otherwise payable by Agent to such Lender from any other source against any amount due to Agent under this paragraph (f).

(g) Each party's obligations under Section 2.8(a) through (f) shall survive the resignation or replacement of the Agent or any assignment of rights by, or the replacement of, a Lender, and the repayment, satisfaction or discharge of all Obligations hereunder.

(h) If any Lender shall reasonably determine that the adoption or taking effect of, or any change in, any applicable Law regarding capital adequacy, in each instance, after the Closing Date, or any change after the Closing Date in the interpretation, administration or application thereof by any Governmental Authority, central bank or comparable agency charged with the interpretation, administration or application thereof, or the compliance by any Lender or any Person controlling such Lender with any request, guideline or directive regarding capital adequacy (whether or not having the force of Law) of any such Governmental Authority, central bank or comparable agency adopted or otherwise taking effect after the Closing Date, has or would have the effect of reducing the rate of return on such Lender's or such controlling Person's capital as a consequence of such Lender's obligations hereunder to a level below that which such Lender or such controlling Person could have achieved but for such adoption, taking effect, change, interpretation, administration, application or compliance (taking into consideration such Lender's or such controlling Person's policies with respect to capital adequacy) then from time to time, upon demand by such Lender (which demand shall be accompanied by a certificate setting forth the basis for such demand and a calculation of the amount thereof in reasonable detail, a copy of which shall be furnished to Agent), Borrowers shall promptly pay to such Lender such additional amount as will compensate such Lender or such controlling Person for such reduction, so long as such amounts have accrued on or after the day which is two hundred seventy (270) days prior to the date on which such Lender first made demand therefor; *provided* that notwithstanding anything in this Agreement to the contrary, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (ii) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a "change in applicable Law", regardless of the date enacted, adopted or issued.

(i) If any Lender requests compensation under either Section 2.1(b)(iv) or Section 2.8(h), or requires Borrowers to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.8, then, upon the written request of Borrower Representative, such Lender shall use reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder (subject to the provisions of Section 11.17) to another of its offices, branches or affiliates, if, in the reasonable judgment of such Lender, such designation or assignment (i) would eliminate or materially reduce amounts payable pursuant to any such Section, as the case may be, in the future, (ii) would not subject such Lender to any unreimbursed cost or expense and (iii) would not otherwise be disadvantageous to such Lender (as determined in its sole good faith discretion). Without limitation of the provisions of Section 12.14, each Borrower hereby agrees to pay all reasonable and documented, out-of-pocket costs and expenses incurred by any Lender in connection with any such designation or assignment.

Section 2.9 Appointment of Borrower Representative.

(a) Each Borrower hereby irrevocably appoints and constitutes Borrower Representative as its agent and attorney-in-fact to request and receive Loans in the name or on behalf of such Borrower and any other Borrowers, deliver Notices of Borrowing and Borrowing Base Certificates, give instructions with respect to the disbursement of the proceeds of the Loans, give and receive all other notices and consents hereunder or under any of the other Financing Documents and taking all other actions (including in respect of compliance with covenants) in the name or on behalf of any Borrower or Borrowers pursuant to this Agreement and the other Financing Documents. Agent and Lenders may disburse the Loans to such bank account of Borrower Representative or a Borrower or otherwise make such Loans to a Borrower, in each case as Borrower Representative may designate or direct, without notice to any other Borrower. Notwithstanding anything to the contrary contained herein, Agent may at any time and from time to time require that Loans to or for the account of any Borrower be disbursed directly to an operating account of such Borrower.

(b) Borrower Representative hereby accepts the appointment by Borrowers to act as the agent and attorney-in-fact of Borrowers pursuant to this Section 2.9. Borrower Representative shall ensure that the disbursement of any Loans that are at any time requested by or to be remitted to or for the account of a Borrower, shall be remitted or issued to or for the account of such Borrower.

(c) Each Borrower hereby irrevocably appoints and constitutes Borrower Representative as its agent to receive statements on account and all other notices from Agent, Lenders with respect to the Obligations or otherwise under or in connection with this Agreement and the other Financing Documents.

(d) Any notice, election, representation, warranty, agreement or undertaking made or delivered by or on behalf of any Borrower by Borrower Representative shall be deemed for all purposes to have been made or delivered by such Borrower, as the case may be, and shall be binding upon and enforceable against such Borrower to the same extent as if made or delivered directly by such Borrower.

(e) No resignation by or termination of the appointment of Borrower Representative as agent and attorney-in-fact as aforesaid shall be effective, except after ten (10) Business Days' prior written notice to Agent. If the Borrower Representative resigns under this Agreement, Borrowers shall be entitled to appoint a successor Borrower Representative (which shall be a Borrower and shall be reasonably acceptable to Agent as such successor). Upon the acceptance of its appointment as successor Borrower Representative hereunder, such successor Borrower Representative shall succeed to all the rights, powers and duties of the retiring Borrower Representative and the term "Borrower Representative" means such successor Borrower Representative for all purposes of this Agreement and the other Financing Documents, and the retiring or terminated Borrower Representative's appointment, powers and duties as Borrower Representative shall be thereupon terminated.

Section 2.10 Joint and Several Liability; Rights of Contribution; Subordination and Subrogation.

(a) Borrowers are defined collectively to include all Persons named as one of the Borrowers herein; *provided*, *however*, that any references herein to "any Borrower", "each Borrower" or similar references, shall be construed as a reference to each individual Person named as one of the Borrowers herein. Each Person so named shall be jointly and severally liable for all of the obligations of Borrowers under this Agreement. Each Borrower, individually, expressly understands, agrees and acknowledges, that the credit facilities would not be made available on the terms herein in the absence of the collective credit of all of the Persons named as the Borrowers herein, the joint and several liability of all such Persons, and the cross-collateralization of the collateral of all such Persons. Accordingly, each Borrower individually acknowledges that the benefit to each of the Persons named as one of the Borrowers as a whole constitutes reasonably equivalent value, regardless of the amount of the credit facilities actually borrowed by, advanced to, or the amount of collateral provided by, any individual Borrower. In addition, each entity named as one of the Borrowers herein hereby acknowledges and agrees that all of the representations, warranties, covenants, obligations, conditions, agreements and other terms contained in this Agreement shall be applicable to and shall be binding upon and measured and enforceable individually against each Person named as one of the Borrowers herein as well as all such Persons when taken together. By way of illustration, but without limiting the generality of the foregoing, the terms of Section 10.1 of this Agreement are to be applied to each individual Person named as one of the Borrowers herein (as well as to all such Persons taken as a whole), such that the occurrence of any of the events described in Section 10.1 of this Agreement as to any Person named as one of the Borrowers herein shall constitute an Event of Default even if such event has not occurred as to any other Persons named as the Borrowers or as to all such Persons taken as a whole.

(b) Notwithstanding any provisions of this Agreement to the contrary, it is intended that the joint and several nature of the liability of each Borrower for the Obligations and the Liens granted by Borrowers to secure the Obligations, not constitute a Fraudulent Conveyance (as defined below). Consequently, Agent, Lenders and each Borrower agree that if the liability of a Borrower for the Obligations, or any Liens granted by such Borrower securing the Obligations would, but for the application of this sentence, constitute a Fraudulent Conveyance, the liability of such Borrower and the Liens securing such liability shall be valid and enforceable only to the maximum extent that would not cause such liability or such Lien to constitute a Fraudulent Conveyance, and the liability of such Borrower and this Agreement shall automatically be deemed to have been amended accordingly. For purposes hereof, the term "**Fraudulent Conveyance**" means a fraudulent conveyance under Section 548 of Chapter 11 of Title II of the Bankruptcy Code or a fraudulent conveyance or fraudulent transfer under the applicable provisions of any fraudulent conveyance or fraudulent transfer law or similar law of any state, nation or other governmental unit, as in effect from time to time.

(c) Agent is hereby authorized, without notice or demand (except as otherwise specifically required under this Agreement) and without affecting the liability of any Borrower hereunder, at any time and from time to time, to (i) renew, extend or otherwise increase the time for payment of the Obligations; (ii) with the written agreement of any Borrower, change the terms relating to the Obligations or otherwise modify, amend or change the terms of any Note or other agreement, document or instrument now or hereafter executed by any Borrower and delivered to Agent for any Lender; (iii) accept partial payments of the Obligations; (iv) take and hold any Collateral for the payment of the Obligations or for the payment of any guaranties of the Obligations and exchange, enforce, waive and release any such Collateral; (v) apply any such Collateral and direct the order or manner of sale thereof as Agent, in its sole discretion, may determine; and (vi) settle, release, compromise, collect or otherwise liquidate the Obligations and any Collateral therefor in any manner, all guarantor and surety defenses being hereby waived by each Borrower. Without limitations of the foregoing, with respect to the Obligations, each Borrower hereby makes and adopts each of the agreements and waivers set forth in each Guarantee, the same being incorporated hereby by reference. Except as specifically provided in this Agreement or any of the other Financing Documents, Agent shall have the exclusive right to determine the time and manner of application of any payments or credits, whether received from any Borrower or any other source, and such determination shall be binding on all Borrowers. All such payments and credits may be applied, reversed and reapplied, in whole or in part, to any of the Obligations that Agent shall determine, in its sole discretion, without affecting the validity or enforceability of the Obligations of the other Borrower.

(d) Each Borrower hereby agrees that, except as hereinafter provided, its obligations hereunder shall be unconditional, irrespective of (i) the absence of any attempt to collect the Obligations from any obligor or other action to enforce the same; (ii) the waiver or consent by Agent with respect to any provision of any instrument evidencing the Obligations, or any part thereof, or any other agreement heretofore, now or hereafter executed by a Borrower and delivered to Agent; (iii) failure by Agent to take any steps to perfect and maintain its security interest in, or to preserve its rights to, any security or collateral for the Obligations; (iv) the institution of any proceeding under the Bankruptcy Code, or any similar proceeding, by or against a Borrower or Agent's election in any such proceeding of the application of Section 1111(b)(2) of the Bankruptcy Code; (v) any borrowing or grant of a security interest by a Borrower as debtor-in-possession, under Section 364 of the Bankruptcy Code; (vi) the disallowance, under Section 502 of the Bankruptcy Code, of all or any portion of Agent's claim(s) for repayment of any of the Obligations; or (vii) any other circumstance other than payment in full of the Obligations which might otherwise constitute a legal or equitable discharge or defense of a guarantor or surety.

(e) Borrowers hereby agree, as between themselves, that to the extent that Agent, on behalf of Lenders, shall have received from any Borrower any Recovery Amount (as defined below), then the paying Borrower shall have a right of contribution against each other Borrower in an amount equal to such other Borrower's contributive share of such Recovery Amount; *provided*, *however*, that in the event any Borrower suffers a Deficiency Amount (as defined below), then the Borrower suffering the Deficiency Amount shall be entitled to seek and receive contribution from and against the other Borrowers in an amount equal to the Deficiency Amount; and *provided*, *further*, that in no event shall the aggregate amounts so reimbursed by reason of the contribution of any Borrower equal or exceed an amount that would, if paid, constitute or result in Fraudulent Conveyance. Until all Obligations have been paid and satisfied in full, no payment made by or for the account of a Borrower including, without limitation, (i) a payment made by such Borrower on behalf of the liabilities of any other Borrower, or (ii) a payment made by any other Guarantor under any Guarantee, shall entitle such Borrower, by subrogation or otherwise, to any payment from such other Borrower or from or out of such other Borrower's property. The right of each Borrower to receive any contribution under this Section 2.10(e) or by subrogation or otherwise from any other Borrower shall be subordinate in right of payment to the Obligations and such Borrower shall not exercise any right or remedy against such other Borrower or any property of such other Borrower by reason of any performance of such Borrower of its joint and several obligations hereunder, until the Obligations have been indefeasibly paid and satisfied in full, and no Borrower shall exercise any right or remedy with respect to this Section 2.10(e) until the Obligations have been indefeasibly paid and satisfied in full. As used in this Section 2.10(e), the term "**Recovery Amount**" means the amount of proceeds received by or credited to Agent from the exercise of any remedy of the Lenders under this Agreement or the other Financing Documents, including, without limitation, the sale of any Collateral. As used in this Section 2.10(e), the term "**Deficiency Amount**" means any amount that is less than the entire amount a Borrower is entitled to receive by way of contribution or subrogation from, but that has not been paid by, the other Borrowers in respect of any Recovery Amount attributable to the Borrower entitled to contribution, until the Deficiency Amount has been reduced to Zero Dollars ($0) through contributions and reimbursements made under the terms of this Section 2.10(e) or otherwise.

Section 2.11 Collections and Lockbox Account.

(a) Borrowers shall maintain a lockbox (the "**Lockbox**") with a United States depository institution designated from time to time by Agent (the "**Lockbox Bank**"), subject to the provisions of this Agreement, and, subject to Section 7.4, shall execute with the Lockbox Bank a Deposit Account Control Agreement and such other agreements related to such Lockbox as Agent may require. Except as provided in Section 2.11(b), Borrowers shall ensure that all collections of Accounts are paid directly from Account Debtors (i) into the Lockbox for deposit into the Lockbox Account and/or (ii) directly into the Lockbox Account; *provided*, *however*, unless Agent shall otherwise direct by written notice to Borrowers, Borrowers shall be permitted to cause Account Debtors who are individuals to pay Accounts directly to Borrowers, which Borrowers shall then administer and apply in the manner required below. All funds deposited into a Lockbox Account shall be transferred into the Payment Account (or, prior to the time of the initial borrowing of the Revolving Loans, such Deposit Account of Borrower, as Agent may direct in its sole discretion) by the close of each Business Day. Notwithstanding the foregoing sentence, during the period beginning on the Closing Date and ending on the date that is sixty (60) days thereafter, Borrower shall be permitted to receive collections of Accounts owing to Aziyo (and not, for the avoidance of doubt, Aziyo Med) in Deposit Account #[XXX] at Alostar Bank; *provided* that all funds in such Deposit Account are transferred to the Lockbox Account at the end of each business day pursuant to irrevocable standing wire instruction.

(b) Notwithstanding the foregoing or anything else to the contrary in this Section 2.11(b), all amounts owed to Aziyo Med in respect of Accounts that are subject to, or potentially subject to, a security interest of Ligand pursuant to the Ligand Royalty Agreement or any other funds constituting "Royalty Interests" (as defined in the Ligand Royalty Agreement) or the proceeds thereof shall be paid into a segregated Deposit Account owned solely by Aziyo Med that is subject to a "springing" Deposit Account Control Agreement (the "**Aziyo Med Controlled Account**"). Once per calendar week, Aziyo Med shall cause all amounts on deposit in the Aziyo Med Controlled Account required to be transferred by the Ligand Royalty Agreement, and permitted to be so transferred pursuant to the terms of the Ligand Intercreditor Agreement, to be transferred to the Permitted Ligand Account in order to pay the Ligand Royalty Payments in accordance with the terms of the Ligand Intercreditor Agreement. Once per calendar week (and, for the avoidance of doubt, on the same day as each transfer to the Permitted Ligand Account pursuant to the preceding sentence), Aziyo Med shall transfer all amounts on deposit in the Aziyo Med Controlled Account other than those necessary to pay the Ligand Royalty Payments, in accordance with the previous sentence, to the Lockbox Account.

(c) Notwithstanding anything in any lockbox agreement or Deposit Account Control Agreement to the contrary, Borrowers agree that they shall be liable for any fees and charges in effect from time to time and charged by the Lockbox Bank in connection with the Lockbox, the Lockbox Account, and that Agent shall have no liability therefor. Borrowers hereby indemnify and agree to hold Agent harmless from any and all liabilities, claims, losses and demands whatsoever, including reasonable attorneys' fees and expenses, arising from or relating to actions of Agent or the Lockbox Bank pursuant to this Section or any lockbox agreement or Deposit Account Control Agreement or similar agreement, except to the extent of such losses arising solely from Agent's gross negligence or willful misconduct.

(d) Agent shall apply, on a daily basis, all funds transferred into the Payment Account pursuant to this Section 2.11 to reduce the outstanding Revolving Loans in such order of application as Agent shall elect. If as the result of collections of Accounts pursuant to the terms and conditions of this Section, a credit balance exists with respect to the Loan Account, such credit balance shall not accrue interest in favor of Borrowers, but Agent shall transfer such funds into an account designated by Borrower Representative for so long as no Event of Default exists.

(e) To the extent that any collections of Accounts or proceeds of other Collateral are not sent directly to the Lockbox or Lockbox Account but are received by any Borrower, such collections shall be held in trust for the benefit of Agent pursuant to an express trust created hereby and immediately remitted, in the form received, to applicable Lockbox or Lockbox Account. No such funds received by any Borrower shall be commingled with other funds of the Borrowers. Except to the extent otherwise permitted pursuant to this Section 2.11, if any funds received by any Borrower are commingled with other funds of the Borrowers, or are required to be deposited to a Lockbox or Lockbox Account and are not so deposited within five (5) Business Days, then Borrowers shall pay to Agent, for its own account and not for the account of any other Lenders, a compliance fee equal to $500 for each day that any such conditions exist.

(f) Borrowers acknowledge and agree that compliance with the terms of this Section is essential, and that Agent and Lenders will suffer immediate and irreparable injury and have no adequate remedy at law, if any Borrower, through acts or omissions, causes or permits Account Debtors to send payments other than to the Lockbox or Lockbox Accounts or if any Borrower fails to promptly deposit collections of Accounts or proceeds of other Collateral in the Lockbox Account as herein required. Accordingly, in addition to all other rights and remedies of Agent and Lenders hereunder, Agent shall have the right to seek specific performance of the Borrowers' obligations under this Section, and any other equitable relief as Agent may deem necessary or appropriate, and Borrowers waive any requirement for the posting of a bond in connection with such equitable relief.

(g) Borrowers shall not, and Borrowers shall not suffer or permit any Credit Party to, (i) withdraw any amounts from any Lockbox Account, (ii) change the procedures or sweep instructions under the agreements governing any Lockbox Accounts, or (iii) send to or deposit in any Lockbox Account any funds other than payments made with respect to and proceeds of Accounts or other Collateral. Borrowers shall, and shall cause each Credit Party to, cooperate with Agent in the identification and reconciliation on a daily basis of all amounts received in or required to be deposited into the Lockbox Accounts. If more than fifteen percent (15%) of the collections of Accounts received by Borrowers during any given fifteen (15) day period is not identified or reconciled both with respect to the Account Debtor and the Borrower to whom such Account is owed to the reasonable satisfaction of Agent within ten (10) Business Days of receipt, Agent shall not be obligated to make further advances under this Agreement until such amount is identified or is reconciled to the reasonable satisfaction of Agent, as the case may be. In addition, if any such amount cannot be identified or reconciled to the reasonable satisfaction of Agent, Agent may utilize its own staff or, if it deems necessary, engage an outside auditor, in either case at Borrowers' expense (which in the case of Agent's own staff shall be in accordance with Agent's then prevailing customary charges (*plus* expenses)), to make such examination and report as may be necessary to identify and reconcile such amount.

(h) If any Borrower breaches its obligation to direct payments of the proceeds of the Collateral to the Lockbox Account, Agent, as the irrevocably made, constituted and appointed true and lawful attorney for Borrowers, may, by the signature or other act of any of Agent's authorized representatives (without requiring any of them to do so), direct any Account Debtor to pay proceeds of the Collateral to Borrowers by directing payment to the Lockbox Account.

Section 2.12 Termination; Restriction on Termination.

(a) Termination by Lenders. In addition to the rights set forth in Section 10.2, Agent may, and at the direction of Required Lenders shall, terminate this Agreement without notice upon or after the occurrence and during the continuance of an Event of Default.

(b) Termination by Borrowers. Upon at least ten (10) days' prior written notice and pursuant to payoff documentation in form and substance satisfactory to Agent and Lenders, Borrowers may, at its option, terminate this Agreement; *provided, however,* that no such termination shall be effective until Borrowers have complied with Section 2.2 and the terms of any fee letter and paid in full all of the Affiliated Obligations in immediately available funds and terminated the Affiliated Financing Documents. Any notice of termination given by Borrowers shall be irrevocable unless all Lenders otherwise agree in writing and no Lender shall have any obligation to make any Loans on or after the termination date stated in such notice. Borrowers may elect to terminate this Agreement in its entirety only. No section of this Agreement or type of Loan available hereunder may be terminated singly.

(c) Effectiveness of Termination. All of the Obligations shall be immediately due and payable upon the Termination Date. All undertakings, agreements, covenants, warranties and representations of Borrowers contained in the Financing Documents shall survive any such termination and Agent shall retain their Liens in the Collateral and Agent and each Lender shall retain all of its rights and remedies under the Financing Documents notwithstanding such termination until all Obligations and Affiliated Obligations have been discharged or paid, in full, in immediately available funds, including, without limitation, all Obligations under Section 2.2 and the terms of any fee letter resulting from such termination. Notwithstanding the foregoing or the payment in full of the Obligations, Agent shall not be required to terminate its Liens in the Collateral unless, with respect to any loss or damage Agent may incur as a result of dishonored checks or other items of payment received by Agent from Borrower or any Account Debtor and applied to the Obligations, Agent shall, at its option, (i) have received a written agreement satisfactory to Agent, executed by Borrowers and by any Person whose loans or other advances to Borrowers are used in whole or in part to satisfy the Obligations, indemnifying Agent and each Lender from any such loss or damage or (ii) have retained cash Collateral or other Collateral for such period of time as Agent, in its discretion, may deem necessary to protect Agent and each Lender from any such loss or damage.

ARTICLE 3 - REPRESENTATIONS AND WARRANTIES

To induce Agent and Lenders to enter into this Agreement and to make the Loans and other credit accommodations contemplated hereby, each Borrower hereby represents and warrants to Agent and each Lender that:

Section 3.1 Existence and Power. Each Credit Party (a) is an entity as specified on Schedule 3.1, (b) is duly organized, validly existing and in good standing under the laws of the jurisdiction specified on Schedule 3.1 and no other jurisdiction, (c) has the same legal name as it appears in such Credit Party's Organizational Documents and an organizational identification number (if any), in each case as specified on Schedule 3.1, (d) has all powers to own its assets and has powers and all Permits necessary or desirable in the operation of its business as presently conducted or as proposed to be conducted, except where the failure to have such Permits could not reasonably be expected to have a Material Adverse Effect, and (e) is qualified to do business as a foreign entity in each jurisdiction in which it is required to be so qualified, which jurisdictions as of the Closing Date are specified on Schedule 3.1, except where the failure to be so qualified could not reasonably be expected to have a Material Adverse Effect. Except as set forth on Schedule 3.1, no Credit Party (x) has had, over the five (5) year period preceding the Closing Date, any name other than its current name, or (y) was incorporated or organized under the laws of any jurisdiction other than its current jurisdiction of incorporation or organization.

Section 3.2 Organization and Governmental Authorization; No Contravention. The execution, delivery and performance by each Credit Party of the Operative Documents to which it is a party (a) are within its powers, (b) have been duly authorized by all necessary action pursuant to its Organizational Documents, (c) require no further action by or in respect of, or filing with, any Governmental Authority and (d) do not violate, conflict with or cause a breach or a default under (i) any Law applicable to any Credit Party, (ii) any of the Organizational Documents of any Credit Party, or (iii) any agreement or instrument binding upon it, except for such violations, conflicts, breaches or defaults as could not, with respect to this clause (iii), reasonably be expected to have a Material Adverse Effect.

Section 3.3 Binding Effect. Each of the Operative Documents to which any Credit Party is a party constitutes a valid and binding agreement or instrument of such Credit Party, enforceable against such Credit Party in accordance with its respective terms, except as the enforceability thereof may be limited by bankruptcy, insolvency or other similar laws relating to the enforcement of creditors' rights generally and by general equitable principles. Each Financing Document has been duly executed and delivered by each Credit Party party thereto.

Section 3.4 Capitalization. The authorized equity securities of each of the Credit Parties as of the Closing Date are as set forth on Schedule 3.4. All issued and outstanding equity securities of each of the Credit Parties are duly authorized and validly issued, fully paid, nonassessable, free and clear of all Liens other than Permitted Liens, and such equity securities were issued in compliance with all applicable Laws. The identity of the holders of the equity securities of each of the Credit Parties and the percentage of their fully-diluted ownership of the equity securities of each of the Credit Parties as of the Closing Date is set forth on Schedule 3.4. No shares of the capital stock or other equity securities of any Credit Party, other than those described above, are issued and outstanding as of the Closing Date. Except as set forth in the Equity Investment Documents, as of the Closing Date there are no preemptive or other outstanding rights, options, warrants, conversion rights or similar agreements or understandings for the purchase or acquisition from any Credit Party of any equity securities of any such entity.

Section 3.5 Financial Information. All financial statements delivered to Agent by any Credit Party fairly present in all material respects the financial position of such Credit Party as of such date and shall be in conformity with GAAP (and as to unaudited financial statements, subject to normal year-end adjustments and the absence of footnote disclosures). Since December 31, 2018, there has been no development or event that has had or could reasonably be expected to have a Material Adverse Effect. Since December 31, 2018, to the knowledge of any Borrower (after the exercise of reasonable due diligence) there has been no material adverse change in the business, operations, properties, prospects or condition (financial or otherwise) of any business, assets or entities being purchased by Borrowers pursuant to the Transaction Documents.

Section 3.6 Litigation . Except as set forth on Schedule 3.6 as of the Closing Date, and except as hereafter disclosed to Agent in writing, there is no Litigation pending against, or to such Borrower's knowledge threatened against, any Credit Party or, to such Borrower's knowledge, any party to any Operative Document other than a Credit Party. There is no Litigation pending in which an adverse decision could reasonably be expected to have a Material Adverse Effect or which in any manner draws into question the validity of any of the Operative Documents.

Section 3.7 Ownership of Property. Each Borrower and its Subsidiaries are the lawful sole owner of, has good and marketable title to and is in lawful possession of, or has valid leasehold interests in, all properties, accounts and other assets (real or personal, tangible, intangible or mixed) purported or reported to be owned or leased (as the case may be) by such Person.

Section 3.8 No Default. No Event of Default, or to such Borrower's knowledge, Default, has occurred and is continuing. No Credit Party is in breach or default under or with respect to any contract, agreement, lease or other instrument to which it is a party or by which its property is bound or affected, which breach or default could reasonably be expected to have a Material Adverse Effect.

Section 3.9 Labor Matters. As of the Closing Date, there are no strikes or other labor disputes pending or, to any Borrower's knowledge, threatened against any Credit Party. Except as could not reasonably be expected to result in a Material Adverse Effect, (a) hours worked and payments made to the employees of each Borrower and each of its Subsidiaries have not been in violation of the Fair Labor Standards Act or any other applicable Law dealing with such matters and (b) all payments due from each Borrower and each of its Subsidiaries, or for which any claim may be made against any of them, on account of wages and employee and retiree health and welfare insurance and other benefits have been paid or accrued as a liability on their books, as the case may be. The consummation of the transactions contemplated by the Financing Documents and the other Operative Documents will not give rise to a right of termination or right of renegotiation on the part of any union under any collective bargaining agreement to which any Borrower or any Subsidiary is a party or by which it is bound.

Section 3.10 Regulated Entities. No Credit Party is an "investment company" or a company "controlled" by an "investment company" or a "subsidiary" of an "investment company," all within the meaning of the Investment Company Act of 1940.

Section 3.11 Margin Regulations. None of the proceeds from the Loans have been or will be used, directly or indirectly, for the purpose of purchasing or carrying any "margin stock" (as defined in Regulation U of the Federal Reserve Board), for the purpose of reducing or retiring any indebtedness which was originally incurred to purchase or carry any "margin stock" or for any other purpose which might cause any of the Loans to be considered a "purpose credit" within the meaning of Regulation T, U or X of the Federal Reserve Board.

Section 3.12 Compliance With Laws; Anti-Terrorism Laws.

(a) Each Credit Party is in compliance with the requirements of all applicable Laws, except for such Laws the noncompliance with which could not reasonably be expected to have a Material Adverse Effect.

(b) None of the Credit Parties and, to the knowledge of the Credit Parties, none of their Affiliates (except for any Person that is an Affiliate of a Credit Party solely due to the fact that it is HighCape Portfolio Company) (i) is in violation of any Anti-Terrorism Law, (ii) engages in or conspires to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law, (iii) is a Blocked Person, or is controlled by a Blocked Person, (iv) is acting or will act for or on behalf of a Blocked Person, (v) is associated with, or will become associated with, a Blocked Person or (vi) is providing, or will provide, material, financial or technical support or other services to or in support of acts of terrorism of a Blocked Person. No Credit Party nor, to the knowledge of any Credit Party, any of its Affiliates (except for any Person that is an Affiliate of a Credit Party solely due to the fact that it is HighCape Portfolio Company) or agents acting or benefiting in any capacity in connection with the transactions contemplated by this Agreement, (A) conducts any business or engages in making or receiving any contribution of funds, goods or services to or for the benefit of any Blocked Person, or (B) deals in, or otherwise engages in any transaction relating to, any property or interest in property blocked pursuant to Executive Order No. 13224, any similar executive order or other Anti-Terrorism Law.

Section 3.13 Taxes. All federal, state and material local tax returns, reports and statements required to be filed by or on behalf of each Credit Party have been filed with the appropriate Governmental Authorities in all jurisdictions in which such returns, reports and statements are required to be filed and, except to the extent subject to a Permitted Contest, all Taxes (including real property Taxes) and other charges shown to be due and payable in respect thereof have been timely paid prior to the date on which any fine, penalty, interest, late charge or loss may be added thereto for nonpayment thereof. Except to the extent subject to a Permitted Contest, all material state and local sales and use Taxes required to be paid by each Credit Party have been paid. All federal and state returns have been filed by each Credit Party for all periods for which returns were due with respect to employee income tax withholding, social security and unemployment taxes, and, except to the extent subject to a Permitted Contest, the amounts shown thereon to be due and payable have been paid in full or adequate provisions therefor have been made.

Section 3.14 Compliance with ERISA.

(a) Each ERISA Plan (and the related trusts and funding agreements) complies in form and in operation with, has been administered in compliance with, and the terms of each ERISA Plan satisfy, the applicable requirements of ERISA and the Code in all material respects. Each ERISA Plan which is intended to be qualified under Section 401(a) of the Code is so qualified, and the United States Internal Revenue Service has issued a favorable determination letter with respect to each such ERISA Plan which may be relied on currently. No Credit Party has incurred liability for any material excise tax under any of Sections 4971 through 5000 of the Code.

(b) Except as could not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect, each Borrower and each Subsidiary is in compliance with the applicable provisions of ERISA and the provision of the Code relating to ERISA Plans and the regulations and published interpretations therein. During the thirty-six (36) month period prior to the Closing Date or the making of any Loan (i) no steps have been taken to terminate any Pension Plan, and (ii) no contribution failure has occurred with respect to any Pension Plan sufficient to give rise to a Lien under Section 303(k) of ERISA or Section 430(k) of the Code and no event has occurred that would give rise to a Lien under Section 4068 of ERISA. No condition exists or event or transaction has occurred with respect to any Pension Plan which could result in the incurrence by any Credit Party of any material liability, fine or penalty. No Credit Party has incurred liability to the PBGC (other than for current premiums) with respect to any employee Pension Plan. All contributions (if any) have been made on a timely basis to any Multiemployer Plan that are required to be made by any Credit Party or any other member of the Controlled Group under the terms of the plan or of any collective bargaining agreement or by applicable Law; no Credit Party nor any member of the Controlled Group has withdrawn or partially withdrawn from any Multiemployer Plan, incurred any withdrawal liability with respect to any such plan or received notice of any claim or demand for withdrawal liability or partial withdrawal liability from any such plan, and no condition has occurred which, if continued, could result in a withdrawal or partial withdrawal from any such plan, and no Credit Party nor any member of the Controlled Group has received any notice that any Multiemployer Plan is in reorganization, that increased contributions may be required to avoid a reduction in plan benefits or the imposition of any excise tax, that any such plan is or has been funded at a rate less than that required under Section 412 of the Code, that any such plan is or may be terminated, or that any such plan is or may become insolvent.

Section 3.15 Consummation of Operative Documents; Brokers. Except for fees payable to Agent and/or Lenders, no broker, finder or other intermediary has brought about the obtaining, making or closing of the transactions contemplated by the Operative Documents, and no Credit Party has or will have any obligation to any Person in respect of any finder's or brokerage fees, commissions or other expenses in connection herewith or therewith.

Section 3.16 [Reserved].

Section 3.17 Material Contracts. Except for the Operative Documents and the other agreements set forth on Schedule 3.17, as of the Closing Date there are no Material Contracts. The consummation of the transactions contemplated by the Financing Documents will not give rise to a right of termination in favor of any party to any Material Contract (other than any Credit Party), except for such Material Contracts the noncompliance with which would not reasonably be expected to have a Material Adverse Effect.

Section 3.18 Compliance with Environmental Requirements; No Hazardous Materials. Except in each case as set forth on Schedule 3.18:

(a) no notice, notification, demand, request for information, citation, summons, complaint or order has been issued, no complaint has been filed, no penalty has been assessed and no investigation or review is pending, or to such Borrower's knowledge, threatened by any Governmental Authority or other Person with respect to any (i) alleged violation by any Credit Party of any Environmental Law, (ii) alleged failure by any Credit Party to have any Permits required in connection with the conduct of its business or to comply with the terms and conditions thereof, (iii) any generation, treatment, storage, recycling, transportation or disposal of any Hazardous Materials, or (iv) release of Hazardous Materials; and

(b) no property now owned or leased by any Credit Party and, to the knowledge of each Borrower, no such property previously owned or leased by any Credit Party, to which any Credit Party has, directly or indirectly, transported or arranged for the transportation of any Hazardous Materials, is listed or, to such Borrower's knowledge, proposed for listing, on the National Priorities List promulgated pursuant to CERCLA, or CERCLIS (as defined in CERCLA) or any similar state list or is the subject of federal, state or local enforcement actions or, to the knowledge of such Borrower, other investigations which may lead to claims against any Credit Party for clean-up costs, remedial work, damage to natural resources or personal injury claims, including, without limitation, claims under CERCLA.

For purposes of this Section 3.18, each Credit Party shall be deemed to include any business or business entity (including a corporation) that is, in whole or in part, a predecessor of such Credit Party.

Section 3.19 Intellectual Property and License Agreements. A list of all Registered Intellectual Property of each Credit Party and all material in-bound license or sublicense agreements, exclusive and material out-bound license or sublicense agreements, or other material rights of any Credit Party to use Intellectual Property (but excluding in-bound licenses of over-the-counter software that is commercially available to the public), as of the Closing Date and, as updated pursuant to Section 4.15, is set forth on Schedule 3.19. Except for Permitted Licenses, each Credit Party is the sole owner of its Intellectual Property free and clear of any Liens other than Permitted Liens. Each patent is valid and enforceable and no part of the Material Intangible Assets has been judged invalid or unenforceable, in whole or in part, and to the best of Borrower's knowledge, no claim has been made that any part of the Intellectual Property violates the rights of any third party.

Section 3.20 Solvency. Each Borrower is, and after giving effect to the Loan advance and the liabilities and obligations of each Borrower under the Operative Documents, will be, Solvent; and each other Credit Party together with Borrower and its Subsidiaries, taken as a whole, is Solvent.

Section 3.21 Full Disclosure. None of the material written information (financial or otherwise, but excluding any projections and forward-looking statements, estimates, budgets and industry data of a general nature) furnished by or on behalf of any Credit Party to Agent or any Lender in connection with the consummation of the transactions contemplated by the Operative Documents (in each case, taken as a whole and as modified or supplemented by other information so furnished promptly after the same becomes available) contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements contained herein or therein not misleading in light of the circumstances under which such statements were made. All financial projections and forward-looking statements delivered to Agent and the Lenders by the Borrowers have been prepared on the basis of the assumptions stated therein. Such projections represent the Borrowers' best estimate of the Borrowers' future financial performance as of the date of delivery and such assumptions are believed by the Borrowers to be fair and reasonable in light of current business conditions at the time of delivery to the Agent, *provided* that it being understood that such projections are subject to uncertainties and contingencies, many of which are beyond the control of the Borrowers, and the Borrowers can give no assurance that such projections will be attained, that actual results may differ in a material manner from such projections and any failure to meet such projections shall not be deemed to be a breach of any representation or covenant herein.

Section 3.22 Reserved.

Section 3.23 Subsidiaries. Borrowers do not own any stock, partnership interests, limited liability company interests or other equity securities or Subsidiaries except for Permitted Investments.

Section 3.24 Reserved.

Section 3.25 Regulatory Matters.

(a) All of Borrower's material Products and material Regulatory Required Permits as of the Closing Date are listed on Schedule 4.17.

(b) None of the Borrowers are in violation of any Healthcare Laws in any material respect.

(c) No Borrower is participating in any Third Party Payor Program.

(d) None of the Borrower's officers, directors, employees, shareholders, their agents or affiliates has made an untrue statement of material fact or fraudulent statement to the FDA or failed to disclose a material fact required to be disclosed to the FDA, committed an act, made a statement, or failed to make a statement that could reasonably be expected to provide a basis for the FDA to invoke its policy respecting "Fraud, Untrue Statements of Material Facts, Bribery, and Illegal Gratuities," set forth in 56 Fed. Regulation 46191 (September 10, 1991).

(e) No Borrower has received any written notice that any Governmental Authority, including without limitation the FDA, DEA, the Office of the Inspector General of HHS or the United States Department of Justice has commenced or threatened to initiate any action against a Credit Party, any action to enjoin a Credit Party, their officers, directors, employees, shareholders or their agents and Affiliates (except for any Person that is an Affiliate of a Credit Party solely due to the fact that it is HighCape Portfolio Company), from conducting their businesses at any facility owned or used by them or for any material civil penalty, injunction, seizure or criminal action.

(f) No Borrower has received from the FDA or the DEA, a Warning Letter, Form FDA-483, "Untitled Letter," other correspondence or notice setting forth allegedly objectionable observations or alleged violations of laws and regulations enforced by the FDA or the DEA, or any comparable correspondence from any state or local authority responsible for regulating drug products and establishments, or any comparable correspondence from any foreign counterpart of the FDA or DEA, or any comparable correspondence from any foreign counterpart of any state or local authority with regard to any Product or the manufacture, processing, packing, or holding thereof.

(g) No Borrower is subject to any proceeding, suit or, to Borrower's knowledge, investigation by any federal, state or local government or quasi-governmental body, agency, board or authority or any other administrative or investigative body which could result in the revocation, transfer, surrender, suspension or other impairment of the Permits of such Borrower.

(h) Borrower has not engaged in any Recalls, Market Withdrawals, or other forms of product retrieval from the marketplace of any Products.

(i) Each Product, to the extent applicable (a) is not adulterated or misbranded within the meaning of the FDCA; (b) is not an article prohibited from introduction into interstate commerce under the provisions of Sections 404, 505 or 512 of the FDCA; (c) has been, to Borrower's knowledge after due inquiry, prior to the Closing Date and, thereafter, shall be manufactured, imported, possessed, owned, warehoused, marketed, promoted, sold, labeled, furnished, distributed and marketed and each service has been conducted in accordance with all applicable Permits and Laws; and (d) has been, to Borrower's knowledge after due inquiry, prior to the Closing Date and, thereafter, shall be manufactured in accordance with Good Manufacturing Practices, except in each case as could not reasonably be expected to result in a Material Adverse Effect.

(j) No Borrower is subject to any proceeding, suit or, to Borrowers' knowledge, investigation by any federal, state or local government or quasi-governmental body, agency, board or authority or any other administrative or investigative body: (i) which may result in the imposition of a fine, alternative, interim or final sanction or which would have a Material Adverse Effect on any Borrower; or (ii) which would reasonably be expected to result in the revocation, transfer, surrender, suspension or other material impairment of any material Permits of Borrower.

Section 3.26 Accuracy of Schedules. All information set forth in the Schedules to this Agreement (including Schedule 3.19 and Schedule 4.17) is true, accurate and complete as of the Closing Date, the date of delivery of the last Compliance Certificate and any other subsequent date in which Borrower is requested to update such Schedules. All information set forth in the Perfection Certificate is true, accurate and complete as of the Closing Date and any other subsequent date in which Borrower is requested to update such certificate.

ARTICLE 4 - AFFIRMATIVE COVENANTS

Each Borrower agrees that, so long as any Credit Exposure exists:

Section 4.1 Financial Statements and Other Reports. Each Borrower will deliver to Agent:

(a) as soon as available, but no later than thirty (30) days after the last day of each month, a company prepared consolidated and consolidating balance sheet, cash flow and income statement covering Borrowers' and its Consolidated Subsidiaries' consolidated operations during the period, prepared under GAAP, consistently applied, certified by a Responsible Officer and in a form acceptable to Agent;

(b) [reserved];

(c) as soon as available, but no later than one hundred twenty (120) days after the last day of Borrower's fiscal year, audited consolidated and consolidating financial statements prepared under GAAP, consistently applied, together with an unqualified opinion on the financial statements from an independent certified public accounting firm acceptable to Agent in its reasonable discretion;

(d) within five (5) days of delivery or filing thereof, copies of all material statements, reports and notices made available to Borrower's security holders or to any holders of Subordinated Debt and copies of all reports and other filings made by Borrower with any stock exchange on which any securities of any Borrower are traded and/or the SEC;

(e) a prompt written report of any legal actions pending or threatened against any Borrower or any of its Subsidiaries that could reasonably be expected to result in damages or costs to any Borrower or any of its Subsidiaries of Fifty Thousand Dollars ($50,000) or more;

(f) prompt written notice of an event that materially and adversely affects the value of any Intellectual Property;

(g) within sixty (60) days after the start of each fiscal year, projections for the forthcoming two fiscal years, on a quarterly basis for the current year and on an annual basis for the subsequent year;

(h) promptly (and in any event within ten (10) days of any request therefor) such readily available other budgets, sales projections, operating plans and other financial information and information, reports or statements regarding the Borrowers, their business and the Collateral as Agent may from time to time reasonably request;

(i) written notice to Agent promptly, and in any event within five (5) Business Days of a Responsible Officer of a Borrower receiving, becoming aware of or determining that: (i) development, testing, and/or manufacturing of any Product that is material to Borrowers' business should cease, (ii) the marketing or sales of a Product, which is material to Borrowers' business and which has been approved for marketing and sale, should cease or such Product should be withdrawn from the marketplace, (iii) any Governmental Authority is conducting an investigation or review of any material Regulatory Required Permit or (iv) any material Regulatory Required Permit has been revoked or withdrawn;

(j) promptly, but in any event within three (3) Business Days, after any Responsible Officer of any Borrower obtains knowledge of the occurrence of any event or change (including, without limitation, any notice of any violation of Healthcare Laws) that has resulted or could reasonably be expected to result in, either in any case or in the aggregate, a Material Adverse Effect, a certificate of a Responsible Officer specifying the nature and period of existence of any such event or change, or specifying the notice given or action taken by such holder or Person and the nature of such event or change, and what action the applicable Credit Party or Subsidiary has taken, is taking or proposes to take with respect thereto;

(k) within thirty (30) days after the last day of each month, a duly completed Compliance Certificate signed by a Responsible Officer setting forth calculations showing (i) cash and cash equivalents of Borrowers and Borrowers and their Consolidated Subsidiaries, and (ii) compliance with the financial covenants set forth in this Agreement;

(l) within ten (10) days after the last day of each month, a duly completed Borrowing Base Certificate signed by a Responsible Officer, with aged listings of accounts receivable and accounts payable (by invoice date); and

(m) within ten (10) Business Days of any reasonable request by Agent, deliver to Agent a schedule of Eligible Accounts denoting the thirty (30) largest Account Debtors during the calendar quarter most recently ended prior thereto; *provided* that, if no Event of Default has occurred and is continuing, Borrower shall not be required to deliver such a schedule to Agent more than once per calendar month.

Section 4.2 Payment and Performance of Obligations.

(a) Each Borrower (i) will pay and discharge, and cause each Subsidiary to pay and discharge, on a timely basis as and when due, all of their respective obligations and liabilities, except for such obligations and/or liabilities (A) that may be the subject of a Permitted Contest, and (B) the nonpayment or nondischarge of which could not reasonably be expected to have a Material Adverse Effect or result in a Lien against any Collateral, except for Permitted Liens, (ii) without limiting anything contained in the foregoing clause (i), pay all amounts due and owing in respect of Taxes (including without limitation, payroll and withholdings tax liabilities) on a timely basis as and when due, and in any case prior to the date on which any fine, penalty, interest, late charge or loss may be added thereto for nonpayment thereof, (iii) will maintain, and cause each Subsidiary to maintain, in accordance with GAAP, appropriate reserves for the accrual of all of their respective obligations and liabilities, and (iv) will not breach or permit any Subsidiary to breach, or permit to exist any default under, the terms of any lease, commitment, contract, instrument or obligation to which it is a party, or by which its properties or assets are bound, except for such breaches or defaults which could not reasonably be expected to have a Material Adverse Effect.

(b) Upon completion of any Permitted Contest, each Borrower shall, and will cause each Subsidiary to, promptly pay the amount due, if any, except where the failure to pay such amount could not reasonably be expected to have a Material Adverse Effect.

Section 4.3 Maintenance of Existence. Each Borrower will preserve, renew and keep in full force and effect, and will cause each Subsidiary to preserve, renew and keep in full force and effect, (a) their respective existence and (b) their respective rights, privileges and franchises necessary or desirable in the normal conduct of business, except with respect to clauses (a) and (b) above in connection with a transaction permitted under Section 5.6, and (c) their respective qualification to do business and good standing in each jurisdiction except, with respect to clause (b) and this clause (c), where the failure to be qualified or in good standing could not reasonably be expected to have a Material Adverse Effect.

Section 4.4 Maintenance of Property; Insurance.

(a) Each Borrower will keep, and will cause each Subsidiary to keep, all property useful and necessary in its business in good working order and condition, ordinary wear and tear excepted. If all or any part of the Collateral useful or necessary in its business, or upon which any Borrowing Base is calculated, becomes damaged or destroyed, each Borrower will, and will cause each Subsidiary to, promptly and completely repair and/or restore the affected Collateral in a good and workmanlike manner, regardless of whether Agent agrees to disburse insurance proceeds or other sums to pay costs of the work of repair or reconstruction.

(b) Upon completion of any Permitted Contest, Borrowers shall, and will cause each Subsidiary to, promptly pay the amount due, if any, and deliver to Agent proof of the completion of the contest and payment of the amount due, if any.

(c) Each Borrower will maintain (i) casualty insurance on all real and personal property on an all risks basis (including the perils of flood, windstorm and quake), covering the repair and replacement cost of all such property and coverage, business interruption and rent loss coverages with extended period of indemnity (for the period required by Agent from time to time) and indemnity for extra expense, in each case without application of coinsurance and with agreed amount endorsements, (ii) general and professional liability insurance (including products/completed operations liability coverage), and (iii) such other insurance coverage, in each case against loss or damage of the kinds customarily insured against by Persons engaged in the same or similar business, of such types and in such amounts as are customarily carried under similar circumstances by such other Persons; *provided*, *however*, that, in no event shall such insurance be in amounts or with coverage less than, or with carriers with qualifications inferior to, any of the insurance or carriers in existence as of the Closing Date (or required to be in existence after the Closing Date under a Financing Document). All such insurance shall be provided by insurers having an A.M. Best policyholders rating reasonably acceptable to Agent.

(d) On or prior to the Closing Date, and at all times thereafter, each Borrower will cause Agent to be named as an additional insured, assignee and lender loss payee, as applicable, on each insurance policy required to be maintained pursuant to this Section 4.4 pursuant to endorsements in form and substance acceptable to Agent. Borrowers shall deliver to Agent and the Lenders (i) on the Closing Date, a certificate from Borrowers' insurance broker dated such date showing the amount of coverage as of such date, and that such policies will include effective waivers (whether under the terms of any such policy or otherwise) by the insurer of all claims for insurance premiums against all loss payees and additional insureds and all rights of subrogation against all loss payees and additional insureds, and that if all or any part of such policy is canceled, terminated or expires, the insurer will forthwith give notice thereof to each additional insured, assignee and loss payee and that no cancellation, reduction in amount or material change in coverage thereof shall be effective until at least thirty (30) days after receipt by each additional insured, assignee and loss payee of written notice thereof, (ii) on an annual basis, and upon the request of any Lender through Agent from time to time full information as to the insurance carried, (iii) within five (5) days of receipt of notice from any insurer, a copy of any notice of cancellation, nonrenewal or material change in coverage from that existing on the date of this Agreement, (iv) forthwith, notice of any cancellation or nonrenewal of coverage by any Borrower, and (v) at least sixty (60) days prior to expiration of any policy of insurance, evidence of renewal of such insurance upon the terms and conditions herein required.

(e) In the event any Borrower fails to provide Agent with evidence of the insurance coverage required by this Agreement, Agent may purchase insurance at Borrowers' expense to protect Agent's interests in the Collateral. This insurance may, but need not, protect such Borrower's interests. The coverage purchased by Agent may not pay any claim made by such Borrower or any claim that is made against such Borrower in connection with the Collateral. Such Borrower may later cancel any insurance purchased by Agent, but only after providing Agent with evidence that such Borrower has obtained insurance as required by this Agreement. If Agent purchases insurance for the Collateral, Borrowers will be responsible for the costs of that insurance to the fullest extent provided by law, including interest and other charges imposed by Agent in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance may be added to the Obligations. The costs of the insurance may be more than the cost of insurance such Borrower is able to obtain on its own.

Section 4.5 Compliance with Laws and Material Contracts. Each Borrower will comply, and cause each Subsidiary to comply, with the requirements of all applicable Laws and Material Contracts, except to the extent that failure to so comply could not reasonably be expected to (a) have a Material Adverse Effect, or (b) result in any Lien upon either (i) a material portion of the assets of any such Person in favor of any Governmental Authority, or (ii) any Collateral which is part of the Borrowing Base.

Section 4.6 Inspection of Property, Books and Records. Each Borrower will keep, and will cause each Subsidiary to keep, proper books of record substantially in accordance with GAAP in which full, true and correct entries shall be made of all dealings and transactions in relation to its business and activities; and will permit, and will cause each Subsidiary to permit, at the sole cost of the applicable Borrower or any applicable Subsidiary, representatives of Agent and of any Lender to visit and inspect any of their respective properties, to examine and make abstracts or copies from any of their respective books and records, to conduct a collateral audit and analysis of their respective operations and the Collateral (each a "**Collateral Audit**"), to evaluate and make physical verifications and appraisals of the Inventory and other Collateral in any manner and through any medium that Agent considers advisable, to verify the amount and age of the Accounts, the identity and credit of the respective Account Debtors, to review the billing practices of Borrowers and to discuss their respective affairs, finances and accounts with their respective officers, employees and independent public accountants as often as may reasonably be desired. In the absence of a Default or an Event of Default, Agent or any Lender exercising any rights pursuant to this Section 4.6 shall give the applicable Borrower or any applicable Subsidiary commercially reasonable prior notice of such exercise. No notice shall be required during the existence and continuance of any Default or any time during which Agent reasonably believes a Default exists.

Section 4.7 Use of Proceeds. Borrowers shall use the proceeds of Loans solely for (a) transaction fees incurred in connection with the Financing Documents and the payment in full on the Closing Date of certain existing Debt, and (b) for working capital needs of Borrowers and their Subsidiaries. No portion of the proceeds of the Loans will be used for family, personal, agricultural or household use.

Section 4.8 Estoppel Certificates. After written request by Agent, Borrowers, within fifteen (15) days and at their expense, will furnish Agent with a statement, duly acknowledged and certified, setting forth (a) the amount of the original principal amount of the Notes, and the unpaid principal amount of the Notes, (b) the rate of interest of the Notes, (c) the date payments of interest and/or principal were last paid, (d) any offsets or defenses to the payment of the Obligations, and if any are alleged, the nature thereof, (e) that the Notes and this Agreement have not been modified or if modified, giving particulars of such modification, and (f) that there has occurred and is then continuing no Default or if such Default exists, the nature thereof, the period of time it has existed, and the action being taken to remedy such Default. After written request by Agent, Borrowers, within fifteen (15) days and at their expense, will furnish Agent with a certificate, signed by a Responsible Officer of Borrowers, updating all of the representations and warranties contained in this Agreement and the other Financing Documents and certifying that all of the representations and warranties contained in this Agreement and the other Financing Documents, as updated pursuant to such certificate, are true, accurate and complete as of the date of such certificate.

Section 4.9 Notices of Material Contracts, Litigation and Defaults.

(a) Borrower shall provide (i) five (5) Business Days written notice to Agent after any Borrower or Subsidiary (1) executes and delivers any amendment, consent, waiver or other modification to any Material Contract which is material and adverse to (x) Agent or Lenders, (y) Borrowers or their Subsidiaries, or (z) which could reasonably be expected to have a Material Adverse Effect or (2) receives or delivers any notice of termination or default or similar notice in connection with any Material Contract and (ii) at such time as the Schedules are required to be updated pursuant to Section 4.15, notice of the execution of any new Material Contract and/or any new material amendment, consent, waiver or other modification to any Material Contract not previously disclosed (which, for the avoidance of doubt, may be included as an updated to Schedule 3.17).

(b) Borrowers shall promptly (but in any event within three (3) Business Days) provide written notice to Agent (i) of any litigation or governmental proceedings pending or threatened (in writing) against Borrowers or other Credit Party which would reasonably be expected to have a Material Adverse Effect with respect to Borrowers or any other Credit Party or which in any manner calls into question the validity or enforceability of any Financing Document, (ii) upon any Borrower becoming aware of the existence of any Default or Event of Default, (iii) of any strikes or other labor disputes pending or, to any Borrower's knowledge, threatened against any Credit Party, (iv) if there is any infringement or claim of infringement by any other Person with respect to any Intellectual Property rights of any Credit Party that could reasonably be expected to have a Material Adverse Effect, or if there is any claim by any other Person that any Credit Party in the conduct of its business is infringing on the Intellectual Property rights of others, and (v) of all returns, recoveries, disputes and claims that involve more than $50,000. Borrowers represent and warrant that Schedule 4.9 sets forth a complete list of all matters existing as of the Closing Date for which notice could be required under this Section and all litigation or governmental proceedings pending or threatened (in writing) against Borrowers or other Credit Party as of the Closing Date.

(c) Borrower shall, and shall cause each Credit Party, to provide such further information (including copies of such documentation) as Agent or any Lender shall reasonably request with respect to any of the events or notices described in clauses (a) and (b) above. From the date hereof and continuing through the termination of this Agreement, Borrower shall, and shall cause each Credit Party to, make available to Agent and each Lender, without expense to Agent or any Lender, each Credit Party's officers, employees and agents and books, to the extent that Agent or any Lender may deem them reasonably necessary to prosecute or defend any third-party suit or proceeding instituted by or against Agent or any Lender with respect to any Collateral or relating to a Credit Party.

Section 4.10 Hazardous Materials; Remediation.

(a) If any release or disposal of Hazardous Materials shall occur or shall have occurred on any real property or any other assets of any Borrower or any other Credit Party, such Borrower will cause, or direct the applicable Credit Party to cause, the prompt containment and removal of such Hazardous Materials and the remediation of such real property or other assets as is necessary to comply with all Environmental Laws and Healthcare Laws and to preserve the value of such real property or other assets. Without limiting the generality of the foregoing, each Borrower shall, and shall cause each other Credit Party to, comply with each Environmental Law and Healthcare Law requiring the performance at any real property by any Borrower or any other Credit Party of activities in response to the release or threatened release of a Hazardous Material.

(b) Borrowers will provide Agent within thirty (30) days after written demand therefor with a bond, letter of credit or similar financial assurance evidencing to the reasonable satisfaction of Agent that sufficient funds are available to pay the cost of removing, treating and disposing of any Hazardous Materials or Hazardous Materials Contamination and discharging any assessment which may be established on any property as a result thereof, such demand to be made, if at all, upon Agent's reasonable business determination that the failure to remove, treat or dispose of any Hazardous Materials or Hazardous Materials Contamination, or the failure to discharge any such assessment could reasonably be expected to have a Material Adverse Effect.

Section 4.11 Further Assurances.

(a) Each Borrower will, and will cause each Subsidiary to, at its own cost and expense, promptly and duly take, execute, acknowledge and deliver all such further acts, documents and assurances as may from time to time be necessary or as Agent or the Required Lenders may from time to time reasonably request in order to carry out the intent and purposes of the Financing Documents and the transactions contemplated thereby, including all such actions to (i) establish, create, preserve, protect and perfect a first priority Lien (subject only to the Affiliated Intercreditor Agreement and to Permitted Liens) in favor of Agent for itself and for the benefit of the Lenders on the Collateral (including Collateral acquired after the Original Closing Date), and (ii) unless Agent shall agree otherwise in writing, cause all Subsidiaries of Borrowers to be jointly and severally obligated with the other Borrowers under all covenants and obligations under this Agreement, including the obligation to repay the Obligations.

(b) Upon receipt of an affidavit (which shall contain customary indemnification provisions in favor of Borrower) of an authorized representative of Agent or a Lender as to the loss, theft, destruction or mutilation of any Note or any other Financing Document which is not of public record, and, in the case of any such mutilation, upon surrender and cancellation of such Note or other applicable Financing Document, Borrowers will issue, in lieu thereof, a replacement Note or other applicable Financing Document, dated the date of such lost, stolen, destroyed or mutilated Note or other Financing Document in the same principal amount thereof and otherwise of like tenor.

(c) Upon the request of Agent, Borrowers shall obtain a landlord's agreement or mortgagee agreement, as applicable, from the lessor of each leased property or mortgagee of owned property with respect to any business location where any portion of the Collateral with an aggregate value in excess of $250,000 included in or proposed to be included in the Borrowing Base, or the records relating to such Collateral and/or software and equipment relating to such records or Collateral, is stored or located, which agreement or letter shall be reasonably satisfactory in form and substance to Agent, Borrowers and such landlord. Borrowers shall timely and fully pay and perform its obligations under all leases and other agreements with respect to each leased location where any Collateral, or any records related thereto, is or may be located.

(d) Borrower shall provide Agent with at least ten (10) days (or such shorter period as Agent may accept in its sole discretion) prior written notice of its intention to create (or to the extent permitted under this Agreement, acquire) a new Subsidiary. Upon the formation (or to the extent permitted under this Agreement, acquisition) of a new Subsidiary, Borrowers shall promptly (but in any event within ten (10) Business Days of such formation): (i) pledge, have pledged or cause or have caused to be pledged to Agent pursuant to a pledge agreement in form and substance satisfactory to Agent, all of the outstanding shares of equity interests or other equity interests of such new Subsidiary owned directly or indirectly by any Borrower, along with undated stock or equivalent powers for such certificates, executed in blank; (ii) unless Agent shall agree otherwise in writing, cause the new Subsidiary to take such other actions (including entering into or joining any Security Documents) as are necessary or advisable in the reasonable opinion of Agent in order to grant Agent, acting on behalf of the Lenders, a first priority Lien (subject to the Affiliated Intercreditor Agreement) on all real and personal property of such Subsidiary in existence as of such date and in all after acquired property, which first priority Liens are required to be granted pursuant to this Agreement; (iii) unless Agent shall agree otherwise in writing, cause such new Subsidiary to either (at the election of Agent) become a Borrower hereunder with joint and several liability for all obligations of Borrowers hereunder and under the other Financing Documents pursuant to a joinder agreement or other similar agreement in form and substance satisfactory to Agent or to become a Guarantor of the obligations of Borrowers hereunder and under the other Financing Documents pursuant to a guaranty and suretyship agreement in form and substance satisfactory to Agent; and (iv) cause the new Subsidiary to deliver certified copies of such Subsidiary's certificate or articles of incorporation, together with good standing certificates, by-laws (or other operating agreement or governing documents), resolutions of the Board of Directors or other governing body, approving and authorizing the execution and delivery of the Security Documents, incumbency certificates and to execute and/or deliver such other documents and legal opinions or to take such other actions as may be requested by Agent, in each case, in form and substance satisfactory to Agent.

Section 4.12 Reserved.

Section 4.13 Power of Attorney. Each of the authorized representatives of Agent is hereby irrevocably made, constituted and appointed the true and lawful attorney for Borrowers (without requiring any of them to act as such) with full power of substitution to do the following: (a) after the occurrence and during the continuance of an Event of Default ,endorse the name of Borrowers upon any and all checks, drafts, money orders, and other instruments for the payment of money that are payable to Borrowers and constitute collections on Borrowers' Accounts; (b) if an Event of Default has occurred and is continuing and so long as Agent has provided not less than three (3) Business Days' prior written notice to Borrower to perform the same and Borrower has failed to take such action, execute in the name of Borrowers any schedules, assignments, instruments, documents, and statements that Borrowers are obligated to give Agent under this Agreement; (c) after the occurrence and during the continuance of an Event of Default, take any action Borrowers are required to take under this Agreement; (d) so long as Agent has provided not less than three (3) Business Days' prior written notice to Borrower to perform the same and Borrower has failed to take such action, do such other and further acts and deeds in the name of Borrowers that Agent may deem necessary or desirable to enforce any Account or other Collateral or perfect Agent's security interest or Lien in any Collateral; and (e) after the occurrence and during the continuance of an Event of Default, do such other and further acts and deeds in the name of Borrowers that Agent may deem necessary or desirable to enforce its rights with regard to any Account or other Collateral. This power of attorney shall be irrevocable and coupled with an interest.

Section 4.14 Borrowing Base Collateral Administration.

(a) All data and other information relating to Accounts and other intangible Collateral shall at all times be kept by Borrowers, at their respective principal offices and shall not be moved from such locations without (i) providing prior written notice to Agent, and (ii) obtaining the prior written consent of Agent, which consent shall not be unreasonably withheld.

(b) Borrowers shall provide prompt written notice to each Person who either is currently an Account Debtor or becomes an Account Debtor at any time following the date of this Agreement that directs each Account Debtor to make payments into the Lockbox, and hereby authorizes Agent, upon Borrowers' failure to send such notices within ten (10) days after the date of this Agreement (or ten (10) days after the Person becomes an Account Debtor), to send any and all similar notices to such Person. Agent reserves the right to notify Account Debtors that Agent has been granted a Lien upon all Accounts.

(c) Borrowers will conduct a physical count of the Inventory at least twice per year and at such other times as Agent reasonably requests, and Borrowers shall provide to Agent a written accounting of such physical count in form and substance satisfactory to Agent. Each Borrower will use commercially reasonable efforts to at all times keep its Inventory in good and marketable condition. In addition to the foregoing, from time to time, Agent may require Borrowers to obtain and deliver to Agent appraisal reports in form and substance and from appraisers reasonably satisfactory to Agent stating the then current fair market values of all or any portion of Inventory owned by each Borrower or any Subsidiaries.

(d) In addition to the foregoing, from time to time, Agent may require Borrowers to obtain and deliver to Agent appraisal reports in form and substance and from appraisers reasonably satisfactory to Agent stating the then current fair market values of all Collateral.

Section 4.15 Schedule Updates. At, or within two (2) Business Days following each Collateral Audit (but in no event more than once per calendar quarter), Borrower shall deliver to Agent updates to the Schedules correcting all information that has become outdated, inaccurate, incomplete or misleading in any material respects; provided, however, (i) with respect to any proposed updates to the Schedules involving Permitted Liens, Permitted Debt or Permitted Investments, Agent will replace the respective Schedule attached hereto with such proposed update only if such updated information is consistent with the definitions of and limitations herein pertaining to Permitted Liens, Permitted Debt or Permitted Investments and (ii) with respect to any proposed updates to such Schedules involving other matters, Agent will replace the applicable portion of such Schedules attached hereto with such proposed update upon Agent's approval thereof.

Section 4.16 Intellectual Property and Licensing.

(a) Together with each Compliance Certificate required to be delivered pursuant to Section 4.1 to the extent (i) Borrower acquires and/or develops any new Registered Intellectual Property, (ii) Borrower enters into or becomes bound by any additional material in-bound license or sublicense agreement, any additional material exclusive out-bound license or sublicense agreement or other material agreement with respect to rights in Intellectual Property (other than over-the-counter software that is commercially available to the public), or (iii) there occurs any other material change in Borrower's Registered Intellectual Property, in-bound licenses or sublicenses or exclusive out-bound licenses or sublicenses from that listed on Schedule 3.19 together with such Compliance Certificate, deliver to Agent an updated Schedule 3.19 reflecting such updated information. With respect to any updates to Schedule 3.19 involving exclusive out-bound licenses or sublicenses, such licenses shall be consistent with the definitions of and limitations herein pertaining to Permitted Licenses.

(b) If Borrower obtains any Registered Intellectual Property (other than copyrights, mask works and related applications, which are addressed below), Borrower shall promptly notify Agent and execute such documents and provide such other information (including, without limitation, copies of applications) and take such other actions as Agent shall request in its good faith business judgment to perfect and maintain a first priority perfected security interest in favor of Agent, for the ratable benefit of Lenders, in such Registered Intellectual Property.

(c) Borrower shall take such steps as Agent requests to obtain the consent of, or waiver by, any person whose consent or waiver is necessary for (x) all licenses or agreements to be deemed "Collateral" and for Agent to have a security interest in it that might otherwise be restricted or prohibited by Law or by the terms of any such license or agreement, whether now existing or entered into in the future, and (y) Agent to have the ability in the event of a liquidation of any Collateral to dispose of such Collateral in accordance with Agent's rights and remedies under this Agreement and the other Financing Documents.

(d) Borrower shall own, or be licensed to use or otherwise have the right to use, all Material Intangible Assets. Borrower shall cause all Registered Intellectual Property to be duly and properly registered, filed or issued in the appropriate office and jurisdictions for such registrations, filings or issuances, except where the failure to do so would not reasonably be expected to result in a Material Adverse Effect. Borrower shall at all times conduct its business without infringement or claim of infringement of any Intellectual Property rights of others. Borrower shall (i) protect, defend and maintain the validity and enforceability of its Material Intangible Assets (ii) promptly advise Agent in writing of material infringements of its Material Intangible Assets, or of a material claim of infringement by Borrower on the Intellectual Property rights of others; and (iii) not allow any of Borrower's Material Intangible Assets to be abandoned, invalidated, forfeited or dedicated to the public or to become unenforceable. Borrower shall not become a party to, nor become bound by, any material license or other agreement with respect to which Borrower is the licensee that prohibits or otherwise restricts Borrower from granting a security interest in Borrower's interest in such license or agreement or other property.

Section 4.17 Regulatory Covenants.

(a) Borrowers shall have, and shall ensure that it and each of its Subsidiaries has, each material Permit and other rights from, and have made all declarations and filings with, all applicable Governmental Authorities, all self-regulatory authorities and all courts and other tribunals necessary to engage in the ownership, management and operation of the business or the assets of any Borrower. Borrower shall ensure that all such Permits are valid and in full force and effect and Borrowers are in material compliance with the terms and conditions of all such Permits in all material respects.

(b) Borrower will maintain in full force and effect, and free from restrictions, probations, conditions or known conflicts which would materially impair the use or operation of Borrowers' business and assets, all material Permits necessary under Healthcare Laws to carry on the business of Borrowers as it is conducted on the Closing Date in all material respects.

(c) In connection with the development, testing, manufacture, marketing or sale of each and any material Product by any Borrower, Borrower shall comply in all material respects with all material Regulatory Required Permits at all times issued by any Governmental Authority, specifically including the FDA, with respect to such development, testing, manufacture, marketing or sales of such Product by Borrower as such activities are at any such time being conducted by Borrower.

(d) Borrower will timely file or caused to be timely filed (after giving effect to any extension duly obtained), all material notifications, reports, submissions, Permit renewals and reports required by Healthcare Laws (which reports will be materially accurate and complete in all respects and not misleading in any respect and shall not remain open or unsettled).

(e) If, after the Closing Date, Borrower determines to manufacture, sell, develop, test or market any new material Product or obtains any new material Regulatory Required Permit, Borrower shall deliver prior written notice to Agent of such determination (which shall include a brief description of such Product or Regulatory Required Permit) and, at such time as the Schedules are required to be updated pursuant to Section 4.15, shall provide an updated Schedule 4.17 (and copies of such Permits as Agent may request) reflecting updates related to such determination.

Section 4.18 Aziyo Med. Since the date of its formation and at all times on and after the date thereof, Aziyo Med has complied with and shall at all times after the date hereof comply with the following requirements:

(a) Aziyo Med does not have and will not have any assets other than (i) the assets acquired by it and its rights under the Purchase Agreement, including all Accounts generated through the sale of Products acquired under such Purchase Agreement and payments made to Aziyo Med in respect thereof (the "**Aziyo Med Purchased Assets**"), (ii) its rights under a Ligand Royalty Agreement and (iii) de minimis cash necessary to pay fees and costs associated with maintaining its legal existence and good standing in its respective jurisdiction of formation, each in accordance with Section 4.2 of this Agreement;

(b) Aziyo Med is not engaged and will not engage in any business unrelated to (i) the performance of its obligations under the Purchase Agreement, (ii) its ownership and operation of the Aziyo Med Purchased Assets, and (iii) the performance of its obligations under the Ligand Royalty Agreement, and (iv) the performance of its obligations under the Financing Documents and the Affiliated Financing Documents;

(c) Aziyo Med has not entered into and will not enter into any contract or agreement with any Affiliate of such entity, any constituent party of such entity or any Affiliate of any constituent party, except upon terms and conditions, that have been, are and shall be intrinsically fair and substantially similar to those that would be available on an arms-length basis with third parties other than any such party;

(d) Aziyo Med has not incurred and will not incur any Debt or Contingent Obligations other than the Obligations incurred under the Financing Documents, the Affiliated Obligations and its obligations under the Ligand Royalty Agreement;

(e) Aziyo Med has not made and will not make any loans or advances to any third party (including any affiliate or constituent party or any affiliate of any constituent party) and has not and shall not acquire obligations or securities of its Affiliates or any constituent party;

(f) Aziyo Med has done or caused to be done and will do all things necessary to observe organizational formalities and preserve its existence and will not, nor will such entity permit any constituent party to, amend, modify or otherwise change the organizational documents of such entity or such constituent party without the prior written consent of Agent;

(g) Aziyo Med has been and will be, and at all times has held itself out and will hold itself out to the public as, a legal entity separate and distinct from any other entity (including any Affiliate of such entity, any constituent party of such entity or any Affiliate of any constituent party), shall correct any known misunderstanding regarding its status as a separate entity, shall conduct business in its own name, shall not identify itself or any of its Affiliates as a division or part of the other;

(h) Aziyo Med has not engaged, sought or consented to and will not engage in, seek or consent to any dissolution, winding up, liquidation, consolidation, merger, sale of all or substantially all of its assets, transfer of its equity interests or amendment of its operating documents with respect to the matters set forth in this Section 4.18;

(i) except as expressly provided in Section 2.11(b) with respect to payments made from the Aziyo Med Controlled Account to the Lockbox Account, Aziyo Med has not commingled and will not commingle its funds and other assets with those of any Affiliate or constituent party, or any Affiliate of any constituent party, or any other person;

(j) Aziyo Med will not own or maintain any Deposit Accounts or Securities Accounts other than the Aziyo Med Controlled Account, the Permitted Ligand Account, the Aziyo Med Operating Account, and any other Deposit Account or Securities Account that has been opened with the consent of Agent; *provided, however,* that Aziyo Med shall not hold funds in the Aziyo Med Operating Account in excess of the amount necessary to fund its current operating expenses (taking into account their revenue from other sources) incurred in connection with its business as permitted to be undertaken pursuant to this Section 4.18.

(k) Aziyo Med has and will maintain its assets in such a manner that it will not be costly or difficult to segregate, ascertain or identify its individual assets from those of any Affiliate or constituent party, or any Affiliate of any constituent party, or any other Person and has held and will hold its assets in its own name;

(l) Aziyo Med has not and will not assume or guarantee or become obligated for the debts of any other Person or hold out its credit as being available to satisfy the obligations of any other Person except as permitted pursuant to this Agreement;

(m) Aziyo Med has maintained and will maintain its financial statements, accounting records and other entity documents separate from any other Person and has not permitted and will not permit its assets to be listed as assets on the financial statement of any other entity except as required by GAAP;

(n) Aziyo Med has not pledged and will not pledge its assets for the benefit of any other Person, except as permitted pursuant to this Agreement; and

(o) Aziyo Med has not identified and will not identify its partners, members or shareholders, or any Affiliate of any of them, as a division or part of it and has not identified itself and shall not identify itself as a division of any other Person.

ARTICLE 5 - NEGATIVE COVENANTS

Each Borrower agrees that, so long as any Credit Exposure exists:

Section 5.1 Debt; Contingent Obligations. No Borrower will, or will permit any Subsidiary to, directly or indirectly, create, incur, assume, guarantee or otherwise become or remain directly or indirectly liable with respect to, any Debt, except for Permitted Debt. No Borrower will, or will permit any Subsidiary to, directly or indirectly, create, assume, incur or suffer to exist any Contingent Obligations, except for Permitted Contingent Obligations.

Section 5.2 Liens. No Borrower will, or will permit any Subsidiary to, directly or indirectly, create, assume or suffer to exist any Lien on any asset now owned or hereafter acquired by it, except for Permitted Liens.

Section 5.3 Distributions. No Borrower will, or will permit any Subsidiary to, directly or indirectly, declare, order, pay, make or set apart any sum for any Distribution, except for Permitted Distributions.

Section 5.4 Restrictive Agreements. No Borrower will, or will permit any Subsidiary to, directly or indirectly (a) enter into or assume any agreement (other than the Financing Documents, the Affiliated Financing Documents, and any agreements for purchase money debt permitted under clause (c) of the definition of Permitted Debt) prohibiting the creation or assumption of any Lien upon its properties or assets, whether now owned or hereafter acquired, or (b) create or otherwise cause or suffer to exist or become effective any consensual encumbrance or restriction of any kind (except as provided by the Financing Documents and the Affiliated Financing Documents) on the ability of any Subsidiary to: (i) pay or make Distributions to any Borrower or any Subsidiary; (ii) pay any Debt owed to any Borrower or any Subsidiary; (iii) make loans or advances to any Borrower or any Subsidiary; or (iv) transfer any of its property or assets to any Borrower or any Subsidiary; *provided* that (1) the foregoing shall not apply to restrictions or conditions imposed by Law, by this Agreement or any other Financing Document, (2) restrictions or conditions imposed by any agreement relating to secured Debt permitted by this Agreement if such restrictions and conditions apply only to the property or assets securing such Debt, (3) customary provisions in leases and subleases restricting the assignment thereof or the assets governed thereby and (4) any agreement in connection with an Asset Disposition permitted by Section 5.6 pending consummation of such Asset Disposition solely to the extent it relates only to property being sold in such Permitted Asset Disposition.

Section 5.5 Payments and Modifications of Subordinated Debt. No Borrower will, or will permit any Subsidiary to, directly or indirectly:

(a) declare, pay, make or set aside any amount for payment in respect of Subordinated Debt, except for payments made in full compliance with and expressly permitted under any applicable Subordination Agreement;

(b) declare, pay, make or set aside any amount for payment in respect of Ligand Royalty Payments or otherwise pursuant to the Ligand Royalty Agreement or the Ligand Parent Guaranty except, in each case, in accordance with the terms of the Ligand Royalty Agreement and the Ligand Intercreditor Agreement;

(c) amend or otherwise modify the terms of any Subordinated Debt, except for amendments or modifications made in full compliance with any applicable Subordination Agreement;

(d) declare, pay, make or set aside any amount for payment in respect of any Debt hereinafter incurred that, by its terms, or by separate agreement, is subordinated to the Obligations (including Subordinated Debt), except for payments made in full compliance with and expressly permitted under the subordination provisions applicable thereto and any applicable Subordination Agreement;

(e) prior to making any payment to the holders of Subordinated Debt that are permitted under the Debt Subordination Agreement (Donor Network West) and solely to the extent requested by Agent, Agent shall have received a certificate from a Responsible Officer of Borrower setting for the amount of such payments and certifying that the conditions payment in Section 5 of the Debt Subordination Agreement (Donor Network West), as applicable, have been satisfied and providing such detail as to the financial calculations set forth therein as Agent may reasonable request; or

(f) unless provided otherwise in any applicable Subordination Agreement, amend or otherwise modify the terms of any such Debt if the effect of such amendment or modification is to (i) increase the interest rate or fees on, or change the manner or timing of payment of, such Debt, (ii) accelerate or shorten the dates upon which payments of principal or interest are due on, or the principal amount of, such Debt, (iii) change in a manner adverse to any Credit Party or Agent any event of default or add or make more restrictive any covenant with respect to such Debt, (iv) change the prepayment provisions of such Debt or any of the defined terms related thereto, (v) change the subordination provisions thereof (or the subordination terms of any guaranty thereof), or (vi) change or amend any other term if such change or amendment would materially increase the obligations of the obligor or confer additional material rights on the holder of such Debt in a manner adverse to Borrowers, any Subsidiaries, Agent or Lenders. Borrowers shall, prior to entering into any such amendment or modification, deliver to Agent reasonably in advance of the execution thereof, any final or execution form copy thereof.

Section 5.6 Consolidations, Mergers and Sales of Assets; Change in Control.

(a) No Borrower will, or will permit any Subsidiary to, directly or indirectly (i) consolidate or merge or amalgamate with or into any other Person other than (A) consolidations or mergers among Borrowers (other than Aziyo Med), (B) consolidations or mergers among a Guarantor and a Borrower (other than Aziyo Med) so long as the Borrower is the surviving entity, (C) consolidations or mergers among Guarantors, and (D) consolidations or mergers among Subsidiaries that are not Credit Parties, or (ii) consummate any Asset Dispositions other than Permitted Asset Dispositions.

(b) Prior to the termination of the Ligand Royalty Agreement and the Ligand Parent Guaranty, Aziyo Med shall not transfer any of its assets to Aziyo except for cash and cash equivalents (i) constituting Permitted Distributions, (ii) that are permitted or required to be transferred by Aziyo Med to Aziyo pursuant to Section 2.11(b), or (iii) constituting Excluded Costs (as such term is defined in the Ligand Royalty Agreement).

(c) No Borrower will suffer or permit to occur any Change in Control with respect to itself, any Subsidiary or any Guarantor.

Section 5.7 Purchase of Assets, Investments. No Borrower will, or will permit any Subsidiary to, directly or indirectly:

(a) (i) make any Acquisition or enter into any agreement to make an Acquisition other than a Permitted Investment or (ii) acquire or own or enter into any agreement to acquire or own any other Investment other than Permitted Investments,

(b) without limiting clause (a), otherwise acquire or enter into any agreement to acquire any assets other than (i) in the Ordinary Course of Business, (ii) constituting capital expenditures, and (iii) constituting replacement assets purchased with proceeds of property insurance policies, awards or other compensation with respect to any eminent domain, condemnation or similar proceeding and for which the requirements set forth in Section 2.2(a)(ii)(B) have been satisfied; or

(c) engage or enter into any agreement to engage in any joint venture or partnership with any other Person.

Section 5.8 Transactions with Affiliates. Except (a) as otherwise disclosed on Schedule 5.8, (b) for Permitted Distributions, and (c) for transactions that are disclosed to Agent in advance of being entered into, are not prohibited by Section 4.18 and which contain terms that are no less favorable to the applicable Borrower or any Subsidiary, as the case may be, than those which might be obtained from a third party not an Affiliate of any Credit Party, no Borrower will, or will permit any Subsidiary to, directly or indirectly, enter into or permit to exist any transaction (including the purchase, sale, lease or exchange of any property or the rendering of any service) with any Affiliate of any Borrower.

Section 5.9 Modification of Organizational Documents. No Borrower will, or will permit any Subsidiary to, directly or indirectly, amend or otherwise modify any Organizational Documents of such Person, except for Permitted Modifications.

Section 5.10 Modification of Certain Agreements. No Borrower will, or will permit any Subsidiary to, directly or indirectly, (i) amend or otherwise modify any Material Contract, which amendment or modification in any case: (a) is contrary to the terms of this Agreement or any other Financing Document or (b) could reasonably be expected to be adverse to the rights, interests or privileges of Agent or the Lenders or their ability to enforce the same; or (ii) without the prior written consent of Agent, amend or otherwise modify any Affiliated Financing Document. Each Borrower shall, prior to entering into any amendment or other modification of any of the foregoing documents, deliver to Agent reasonably in advance of the execution thereof, any final or execution form copy of amendments or other modifications to such documents, and such Borrower agrees not to take, nor permit any of its Subsidiaries to take, any such action with respect to any such documents without obtaining such approval from Agent.

Section 5.11 Conduct of Business. No Borrower will, or will permit any Subsidiary to, directly or indirectly, engage in any line of business other than those businesses engaged in on the Closing Date and businesses reasonably related thereto. No Borrower will, or will permit any Subsidiary to, other than in the Ordinary Course of Business, change its normal billing payment and reimbursement policies and procedures with respect to its Accounts (including, without limitation, the amount and timing of finance charges, fees and write-offs).

Section 5.12 Lease Payments. No Borrower will, or will permit any Subsidiary to, directly or indirectly, incur or assume (whether pursuant to a Guarantee or otherwise) any liability for rental payments except in the Ordinary Course of Business.

Section 5.13 Limitation on Sale and Leaseback Transactions. No Borrower will, or will permit any Subsidiary to, directly or indirectly, enter into any arrangement with any Person whereby, in a substantially contemporaneous transaction, any Borrower or any Subsidiaries sells or transfers all or substantially all of its right, title and interest in an asset and, in connection therewith, acquires or leases back the right to use such asset.

Section 5.14 Deposit Accounts and Securities Accounts; Payroll and Benefits Accounts.

(a) No Borrower will, or will permit any Subsidiary to, directly or indirectly, establish any new Deposit Account or Securities Account without prior written notice to Agent, and unless Agent, such Borrower or such Subsidiary and the bank, financial institution or securities intermediary at which the account is to be opened enter into a Deposit Account Control Agreement or Securities Account Control Agreement prior to or concurrently with the establishment of such Deposit Account or Securities Account.

(b) Borrowers represent and warrant that Schedule 5.14 lists all of the Deposit Accounts and Securities Accounts of each Borrower. The provisions of this Section requiring Deposit Account Control Agreements shall not apply to (i) Deposit Accounts exclusively used for payroll, payroll taxes and other employee wage and benefit payments to or for the benefit of Borrowers' employees and identified to Agent by Borrowers as such (each, a "**Payroll Account**"); *provided, however*, that the aggregate balance in such accounts does not exceed the amount necessary to make the immediately succeeding payroll, payroll tax or benefit payment (or such minimum amount as may be required by any requirement of Law with respect to such accounts) and (ii) the Permitted Ligand Account (the Deposit Accounts referred to in clauses (i)-(ii), collectively, the "**Excluded Accounts**").

(c) At all times that any Obligations or Affiliated Obligations remain outstanding following the date that is thirty (30) days following the Closing Date, Borrower shall maintain one or more separate Payroll Accounts to hold any and all amounts to be used for payroll, payroll taxes and other employee wage and benefit payments, and shall not commingle any monies allocated for such purposes with funds in any other Deposit Account.

Section 5.15 Compliance with Anti-Terrorism Laws. Agent hereby notifies Borrowers that pursuant to the requirements of Anti-Terrorism Laws, and Agent's policies and practices, Agent is required to obtain, verify and record certain information and documentation that identifies Borrowers and its principals, which information includes the name and address of each Borrower and its principals and such other information that will allow Agent to identify such party in accordance with Anti-Terrorism Laws. No Borrower will, or will permit any Subsidiary to, directly or indirectly, knowingly enter into any Material Contracts with any Blocked Person or any Person listed on the OFAC Lists. Each Borrower shall immediately notify Agent if such Borrower has knowledge that any Borrower, any additional Credit Party or any of their respective Affiliates (except for any Person that is an Affiliate of a Credit Party solely due to the fact that it is HighCape Portfolio Company) or agents acting or benefiting in any capacity in connection with the transactions contemplated by this Agreement is or becomes a Blocked Person or (a) is convicted on, (b) pleads nolo contendere to, (c) is indicted on, or (d) is arraigned and held over on charges involving money laundering or predicate crimes to money laundering. No Borrower will, or will permit any Subsidiary to, directly or indirectly, (i) conduct any business or engage in any transaction or dealing with any Blocked Person, including, without limitation, the making or receiving of any contribution of funds, goods or services to or for the benefit of any Blocked Person, (ii) deal in, or otherwise engage in any transaction relating to, any property or interests in property blocked pursuant to Executive Order No. 13224, any similar executive order or other Anti-Terrorism Law, or (iii) engage in or conspire to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in Executive Order No. 13224 or other Anti-Terrorism Law.

Section 5.16 Change in Accounting. No Borrower shall, and no Borrower shall suffer or permit any of its Subsidiaries to, (i) make any significant change in accounting treatment or reporting practices, except as required by GAAP or as otherwise consented to be Agent (in its reasonable discretion) or (ii) change the fiscal year or method for determining fiscal quarters of any Credit Party or of any consolidated Subsidiary of any Credit Party.

Section 5.17 Agreements Regarding Receivables. No Borrower may backdate, postdate or redate any of its invoices. No Borrower may make any sales on extended dating or credit terms beyond that customary in such Borrower's industry and consented to in advance by Agent. In addition to the Borrowing Base Certificate to be delivered in accordance with this Agreement, Borrower Representative shall notify Agent promptly upon any Borrower's learning thereof, in the event any Eligible Account becomes ineligible for any reason, other than the aging of such Account, and of the reasons for such ineligibility. Borrower Representative shall also notify Agent promptly of all material disputes and claims with respect to the Accounts of any Borrower, and such Borrower will settle or adjust such material disputes and claims at no expense to Agent; provided, however, no Borrower may, without Agent's consent, grant (a) any discount, credit or allowance in respect of its Accounts (i) which is outside the ordinary course of business or (ii) which discount, credit or allowance exceeds an amount equal to $100,000 in the aggregate with respect to any individual Account of (b) any materially adverse extension, compromise or settlement to any customer or account debtor with respect to any then Eligible Account. Nothing permitted by this Section 5.16, however, may be construed to alter in any the criteria for Eligible Accounts or Eligible Inventory provided in Section 1.1.

Section 5.18 Management Fees. No Borrower shall, nor shall it permit any Subsidiary to, directly or indirectly, pay or become obligated to pay any management, consulting, professional or similar advisory fees or other amounts to or for the account of any holder of equity interests in such Borrower of Subsidiary or any or any Affiliate thereof, except the payment of management fees to HighCape pursuant to the Management Agreement solely to the extent constituting a Permitted Distribution

ARTICLE 6 - FINANCIAL COVENANTS

Section 6.1 Minimum Net Product Revenue. Borrower shall not permit its consolidated Net Product Revenue for any Defined Period, as tested monthly, to be less than the minimum amount set forth on Schedule 6.1 for such Defined Period. A breach of a financial covenant contained in this Section 6.1 shall be deemed to have occurred as of any date of determination by Agent or as of the last day of any specified Defined Period, regardless of when the financial statements reflecting such breach are delivered to Agent.

Section 6.2 Evidence of Compliance. Borrowers shall furnish to Agent, as required by Section 4.1, a Compliance Certificate as evidence of (x) the monthly cash and cash equivalents of Borrowers and Borrowers and their Consolidated Subsidiaries, (y) as applicable, of Borrowers' compliance with the covenants in this Article, and (z) that no Event of Default specified in this Article has occurred. The Compliance Certificate shall include, without limitation, (a) a statement and report, in form and substance reasonably satisfactory to Agent, detailing Borrowers' calculations, and (b) if requested by Agent, back-up documentation (including, without limitation, bank statements, invoices, receipts and other evidence of costs incurred during such quarter as Agent shall reasonably require) evidencing the propriety of the calculations.

ARTICLE 7 - CONDITIONS

Section 7.1 Conditions to Closing. The obligation of each Lender to make the initial Loans on the Closing Date shall be subject to the receipt by Agent of each agreement, document and instrument set forth on the closing checklist prepared by Agent or its counsel, each
in form and substance satisfactory to Agent, and such other closing deliverables reasonably requested by Agent and Lenders, and to the satisfaction of the following conditions precedent, each to the satisfaction of Agent and Lenders and their respective counsel in their sole discretion:

(a) the receipt by Agent of executed counterparts of this Agreement, the other Financing Documents and the Affiliated Financing Documents;

(b) the payment of all fees, expenses and other amounts due and payable under each Financing Document; and

(c) since December 31, 2018, the absence of any material adverse change in any aspect of the business, operations, properties, prospects or condition (financial or otherwise) of any Credit Party or any Seller, or any event or condition which could reasonably be expected to result in such a material adverse change.

Each Lender, by delivering its signature page to this Agreement, shall be deemed to have acknowledged receipt of, and consented to and approved, each Financing Document, each additional Operative Document and each other document, agreement and/or instrument required to be approved by Agent, Required Lenders or Lenders, as applicable, on the Closing Date.

Section 7.2 Conditions to Each Loan. The obligation of the Lenders to make a Loan or an advance in respect of any Loan, is subject to the satisfaction of the following additional conditions:

(a) (i) in the case of the initial borrowing of Revolving Loans, receipt by Agent of a Notice of Borrowing and the initial Borrowing Base Certificate in form and substance reasonably satisfactory to Agent and (ii) in the case of each subsequent borrowing of a Revolving Loan, receipt by Agent of a Notice of Borrowing and updated Borrowing Base Certificate in form and substance reasonable satisfactory to Agent;

(b) the fact that, immediately after such borrowing and after application of the proceeds thereof or after such issuance, the Revolving Loan Outstandings will not exceed the Revolving Loan Limit;

(c) the fact that, immediately before and after such advance, no Default or Event of Default shall have occurred and be continuing;

(d) for Loans made on the Closing Date, the fact that the representations and warranties of each Credit Party contained in the Financing Documents shall be true, correct and complete on and as of the Closing Date, except to the extent that any such representation or warranty relates to a specific date in which case such representation or warranty shall be true and correct as of such earlier date;

(e) for Loans made after the Closing Date, the fact that the representations and warranties of each Credit Party contained in the Financing Documents shall be true, correct and complete in all material respects on and as of the date of such borrowing or issuance, except to the extent that any such representation or warranty relates to a specific date in which case such representation or warranty shall be true and correct in all material respects as of such earlier date; provided, however, in each case, such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof; and

(f) the fact that no adverse change in the condition (financial or otherwise), properties, business or operations of Borrowers or any other Credit Party shall have occurred and be continuing with respect to Borrowers or any Credit Party since the date of this Agreement.

Each giving of a Notice of Borrowing hereunder and each acceptance by any Borrower of the proceeds of any Loan made hereunder shall be deemed to be (y) a representation and warranty by each Borrower on the date of such notice or acceptance as to the facts specified in this Section, and (z) a restatement by each Borrower that each and every one of the representations made by it in any of the Financing Documents is true and correct as of such date (except to the extent that such representations and warranties expressly relate solely to an earlier date).

Section 7.3 Searches. Before the Closing Date, and thereafter (as and when determined by Agent in its discretion), Agent shall have the right to perform, all at Borrowers' expense, the searches described in clauses (a), (b), and (c) below against Borrowers and any other Credit Party, the results of which are to be consistent with Borrowers' representations and warranties under this Agreement and the satisfactory results of which shall be a condition precedent to all advances of Loan proceeds: (a) UCC searches with the Secretary of State of the jurisdiction in which the applicable Person is organized; (b) judgment, pending litigation, federal tax lien, personal property tax lien, and corporate and partnership tax lien searches, in each jurisdiction searched under clause (a) above; and (c) searches of applicable corporate, limited liability company, partnership and related records to confirm the continued existence, organization and good standing of the applicable Person and the exact legal name under which such Person is organized.

Section 7.4 Post-Closing Requirements. Borrowers shall complete each of the post-closing obligations and/or provide to Agent each of the documents, instruments, agreements and information listed on Schedule 7.4 attached hereto on or before the date set forth for each such item thereon, each of which shall be completed or provided in form and substance satisfactory to Agent.

ARTICLE 8 – RESERVED

ARTICLE 9 - SECURITY AGREEMENT

Section 9.1 Generally. As security for the payment and performance of the Obligations, and for the payment and performance of all obligations under the Affiliated Financing Documents (if any) and without limiting any other grant of a Lien and security interest in any Security Document, Borrowers hereby assign and grant to Agent, for the benefit of itself and Lenders, and, subject only to the Affiliated Intercreditor Agreement and Permitted Liens (if applicable), a continuing first priority Lien on and security interest in, upon, and to the personal property set forth on Schedule 9.1 attached hereto and made a part hereof.

Section 9.2 Representations and Warranties and Covenants Relating to Collateral.

(a) The security interest granted pursuant to this Agreement constitutes a valid and, to the extent such security interest is required to be perfected by this Agreement and any other Financing Document, continuing perfected security interest in favor of Agent in all Collateral subject, for the following Collateral, to the occurrence of the following: (i) in the case of all Collateral in which a security interest may be perfected by filing a financing statement under the UCC, the completion of the filings and other actions specified on Schedule 9.2(b) (which, in the case of all filings and other documents referred to on such schedule, have been delivered to Agent in completed and duly authorized form), (ii) with respect to any Deposit Account, the execution of Deposit Account Control Agreements, (iii) in the case of letter-of-credit rights that are not supporting obligations of Collateral, the execution of a contractual obligation granting control to Agent over such letter-of-credit rights, (iv) in the case of electronic chattel paper, the completion of all steps necessary to grant control to Agent over such electronic chattel paper, (v) in the case of all certificated stock, debt instruments and investment property, the delivery thereof to Agent of such certificated stock, debt instruments and investment property consisting of instruments and certificates, in each case properly endorsed for transfer to Agent or in blank, (vi) in the case of all investment property not in certificated form, the execution of control agreements with respect to such investment property and (vii) in the case of all other instruments and tangible chattel paper that are not certificated stock, debt instructions or investment property, the delivery thereof to Agent of such instruments and tangible chattel paper. Such security interest shall be prior to all other Liens on the Collateral except for Permitted Liens. Except to the extent not required pursuant to the terms of this Agreement, all actions by each Credit Party necessary or desirable to protect and perfect the Lien granted hereunder on the Collateral have been duly taken.

(b) Schedule 9.2(b) sets forth (i) each chief executive office and principal place of business of each Borrower and each of their respective Subsidiaries, and (ii) all of the addresses (including all warehouses) at which any of the Collateral is located and/or books and records of Borrowers regarding any Collateral or any of Borrower’s assets, liabilities, business operations or financial condition are kept, which such Schedule 9.2(b) indicates in each case which Borrower(s) have Collateral and/or books located at such address, and, in the case of any such address not owned by one or more of the Borrowers(s), indicates the nature of such location (e.g., leased business location operated by Borrower(s), third party warehouse, consignment location, processor location, etc.) and the name and address of the third party owning and/or operating such location.

(c) Without limiting the generality of Section 3.2, except as indicated on Schedule 3.19 with respect to any rights of any Borrower as a licensee under any license of Intellectual Property owned by another Person, and except for the filing of financing statements under the UCC, no authorization, approval or other action by, and no notice to or filing with, any Governmental Authority or consent of any other Person is required for (i) the grant by each Borrower to Agent of the security interests and Liens in the Collateral provided for under this Agreement and the other Security Documents (if any), or (ii) the exercise by Agent of its rights and remedies with respect to the Collateral provided for under this Agreement and the other Security Documents or under any applicable Law, including the UCC and neither any such grant of Liens in favor of Agent or exercise of rights by Agent shall violate or cause a default under any agreement between any Borrower and any other Person relating to any such collateral, including any license to which a Borrower is a party, whether as licensor or licensee, with respect to any Intellectual Property, whether owned by such Borrower or any other Person.

(d) As of the Closing Date, except as set forth on Schedule 9.2(d), no Borrower has any ownership interest in any Chattel Paper (as defined in Article 9 of the UCC), letter of credit rights, commercial tort claims, Instruments, documents or investment property (other than equity interests in any Subsidiaries of such Borrower disclosed on Schedule 3.4), and Borrowers shall give notice to Agent promptly (but in any event not later than the delivery by Borrowers of the next Compliance Certificate required pursuant to Section 4.1 above) upon the acquisition by any Borrower of any such Chattel Paper, letter of credit rights, commercial tort claims, Instruments, documents, investment property. No Person other than Agent or (if applicable) any Lender has "control" (as defined in Article 9 of the UCC) over any Deposit Account, investment property (including Securities Accounts and commodities account), letter of credit rights or electronic chattel paper in which any Borrower has any interest (except for such control arising by operation of law in favor of any bank or securities intermediary or commodities intermediary with whom any Deposit Account, Securities Account or commodities account of Borrowers is maintained).

(e) Borrowers shall not, and shall not permit any Credit Party to, take any of the following actions or make any of the following changes unless Borrowers have given at least five (5) Business Days' prior written notice to Agent of Borrowers' intention to take any such action (which such written notice shall include an updated version of any Schedule impacted by such change) and have executed any and all documents, instruments and agreements and taken any other actions which Agent may request after receiving such written notice in order to protect and preserve the Liens, rights and remedies of Agent with respect to the Collateral: (i) change the legal name or organizational identification number of any Borrower as it appears in official filings in the jurisdiction of its organization, (ii) change the jurisdiction of incorporation or formation of any Borrower or Credit Party or allow any Borrower or Credit Party to designate any jurisdiction as an additional jurisdiction of incorporation for such Borrower or Credit Party, or change the type of entity that it is, or (iii) change its chief executive office, principal place of business, or the location of its books and records or move any Collateral to or place any Collateral on any location that is not then listed on the Schedules and/or establish any business location at any location that is not then listed on the Schedules.

(f) Borrowers shall not adjust, settle or compromise the amount or payment of any Account, or release wholly or partly any Account Debtor, or allow any credit or discount thereon (other than adjustments, settlements, compromises, credits and discounts in the Ordinary Course of Business, made while no Default exists and in amounts which are not material with respect to the Account and which, after giving effect thereto, do not cause the Borrowing Base to be less than the Revolving Loan Outstandings) without the prior written consent of Agent. Without limiting the generality of this Agreement or any other provisions of any of the Financing Documents relating to the rights of Agent after the occurrence and during the continuance of an Event of Default, Agent shall have the right at any time after the occurrence and during the continuance of an Event of Default to: (i) exercise the rights of Borrowers with respect to the obligation of any Account Debtor to make payment or otherwise render performance to Borrowers and with respect to any property that secures the obligations of any Account Debtor or any other Person obligated on the Collateral, and (ii) adjust, settle or compromise the amount or payment of such Accounts.

(g) Without limiting the generality of Sections 9.2(c) and 9.2(e):

(i) Borrowers shall deliver to Agent all tangible Chattel Paper and all Instruments and documents owned by any Borrower and constituting part of the Collateral duly endorsed and accompanied by duly executed instruments of transfer or assignment, all in form and substance satisfactory to Agent. Borrowers shall provide Agent with "control" (as defined in Article 9 of the UCC) of all electronic Chattel Paper owned by any Borrower and constituting part of the Collateral by having Agent identified as the assignee on the records pertaining to the single authoritative copy thereof and otherwise complying with the applicable elements of control set forth in the UCC. Borrowers also shall deliver to Agent all security agreements securing any such Chattel Paper and securing any such Instruments. Borrowers will mark conspicuously all such Chattel Paper and all such Instruments and documents with a legend, in form and substance satisfactory to Agent, indicating that such Chattel Paper and such instruments and documents are subject to the security interests and Liens in favor of Agent created pursuant to this Agreement and the Security Documents. Borrowers shall comply with all the provisions of Section 5.14 with respect to the Deposit Accounts and Securities Accounts of Borrowers.

(ii) Borrowers shall deliver to Agent all letters of credit on which any Borrower is the beneficiary and which give rise to letter of credit rights owned by such Borrower which constitute part of the Collateral in each case duly endorsed and accompanied by duly executed instruments of transfer or assignment, all in form and substance satisfactory to Agent. Borrowers shall take any and all actions as may be necessary or desirable, or that Agent may request, from time to time, to cause Agent to obtain exclusive "control" (as defined in Article 9 of the UCC) of any such letter of credit rights in a manner acceptable to Agent.

(iii) Borrowers shall promptly advise Agent upon any Borrower becoming aware that it has any interests in any commercial tort claim that constitutes part of the Collateral, which such notice shall include descriptions of the events and circumstances giving rise to such commercial tort claim and the dates such events and circumstances occurred, the potential defendants with respect such commercial tort claim and any court proceedings that have been instituted with respect to such commercial tort claims, and Borrowers shall, with respect to any such commercial tort claim, execute and deliver to Agent such documents as Agent shall request to perfect, preserve or protect the Liens, rights and remedies of Agent with respect to any such commercial tort claim.

(iv) Except for Accounts and Inventory in an aggregate amount of $25,000, no Accounts or Inventory or other Collateral and no books and records and/or software and equipment of the Borrowers regarding any of the Collateral or any of the Borrower's assets, liabilities, business operations or financial condition shall at any time be located at any leased location or in the possession or control of any warehouse, consignee, bailee or any of Borrowers' agents or processors, without prior written notice to Agent and the receipt by Agent, of warehouse receipts, consignment agreements, landlord waivers, or bailee waivers (as applicable) satisfactory to Agent prior to the commencement of such lease or of such possession or control (as applicable). Borrower has notified Agent that Collateral and books and records are currently located at the locations set forth on Schedule 9.2(b). Borrowers shall, upon the request of Agent, notify any such landlord, warehouse, consignee, bailee, agent or processor of the security interests and Liens in favor of Agent created pursuant to this Agreement and the Security Documents, instruct such Person to hold all such Collateral for Agent's account subject to Agent's instructions and shall obtain an acknowledgement from such Person that such Person holds the Collateral for Agent's benefit.

(v) Borrowers shall cause all equipment and other tangible Personal Property other than Inventory to be maintained and preserved in the same condition, repair and in working order as when new, ordinary wear and tear excepted, and shall promptly make or cause to be made all repairs, replacements and other improvements in connection therewith that are necessary or desirable to such end. Upon request of Agent, Borrowers shall promptly deliver to Agent any and all certificates of title, applications for title or similar evidence of ownership of all such tangible Personal Property and shall cause Agent to be named as lienholder on any such certificate of title or other evidence of ownership. Borrowers shall not permit any such tangible Personal Property to become fixtures to real estate unless such real estate is subject to a Lien in favor of Agent.

(vi) Each Borrower hereby authorizes Agent to file without the signature of such Borrower one or more UCC financing statements relating to liens on personal property relating to all or any part of the Collateral, which financing statements may list Agent as the "secured party" and such Borrower as the "debtor" and which describe and indicate the collateral covered thereby as all or any part of the Collateral under the Financing Documents (including an indication of the collateral covered by any such financing statement as "all assets" of such Borrower now owned or hereafter acquired), in such jurisdictions as Agent from time to time determines are appropriate, and to file without the signature of such Borrower any continuations of or corrective amendments to any such financing statements, in any such case in order for Agent to perfect, preserve or protect the Liens, rights and remedies of Agent with respect to the Collateral. Each Borrower also ratifies its authorization for Agent to have filed in any jurisdiction any initial financing statements or amendments thereto if filed prior to the date hereof.

(vii) As of the Closing Date, no Borrower holds, and after the Closing Date Borrowers shall promptly notify Agent in writing upon creation or acquisition by any Borrower of, any Collateral which constitutes a claim against any Governmental Authority, including, without limitation, the federal government of the United States or any instrumentality or agency thereof, the assignment of which claim is restricted by any applicable Law, including, without limitation, the federal Assignment of Claims Act and any other comparable Law. Upon the request of Agent, Borrowers shall take such steps as may be necessary or desirable, or that Agent may request, to comply with any such applicable Law.

(viii) Borrowers shall furnish to Agent from time to time any statements and schedules further identifying or describing the Collateral and any other information, reports or evidence concerning the Collateral as Agent may reasonably request from time to time.

(h) Any obligation of any Credit Party in this Agreement that requires (or any representation or warranty hereunder to the extent that it would have the effect of requiring) delivery of Collateral (including any endorsements related thereto) to, or the possession of Collateral with, Agent shall be deemed complied with and satisfied (or, in the case of any representation or warranty hereunder, shall be deemed to be true) if such delivery of Collateral is made to, or such possession of Collateral is with, the Affiliated Financing Agent.

ARTICLE 10 - EVENTS OF DEFAULT

Section 10.1 Events of Default. For purposes of the Financing Documents, the occurrence of any of the following conditions and/or events, whether voluntary or involuntary, by operation of law or otherwise, shall constitute an "**Event of Default**":

(a) (i) any Credit Party shall fail to pay when due any principal, interest, premium or fee under any Financing Document or any other amount payable under any Financing Document, or (ii) there shall occur any default in the performance of or compliance with any of the following sections of this Agreement: Section 2.11, Section 4.1, Section 4.2(b), Section 4.4(c), Section 4.6, 4.9, 4.16, 4.17, 4.18, Article 5, Article 6 or Section 7.4;

(b) any Credit Party defaults in the performance of or compliance with any term contained in this Agreement or in any other Financing Document (other than occurrences described in other provisions of this Section 10.1 for which a different grace or cure period is specified or for which no grace or cure period is specified and thereby constitute immediate Events of Default) and such default is not remedied by the Credit Party or waived by Agent within fifteen (15) days after the earlier of (i) receipt by Borrower Representative of notice from Agent or Required Lenders of such default, or (ii) actual knowledge of any Borrower or any other Credit Party of such default;

(c) any representation, warranty, certification or statement made by any Credit Party or any other Person in any Financing Document or in any certificate, financial statement or other document delivered pursuant to any Financing Document is incorrect in any respect (or in any material respect if such representation, warranty, certification or statement is not by its terms already qualified as to materiality) when made (or deemed made);

(d) (i) failure of any Credit Party to pay when due or within any applicable grace period any principal, interest or other amount on Debt (other than the Loans), or the occurrence of any breach, default, condition or event with respect to any Debt (other than the Loans), if the effect of such failure or occurrence is to cause or to permit the holder or holders of any such Debt, or to cause, Debt or other liabilities having an individual principal amount in excess of $250,000 or having an aggregate principal amount in excess of $250,000 to become or be declared due prior to its stated maturity, or (ii) the occurrence of any breach or default under any terms or provisions of any Subordinated Debt Document or under any agreement subordinating the Subordinated Debt to all or any portion of the Obligations or the occurrence of any event requiring the prepayment of any Subordinated Debt;

(e) any Credit Party or any Subsidiary of a Borrower shall commence a voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to itself or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its property, or shall consent to any such relief or to the appointment of or taking possession by any such official in an involuntary case or other proceeding commenced against it, or shall make a general assignment for the benefit of creditors, or shall fail generally to pay its debts as they become due, or shall take any corporate action to authorize any of the foregoing;

(f) an involuntary case or other proceeding shall be commenced against any Credit Party or any Subsidiary of a Borrower seeking liquidation, reorganization or other relief with respect to it or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its property, and such involuntary case or other proceeding shall remain undismissed and unstayed for a period of forty-five (45) days; or an order for relief shall be entered against any Credit Party or any Subsidiary of a Borrower under applicable federal bankruptcy, insolvency or other similar law in respect of (i) bankruptcy, liquidation, winding-up, dissolution or suspension of general operations, (ii) composition, rescheduling, reorganization, arrangement or readjustment of, or other relief from, or stay of proceedings to enforce, some or all of the debts or obligations, or (iii) possession, foreclosure, seizure or retention, sale or other disposition of, or other proceedings to enforce security over, all or any substantial part of the assets of such Credit Party or Subsidiary;

(g) (i) institution of any steps by any Person to terminate a Pension Plan if as a result of such termination any Credit Party or any member of the Controlled Group could be required to make a contribution to such Pension Plan, or could incur a liability or obligation to such Pension Plan, in excess of $250,000, (ii) a contribution failure occurs with respect to any Pension Plan sufficient to give rise to a Lien under Section 303(k) of ERISA or Section 430(k) of the Code or an event occurs that could reasonably be expected to give rise to a Lien under Section 4068 of ERISA, or (iii) there shall occur any withdrawal or partial withdrawal from a Multiemployer Plan and the withdrawal liability (without unaccrued interest) to Multiemployer Plans as a result of such withdrawal (including any outstanding withdrawal liability that any Credit Party or any member of the Controlled Group have incurred on the date of such withdrawal) exceeds $250,000;

(h) one or more judgments or orders for the payment of money (not paid or fully covered by insurance maintained in accordance with the requirements of this Agreement and as to which the relevant insurance company has acknowledged coverage) aggregating in excess of $250,000 shall be rendered against any or all Credit Parties and either (i) enforcement proceedings shall have been commenced by any creditor upon any such judgments or orders, or (ii) there shall be any period of twenty (20) consecutive days during which a stay of enforcement of any such judgments or orders, by reason of a pending appeal, bond or otherwise, shall not be in effect;

(i) any Lien created by any of the Security Documents shall at any time fail to constitute a valid and perfected Lien on all of the Collateral purported to be encumbered thereby, subject to no prior or equal Lien except Permitted Liens, or any Credit Party shall so assert;

(j) the institution by any Governmental Authority of criminal proceedings against any Credit Party;

(k) a default or event of default occurs under any Guarantee of any portion of the Obligations;

(l) any Borrower makes any payment on account of any Debt that has been subordinated to any of the Obligations, other than payments specifically permitted by the terms of such subordination;

(m) if any Borrower is or becomes an entity whose equity is registered with the SEC, and/or is publicly traded on and/or registered with a public securities exchange, such Borrower's equity fails to remain registered with the SEC in good standing, and/or such equity fails to remain publicly traded on and registered with a public securities exchange;

(n) the occurrence of a Material Adverse Effect;

(o) (i) the voluntary withdrawal or institution of any action or proceeding by the FDA or similar Governmental Authority to order the withdrawal of any Product or Product category from the market or to enjoin Borrower, its Subsidiaries or any representative of Borrower or its Subsidiaries from manufacturing, marketing, selling or distributing any Product or Product category, (ii) the institution of any action or proceeding by any FDA or any other Governmental Authority to revoke, suspend, reject, withdraw, limit, or restrict any Regulatory Required Permit held by Borrower, its Subsidiaries or any representative of Borrower or its Subsidiaries, which, in each case, has or could reasonably be expected to result in Material Adverse Effect, (iii) the commencement of any enforcement action against Borrower, its Subsidiaries or any representative of Borrower or its Subsidiaries (with respect to the business of Borrower or its Subsidiaries) by FDA or any other Governmental Authority which has or could reasonably be expected to result in a Material Adverse Effect, or (iv) the occurrence of adverse test results in connection with a Product which could result in Material Adverse Effect;

(p) any Credit Party materially breaches, or otherwise materially defaults under, (i) the Cook License Agreement, the Cook Supply Agreement or Cross License Agreement or (ii) any other Material Contract (after any applicable grace period contained therein) the loss of which could be reasonably expected to result in a Material Adverse Effect, or any such Material Contract referred to in clauses (i) or (ii) shall be terminated by a third party or parties party thereto prior to the expiration thereof;

(q) any Credit Party breaches, or defaults under, the Ligand Royalty Agreement or the Ligand Parent Guaranty or there occurs any Remedies Event (as defined in the Ligand Royalty Agreement);

(r) there shall occur any default or event of default under the Affiliated Financing Documents;

(s) the introduction of, or any change in, any law or regulation governing or affecting the healthcare industry, including, without limitation, any Healthcare Laws, which could reasonably be expected to have a material adverse effect on Borrowers' business, condition (financial or otherwise), prospects or properties; or

(t) any of the Operative Documents shall for any reason fail to constitute the valid and binding agreement of any party thereto, or any Credit Party shall so assert, in each case, unless such Operative Document terminates pursuant to the terms and conditions thereof without any breach or default thereunder by any Credit Party thereto.

All cure periods provided for in this Section 10.1 shall run concurrently with any cure period provided for in any applicable Financing Documents under which the default occurred.

Section 10.2 Acceleration and Suspension or Termination of Revolving Loan Commitment. Upon the occurrence and during the continuance of an Event of Default, Agent may, and shall if requested by Required Lenders, (a) by notice to Borrower Representative suspend or terminate the Revolving Loan Commitment and the obligations of Agent and the Lenders with respect thereto, in whole or in part (and, if in part, each Lender's Revolving Loan Commitment shall be reduced in accordance with its Pro Rata Share), and/or (b) by notice to Borrower Representative declare all or any portion of the Obligations to be, and the Obligations shall thereupon become, immediately due and payable, with accrued interest thereon, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by each Borrower and Borrowers will pay the same; *provided*, *however*, that in the case of any of the Events of Default specified in Section 10.1(e) or 10.1(f) above, without any notice to any Borrower or any other act by Agent or the Lenders, the Revolving Loan Commitment and the obligations of Agent and the Lenders with respect thereto shall thereupon immediately and automatically terminate and all of the Obligations shall become immediately and automatically due and payable without presentment, demand, protest or other notice of any kind, all of which are hereby waived by each Borrower and Borrowers will pay the same.

Section 10.3 UCC Remedies.

(a) Upon the occurrence of and during the continuance of an Event of Default under this Agreement or the other Financing Documents, Agent, in addition to all other rights, options, and remedies granted to Agent under this Agreement or at law or in equity, may exercise, either directly or through one or more assignees or designees, all rights and remedies granted to it under all Financing Documents and under the UCC in effect in the applicable jurisdiction(s) and under any other applicable law; including, without limitation:

(i) the right to take possession of, send notices regarding, and collect directly the Collateral, with or without judicial process;

(ii) the right to (by its own means or with judicial assistance) enter any of Borrowers' premises and take possession of the Collateral, or render it unusable, or to render it usable or saleable, or dispose of the Collateral on such premises in compliance with subsection (iii) below and to take possession of Borrowers' original books and records, to obtain access to Borrowers' data processing equipment, computer hardware and software relating to the Collateral and to use all of the foregoing and the information contained therein in any manner Agent deems appropriate, without any liability for rent, storage, utilities, or other sums, and Borrowers shall not resist or interfere with such action (if Borrowers' books and records are prepared or maintained by an accounting service, contractor or other third party agent, Borrowers hereby irrevocably authorize such service, contractor or other agent, upon notice by Agent to such Person that an Event of Default has occurred and is continuing, to deliver to Agent or its designees such books and records, and to follow Agent's instructions with respect to further services to be rendered);

(iii) the right to require Borrowers at Borrowers' expense to assemble all or any part of the Collateral and make it available to Agent at any place designated by Lender;

(iv) the right to notify postal authorities to change the address for delivery of Borrowers' mail to an address designated by Agent and to receive, open and dispose of all mail addressed to any Borrower; and/or

(v) the right to enforce Borrowers' rights against Account Debtors and other obligors, including, without limitation, (i) the right to collect Accounts directly in Agent's own name (as agent for Lenders) and to charge the collection costs and expenses, including attorneys' fees, to Borrowers, and (ii) the right, in the name of Agent or any designee of Agent or Borrowers, to verify the validity, amount or any other matter relating to any Accounts by mail, telephone, telegraph or otherwise, including, without limitation, verification of Borrowers' compliance with applicable Laws. Borrowers shall cooperate fully with Agent in an effort to facilitate and promptly conclude such verification process. Such verification may include contacts between Agent and applicable federal, state and local regulatory authorities having jurisdiction over the Borrowers' affairs, all of which contacts Borrowers hereby irrevocably authorize.

(b) Each Borrower agrees that a notice received by it at least ten (10) days before the time of any intended public sale, or the time after which any private sale or other disposition of the Collateral is to be made, shall be deemed to be reasonable notice of such sale or other disposition. If permitted by applicable law, any perishable Collateral which threatens to speedily decline in value or which is sold on a recognized market may be sold immediately by Agent without prior notice to Borrowers. At any sale or disposition of Collateral, Agent may (to the extent permitted by applicable law) purchase all or any part of the Collateral, free from any right of redemption by Borrowers, which right is hereby waived and released. Each Borrower covenants and agrees not to interfere with or impose any obstacle to Agent's exercise of its rights and remedies with respect to the Collateral. Agent shall have no obligation to clean-up or otherwise prepare the Collateral for sale. Agent may comply with any applicable state or federal law requirements in connection with a disposition of the Collateral and compliance will not be considered to adversely affect the commercial reasonableness of any sale of the Collateral. Agent may sell the Collateral without giving any warranties as to the Collateral. Agent may specifically disclaim any warranties of title or the like. This procedure will not be considered to adversely affect the commercial reasonableness of any sale of the Collateral. If Agent sells any of the Collateral upon credit, Borrowers will be credited only with payments actually made by the purchaser, received by Agent and applied to the indebtedness of the purchaser. In the event the purchaser fails to pay for the Collateral, Agent may resell the Collateral and Borrowers shall be credited with the proceeds of the sale. Borrowers shall remain liable for any deficiency if the proceeds of any sale or disposition of the Collateral are insufficient to pay all Obligations.

(c) Without restricting the generality of the foregoing and for the purposes aforesaid, each Borrower hereby appoints and constitutes Agent its lawful attorney-in-fact with full power of substitution in the Collateral, upon the occurrence and during the continuance of an Event of Default, to (i) use unadvanced funds remaining under this Agreement or which may be reserved, escrowed or set aside for any purposes hereunder at any time, or to advance funds in excess of the face amount of the Notes, (ii) pay, settle or compromise all existing bills and claims, which may be Liens or security interests, or to avoid such bills and claims becoming Liens against the Collateral, (iii) execute all applications and certificates in the name of such Borrower and to prosecute and defend all actions or proceedings in connection with the Collateral, and (iv) do any and every act which such Borrower might do in its own behalf; it being understood and agreed that this power of attorney in this subsection (c) shall be a power coupled with an interest and cannot be revoked.

(d) Agent and each Lender is hereby granted a non-exclusive, royalty-free license or other right to use, without charge, Borrowers' labels, mask works, rights of use of any name, any other Intellectual Property and advertising matter, and any similar property as it pertains to the Collateral, in completing production of, advertising for sale, and selling any Collateral and, in connection with Agent's exercise of its rights under this Article, Borrowers' rights under all licenses (whether as licensor or licensee) and all franchise agreements inure to Agent's and each Lender's benefit.

Section 10.4 Reserved.

Section 10.5 Default Rate of Interest. At the election of Agent or Required Lenders, after the occurrence of an Event of Default and for so long as it continues, the Loans and other Obligations shall bear interest at rates that are four percent (4.0%) per annum in excess of the rates otherwise payable under this Agreement; *provided*, *however*, that in the case of any Event of Default specified in Section 10.1(e) or 10.1(f) above, such default rates shall apply immediately and automatically without the need for any election or action of any kind on the part of Agent or any Lender.

Section 10.6 Setoff Rights. During the continuance of any Event of Default, each Lender is hereby authorized by each Borrower at any time or from time to time, with reasonably prompt subsequent notice to such Borrower (any prior or contemporaneous notice being hereby expressly waived) to set off and to appropriate and to apply any and all (a) balances held by such Lender or any of such Lender's Affiliates at any of its offices for the account of such Borrower or any of its Subsidiaries (regardless of whether such balances are then due to such Borrower or its Subsidiaries), and (b) other property at any time held or owing by such Lender to or for the credit or for the account of such Borrower or any of its Subsidiaries, against and on account of any of the Obligations; except that no Lender shall exercise any such right without the prior written consent of Agent. Any Lender exercising a right to set off shall purchase for cash (and the other Lenders shall sell) interests in each of such other Lender's Pro Rata Share of the Obligations as would be necessary to cause all Lenders to share the amount so set off with each other Lender in accordance with their respective Pro Rata Share of the Obligations. Each Borrower agrees, to the fullest extent permitted by law, that any Lender and any of such Lender's Affiliates may exercise its right to set off with respect to the Obligations as provided in this Section 10.6.

Section 10.7 Application of Proceeds.

(a) Notwithstanding anything to the contrary contained in this Agreement, upon the occurrence and during the continuance of an Event of Default, each Borrower irrevocably waives the right to direct the application of any and all payments at any time or times thereafter received by Agent from or on behalf of such Borrower or any Guarantor of all or any part of the Obligations, and, as between Borrowers on the one hand and Agent and Lenders on the other, Agent shall have the continuing and exclusive right to apply and to reapply any and all payments received against the Obligations in such manner as Agent may deem advisable notwithstanding any previous application by Agent.

(b) Following the occurrence and continuance of an Event of Default, but absent the occurrence and continuance of an Acceleration Event, Agent shall apply any and all payments received by Agent in respect of the Obligations, and any and all proceeds of Collateral received by Agent, in such order as Agent may from time to time elect.

(c) Notwithstanding anything to the contrary contained in this Agreement, if an Acceleration Event shall have occurred, and so long as it continues, Agent shall apply any and all payments received by Agent in respect of the Obligations, and any and all proceeds of Collateral received by Agent, in the following order: *first*, to all fees, costs, indemnities, liabilities, obligations and expenses incurred by or owing to Agent with respect to this Agreement, the other Financing Documents or the Collateral; *second*, to all fees, costs, indemnities, liabilities, obligations and expenses incurred by or owing to any Lender with respect to this Agreement, the other Financing Documents or the Collateral; *third*, to accrued and unpaid interest on the Obligations (including any interest which, but for the provisions of the Bankruptcy Code, would have accrued on such amounts); *fourth*, to the principal amount of the Obligations outstanding; and *fifth* to any other indebtedness or obligations of Borrowers owing to Agent or any Lender under the Financing Documents. Any balance remaining shall be delivered to Borrowers or to whomever may be lawfully entitled to receive such balance or as a court of competent jurisdiction may direct. In carrying out the foregoing, (y) amounts received shall be applied in the numerical order provided until exhausted prior to the application to the next succeeding category, and (z) each of the Persons entitled to receive a payment in any particular category shall receive an amount equal to its Pro Rata Share of amounts available to be applied pursuant thereto for such category.

Section 10.8 Waivers.

(a) Except as otherwise provided for in this Agreement and to the fullest extent permitted by applicable law, each Borrower waives: (i) presentment, demand and protest, and notice of presentment, dishonor, intent to accelerate, acceleration, protest, default, nonpayment, maturity, release, compromise, settlement, extension or renewal of any or all Financing Documents, the Notes or any other notes, commercial paper, accounts, contracts, documents, Instruments, Chattel Paper and Guarantees at any time held by Lenders on which any Borrower may in any way be liable, and hereby ratifies and confirms whatever Lenders may do in this regard; (ii) all rights to notice and a hearing prior to Agent's or any Lender's taking possession or control of, or to Agent's or any Lender's replevy, attachment or levy upon, any Collateral or any bond or security which might be required by any court prior to allowing Agent or any Lender to exercise any of its remedies; and (iii) the benefit of all valuation, appraisal and exemption Laws. Each Borrower acknowledges that it has been advised by counsel of its choices and decisions with respect to this Agreement, the other Financing Documents and the transactions evidenced hereby and thereby.

(b) Each Borrower for itself and all its successors and assigns, (i) agrees that its liability shall not be in any manner affected by any indulgence, extension of time, renewal, waiver, or modification granted or consented to by Lender; (ii) consents to any indulgences and all extensions of time, renewals, waivers, or modifications that may be granted by Agent or any Lender with respect to the payment or other provisions of the Financing Documents, and to any substitution, exchange or release of the Collateral, or any part thereof, with or without substitution, and agrees to the addition or release of any Borrower, endorsers, guarantors, or sureties, or whether primarily or secondarily liable, without notice to any other Borrower and without affecting its liability hereunder; (iii) agrees that its liability shall be unconditional and without regard to the liability of any other Borrower, Agent or any Lender for any tax on the indebtedness; and (iv) to the fullest extent permitted by law, expressly waives the benefit of any statute or rule of law or equity now provided, or which may hereafter be provided, which would produce a result contrary to or in conflict with the foregoing.

(c) To the extent that Agent or any Lender may have acquiesced in any noncompliance with any requirements or conditions precedent to the closing of the Loans or to any subsequent disbursement of Loan proceeds, such acquiescence shall not be deemed to constitute a waiver by Agent or any Lender of such requirements with respect to any future disbursements of Loan proceeds and Agent may at any time after such acquiescence require Borrowers to comply with all such requirements. Any forbearance by Agent or Lender in exercising any right or remedy under any of the Financing Documents, or otherwise afforded by applicable law, including any failure to accelerate the maturity date of the Loans, shall not be a waiver of or preclude the exercise of any right or remedy nor shall it serve as a novation of the Notes or as a reinstatement of the Loans or a waiver of such right of acceleration or the right to insist upon strict compliance of the terms of the Financing Documents. Agent's or any Lender's acceptance of payment of any sum secured by any of the Financing Documents after the due date of such payment shall not be a waiver of Agent's and such Lender's right to either require prompt payment when due of all other sums so secured or to declare a default for failure to make prompt payment. The procurement of insurance or the payment of taxes or other Liens or charges by Agent as the result of an Event of Default shall not be a waiver of Agent's right to accelerate the maturity of the Loans, nor shall Agent's receipt of any condemnation awards, insurance proceeds, or damages under this Agreement operate to cure or waive any Credit Party's default in payment of sums secured by any of the Financing Documents.

(d) Without limiting the generality of anything contained in this Agreement or the other Financing Documents, each Borrower agrees that if an Event of Default is continuing (i) Agent and Lenders shall not be subject to any "one action" or "election of remedies" law or rule, and (ii) all Liens and other rights, remedies or privileges provided to Agent or Lenders shall remain in full force and effect until Agent or Lenders have exhausted all remedies against the Collateral and any other properties owned by Borrowers and the Financing Documents and other security instruments or agreements securing the Loans have been foreclosed, sold and/or otherwise realized upon in satisfaction of Borrowers' obligations under the Financing Documents.

(e) Nothing contained herein or in any other Financing Document shall be construed as requiring Agent or any Lender to resort to any part of the Collateral for the satisfaction of any of Borrowers' obligations under the Financing Documents in preference or priority to any other Collateral, and Agent may seek satisfaction out of all of the Collateral or any part thereof, in its absolute discretion in respect of Borrowers' obligations under the Financing Documents. In addition, Agent shall have the right from time to time to partially foreclose upon any Collateral in any manner and for any amounts secured by the Financing Documents then due and payable as determined by Agent in its sole discretion, including, without limitation, the following circumstances: (i) in the event any Borrower defaults beyond any applicable grace period in the payment of one or more scheduled payments of principal and/or interest, Agent may foreclose upon all or any part of the Collateral to recover such delinquent payments, or (ii) in the event Agent elects to accelerate less than the entire outstanding principal balance of the Loans, Agent may foreclose all or any part of the Collateral to recover so much of the principal balance of the Loans as Lender may accelerate and such other sums secured by one or more of the Financing Documents as Agent may elect. Notwithstanding one or more partial foreclosures, any unforeclosed Collateral shall remain subject to the Financing Documents to secure payment of sums secured by the Financing Documents and not previously recovered.

(f) To the fullest extent permitted by law, each Borrower, for itself and its successors and assigns, waives in the event of foreclosure of any or all of the Collateral any equitable right otherwise available to any Credit Party which would require the separate sale of any of the Collateral or require Agent or Lenders to exhaust their remedies against any part of the Collateral before proceeding against any other part of the Collateral; and further in the event of such foreclosure each Borrower does hereby expressly consent to and authorize, at the option of Agent, the foreclosure and sale either separately or together of each part of the Collateral.

Section 10.9 Injunctive Relief. The parties acknowledge and agree that, in the event of a breach or threatened breach of any Credit Party's obligations under any Financing Documents, Agent and Lenders may have no adequate remedy in money damages and, accordingly, shall be entitled to an injunction (including, without limitation, a temporary restraining order, preliminary injunction, writ of attachment, or order compelling an audit) against such breach or threatened breach, including, without limitation, maintaining any cash management and collection procedure described herein. However, no specification in this Agreement of a specific legal or equitable remedy shall be construed as a waiver or prohibition against any other legal or equitable remedies in the event of a breach or threatened breach of any provision of this Agreement. Each Credit Party waives, to the fullest extent permitted by law, the requirement of the posting of any bond in connection with such injunctive relief. By joining in the Financing Documents as a Credit Party, each Credit Party specifically joins in this Section as if this Section were a part of each Financing Document executed by such Credit Party.

Section 10.10 Marshalling; Payments Set Aside. Neither Agent nor any Lender shall be under any obligation to marshal any assets in payment of any or all of the Obligations. To the extent that Borrower makes any payment or Agent enforces its Liens or Agent or any Lender exercises its right of set-off, and such payment or the proceeds of such enforcement or set-off is subsequently invalidated, declared to be fraudulent or preferential, set aside, or required to be repaid by anyone, then to the extent of such recovery, the Obligations or part thereof originally intended to be satisfied, and all Liens, rights and remedies therefor, shall be revived and continued in full force and effect as if such payment had not been made or such enforcement or set-off had not occurred.

Section 10.11 Transfer of Licenses. In the event any Permit is terminated or in the event of foreclosure or other acquisition of any location owned or leased by Borrower, any Inventory or other Collateral by Agent or its designee or any purchaser at a foreclosure sale, Borrower shall cooperate with Agent to cause all Permits to be reissued or transferred to Agent or Agent's designee, including, without limitation, any subsequent purchaser.

ARTICLE 11 - AGENT

Section 11.1 Appointment and Authorization. Each Lender hereby irrevocably appoints and authorizes Agent to enter into each of the Financing Documents to which it is a party (other than this Agreement) on its behalf and to take such actions as Agent on its behalf and to exercise such powers under the Financing Documents as are delegated to Agent by the terms thereof, together with all such powers as are reasonably incidental thereto. Subject to the terms of Section 11.16 and to the terms of the other Financing Documents, Agent is authorized and empowered to amend, modify, or waive any provisions of this Agreement or the other Financing Documents on behalf of Lenders. The provisions of this Article 11 are solely for the benefit of Agent and Lenders and neither any Borrower nor any other Credit Party shall have any rights as a third party beneficiary of any of the provisions hereof. In performing its functions and duties under this Agreement, Agent shall act solely as agent of Lenders and does not assume and shall not be deemed to have assumed any obligation toward or relationship of agency or trust with or for any Borrower or any other Credit Party. Agent may perform any of its duties hereunder, or under the Financing Documents, by or through its agents, servicers, trustees, investment managers or employees.

Section 11.2 Agent and Affiliates. Agent shall have the same rights and powers under the Financing Documents as any other Lender and may exercise or refrain from exercising the same as though it were not Agent, and Agent and its Affiliates may lend money to, invest in and generally engage in any kind of business with each Credit Party or Affiliate of any Credit Party as if it were not Agent hereunder.

Section 11.3 Action by Agent. The duties of Agent shall be mechanical and administrative in nature. Agent shall not have by reason of this Agreement a fiduciary relationship in respect of any Lender. Nothing in this Agreement or any of the Financing Documents is intended to or shall be construed to impose upon Agent any obligations in respect of this Agreement or any of the Financing Documents except as expressly set forth herein or therein.

Section 11.4 Consultation with Experts. Agent may consult with legal counsel, independent public accountants and other experts selected by it and shall not be liable for any action taken or omitted to be taken by it in good faith in accordance with the advice of such counsel, accountants or experts.

Section 11.5 Liability of Agent. Neither Agent nor any of its directors, officers, agents, trustees, investment managers, servicers or employees shall be liable to any Lender for any action taken or not taken by it in connection with the Financing Documents, except that Agent shall be liable with respect to its specific duties set forth hereunder but only to the extent of its own gross negligence or willful misconduct in the discharge thereof as determined by a final non-appealable judgment of a court of competent jurisdiction. Neither Agent nor any of its directors, officers, agents, trustees, investment managers, servicers or employees shall be responsible for or have any duty to ascertain, inquire into or verify (a) any statement, warranty or representation made in connection with any Financing Document or any borrowing hereunder; (b) the performance or observance of any of the covenants or agreements specified in any Financing Document; (c) the satisfaction of any condition specified in any Financing Document; (d) the validity, effectiveness, sufficiency or genuineness of any Financing Document, any Lien purported to be created or perfected thereby or any other instrument or writing furnished in connection therewith; (e) the existence or non-existence of any Default or Event of Default; or (f) the financial condition of any Credit Party. Agent shall not incur any liability by acting in reliance upon any notice, consent, certificate, statement, or other writing (which may be a bank wire, facsimile or electronic transmission or similar writing) believed by it to be genuine or to be signed by the proper party or parties. Agent shall not be liable for any apportionment or distribution of payments made by it in good faith and if any such apportionment or distribution is subsequently determined to have been made in error the sole recourse of any Lender to whom payment was due but not made, shall be to recover from other Lenders any payment in excess of the amount to which they are determined to be entitled (and such other Lenders hereby agree to return to such Lender any such erroneous payments received by them).

Section 11.6 Indemnification. Each Lender shall, in accordance with its Pro Rata Share, indemnify Agent (to the extent not reimbursed by Borrowers) upon demand against any cost, expense (including counsel fees and disbursements), claim, demand, action, loss or liability (except such as result from Agent's gross negligence or willful misconduct as determined by a final non-appealable judgment of a court of competent jurisdiction) that Agent may suffer or incur in connection with the Financing Documents or any action taken or omitted by Agent hereunder or thereunder. If any indemnity furnished to Agent for any purpose shall, in the opinion of Agent, be insufficient or become impaired, Agent may call for additional indemnity and cease, or not commence, to do the acts indemnified against even if so directed by Required Lenders until such additional indemnity is furnished.

Section 11.7 Right to Request and Act on Instructions. Agent may at any time request instructions from Lenders with respect to any actions or approvals which by the terms of this Agreement or of any of the Financing Documents Agent is permitted or desires to take or to grant, and if such instructions are promptly requested, Agent shall be absolutely entitled to refrain from taking any action or to withhold any approval and shall not be under any liability whatsoever to any Person for refraining from any action or withholding any approval under any of the Financing Documents until it shall have received such instructions from Required Lenders or all or such other portion of the Lenders as shall be prescribed by this Agreement. Without limiting the foregoing, no Lender shall have any right of action whatsoever against Agent as a result of Agent acting or refraining from acting under this Agreement or any of the other Financing Documents in accordance with the instructions of Required Lenders (or all or such other portion of the Lenders as shall be prescribed by this Agreement) and, notwithstanding the instructions of Required Lenders (or such other applicable portion of the Lenders), Agent shall have no obligation to take any action if it believes, in good faith, that such action would violate applicable Law or exposes Agent to any liability for which it has not received satisfactory indemnification in accordance with the provisions of Section 11.6.

Section 11.8 Credit Decision. Each Lender acknowledges that it has, independently and without reliance upon Agent or any other Lender, and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender also acknowledges that it will, independently and without reliance upon Agent or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking any action under the Financing Documents.

Section 11.9 Collateral Matters. Lenders irrevocably authorize Agent, at its option and in its discretion, to (a) release any Lien granted to or held by Agent under any Security Document (i) upon termination of the Revolving Loan Commitment and payment in full of all Obligations; or (ii) constituting property sold or disposed of as part of or in connection with any disposition permitted under any Financing Document (it being understood and agreed that Agent may conclusively rely without further inquiry on a certificate of a Responsible Officer as to the sale or other disposition of property being made in full compliance with the provisions of the Financing Documents); and (b) subordinate any Lien granted to or held by Agent under any Security Document to a Permitted Lien that is allowed to have priority over the Liens granted to or held by Agent pursuant to the definition of "Permitted Liens". Upon request by Agent at any time, Lenders will confirm Agent's authority to release and/or subordinate particular types or items of Collateral pursuant to this Section 11.9.

Section 11.10 Agency for Perfection. Agent and each Lender hereby appoint each other Lender as agent for the purpose of perfecting Agent's security interest in assets which, in accordance with the Uniform Commercial Code in any applicable jurisdiction, can be perfected by possession or control. Should any Lender (other than Agent) obtain possession or control of any such assets, such Lender shall notify Agent thereof, and, promptly upon Agent's request therefor, shall deliver such assets to Agent or in accordance with Agent's instructions or transfer control to Agent in accordance with Agent's instructions. Each Lender agrees that it will not have any right individually to enforce or seek to enforce any Security Document or to realize upon any Collateral for the Loan unless instructed to do so by Agent (or consented to by Agent), it being understood and agreed that such rights and remedies may be exercised only by Agent.

Section 11.11 Notice of Default. Agent shall not be deemed to have knowledge or notice of the occurrence of any Default or Event of Default except with respect to defaults in the payment of principal, interest and fees required to be paid to Agent for the account of Lenders, unless Agent shall have received written notice from a Lender or a Borrower referring to this Agreement, describing such Default or Event of Default and stating that such notice is a "notice of default". Agent will notify each Lender of its receipt of any such notice. Agent shall take such action with respect to such Default or Event of Default as may be requested by Required Lenders (or all or such other portion of the Lenders as shall be prescribed by this Agreement) in accordance with the terms hereof. Unless and until Agent has received any such request, Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Default or Event of Default as it shall deem advisable or in the best interests of Lenders.

Section 11.12 Assignment by Agent; Resignation of Agent; Successor Agent.

(a) Agent may at any time assign its rights, powers, privileges and duties hereunder to (i) another Lender or an Affiliate of Agent or any Lender or any Approved Fund, or (ii) any Person to whom Agent, in its capacity as a Lender, has assigned (or will assign, in conjunction with such assignment of agency rights hereunder) 50% or more of its Loan, in each case without the consent of the Lenders or Borrowers. Following any such assignment, Agent shall endeavor to give notice to the Lenders and Borrowers. Failure to give such notice shall not affect such assignment in any way or cause the assignment to be ineffective. An assignment by Agent pursuant to this subsection (a) shall not be deemed a resignation by Agent for purposes of subsection (b) below.

(b) Without limiting the rights of Agent to designate an assignee pursuant to subsection (a) above, Agent may at any time give notice of its resignation to the Lenders and Borrowers. Upon receipt of any such notice of resignation, Required Lenders shall have the right to appoint a successor Agent. If no such successor shall have been so appointed by Required Lenders and shall have accepted such appointment within ten (10) Business Days after the retiring Agent gives notice of its resignation, then the retiring Agent may on behalf of the Lenders, appoint a successor Agent; *provided, however,* that if Agent shall notify Borrowers and the Lenders that no Person has accepted such appointment, then such resignation shall nonetheless become effective in accordance with such notice from Agent that no Person has accepted such appointment and, from and following delivery of such notice, (i) the retiring Agent shall be discharged from its duties and obligations hereunder and under the other Financing Documents, and (ii) all payments, communications and determinations provided to be made by, to or through Agent shall instead be made by or to each Lender directly, until such time as Required Lenders appoint a successor Agent as provided for above in this paragraph.

(c) Upon (i) an assignment permitted by subsection (a) above, or (ii) the acceptance of a successor's appointment as Agent pursuant to subsection (b) above, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or retired) Agent, and the retiring Agent shall be discharged from all of its duties and obligations hereunder and under the other Financing Documents (if not already discharged therefrom as provided above in this paragraph). The fees payable by Borrowers to a successor Agent shall be the same as those payable to its predecessor unless otherwise agreed between Borrowers and such successor. After the retiring Agent's resignation hereunder and under the other Financing Documents, the provisions of this Article and Section 11.12 shall continue in effect for the benefit of such retiring Agent and its sub-agents in respect of any actions taken or omitted to be taken by any of them while the retiring Agent was acting or was continuing to act as Agent.

Section 11.13 Payment and Sharing of Payment.

(a) Revolving Loan Advances, Payments and Settlements; Interest and Fee Payments.

(i) Agent shall have the right, on behalf of Revolving Lenders to disburse funds to Borrowers for all Revolving Loans requested or deemed requested by Borrowers pursuant to the terms of this Agreement. Agent shall be conclusively entitled to assume, for purposes of the preceding sentence, that each Revolving Lender, other than any Non-Funding Lenders, will fund its Pro Rata Share of all Revolving Loans requested by Borrowers. Each Revolving Lender shall reimburse Agent on demand, in accordance with the provisions of the immediately following paragraph, for all funds disbursed on its behalf by Agent pursuant to the first sentence of this clause (i), or if Agent so requests, each Revolving Lender will remit to Agent its Pro Rata Share of any Revolving Loan before Agent disburses the same to a Borrower. If Agent elects to require that each Revolving Lender make funds available to Agent, prior to a disbursement by Agent to a Borrower, Agent shall advise each Revolving Lender by telephone, facsimile or e-mail of the amount of such Revolving Lender's Pro Rata Share of the Revolving Loan requested by such Borrower no later than noon (Eastern time) on the date of funding of such Revolving Loan, and each such Revolving Lender shall pay Agent on such date such Revolving Lender's Pro Rata Share of such requested Revolving Loan, in same day funds, by wire transfer to the Payment Account, or such other account as may be identified by Agent to Revolving Lenders from time to time. If any Lender fails to pay the amount of its Pro Rata Share of any funds advanced by Agent pursuant to the first sentence of this clause (i) within one (1) Business Day after Agent's demand, Agent shall promptly notify Borrower Representative, and Borrowers shall immediately repay such amount to Agent. Any repayment required by Borrowers pursuant to this Section 11.13 shall be accompanied by accrued interest thereon from and including the date such amount is made available to a Borrower to but excluding the date of payment at the rate of interest then applicable to Revolving Loans. Nothing in this Section 11.13 or elsewhere in this Agreement or the other Financing Documents shall be deemed to require Agent to advance funds on behalf of any Lender or to relieve any Lender from its obligation to fulfill its commitments hereunder or to prejudice any rights that Agent or any Borrower may have against any Lender as a result of any default by such Lender hereunder.

(ii) On a Business Day of each week as selected from time to time by Agent, or more frequently (including daily), if Agent so elects (each such day being a "**Settlement Date**"), Agent will advise each Revolving Lender by telephone, facsimile or e-mail of the amount of each such Revolving Lender's percentage interest of the Revolving Loan balance as of the close of business of the Business Day immediately preceding the Settlement Date. In the event that payments are necessary to adjust the amount of such Revolving Lender's actual percentage interest of the Revolving Loans to such Lender's required percentage interest of the Revolving Loan balance as of any Settlement Date, the Revolving Lender from which such payment is due shall pay Agent, without setoff or discount, to the Payment Account before 1:00 p.m. (Eastern time) on the Business Day following the Settlement Date the full amount necessary to make such adjustment. Any obligation arising pursuant to the immediately preceding sentence shall be absolute and unconditional and shall not be affected by any circumstance whatsoever. In the event settlement shall not have occurred by the date and time specified in the second preceding sentence, interest shall accrue on the unsettled amount at the rate of interest then applicable to Revolving Loans.

(iii) On each Settlement Date, Agent shall advise each Revolving Lender by telephone, facsimile or e-mail of the amount of such Revolving Lender's percentage interest of principal, interest and fees paid for the benefit of Revolving Lenders with respect to each applicable Revolving Loan, to the extent of such Revolving Lender's Revolving Loan Exposure with respect thereto, and shall make payment to such Revolving Lender before 1:00 p.m. (Eastern time) on the Business Day following the Settlement Date of such amounts in accordance with wire instructions delivered by such Revolving Lender to Agent, as the same may be modified from time to time by written notice to Agent; *provided*, *however*, that, in the case such Revolving Lender is a Defaulted Lender, Agent shall be entitled to set off the funding short-fall against that Defaulted Lender's respective share of all payments received from any Borrower.

(iv) On the Closing Date, Agent, on behalf of Lenders, may elect to advance to Borrowers the full amount of the initial Loans to be made on the Closing Date prior to receiving funds from Lenders, in reliance upon each Lender's commitment to make its Pro Rata Share of such Loans to Borrowers in a timely manner on such date. If Agent elects to advance the initial Loans to Borrower in such manner, Agent shall be entitled to receive all interest that accrues on the Closing Date on each Lender's Pro Rata Share of such Loans unless Agent receives such Lender's Pro Rata Share of such Loans before 3:00 p.m. (Eastern time) on the Closing Date.

(v) It is understood that for purposes of advances to Borrowers made pursuant to this Section 11.13, Agent will be using the funds of Agent, and pending settlement, (A) all funds transferred from the Payment Account to the outstanding Revolving Loans shall be applied first to advances made by Agent to Borrowers pursuant to this Section 11.13, and (B) all interest accruing on such advances shall be payable to Agent.

(vi) The provisions of this Section 11.13(a) shall be deemed to be binding upon Agent and Lenders notwithstanding the occurrence of any Default or Event of Default, or any insolvency or bankruptcy proceeding pertaining to any Borrower or any other Credit Party.

(b) Reserved.

(c) Return of Payments.

(i) If Agent pays an amount to a Lender under this Agreement in the belief or expectation that a related payment has been or will be received by Agent from a Borrower and such related payment is not received by Agent, then Agent will be entitled to recover such amount from such Lender on demand without setoff, counterclaim or deduction of any kind, together with interest accruing on a daily basis at the Federal Funds Rate.

(ii) If Agent determines at any time that any amount received by Agent under this Agreement must be returned to any Borrower or paid to any other Person pursuant to any insolvency law or otherwise, then, notwithstanding any other term or condition of this Agreement or any other Financing Document, Agent will not be required to distribute any portion thereof to any Lender. In addition, each Lender will repay to Agent on demand any portion of such amount that Agent has distributed to such Lender, together with interest at such rate, if any, as Agent is required to pay to any Borrower or such other Person, without setoff, counterclaim or deduction of any kind.

(d) Defaulted Lenders. The failure of any Defaulted Lender to make any payment required by it hereunder shall not relieve any other Lender of its obligations to make payment, but neither any other Lender nor Agent shall be responsible for the failure of any Defaulted Lender to make any payment required hereunder. Notwithstanding anything set forth herein to the contrary, a Defaulted Lender shall not have any voting or consent rights under or with respect to any Financing Document or constitute a "Lender" (or be included in the calculation of "Required Lenders" hereunder) for any voting or consent rights under or with respect to any Financing Document.

(e) Sharing of Payments. If any Lender shall obtain any payment or other recovery (whether voluntary, involuntary, by application of setoff or otherwise) on account of any Loan (other than pursuant to the terms of Section 2.8(d)) in excess of its Pro Rata Share of payments entitled pursuant to the other provisions of this Section 11.13, such Lender shall purchase from the other Lenders such participations in extensions of credit made by such other Lenders (without recourse, representation or warranty) as shall be necessary to cause such purchasing Lender to share the excess payment or other recovery ratably with each of them; *provided, however*, that if all or any portion of the excess payment or other recovery is thereafter required to be returned or otherwise recovered from such purchasing Lender, such portion of such purchase shall be rescinded and each Lender which has sold a participation to the purchasing Lender shall repay to the purchasing Lender the purchase price to the ratable extent of such return or recovery, without interest. Each Borrower agrees that any Lender so purchasing a participation from another Lender pursuant to this clause (e) may, to the fullest extent permitted by law, exercise all its rights of payment (including pursuant to Section 10.6) with respect to such participation as fully as if such Lender were the direct creditor of Borrowers in the amount of such participation). If under any applicable bankruptcy, insolvency or other similar law, any Lender receives a secured claim in lieu of a setoff to which this clause (e) applies, such Lender shall, to the extent practicable, exercise its rights in respect of such secured claim in a manner consistent with the rights of the Lenders entitled under this clause (e) to share in the benefits of any recovery on such secured claim.

Section 11.14 Right to Perform, Preserve and Protect. If any Credit Party fails to perform any obligation hereunder or under any other Financing Document, Agent itself may, but shall not be obligated to, cause such obligation to be performed at Borrowers' expense. Agent is further authorized by Borrowers and the Lenders to make expenditures from time to time which Agent, in its reasonable business judgment, deems necessary or desirable to (a) preserve or protect the business conducted by Borrowers, the Collateral, or any portion thereof, and/or (b) enhance the likelihood of, or maximize the amount of, repayment of the Loan and other Obligations. Each Borrower hereby agrees to reimburse Agent on demand for any and all costs, liabilities and obligations incurred by Agent pursuant to this Section 11.14. Each Lender hereby agrees to indemnify Agent upon demand for any and all costs, liabilities and obligations incurred by Agent pursuant to this Section 11.14, in accordance with the provisions of Section 11.6.

Section 11.15 Additional Titled Agents. Except for rights and powers, if any, expressly reserved under this Agreement to any bookrunner, arranger or to any titled agent named on the cover page of this Agreement, other than Agent (collectively, the "**Additional Titled Agents**"), and except for obligations, liabilities, duties and responsibilities, if any, expressly assumed under this Agreement by any Additional Titled Agent, no Additional Titled Agent, in such capacity, has any rights, powers, liabilities, duties or responsibilities hereunder or under any of the other Financing Documents. Without limiting the foregoing, no Additional Titled Agent shall have nor be deemed to have a fiduciary relationship with any Lender. At any time that any Lender serving as an Additional Titled Agent shall have transferred to any other Person (other than any Affiliates) all of its interests in the Loan, such Lender shall be deemed to have concurrently resigned as such Additional Titled Agent.

Section 11.16 Amendments and Waivers.

(a) No provision of this Agreement or any other Financing Document may be amended, waived or otherwise modified unless such amendment, waiver or other modification is in writing and is signed or otherwise approved by Borrowers, the Required Lenders and any other Lender to the extent required under Section 11.16(b).

(b) In addition to the required signatures under Section 11.16(a), no provision of this Agreement or any other Financing Document may be amended, waived or otherwise modified unless such amendment, waiver or other modification is in writing and is signed or otherwise approved by the following Persons:

(i) if any amendment, waiver or other modification would increase a Lender's funding obligations in respect of any Loan, by such Lender; and/or

(ii) if the rights or duties of Agent are affected thereby, by Agent;

provided, however, that, in each of (i) and (ii) above, no such amendment, waiver or other modification shall, unless signed or otherwise approved in writing by all the Lenders directly affected thereby, (A) reduce the principal of, rate of interest on or any fees with respect to any Loan or forgive any principal, interest (other than default interest) or fees (other than late charges) with respect to any Loan; (B) postpone the date fixed for, or waive, any payment (other than any mandatory prepayment pursuant to Section 2.1(b)(ii)) of principal of any Loan, or of interest on any Loan (other than default interest) or any fees provided for hereunder (other than late charges) or postpone the date of termination of any commitment of any Lender hereunder; (C) change the definition of the term Required Lenders or the percentage of Lenders which shall be required for Lenders to take any action hereunder; (D) release all or substantially all of the Collateral, authorize any Borrower to sell or otherwise dispose of all or substantially all of the Collateral, release any Guarantor of all or any portion of the Obligations or its Guarantee obligations with respect thereto, or consent to a transfer of any of the Intellectual Property, except, in each case with respect to this clause (D), as otherwise may be provided in this Agreement or the other Financing Documents (including in connection with any disposition permitted hereunder); (E) amend, waive or otherwise modify this Section 11.16(b) or the definitions of the terms used in this Section 11.16(b) insofar as the definitions affect the substance of this Section 11.16(b); (F) consent to the assignment, delegation or other transfer by any Credit Party of any of its rights and obligations under any Financing Document or release any Borrower of its payment obligations under any Financing Document, except, in each case with respect to this clause (F), pursuant to a merger or consolidation permitted pursuant to this Agreement; or (G) amend any of the provisions of Section 10.7 or amend any of the definitions Pro Rata Share, Revolving Loan Commitment, Revolving Loan Commitment Amount, Revolving Loan Commitment Percentage or that provide for the Lenders to receive their Pro Rata Shares of any fees, payments, setoffs or proceeds of Collateral hereunder. It is hereby understood and agreed that all Lenders shall be deemed directly affected by an amendment, waiver or other modification of the type described in the preceding clauses (C), (D), (E), (F) and (G) of the preceding sentence.

Section 11.17 Assignments and Participations.

(a) Assignments.

(i) Any Lender may at any time assign to one or more Eligible Assignees all or any portion of such Lender's Loan together with all related obligations of such Lender hereunder. Except as Agent may otherwise agree, the amount of any such assignment (determined as of the date of the applicable Assignment Agreement or, if a "Trade Date" is specified in such Assignment Agreement, as of such Trade Date) shall be in a minimum aggregate amount equal to $1,000,000 or, if less, the assignor's entire interests in the outstanding Loan; *provided, however,* that, in connection with simultaneous assignments to two or more related Approved Funds, such Approved Funds shall be treated as one assignee for purposes of determining compliance with the minimum assignment size referred to above. Borrowers and Agent shall be entitled to continue to deal solely and directly with such Lender in connection with the interests so assigned to an Eligible Assignee until Agent shall have received and accepted an effective Assignment Agreement executed, delivered and fully completed by the applicable parties thereto and a processing fee of $3,500 to be paid by the assigning Lender; *provided, however,* that only one processing fee shall be payable in connection with simultaneous assignments to two or more related Approved Funds.

(ii) From and after the date on which the conditions described above have been met, (A) such Eligible Assignee shall be deemed automatically to have become a party hereto and, to the extent of the interests assigned to such Eligible Assignee pursuant to such Assignment Agreement, shall have the rights and obligations of a Lender hereunder, and (B) the assigning Lender, to the extent that rights and obligations hereunder have been assigned by it pursuant to such Assignment Agreement, shall be released from its rights and obligations hereunder (other than those that survive termination pursuant to Section 12.1). Upon the request of the Eligible Assignee (and, as applicable, the assigning Lender) pursuant to an effective Assignment Agreement, each Borrower shall execute and deliver to Agent for delivery to the Eligible Assignee (and, as applicable, the assigning Lender) Notes in the aggregate principal amount of the Eligible Assignee's Loan (and, as applicable, Notes in the principal amount of that portion of the principal amount of the Loan retained by the assigning Lender). Upon receipt by the assigning Lender of such Note, the assigning Lender shall return to Borrower Representative any prior Note held by it.

(iii) Agent, acting solely for this purpose as an agent of Borrower, shall maintain at the office of its servicer located in Bethesda, Maryland a copy of each Assignment Agreement delivered to it and a register for the recordation of the names and addresses of each Lender, and the commitments of, and principal amount of the Loan owing to, such Lender pursuant to the terms hereof (the "**Register**"). The entries in such Register shall be conclusive, absent manifest effort, and Borrower, Agent and Lenders may treat each Person whose name is recorded therein pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. Such Register shall be available for inspection by Borrower and any Lender, at any reasonable time upon reasonable prior notice to Agent. Each Lender that sells a participation shall, acting solely for this purpose as an agent of Borrower maintain a register on which it enters the name and address of each participant and the principal amounts (and stated interest) of each participant's interest in the Obligations (each, a "Participant Register"). The entries in the Participant Registers shall be conclusive, absent manifest error. Each Participant Register shall be available for inspection by Borrower and Agent at any reasonable time upon reasonable prior notice to the applicable Lender; provided, that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans, letters of credit or its other obligations under any Financing Document) to any Person (including Borrower) except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. For the avoidance of doubt, Agent (in its capacity as Agent) shall have no responsibility for maintaining a participant register.

(iv) Notwithstanding the foregoing provisions of this Section 11.17(a) or any other provision of this Agreement, any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; *provided*, *however*, that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(v) Notwithstanding the foregoing provisions of this Section 11.17(a) or any other provision of this Agreement, Agent has the right, but not the obligation, to effectuate assignments of Loan via an electronic settlement system acceptable to Agent as designated in writing from time to time to the Lenders by Agent (the "**Settlement Service**"). At any time when Agent elects, in its sole discretion, to implement such Settlement Service, each such assignment shall be effected by the assigning Lender and proposed assignee pursuant to the procedures then in effect under the Settlement Service, which procedures shall be consistent with the other provisions of this Section 11.17(a). Each assigning Lender and proposed Eligible Assignee shall comply with the requirements of the Settlement Service in connection with effecting any assignment of Loan pursuant to the Settlement Service. With the prior written approval of Agent, Agent's approval of such Eligible Assignee shall be deemed to have been automatically granted with respect to any transfer effected through the Settlement Service. Assignments and assumptions of the Loan shall be effected by the provisions otherwise set forth herein until Agent notifies Lenders of the Settlement Service as set forth herein.

(b) Participations. Any Lender may at any time, without the consent of, or notice to, any Borrower or Agent, sell to one or more Persons (other than any Borrower or any Borrower's Affiliates) participating interests in its Loan, commitments or other interests hereunder (any such Person, a "**Participant**"). In the event of a sale by a Lender of a participating interest to a Participant, (i) such Lender's obligations hereunder shall remain unchanged for all purposes, (ii) Borrowers and Agent shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations hereunder, and (iii) all amounts payable by each Borrower shall be determined as if such Lender had not sold such participation and shall be paid directly to such Lender. Each Borrower agrees that if amounts outstanding under this Agreement are due and payable (as a result of acceleration or otherwise), each Participant shall be deemed to have the right of set-off in respect of its participating interest in amounts owing under this Agreement to the same extent as if the amount of its participating interest were owing directly to it as a Lender under this Agreement; *provided, however*, that such right of set-off shall be subject to the obligation of each Participant to share with Lenders, and Lenders agree to share with each Participant, as provided in Section 11.5.

(c) Replacement of Lenders. Within thirty (30) days after: (i) receipt by Agent of notice and demand from any Lender for payment of additional costs as provided in Section 2.8(d), which demand shall not have been revoked, (ii) any Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.8(a), (iii) any Lender is a Defaulted Lender, and the circumstances causing such status shall not have been cured or waived; or (iv) any failure by any Lender to consent to a requested amendment, waiver or modification to any Financing Document in which Required Lenders have already consented to such amendment, waiver or modification but the consent of each Lender, or each Lender affected thereby, is required with respect thereto (each relevant Lender in the foregoing clauses (i) through (iv) being an "**Affected Lender**") each of Borrower Representative and Agent may, at its option, notify such Affected Lender and, in the case of Borrowers' election, Agent, of such Person's intention to obtain, at Borrowers' expense, a replacement Lender ("**Replacement Lender**") for such Lender, which Replacement Lender shall be an Eligible Assignee and, in the event the Replacement Lender is to replace an Affected Lender described in the preceding clause (iv), such Replacement Lender consents to the requested amendment, waiver or modification making the replaced Lender an Affected Lender. In the event Borrowers or Agent, as applicable, obtains a Replacement Lender within ninety (90) days following notice of its intention to do so, the Affected Lender shall sell, at par, and assign all of its Loan and funding commitments hereunder to such Replacement Lender in accordance with the procedures set forth in Section 11.17(a); *provided, however*, that (A) Borrowers shall have reimbursed such Lender for its increased costs and additional payments for which it is entitled to reimbursement under Section 2.8(a) or Section 2.8(d), as applicable, of this Agreement through the date of such sale and assignment, and (B) Borrowers shall pay to Agent the $3,500 processing fee in respect of such assignment. In the event that a replaced Lender does not execute an Assignment Agreement pursuant to Section 11.17(a) within five (5) Business Days after receipt by such replaced Lender of notice of replacement pursuant to this Section 11.17(c) and presentation to such replaced Lender of an Assignment Agreement evidencing an assignment pursuant to this Section 11.17(c), such replaced Lender shall be deemed to have consented to the terms of such Assignment Agreement, and any such Assignment Agreement executed by Agent, the Replacement Lender and, to the extent required pursuant to Section 11.17(a), Borrowers, shall be effective for purposes of this Section 11.17(c) and Section 11.17(a). Upon any such assignment and payment, such replaced Lender shall no longer constitute a "**Lender**" for purposes hereof, other than with respect to such rights and obligations that survive termination as set forth in Section 12.1.

(d) Credit Party Assignments. No Credit Party may assign, delegate or otherwise transfer any of its rights or other obligations hereunder or under any other Financing Document without the prior written consent of Agent and each Lender.

Section 11.18 Funding and Settlement Provisions Applicable When Non-Funding Lenders Exist. So long as Agent has not waived the conditions to the funding of Loans set forth in Section 7.2 or Section 2.1, any Lender may deliver a notice to Agent stating that such Lender shall cease making Revolving Loans due to the non-satisfaction of one or more conditions to funding Loans set forth in Section 7.2 or Section 2.1, and specifying any such non-satisfied conditions. Any Lender delivering any such notice shall become a non-funding Lender (a "**Non-Funding Lender**") for purposes of this Agreement commencing on the Business Day following receipt by Agent of such notice, and shall cease to be a Non-Funding Lender on the date on which such Lender has either revoked the effectiveness of such notice or acknowledged in writing to each of Agent the satisfaction of the condition(s) specified in such notice, or Required Lenders waive the conditions to the funding of such Loans giving rise to such notice by Non-Funding Lender. Each Non-Funding Lender shall remain a Lender for purposes of this Agreement to the extent that such Non-Funding Lender has Revolving Loan Outstanding in excess of Zero Dollars ($0); *provided, however,* that during any period of time that any Non-Funding Lender exists, and notwithstanding any provision to the contrary set forth herein, the following provisions shall apply:

(a) For purposes of determining the Pro Rata Share of each Revolving Lender under clause (c) of the definition of such term, each Non-Funding Lender shall be deemed to have a Revolving Loan Commitment Amount as in effect immediately before such Lender became a Non-Funding Lender.

(b) Except as provided in clause (a) above, the Revolving Loan Commitment Amount of each Non-Funding Lender shall be deemed to be Zero Dollars ($0).

(c) The Revolving Loan Commitment at any date of determination during such period shall be deemed to be equal to the sum of (i) the aggregate Revolving Loan Commitment Amounts of all Lenders, other than the Non-Funding Lenders as of such date *plus* (ii) the aggregate Revolving Loan Outstandings of all Non-Funding Lenders as of such date.

(d) Agent shall have no right to make or disburse Revolving Loans for the account of any Non-Funding Lender pursuant to Section 2.1(b)(i) to pay interest, fees, expenses and other charges of any Credit Party.

(e) To the extent that Agent applies proceeds of Collateral or other payments received by Agent to repayment of Revolving Loans pursuant to Section 10.7, such payments and proceeds shall be applied first in respect of Revolving Loans made at the time any Non-Funding Lenders exist, and second in respect of all other outstanding Revolving Loans.

ARTICLE 12 - MISCELLANEOUS

Section 12.1 Survival. All agreements, representations and warranties made herein and in every other Financing Document shall survive the execution and delivery of this Agreement and the other Financing Documents and the other Operative Documents. The provisions of Section 2.10 and Articles 11 and 12 shall survive the payment of the Obligations (both with respect to any Lender and all Lenders collectively) and any termination of this Agreement and any judgment with respect to any Obligations, including any final foreclosure judgment with respect to any Security Document, and no unpaid or unperformed, current or future, Obligations will merge into any such judgment.

Section 12.2 No Waivers. No failure or delay by Agent or any Lender in exercising any right, power or privilege under any Financing Document shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies herein and therein provided shall be cumulative and not exclusive of any rights or remedies provided by law. Any reference in any Financing Document to the "continuing" nature of any Event of Default shall not be construed as establishing or otherwise indicating that any Borrower or any other Credit Party has the independent right to cure any such Event of Default, but is rather presented merely for convenience should such Event of Default be waived in accordance with the terms of the applicable Financing Documents.

Section 12.3 Notices.

(a) All notices, requests and other communications to any party hereunder shall be in writing (including prepaid overnight courier, facsimile transmission or similar writing) and shall be given to such party at its address, facsimile number or e-mail address set forth on the signature pages hereof (or, in the case of any such Lender who becomes a Lender after the date hereof, in an assignment agreement or in a notice delivered to Borrower Representative and Agent by the assignee Lender forthwith upon such assignment) or at such other address, facsimile number or e-mail address as such party may hereafter specify for the purpose by notice to Agent and Borrower Representative; *provided*, *however*, that notices, requests or other communications shall be permitted by electronic means only in accordance with the provisions of Section 12.3(b) and (c). Each such notice, request or other communication shall be effective (i) if given by facsimile, when such notice is transmitted to the facsimile number specified by this Section and the sender receives a confirmation of transmission from the sending facsimile machine, or (ii) if given by mail, prepaid overnight courier or any other means, when received or when receipt is refused at the applicable address specified by this Section 12.3(a).

(b) Notices and other communications to the parties hereto may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved from time to time by Agent, *provided*, *however*, that the foregoing shall not apply to notices sent directly to any Lender if such Lender has notified Agent that it is incapable of receiving notices by electronic communication. Agent or Borrower Representative may, in their discretion, agree to accept notices and other communications to them hereunder by electronic communications pursuant to procedures approved by it, *provided*, *however*, that approval of such procedures may be limited to particular notices or communications.

(c) Unless Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgment from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgment), and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor, *provided*, *however*, that if any such notice or other communication is not sent or posted during normal business hours, such notice or communication shall be deemed to have been sent at the opening of business on the next Business Day.

Section 12.4 Severability. In case any provision of or obligation under this Agreement or any other Financing Document shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

Section 12.5 Headings. Headings and captions used in the Financing Documents (including the Exhibits, Schedules and Annexes hereto and thereto) are included for convenience of reference only and shall not be given any substantive effect.

Section 12.6 Confidentiality.

(a) Each Credit Party agrees (i) not to transmit or disclose provisions of any Financing Document to any Person (other than to Borrowers' advisors, directors and officers on a need-to-know basis or as otherwise may be required by Law) without Agent's prior written consent, (ii) to inform all Persons of the confidential nature of the Financing Documents and to direct them not to disclose the same to any other Person and to require each of them to be bound by these provisions.

(b) Agent and each Lender shall hold all non-public information regarding the Credit Parties and their respective businesses identified as such by Borrowers and obtained by Agent or any Lender pursuant to the requirements hereof in accordance with such Person's customary and reasonable procedures for handling information of such nature, except that disclosure of such information may be made (i) to their respective agents, employees, Subsidiaries, Affiliates, attorneys, auditors, professional consultants, rating agencies, insurance industry associations and portfolio management services, (ii) to prospective transferees or purchasers of any interest in the Loans, Agent or a Lender, *provided*, *however*, that any such Persons are bound by obligations of confidentiality, (iii) as required by Law, subpoena, judicial order or similar order and in connection with any litigation, (iv) as may be required in connection with the examination, audit or similar investigation of such Person, and (v) to a Person that is a trustee, investment advisor or investment manager, collateral manager, servicer, noteholder or secured party in a Securitization (as hereinafter defined) in connection with the administration, servicing and reporting on the assets serving as collateral for such Securitization. For the purposes of this Section, "**Securitization**" means (A) the pledge of the Loans as collateral security for loans to a Lender, or (B) a public or private offering by a Lender or any of its Affiliates or their respective successors and assigns, of securities which represent an interest in, or which are collateralized, in whole or in part, by the Loans. Confidential information shall include only such information identified as such at the time provided to Agent and shall not include information that either: (y) is in the public domain, or becomes part of the public domain after disclosure to such Person through no fault of such Person, or (z) is disclosed to such Person by a Person other than a Credit Party, *provided*, *however*, Agent does not have actual knowledge that such Person is prohibited from disclosing such information. The obligations of Agent and Lenders under this Section 12.6 shall supersede and replace the obligations of Agent and Lenders under any confidentiality agreement in respect of this financing executed and delivered by Agent or any Lender prior to the date hereof.

Section 12.7 Waiver of Consequential and Other Damages

. To the fullest extent permitted by applicable law, no Borrower shall assert, and each Borrower hereby waives, any claim against any Indemnitee (as defined below), on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of this Agreement, any other Financing Document or any agreement or instrument contemplated hereby or thereby, the transactions contemplated hereby or thereby, any Loan or the use of the proceeds thereof. No Indemnitee shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Financing Documents or the transactions contemplated hereby or thereby.

Section 12.8 GOVERNING LAW; SUBMISSION TO JURISDICTION.

(a) THIS AGREEMENT, EACH NOTE AND EACH OTHER FINANCING DOCUMENT, AND ALL DISPUTES AND OTHER MATTERS RELATING HERETO OR THERETO OR ARISING THEREFROM (WHETHER SOUNDING IN CONTRACT LAW, TORT LAW OR OTHERWISE), SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO CONFLICTS OF LAWS PRINCIPLES (OTHER THAN SECTION 5-1401 OF THE GENERAL OBLIGATIONS LAW). EACH BORROWER HEREBY CONSENTS TO THE JURISDICTION OF ANY STATE OR FEDERAL COURT LOCATED IN THE STATE OF NEW YORK IN THE CITY OF NEW YORK, BOROUGH OF MANHATTAN AND IRREVOCABLY AGREES THAT, SUBJECT TO AGENT'S ELECTION, ALL ACTIONS OR PROCEEDINGS ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE OTHER FINANCING DOCUMENTS SHALL BE LITIGATED IN SUCH COURTS. EACH BORROWER EXPRESSLY SUBMITS AND CONSENTS TO THE JURISDICTION OF THE AFORESAID COURTS AND WAIVES ANY DEFENSE OF FORUM NON CONVENIENS. EACH BORROWER HEREBY WAIVES PERSONAL SERVICE OF ANY AND ALL PROCESS AND AGREES THAT ALL SUCH SERVICE OF PROCESS MAY BE MADE UPON SUCH BORROWER BY CERTIFIED OR REGISTERED MAIL, RETURN RECEIPT REQUESTED, ADDRESSED TO SUCH BORROWER AT THE ADDRESS SET FORTH IN THIS AGREEMENT AND SERVICE SO MADE SHALL BE COMPLETE TEN (10) DAYS AFTER THE SAME HAS BEEN POSTED.

(b) Each Borrower, Agent and each Lender agree that each Loan (including those made on the Closing Date) shall be deemed to be made in, and the transactions contemplated hereunder and in any other Financing Document shall be deemed to have been performed in, the State of Maryland.

Section 12.9 **WAIVER OF JURY TRIAL.**

(a) EACH BORROWER, AGENT AND THE LENDERS HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THE FINANCING DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED THEREBY AND AGREES THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY. EACH BORROWER, AGENT AND EACH LENDER ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO A BUSINESS RELATIONSHIP, THAT EACH HAS RELIED ON THE WAIVER IN ENTERING INTO THIS AGREEMENT AND THE OTHER FINANCING DOCUMENTS, AND THAT EACH WILL CONTINUE TO RELY ON THIS WAIVER IN THEIR RELATED FUTURE DEALINGS. EACH BORROWER, AGENT AND EACH LENDER WARRANTS AND REPRESENTS THAT IT HAS HAD THE OPPORTUNITY OF REVIEWING THIS JURY WAIVER WITH LEGAL COUNSEL, AND THAT IT KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS.

(b) **In the event any such action or proceeding is brought or filed in any United States federal court sitting in the State of California or in any state court of the State of California, and the waiver of jury trial set forth in Section 12.9(a) hereof is determined or held to be ineffective or unenforceable, the parties agree that all actions or proceedings shall be resolved by reference to a private judge sitting without a jury, pursuant to California Code of Civil Procedure Section 638, before a mutually acceptable referee or, if the parties cannot agree, a referee selected by the Presiding Judge of the Los Angeles County, California. Such proceeding shall be conducted in Los Angeles County, California, with California rules of evidence and discovery applicable to such proceeding. In the event any actions or proceedings are to be resolved by judicial reference, any party may seek from any court having jurisdiction thereover any prejudgment order, writ or other relief and have such prejudgment order, writ or other relief enforced to the fullest extent permitted by Law notwithstanding that all actions or proceedings are otherwise subject to resolution by judicial reference.**

Section 12.10 Publication; Advertisement.

(a) Publication. No Credit Party will directly or indirectly publish, disclose or otherwise use in any public disclosure, advertising material, promotional material, press release or interview, any reference to the name, logo or any trademark of Agent or any of its Affiliates or any reference to this Agreement or the financing evidenced hereby, in any case except (i) as required by Law, subpoena or judicial or similar order, in which case the applicable Credit Party shall give Agent prior written notice of such publication or other disclosure, or (ii) with Agent's prior written consent.

(b) Advertisement. Each Lender and each Credit Party hereby authorizes Agent to publish the name of such Lender and Credit Party, the existence of the financing arrangements referenced under this Agreement, the primary purpose and/or structure of those arrangements, the amount of credit extended under each facility, the title and role of each party to this Agreement, and the total amount of the financing evidenced hereby in any "tombstone", comparable advertisement or press release which Agent elects to submit for publication. In addition, each Lender and each Credit Party agrees that Agent may provide lending industry trade organizations with information necessary and customary for inclusion in league table measurements after the Closing Date. With respect to any of the foregoing, Agent shall provide Borrowers with an opportunity to review and confer with Agent regarding the contents of any such tombstone, advertisement or information, as applicable, prior to its submission for publication and, following such review period, Agent may, from time to time, publish such information in any media form desired by Agent, until such time that Borrowers shall have requested Agent cease any such further publication.

Section 12.11 Counterparts; Integration. This Agreement and the other Financing Documents may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument. Signatures by facsimile or by electronic mail delivery of an electronic version of any executed signature page shall bind the parties hereto. This Agreement and the other Financing Documents constitute the entire agreement and understanding among the parties hereto and supersede any and all prior agreements and understandings, oral or written, relating to the subject matter hereof.

Section 12.12 No Strict Construction. The parties hereto have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties hereto and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provisions of this Agreement.

Section 12.13 Lender Approvals. Unless expressly provided herein to the contrary, any approval, consent, waiver or satisfaction of Agent or Lenders with respect to any matter that is the subject of this Agreement, the other Financing Documents may be granted or withheld by Agent and Lenders in their sole and absolute discretion and credit judgment.

Section 12.14 Expenses; Indemnity

(a) Borrowers hereby agree to promptly pay (i) all costs and expenses of Agent (including, without limitation, the fees, costs and expenses of counsel to, and independent appraisers and consultants retained by Agent) in connection with the examination, review, due diligence investigation, documentation, negotiation, closing and syndication of the transactions contemplated by the Financing Documents, in connection with the performance by Agent of its rights and remedies under the Financing Documents and in connection with the continued administration of the Financing Documents including (A) any amendments, modifications, consents and waivers to and/or under any and all Financing Documents, and (B) any periodic public record searches conducted by or at the request of Agent (including, without limitation, title investigations, UCC searches, fixture filing searches, judgment, pending litigation and tax lien searches and searches of applicable corporate, limited liability, partnership and related records concerning the continued existence, organization and good standing of certain Persons); (ii) without limitation of the preceding clause (i), all costs and expenses of Agent in connection with the creation, perfection and maintenance of Liens pursuant to the Financing Documents; (iii) without limitation of the preceding clause (i), all costs and expenses of Agent in connection with (A) protecting, storing, insuring, handling, maintaining or selling any Collateral, (B) any litigation, dispute, suit or proceeding relating to any Financing Document, and (C) any workout, collection, bankruptcy, insolvency and other enforcement proceedings under any and all of the Financing Documents; (iv) without limitation of the preceding clause (i), all costs and expenses of Agent in connection with Agent's reservation of funds in anticipation of the funding of the initial Loans to be made hereunder; and (v) all costs and expenses incurred by Lenders in connection with any litigation, dispute, suit or proceeding relating to any Financing Document and in connection with any workout, collection, bankruptcy, insolvency and other enforcement proceedings under any and all Financing Documents, whether or not Agent or Lenders are a party thereto. If Agent or any Lender uses in-house counsel for any of these purposes, Borrowers further agree that the Obligations include reasonable charges for such work commensurate with the fees that would otherwise be charged by outside legal counsel selected by Agent or such Lender for the work performed.

(b) Each Borrower hereby agrees to indemnify, pay and hold harmless Agent and Lenders and the officers, directors, employees, trustees, agents, investment advisors and investment managers, collateral managers, servicers, and counsel of Agent and Lenders (collectively called the "**Indemnitees**") from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, claims, costs, expenses and disbursements of any kind or nature whatsoever (including the fees and disbursements of counsel for such Indemnitee) in connection with any investigative, response, remedial, administrative or judicial matter or proceeding, whether or not such Indemnitee shall be designated a party thereto and including any such proceeding initiated by or on behalf of a Credit Party, and the reasonable expenses of investigation by engineers, environmental consultants and similar technical personnel and any commission, fee or compensation claimed by any broker (other than any broker retained by Agent or Lenders) asserting any right to payment for the transactions contemplated hereby, which may be imposed on, incurred by or asserted against such Indemnitee as a result of or in connection with the transactions contemplated hereby or by the other Operative Documents (including (i)(A) as a direct or indirect result of the presence on or under, or escape, seepage, leakage, spillage, discharge, emission or release from, any property now or previously owned, leased or operated by Borrower, any Subsidiary or any other Person of any Hazardous Materials, (B) arising out of or relating to the offsite disposal of any materials generated or present on any such property, or (C) arising out of or resulting from the environmental condition of any such property or the applicability of any governmental requirements relating to Hazardous Materials, whether or not occasioned wholly or in part by any condition, accident or event caused by any act or omission of Borrower or any Subsidiary, and (ii) proposed and actual extensions of credit under this Agreement) and the use or intended use of the proceeds of the Loans, except that Borrower shall have no obligation hereunder to an Indemnitee with respect to any liability resulting from the gross negligence or willful misconduct of such Indemnitee, as determined by a final non-appealable judgment of a court of competent jurisdiction. To the extent that the undertaking set forth in the immediately preceding sentence may be unenforceable, Borrower shall contribute the maximum portion which it is permitted to pay and satisfy under applicable Law to the payment and satisfaction of all such indemnified liabilities incurred by the Indemnitees or any of them.

(c) Notwithstanding any contrary provision in this Agreement, the obligations of Borrowers under this Section 12.14 shall survive the payment in full of the Obligations and the termination of this Agreement. NO INDEMNITEE SHALL BE RESPONSIBLE OR LIABLE TO THE BORROWERS OR TO ANY OTHER PARTY TO ANY FINANCING DOCUMENT, ANY SUCCESSOR, ASSIGNEE OR THIRD PARTY BENEFICIARY OR ANY OTHER PERSON ASSERTING CLAIMS DERIVATIVELY THROUGH SUCH PARTY, FOR INDIRECT, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES WHICH MAY BE ALLEGED AS A RESULT OF CREDIT HAVING BEEN EXTENDED, SUSPENDED OR TERMINATED UNDER THIS AGREEMENT OR ANY OTHER FINANCING DOCUMENT OR AS A RESULT OF ANY OTHER TRANSACTION CONTEMPLATED HEREUNDER OR THEREUNDER.

(d) **Each Borrower for itself and all endorsers, guarantors and sureties and their heirs, legal representatives, successors and assigns, hereby further specifically waives any rights that it may have under Section 1542 of the California Civil Code (to the extent applicable), which provides as follows: "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR," and further waives any similar rights under applicable Laws.**

Section 12.15 Reinstatement. This Agreement shall remain in full force and effect and continue to be effective should any petition or other proceeding be filed by or against any Credit Party for liquidation or reorganization, should any Credit Party become insolvent or make an assignment for the benefit of any creditor or creditors or should an interim receiver, receiver, receiver and manager or trustee be appointed for all or any significant part of any Credit Party's assets, and shall continue to be effective or to be reinstated, as the case may be, if at any time payment and performance of the Obligations, or any part thereof, is, pursuant to applicable law, rescinded or reduced in amount, or must otherwise be restored or returned by any obligee of the Obligations, whether as a fraudulent preference reviewable transaction or otherwise, all as though such payment or performance had not been made. In the event that any payment, or any part thereof, is rescinded, reduced, restored or returned, the Obligations shall be reinstated and deemed reduced only by such amount paid and not so rescinded, reduced, restored or returned.

Section 12.16 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of Borrowers and Agent and each Lender and their respective successors and permitted assigns.

Section 12.17 USA PATRIOT Act Notification. Agent (for itself and not on behalf of any Lender) and each Lender hereby notifies Borrowers that pursuant to the requirements of the USA PATRIOT Act, it is required to obtain, verify and record certain information and documentation that identifies Borrowers, which information includes the name and address of Borrower and such other information that will allow Agent or such Lender, as applicable, to identify Borrowers in accordance with the USA PATRIOT Act.

Section 12.18 Cross Default and Cross Collateralization.

(a) Cross-Default. As stated under Section 10.1 hereof, an Event of Default under any of the Affiliated Financing Documents shall be an Event of Default under this Agreement. In addition, a Default or Event of Default under any of the Financing Documents shall be a Default under the Affiliated Financing Documents.

(b) Cross Collateralization. Borrowers acknowledge and agree that the Collateral securing this Loan, also secures the Affiliated Obligations.

(c) Consent. Each Borrower authorizes Agent, without giving notice to any Borrower or obtaining the consent of any Borrower and without affecting the liability of any Borrower for the Affiliated Obligations directly incurred by the Borrowers, from time to time to:

(i) compromise, settle, renew, extend the time for payment, change the manner or terms of payment, discharge the performance of, decline to enforce, or release all or any of the Affiliated Obligations; grant other indulgences to any Borrowers in respect thereof; or modify in any manner any documents relating to the Affiliated Obligations;

(ii) declare all Affiliated Obligations due and payable upon the occurrence and during the continuance of an Event of Default;

(iii) take and hold security for the performance of the Affiliated Obligations of any Borrowers and exchange, enforce, waive and release any such security;

(iv) apply and reapply such security and direct the order or manner of sale thereof as Agent, in its sole discretion, may determine;

(v) release, surrender or exchange any deposits or other property securing the Affiliated Obligations or on which Agent at any time may have a Lien; release, substitute or add any one or more endorsers or guarantors of the Affiliated Obligations of any Borrowers; or compromise, settle, renew, extend the time for payment, discharge the performance of, decline to enforce, or release all or any obligations of any such endorser or guarantor or other Person who is now or may hereafter be liable on any Affiliated Obligations or release, surrender or exchange any deposits or other property of any such Person;

(vi) apply payments received by Lender from Borrower to any Obligations or Affiliated Obligations, as permitted in accordance with the terms of this Agreement and in such order as Lender shall determine, in its sole discretion; and

(vii) assign the Affiliated Financing Documents in whole or in part.

Section 12.19 Existing Agreements Superseded; Exhibits and Schedules.

(a) The Original Credit Agreement, including the schedules thereto, is superseded by this Agreement, including the schedules hereto, which has been executed in amendment, restatement and modification of, but not in novation or extinguishment of, the obligations under the Original Credit Agreement. It is the express intention of the parties hereto to reaffirm the indebtedness and other obligations created under the Original Credit Agreement. Any and all outstanding amounts under the Original Credit Agreement including, but not limited to principal, accrued interest, fees (except as otherwise provided herein) and other charges, as of the Closing Date shall be carried over and deemed outstanding under this Agreement.

(b) Each Credit Party reaffirms its obligations under each Financing Document to which it is a party, including but not limited to the Security Documents and the schedules thereto.

(c) Each Credit Party acknowledges and confirms that (i) the Liens and security interests granted pursuant to the Financing Documents secure the indebtedness, liabilities and obligations of the Borrowers and the other Credit Parties to Agent and the Lenders under the Original Credit Agreement, as amended and restated hereby, and that the term "Obligations" as used in the Financing Documents (or any other term used therein to describe or refer to the indebtedness, liabilities and obligations of the Borrowers to Agent and the Lenders) includes, without limitation, the indebtedness, liabilities and obligations of the Borrowers under this Agreement and the Notes to be delivered hereunder, if any, and under the Original Credit Agreement, as amended and restated hereby, as the same further may be amended, restated, supplemented and/or modified from time to time, and (ii) the grants of Liens under and pursuant to the Financing Documents shall continue unaltered, and each other Financing Document shall continue in full force and effect in accordance with its terms unless otherwise amended by the parties thereto, and the parties hereto hereby ratify and confirm the terms thereof as being in full force and effect and unaltered by this Agreement and all references in the any of the Financing Documents to the "Credit Agreement" shall be deemed to refer to this Amended and Restated Credit Agreement.

(d) Nothing herein contained shall be construed as a substitution or novation of the obligations outstanding under the Original Credit Agreement or the other Financing Documents. Nothing in this Agreement shall be construed as a release or other discharge of any Borrower or any other Credit Party from its obligations and liabilities under the Original Credit Agreement or the other Financing Documents. On the Closing Date, any and all references in any Financing Documents to the Original Credit Agreement shall be deemed to be amended to refer to this Agreement.

[SIGNATURES APPEAR ON FOLLOWING PAGES]

IN WITNESS WHEREOF, intending to be legally bound, each of the parties have caused this Agreement to be executed day and year first above mentioned.

BORROWERS:

AZIYO BIOLOGICS, INC.

By: /s/ Jeffrey Hamet
Name: Jeffrey Hamet
Title: Treasurer

AZIYO MED, LLC

By: /s/ Jeffrey Hamet
Name: Jeffrey Hamet
Title: Treasurer

Address for Borrowers:

c/o Aziyo Biologics, Inc.
12510 Prosperity Drive, Suite 370
Silver Spring, Maryland 20904
Attn: [XXX]
Facsimile:
E-mail: [XXX]

with a copy to:

Shipman & Goodwin LLP
One Constitution Plaza
Hartford, Connecticut 06103
Attn: [XXX]
Facsimile: 860-251-5311
E-mail: [XXX]

AGENT:

MIDCAP FUNDING IV TRUST

By: Apollo Capital Management, L.P.,
its investment manager

By: Apollo Capital Management GP, LLC,
its general partner

By: Maurice Amsellem
Name: Maurice Amsellem
Title: Authorized Signatory

Address:

c/o MidCap Financial Services, LLC, as servicer
7255 Woodmont Avenue, Suite 200
Bethesda, Maryland 20814
Attn: Account Manager for Aziyo transaction
Facsimile: 301-941-1450
E-mail: notices@midcapfinancial.com

with a copy to:

c/o MidCap Financial Services, LLC, as servicer
7255 Woodmont Avenue, Suite 200
Bethesda, Maryland 20814
Attn: General Counsel
Facsimile: 301-941-1450
E-mail: legalnotices@midcapfinancial.com

Payment Account Designation:

Wells Fargo Bank, N.A. (McLean, VA)
ABA #: [XXX]
Account Name: MidCap Funding IV Trust – Collections
Account #: [XXX]
Attention: Account Manager for Aziyo transaction

LENDER:

MIDCAP FUNDING IV TRUST

By: Apollo Capital Management, L.P.,
its investment manager

By: Apollo Capital Management GP, LLC,
its general partner

By: /s/ Maurice Amsellem
Name: Maurice Amsellem
Title: Authorized Signatory

Address:

c/o MidCap Financial Services, LLC, as servicer
7255 Woodmont Avenue, Suite 200
Bethesda, Maryland 20814
Attn: Account Manager for Aziyo transaction
Facsimile: 301-941-1450
E-mail: notices@midcapfinancial.com

with a copy to:

c/o MidCap Financial Services, LLC, as servicer
7255 Woodmont Avenue, Suite 200
Bethesda, Maryland 20814
Attn: General Counsel
Facsimile: 301-941-1450
E-mail: legalnotices@midcapfinancial.com

ANNEXES, EXHIBITS AND SCHEDULES

ANNEXES

Annex A	Commitment Annex

EXHIBITS

Exhibit A	[Reserved]
Exhibit B	Form of Compliance Certificate
Exhibit C	Borrowing Base Certificate
Exhibit D	Form of Notice of Borrowing
Exhibit F-1	Form of U.S. Tax Compliance Certificate
Exhibit F-2	Form of U.S. Tax Compliance Certificate
Exhibit F-3	Form of U.S. Tax Compliance Certificate
Exhibit F-4	Form of U.S. Tax Compliance Certificate

SCHEDULES

Schedule 3.1	Existence, Organizational ID Numbers, Foreign Qualification, Prior Names
Schedule 3.4	Capitalization
Schedule 3.6	Litigation
Schedule 3.17	Material Contracts
Schedule 3.18	Environmental Compliance
Schedule 3.19	Intellectual Property
Schedule 4.9	Litigation, Governmental Proceedings and Other Notice Events
Schedule 4.17	Products and Permits
Schedule 5.1	Debt; Contingent Obligations
Schedule 5.2	Liens
Schedule 5.7	Permitted Investments
Schedule 5.8	Affiliate Transactions
Schedule 5.14	Deposit Accounts and Securities Accounts
Schedule 6.1	Minimum Net Product Revenue
Schedule 7.4	Post-Closing Obligations
Schedule 9.1	Collateral
Schedule 9.2(b)	Location of Collateral
Schedule 9.2(d)	Chattel Paper, Letter of Credit Rights, Commercial Tort Claims, Instruments, Documents, Investment Property

Annex A to Credit Agreement (Commitment Annex)

Lender	Revolving Loan Commitment Amount	Revolving Loan Commitment Percentage
MidCap Funding IV Trust	$ 8,000,000	100%
TOTALS	$ 8,000,000	100%

Exhibit A to Credit Agreement (Reserved)

Exhibit B to Credit Agreement (Form of Compliance Certificate)

COMPLIANCE CERTIFICATE

This Compliance Certificate is given by _____, a Responsible Officer of Aziyo Biologics, Inc. (the "**Borrower Representative**"), pursuant to that certain Amended and Restated Credit and Security Agreement (Revolving Loan), dated as of July 15, 2019 among the Borrower Representative and any additional Borrower that may hereafter be added thereto (collectively, "**Borrowers**"), MidCap Financial Trust, individually as a Lender and as Agent, and the financial institutions or other entities from time to time parties hereto, each as a Lender (as such agreement may have been amended, restated, supplemented or otherwise modified from time to time, the "**Credit Agreement**"). Capitalized terms used herein without definition shall have the meanings set forth in the Credit Agreement.

The undersigned Responsible Officer hereby certifies to Agent and Lenders that:

(a) the financial statements delivered with this certificate in accordance with Section 4.1 of the Credit Agreement fairly present in all material respects the results of operations and financial condition of Borrowers and their Consolidated Subsidiaries as of the dates and the accounting period covered by such financial statements;

(b) the representations and warranties of each Credit Party contained in the Financing Documents are true, correct and complete in all material respects on and as of the date hereof, except to the extent that any such representation or warranty relates to a specific date in which case such representation or warranty shall be true and correct in all material respects as of such earlier date; provided, however, in each case, such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof;

(c) I have reviewed the terms of the Credit Agreement and have made, or caused to be made under my supervision, a review in reasonable detail of the transactions and conditions of Borrowers and their Consolidated Subsidiaries during the accounting period covered by such financial statements, and such review has not disclosed the existence during or at the end of such accounting period, and I have no knowledge of the existence as of the date hereof, of any condition or event that constitutes a Default or an Event of Default, except as set forth in **Schedule 1** hereto, which includes a description of the nature and period of existence of such Default or an Event of Default and what action Borrowers have taken, are undertaking and propose to take with respect thereto;

(d) except as noted on **Schedule 2** attached hereto, Schedule 9.2(b) to the Credit Agreement contains a complete and accurate list of all business locations of Borrowers and Guarantors and all names under which Borrowers and Guarantors currently conduct business; Schedule 2 specifically notes any changes in the names under which any Borrower or Guarantors conduct business;

(e) except as noted on **Schedule 3** attached hereto, the undersigned has no knowledge of (i) any federal or state tax liens having been filed against any Borrower, Guarantor or any Collateral, or (ii) any failure of any Borrower or any Guarantors to make required payments of withholding or other tax obligations of any Borrower or any Guarantors during the accounting period to which the attached statements pertain or any subsequent period;

(f) Schedule 5.14 to the Credit Agreement contains a complete and accurate statement of all deposit accounts or investment accounts maintained by Borrowers and Guarantors;

(g) except as noted on **Schedule 4** attached hereto and Schedule 3.6 to the Credit Agreement, the undersigned has no knowledge of any current, pending or threatened: (i) litigation against the Borrowers or any Guarantors, (ii) inquiries, investigations or proceedings concerning the business affairs, practices, licensing or reimbursement entitlements of Borrowers or any Guarantors, or (iii) default by Borrowers or any Guarantors under any Material Contract to which it is a party;

(h) except as noted on **Schedule 5** attached hereto, no Borrower or Guarantor has acquired, by purchase, by the approval or granting of any application for registration (whether or not such application was previously disclosed to Agent by Borrowers) or otherwise, any Intellectual Property that is registered with any United States or foreign Governmental Authority, or has filed with any such United States or foreign Governmental Authority, any new application for the registration of any Intellectual Property, or acquired rights under a license as a licensee with respect to any such registered Intellectual Property (or any such application for the registration of Intellectual Property) owned by another Person, that has not previously been reported to Agent on Schedule 3.17 to the Credit Agreement or any **Schedule 5** to any previous Compliance Certificate delivered by Borrower to Agent;

(i) except as noted on **Schedule 6** attached hereto, no Borrower or Guarantor has acquired, by purchase or otherwise, any Chattel Paper, Letter of Credit Rights, Instruments, Documents or Investment Property that has not previously been reported to Agent on any **Schedule 6** to any previous Compliance Certificate delivered by Borrower Representative to Agent;

(j) except as noted on Schedule 7 attached hereto, no Borrower or Guarantor is aware of any commercial tort claim that has not previously been reported to Agent on any Schedule 7 to any previous Compliance Certificate delivered by Borrower Representative to Agent;

(k) Borrowers and Guarantor are in compliance with the covenants contained in Article 6 of the Credit Agreement, and in any Guarantee constituting a part of the Financing Documents, as demonstrated by the calculation of such covenants below, except as set forth below; in determining such compliance, the following calculations have been made: [See attached worksheets]. Such calculations and the certifications contained therein are true, correct and complete;

(l) [Fixed Charge Coverage Ratio for the Defined Period ending [_____] is [___]:[___]][1];

(m) [Liquidity as of the date hereof is $[_____]][2].

The foregoing certifications and computations are made as of _____, 20__ (end of month) and as of _____, 20__.

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[1] Solely to the extent required for Aziyo to make a payment to DNW or HighCape.

[2] Solely to the extent required for Aziyo to make a payment to DNW or HighCape.

Sincerely,

AZIYO BIOLOGICS, INC.

By: _____
Name: _____
Title: _____

Exhibit C to Credit Agreement (Borrowing Base Certificate)

[See attached.]

Exhibit D to Credit Agreement (Form of Notice of Borrowing)

NOTICE OF BORROWING

This Notice of Borrowing is given by _____, a Responsible Officer of Aziyo Biologics, Inc. (the "**Borrower Representative**"), pursuant to that certain Amended and Restated Credit and Security Agreement (Revolving Loan), dated as of July 15, 2019 among the Borrower Representative, and any additional Borrower that may hereafter be added thereto (collectively, "**Borrowers**"), MidCap Financial Trust, individually as a Lender and as Agent, and the financial institutions or other entities from time to time parties hereto, each as a Lender (as such agreement may have been amended, restated, supplemented or otherwise modified from time to time, the "**Credit Agreement**"). Capitalized terms used herein without definition shall have the meanings set forth in the Credit Agreement.

The undersigned Responsible Officer hereby gives notice to Agent of Borrower Representative's request to borrow $_____ of Revolving Loans on _____, 20__. Attached is a Borrowing Base Certificate complying in all respects with the Credit Agreement and confirming that, after giving effect to the requested advance, the Revolving Loan Outstandings will not exceed the Revolving Loan Limit.

The undersigned officer hereby certifies that, both before and after giving effect to the request above (a) each of the conditions precedent set forth in Section 7.2 have been satisfied, (b) all of the representations and warranties contained in the Credit Agreement and the other Financing Documents are true, correct and complete in all material respects as of the date hereof, except to the extent such representation or warranty relates to a specific date, in which case such representation or warranty is true, correct and complete in all material respects as of such earlier date; provided, however, in each case, such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof, and (c) no Default or Event of Default has occurred and is continuing on the date hereof.

IN WITNESS WHEREOF, the undersigned officer has executed and delivered this Notice of Borrowing this ____ day of _____, 20__.

Sincerely,

AZIYO BIOLOGICS, INC.

By: _____
Name: _____
Title: _____

Exhibit F-1 to Credit Agreement (Form of U.S. Tax Compliance Certificate)

U.S. TAX COMPLIANCE CERTIFICATE

(For Foreign Lenders That Are Not Partnerships For U.S. Federal Income Tax Purposes)

This U.S. Tax Compliance Certificate is given by _____, a Responsible Officer of _____ (the "**Borrower Representative**"), pursuant to that certain Amended and Restated Credit and Security Agreement (Revolving Loan), dated as of July 15, 2019 among the Borrower Representative, _____ and any additional Borrower that may hereafter be added thereto (collectively, "**Borrowers**"), MidCap Financial Trust, individually as a Lender and as Agent, and the financial institutions or other entities from time to time parties hereto, each as a Lender (as such agreement may have been amended, restated, supplemented or otherwise modified from time to time, the "**Credit Agreement**"). Capitalized terms used herein without definition shall have the meanings set forth in the Credit Agreement.

Pursuant to the provisions of Section 2.8(c) of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record and beneficial owner of the Loan(s) (as well as any Note(s) evidencing such Loan(s)) in respect of which it is providing this certificate, (ii) it is not a bank within the meaning of Section 881(c)(3)(A) of the Code, (iii) it is not a ten percent shareholder of any Borrower within the meaning of Section 871(h)(3)(B) of the Code and (iv) it is not a controlled foreign corporation related to any Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished the Agent and the Borrower Representative with a certificate of its non-U.S. Person status on IRS Form W-8BEN. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform the Borrower Representative and the Agent, and (2) the undersigned shall have at all times furnished the Borrower Representative and the Agent with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

[NAME OF LENDER]

By: _____
Name:
Title:

Date: _____ __, 20[ ]

Exhibit F-2 to Credit Agreement (Form of U.S. Tax Compliance Certificate)

U.S. TAX COMPLIANCE CERTIFICATE

(For Foreign Participants That Are Not Partnerships For U.S. Federal Income Tax Purposes)

This U.S. Tax Compliance Certificate is given by _____, a Responsible Officer of _____ (the "**Borrower Representative**"), pursuant to that certain Amended and Restated Credit and Security Agreement (Revolving Loan), dated as of July 15, 2019 among the Borrower Representative, _____ and any additional Borrower that may hereafter be added thereto (collectively, "**Borrowers**"), MidCap Financial Trust, individually as a Lender and as Agent, and the financial institutions or other entities from time to time parties hereto, each as a Lender (as such agreement may have been amended, restated, supplemented or otherwise modified from time to time, the "**Credit Agreement**"). Capitalized terms used herein without definition shall have the meanings set forth in the Credit Agreement.

Pursuant to the provisions of Section 2.8(c) of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record and beneficial owner of the participation in respect of which it is providing this certificate, (ii) it is not a bank within the meaning of Section 881(c)(3)(A) of the Code, (iii) it is not a ten percent shareholder of any Borrower within the meaning of Section 871(h)(3)(B) of the Code, and (iv) it is not a controlled foreign corporation related to any Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished its participating Lender with a certificate of its non-U.S. Person status on IRS Form W-8BEN. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform such Lender in writing, and (2) the undersigned shall have at all times furnished such Lender with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

[NAME OF PARTICIPANT]

By: _____
Name:
Title:

Date: _____ __, 20[ ]

Exhibit F-3 to Credit Agreement (Form of U.S. Tax Compliance Certificate)

U.S. TAX COMPLIANCE CERTIFICATE

(For Foreign Participants That Are Partnerships For U.S. Federal Income Tax Purposes)

This U.S. Tax Compliance Certificate is given by _____, a Responsible Officer of _____ (the "**Borrower Representative**"), pursuant to that certain Amended and Restated Credit and Security Agreement (Revolving Loan), dated as of July 15, 2019 among the Borrower Representative, _____ and any additional Borrower that may hereafter be added thereto (collectively, "**Borrowers**"), MidCap Financial Trust, individually as a Lender and as Agent, and the financial institutions or other entities from time to time parties hereto, each as a Lender (as such agreement may have been amended, restated, supplemented or otherwise modified from time to time, the "**Credit Agreement**"). Capitalized terms used herein without definition shall have the meanings set forth in the Credit Agreement.

Pursuant to the provisions of Section 2.8(c) of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record owner of the participation in respect of which it is providing this certificate, (ii) its direct or indirect partners/members are the sole beneficial owners of such participation, (iii) with respect such participation, neither the undersigned nor any of its direct or indirect partners/members is a bank extending credit pursuant to a loan agreement entered into in the ordinary course of its trade or business within the meaning of Section 881(c)(3)(A) of the Code, (iv) none of its direct or indirect partners/members is a ten percent shareholder of any Borrower within the meaning of Section 871(h)(3)(B) of the Code and (v) none of its direct or indirect partners/members is a controlled foreign corporation related to any Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished its participating Lender with IRS Form W-8IMY accompanied by one of the following forms from each of its partners/members that is claiming the portfolio interest exemption: (i) an IRS Form W-8BEN or (ii) an IRS Form W-8IMY accompanied by an IRS Form W-8BEN from each of such partner's/member's beneficial owners that is claiming the portfolio interest exemption. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform such Lender and (2) the undersigned shall have at all times furnished such Lender with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

[NAME OF PARTICIPANT]

By: _____
Name:
Title:

Date: _____ __, 20[ ]

Exhibit F-4 to Credit Agreement (Form of U.S. Tax Compliance Certificate)

U.S. TAX COMPLIANCE CERTIFICATE

(For Foreign Lenders That Are Partnerships For U.S. Federal Income Tax Purposes)

This U.S. Tax Compliance Certificate is given by _____, a Responsible Officer of _____ (the "**Borrower Representative**"), pursuant to that certain Amended and Restated Credit and Security Agreement (Revolving Loan), dated as of July 15, 2019 among the Borrower Representative, _____ and any additional Borrower that may hereafter be added thereto (collectively, "**Borrowers**"), MidCap Financial Trust, individually as a Lender and as Agent, and the financial institutions or other entities from time to time parties hereto, each as a Lender (as such agreement may have been amended, restated, supplemented or otherwise modified from time to time, the "**Credit Agreement**"). Capitalized terms used herein without definition shall have the meanings set forth in the Credit Agreement.

Pursuant to the provisions of Section 2.8(c) of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record owner of the Loan(s) (as well as any Note(s) evidencing such Loan(s)) in respect of which it is providing this certificate, (ii) its direct or indirect partners/members are the sole beneficial owners of such Loan(s) (as well as any Note(s) evidencing such Loan(s)), (iii) with respect to the extension of credit pursuant to this Credit Agreement or any other Financing Document, neither the undersigned nor any of its direct or indirect partners/members is a bank extending credit pursuant to a loan agreement entered into in the ordinary course of its trade or business within the meaning of Section 881(c)(3)(A) of the Code, (iv) none of its direct or indirect partners/members is a ten percent shareholder of any Borrower within the meaning of Section 871(h)(3)(B) of the Code and (v) none of its direct or indirect partners/members is a controlled foreign corporation related to any Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished the Agent and the Borrower Representative with IRS Form W-8IMY accompanied by one of the following forms from each of its partners/members that is claiming the portfolio interest exemption: (i) an IRS Form W-8BEN or (ii) an IRS Form W-8IMY accompanied by an IRS Form W-8BEN from each of such partner's/member's beneficial owners that is claiming the portfolio interest exemption. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform the Borrower Representative and the Agent, and (2) the undersigned shall have at all times furnished the Borrower Representative and the Agent with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

[NAME OF LENDER]

By: _____
Name: _____
Title: _____

Date: _____ __, 20[ ]

Schedule 3.1 – Existence, Organizational ID Numbers, Foreign Qualification, Prior Names

Schedule 3.4 – Capitalization

Schedule 3.6 – Litigation

Schedule 3.17 – Material Contracts

Schedule 3.18 – Environmental Compliance

Schedule 3.19 – Intellectual Property

Schedule 4.9 – Litigation, Governmental Proceedings and Other Notice Events

Schedule 5.1 – Debt; Contingent Obligations

Schedule 5.2 – Liens

Schedule 5.7 – Permitted Investments

Schedule 5.8 – Affiliate Transactions

Schedule 5.14 – Deposit Accounts and Securities Accounts

Schedule 6.1– Minimum Net Product Revenue

Defined Period Ending	Minimum Net Product Revenue Amount
June 30, 2019	$ 25,300,000
July 31, 2019	$ 25,400,000
August 31, 2019	$ 25,500,000
September 30, 2019	$ 26,100,000
October 31, 2019	$ 26,200,000
November 30, 2019	$ 26,400,000
December 31, 2019	$ 28,500,000
January 31, 2020	$ 28,800,000
February 29, 2020	$ 29,000,000
March 31, 2020	$ 29,200,000
April 30, 2020	$ 29,500,000
May 31, 2020	$ 30,200,000
June 30, 2020	$ 30,700,000
July 31, 2020	$ 31,200,000
August 31, 2020	$ 31,900,000
September 30, 2020	$ 32,500,000
October 31, 2020	$ 33,800,000
November 30, 2020	$ 34,500,000
December 31, 2020	$ 35,000,000
January 31, 2021	$ 35,500,000
February 28, 2021	$ 35,700,000
March 31, 2021	$ 36,000,000
April 30, 2021	$ 36,500,000
May 31, 2021	$ 37,100,000
June 30, 2021	$ 37,600,000
July 31, 2021	$ 37,900,000
August 31, 2021	$ 38,200,000
September 30, 2021	$ 38,500,000
October 31, 2021	$ 38,600,000
November 30, 2021	$ 38,800,000
December 31, 2021	$ 40,000,000
January 31, 2022	$ 40,400,000
February 28, 2022	$ 40,800,000

March 31, 2022	$41,200,000
April 30, 2022	$41,600,000
May 31, 2022	$42,000,000
June 30, 2022	$42,400,000
July 31, 2022	$42,800,000
August 31, 2022	$43,200,000
September 30, 2022	$43,600,000
October 31, 2022	$44,000,000
November 30, 2022	$44,400,000
December 31, 2022	$44,800,000
January 31, 2023	$45,000,000
February 28, 2023	$45,200,000
March 31, 2023	$45,400,000
April 30, 2023	$45,600,000
May 31, 2023	$45,800,000
June 30, 2023	$46,000,000
July 31, 2023	$46,200,000
August 31, 2023	$46,400,000
September 30, 2023	$46,600,000
October 31, 2023	$46,800,000
November 30, 2023	$47,000,000
December 31, 2023	$47,200,000
January 31, 2024	$47,400,000
February 29, 2024	$47,600,000
March 31, 2024	$47,800,000
April 30, 2024	$48,000,000
May 31, 2024	$48,200,000
June 30, 2024	$48,200,000

Schedule 7.4 – Post-Closing Requirements

Borrowers shall satisfy and complete each of the following obligations, or provide Agent each of the items listed below, as applicable, on or before the date indicated below, all to the satisfaction of Agent in its sole and absolute discretion:

None.

Borrower's failure to complete and satisfy any of the above obligations on or before the date indicated above, or Borrower's failure to deliver any of the above listed items on or before the date indicated above, shall constitute an immediate an automatic Event of Default.

Schedule 9.1 – Collateral

The Collateral consists of all of each Borrower's assets, including without limitation, all of each Borrower's right, title and interest in and to the following, whether now owned or hereafter created, acquired or arising:

(a) all goods, Accounts (including health-care insurance receivables), equipment, Inventory, contract rights or rights to payment of money, leases, license agreements, franchise agreements, General Intangibles, commercial tort claims (including each such claim listed on Schedule 9.2(d)), documents, instruments (including any promissory notes), chattel paper (whether tangible or electronic), cash, deposit accounts, securities accounts, fixtures, letter of credit rights (whether or not the letter of credit is evidenced by a writing), securities, and all other investment property, supporting obligations, and financial assets, whether now owned or hereafter acquired, wherever located;

(b) all of Borrowers' books and records relating to any of the foregoing; and

(c) any and all claims, rights and interests in any of the above and all substitutions for, additions, attachments, accessories, accessions and improvements to and replacements, products, proceeds and insurance proceeds of any or all of the foregoing.

Schedule 9.2(b) – Collateral Information

Aziyo Biologics, Inc.

12510 Prosperity Drive, Suite 370, Silver Spring, MD 20904 (principal place of business)

880 Harbour Way South, Suite 100, Richmond, CA 94804

Certain collateral is located at various hospital locations in accordance with consignment or other agreements entered in the ordinary course of business

Aziyo Med, LLC

12510 Prosperity Drive, Suite 370, Silver Spring, MD 20904 (principal place of business)

1100 Old Ellis Rd, Suite 1200, Roswell, GA 30076

Certain collateral is located at various hospital locations in accordance with consignment or other agreements entered in the ordinary course of business

Schedule 9.2(d) – Chattel Paper, Letter of Credit Rights, Commercial Tort Claims, Instruments, Documents, Investment Property

None.

Exhibit 23.1

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We hereby consent to the use in this Registration Statement on Form S-1 of Aziyo Biologics, Inc. of our report dated April 17, 2020, except for the effects of the reverse stock split discussed in Note 20 to the consolidated financial statements, as to which the date is September 30, 2020, relating to the financial statements of Aziyo Biologics, Inc., which appears in this Registration Statement. We also consent to the reference to us under the heading “Experts” in such Registration Statement.

/s/ PricewaterhouseCoopers LLP
Baltimore, Maryland
September 30, 2020