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

Form 10-K

☑ **ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the fiscal year ended December 31, 2017
Commission file number: 1-33818

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

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

1001 Calle Amanecer, San Clemente, California 92673
(Address of principal executive offices, including zip code)
(949) 429-6680
(Registrant's telephone number, including area code)
Securities registered pursuant to Section 12(b) of the Act:

Title of Class	Name of Exchange on which Registered
Common stock, $0.01 par value per share	**The NASDAQ Capital Market**

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

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

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

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

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

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. ☐

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

Large accelerated filer ☐ Accelerated filer ☐
Non-accelerated filer ☐ (Do not check if a smaller reporting company) Smaller reporting company ☑
Emerging growth company ☐

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

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

At June 30, 2017, the last business day of the registrant's most recently completed second fiscal quarter, the aggregate market value of the registrant's common stock held by non-affiliates of the registrant, based upon the closing price of a share of the registrant's common stock as reported by the NASDAQ Capital Market on that date was $36,362,152.

As of February 28, 2018, 30,957,113 shares of the registrant's Common Stock were outstanding.

DOCUMENTS INCORPORATED BY REFERENCE

Specified portions of the registrant's Definitive Proxy Statement, which will be filed with the Commission pursuant to Regulation 14A in connection with the registrant's 2018 Annual Meeting of Stockholders, to be held June 6, 2018 (the Proxy Statement), are incorporated by reference into Part III of this report. Except with respect to information specifically incorporated by reference in this report, the Proxy Statement is not deemed to be filed as a part hereof.

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Registered Trademarks and Trademark Applications: In the United States we have registered trademarks for vBLOC®, ENTEROMEDICS®, MAESTRO®, RESHAPE®, RESHAPE DUO®, and RESHAPE MEDICAL®, RESHAPE® DUAL BALLOON each registered with the United States Patent and Trademark Office, and trademark applications for vBLOC POWER TO CHOOSE, RESHAPE vBLOC , vBLOC ACHIEVE, RESHAPE VEST, and VBLOC POWER TO CHOOSE AND DESIGN. In addition, some or all of the marks vBLOC, ENTEROMEDICS, MAESTRO, MAESTRO SYSTEM ORCHESTRATING OBESITY SOLUTIONS, vBLOC POWER TO CHOOSE, vBLOC POWER TO CHOOSE AND DESIGN, RESHAPE, RESHAPE DUO, RESHAPE MEDICAL and RESHAPE LIFESCIENCES are the subject of either a trademark registration or application for registration in Australia, Brazil, Canada, China, the European Community, India, Kuwait, Mexico, Saudi Arabia, Switzerland and the United Arab Emirates. We believe that we have common law trademark rights to RESHAPE VEST. This Annual Report on Form 10-K contains other trade names and trademarks and service marks of ReShape Lifesciences and of other companies.

PART I.

ITEM 1. *BUSINESS*

This Annual Report on Form 10-K contains forward-looking statements. These forward-looking statements are based on our current expectations about our business and industry. In some cases, these statements may be identified by terminology such as "may," "will," "should," "expects," "could," "intends," "might," "plans," "anticipates," "believes," "estimates," "predicts," "potential," or "continue," or the negative of such terms and other comparable terminology. These statements involve known and unknown risks and uncertainties that may cause our results, levels of activity, performance or achievements to be materially different from those expressed or implied by the forward-looking statements. Factors that may cause or contribute to such differences include, among others, those discussed in this report in Item 1A "Risk Factors." Except as may be required by law, we undertake no obligation to update any forward-looking statement to reflect events after the date of this report.

Our Company

Our vision is to be recognized as a leading medical technology company focused on the design, development and commercialization of transformative technology to treat obesity and metabolic diseases. Our growing and differentiated product portfolio is utilized by bariatric surgeons, general surgeons, and gastroenterologists. We believe obesity is a global epidemic and that the majority of patients need treatment options that are anatomy friendly and provide for weight loss and comorbidity improvements along with long-term, ongoing obesity support and prevention.

Corporate Background

We were incorporated in Minnesota in December 2002 as two separate legal entities, Alpha Medical, Inc. and Beta Medical, Inc., both of which were owned 100% by a common stockholder. In October 2003, the two entities were combined and we changed our name to EnteroMedics Inc. In 2004 we reincorporated in Delaware. In October 2017, we changed our company name to ReShape Lifesciences Inc.

On January 14, 2015, the vBloc® System, our initial product, which we now refer to as ReShape vBloc, received U.S. Food and Drug Administration (FDA) approval for vBloc Therapy, delivered via the ReShape vBloc, for the treatment of adult patients with obesity who have a Body Mass Index (BMI) of at least 40 to 45 kg/m2, or a BMI of at least 35 to 39.9 kg/m2 with a related health condition such as high blood pressure or high cholesterol levels, and who have tried to lose weight in a supervised weight management program and failed within the past five years. vBloc Therapy is delivered via a pacemaker-like device that helps patients feel full and eat less by intermittently blocking hunger signals on the vagus nerve. Our therapy limits the expansion of the stomach, helps control hunger sensations between meals, reduces the frequency and intensity of stomach contractions and produces a feeling of early and prolonged fullness. We believe the ReShape vBloc offers obese patients a minimally-invasive treatment that can result in significant, durable and sustained weight loss. We believe that our ReShape vBloc allows bariatric surgeons to offer a new option to obese patients who are concerned about the risks and complications associated with currently available anatomy-altering, restrictive or malabsorptive surgical procedures.

In 2015 we began a controlled commercial launch of the ReShape vBloc at select surgical centers in the United States and had our first commercial sales. During 2015, we initiated a controlled expansion of our commercial operations and started the process of building a sales force. In January 2016, we hired new executives to oversee this expansion. Throughout 2016, our sales force called directly on key opinion leaders and bariatric surgeons at commercially-driven surgical centers that met our certification criteria. Additionally, beginning in 2016, through a distribution agreement with Academy Medical, LLC, U.S. Department of Veterans Affairs (VA) medical facilities began to offer the ReShape vBloc as a treatment option for veterans, at little to no cost to veterans in accordance with their veteran healthcare benefits. Our goal for the ReShape vBloc remains broad coverage and reimbursement for vBloc Therapy. We believe that the most significant barrier to adoption for patients who want vBloc Therapy has been cost and lack of payer coverage.

On May 22, 2017, we acquired the Gastric Vest System™, which we now refer to as the ReShape Vest, through our acquisition of BarioSurg. The ReShape Vest System is an investigational, minimally invasive, laparoscopically implanted medical device being studied for weight loss in morbidly obese patients. The device wraps around the stomach, emulating the effect of conventional weight-loss surgery, and is intended to enable gastric volume reduction without permanently changing patient anatomy. The acquisition was completed under the terms of a merger agreement

pursuant to which BarioSurg became a wholly-owned subsidiary of our company. The aggregate merger consideration we paid for all of the outstanding shares of capital stock and outstanding options of BarioSurg was: (i) 1.38 million shares of our common stock, (ii) 1.0 million shares of our newly created conditional convertible preferred stock, which shares converted into 5.0 million shares of our common stock upon the post-closing approval of our stockholders in accordance with the NASDAQ Stock Market Rules, and (iii) $2 million in cash.

On October 2, 2017, we acquired ReShape Medical, Inc., a privately-held medical technology company that develops, manufactures and markets the ReShape® Integrated Dual Balloon, which now we refer to as the ReShape Balloon, an FDA-approved, minimally invasive intragastric balloon designed to treat obesity patients with a BMI between 30 and 40, with at least one related comorbidity. The aggregate merger consideration we paid for all of the outstanding shares of capital stock and securities convertible into shares of capital stock of ReShape Medical was: (i) approximately 2.4 million shares of our common stock, (ii) 187,772 shares of newly created series C convertible preferred stock, which shares became convertible into approximately 18.8 million shares of common stock upon the post-closing approval of our stockholders in accordance with the NASDAQ Stock Market Rules, and (iii) approximately $5 million in cash, which amount, together with ReShape Medical's cash on-hand, was used to pay ReShape Medical's outstanding senior secured indebtedness and certain transaction expenses of ReShape Medical.

The ReShape Balloon provides a new option for individuals who have not succeeded at diet and exercise alone, and do not want or do not qualify for bariatric surgery. Two connected balloons are placed into the stomach during a short, outpatient endoscopic procedure. The balloons remain in the stomach for six months and are then removed endoscopically. During balloon treatment, and for six more months following removal of the balloons, the patient receives access to nutritional counseling and access to exclusive tools to help them achieve their weight loss goals. The ReShape Balloon was approved by the FDA in July of 2015 and has had CE-marking in Europe since 2011.

On October 23, 2017 we changed our company name from EnteroMedics Inc. to ReShape Lifesciences Inc. (NASDAQ: RSLS) in recognition of our expansion and growth in developing and commercializing transformative technologies to address the continuum of care for obesity and its associated health conditions. The ReShape brand name is strong and well-established in the marketplace and we expect this to not only help our other products succeed, but we also believe it will accelerate growth in our industry overall. In December, 2017, we rebranded the three products under the ReShape Lifesciences brand. Our portfolio of transformative technologies, designed to help patients lose weight and live a healthier life, includes two FDA-approved devices, ReShape™ vBloc (formerly vBloc) and ReShape™ Balloon, as well as the investigational ReShape™ Vest (formerly Gastric Vest System).

In 2015, our first year of commercial activity, we sold 24 ReShape vBloc units for $292,000 in revenue and in 2016, we sold 62 ReShape vBloc units for $787,000 in revenue. In 2017, our total revenues were $1.3 million, $718,000 from 2017 fourth quarter revenue resulting from the acquisition of ReShape Medical, $250,000 from service revenue and $319,000 from the sale of 28 ReShape vBloc units. We have incurred and expect to continue to incur significant sales, marketing, clinical, and R&D expenses prior to recording sufficient revenue to offset these expenses. Additionally, our selling, general and administrative expenses have continued, as we build the infrastructure necessary to support our expanding commercial sales, operate as a public company and develop our intellectual property portfolio. For these reasons, we expect to continue to incur operating losses for the next several years. We have financed our operations to date principally through the sale of equity securities, debt financing and interest earned on cash investments.

Our Market

The Obesity and Metabolic Disease Epidemic

Obesity is a disease that has been increasing at an alarming rate with significant medical repercussions and associated economic costs. Since 1980, the worldwide obesity rate has more than doubled, with about 13% of the world's adult population now being obese. The World Health Organization (WHO) currently estimates that as many as 600 million people worldwide are obese and more than 1.9 billion adults are overweight. Being overweight or obese is also the fifth leading risk for global deaths, with approximately 3.4 million adults dying each year as a result.

According to the World Health Organization, there are over 70 progressive obesity-related diseases and disorders associated with obesity, which are also known as comorbidities, including Type 2 diabetes, hypertension, infertility and certain cancers. Worldwide, 44% of the diabetes burden, 23% of the heart disease burden and between 7% and 41% of certain cancer burdens are attributable to overweight and obesity.

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

The United States Market

Obesity has been identified by the U.S. Surgeon General as the fastest growing cause of disease and death in the United States, and according to a 2014 McKinsey Report is the leading cause of preventable death in the U.S. Currently, the Center for Disease Control (CDC) estimates that 35.7% of U.S. adults (or approximately 73 million people) are obese, having a BMI of 30 or higher. BMI is calculated by dividing a person's weight in kilograms by the square of their height in meters. It is estimated that if obesity rates stay consistent, 51% of the U.S. population will be obese by 2030. According to data from the U.S. Department of Health and Human Services, almost 80% of adults with a BMI above 30 have comorbidity, and almost 40% have two or more of these comorbidities. According to The Obesity Society and the CDC, obesity is associated with many significant weight-related comorbidities including Type 2 diabetes, high blood-pressure, sleep apnea, certain cancers, high cholesterol, coronary artery disease, osteoarthritis and stroke. According to the American Cancer Society, 572,000 Americans die of cancer each year, over one-third of which are linked to excess body weight, poor nutrition and/or physical inactivity. Over 75% of hypertension cases are directly linked to obesity, and approximately two-thirds of U.S. adults with Type 2 diabetes are overweight or have obesity.

Currently, medical costs associated with obesity in the U.S. are estimated to be up to $210 billion per year and nearly 21% of medical costs in the U.S. can be attributed to obesity. An estimated approximately $1.5 billion was spent in 2015 alone in the U.S. on approximately 200,000 bariatric surgical procedures to treat obesity. By 2025, it is estimated that up to $3.8 billion will be spent in the U.S. on approximately 800,000 bariatric surgical procedures to treat obesity. Researchers estimate that if obesity trends continue, obesity related medical costs could rise by another $44-$66 billion each year in the U.S. by 2030. The per person medical costs paid by third-party payers for people who are obese were $2,741 per year, or 42% higher than those of people who are normal weight and the average cost to employers is $6,627 to $8,067 per year per obese employee (BMI of 35 to 40 and higher).

Current Treatment Options and Their Limitations

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

The principal treatment alternatives available today for obesity include:

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

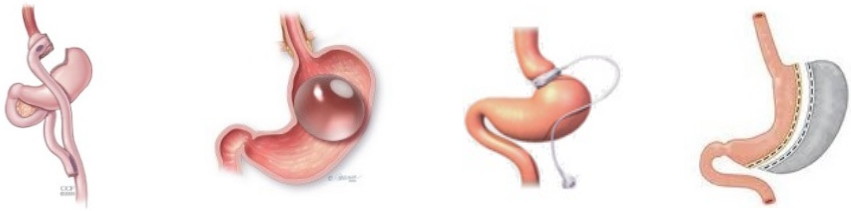
- **Pharmaceutical therapy**. Pharmaceutical therapies often represent a first option in the treatment of obese patients but carry significant safety risks and may present troublesome side effects and compliance issues.

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

Our Competition

The market for obesity treatments is competitive, subject to technological change and significantly affected by new product development. Our primary competition in the obesity treatment market is currently from bariatric surgical procedures and from endoscopic procedures. We believe we are the first company having neuroblocking therapy for the treatment of obesity. There are currently no other FDA-approved neuromodulation or neuroblocking therapies for the

treatment of obesity, but in the future we expect other new stimulation systems and neurotechnology devices to come on the market.



Bypass Balloon Band Sleeve

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

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

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

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

In addition, there are many larger potential competitors experimenting in the field of neurostimulation to treat various diseases and disorders. For example, Medtronic plc, which develops deep brain stimulators and spinal cord stimulators, acquired TransNeuronix, which sought to treat obesity by stimulating the smooth muscle of the stomach wall and nearby tissue. St. Jude Medical, Inc., through its acquisition of Advanced Neuromodulation Systems, is developing spinal cord stimulators. LivaNova PLC is developing vagus nerve stimulators to modulate epileptic seizures and other neurological disorders. Boston Scientific Corporation, through its Advanced Bionics division, is developing neurostimulation devices such as spinal cord stimulators and cochlear implants. Ethicon-Endo Surgery acquired LivaNova PLC's patents and patent applications pertaining to vagus nerve stimulation for the treatment of obesity and two related comorbidities, diabetes and hypertension, in overweight patients.

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

- acceptance by healthcare professionals, patients and payers;
- published rates of safety and efficacy;

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

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

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

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

Market Opportunity

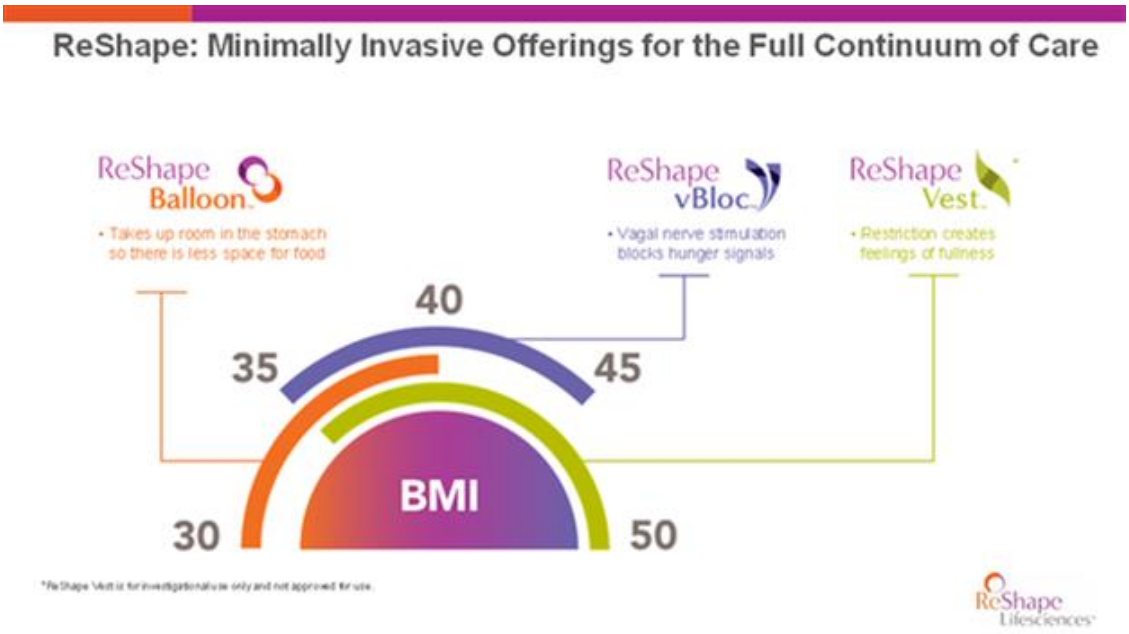
Given the limitations of behavioral modification, pharmaceutical therapy and traditional bariatric surgical approaches, we believe there is a substantial need for patient-friendly, safer, effective and durable solutions that:

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

Our Strategic Focus

Develop and Commercialize a Differentiated Portfolio of Products/Therapies

An overarching strategy for our company is to develop and commercialize a product portfolio that is differentiated from our competition by offering transformative technologies to bariatric surgeons and gastroenterologists that consists of a selection of patient friendly, non-anatomy-changing alternatives to traditional bariatric surgery. With ReShape vBloc, the ReShape Balloon, and the ReShape Vest (if approved for commercial use), we believe we will have three compelling and differentiated medical devices, two of which are currently FDA approved. We believe that we are well positioned for the existing market and can serve more of the overweight and obese population with our solutions and thereby help expand the addressable market for obesity.



Obtain Broad Coverage and Reimbursement

We are working to obtain coverage for our products from insurance carriers, local coverage entities and self-insured plans, including Integrated Delivery Networks (IDNs) and Medicare Administrative Contractors (MACs). Initial coverage for ReShape vBloc will likely occur in self-contained healthcare systems that operate as IDNs, as these systems are able to evaluate risk-benefit ratios in a closed environment. For example, in the first quarter of 2016, we announced that the Winthrop Hospital System in New York, a significant IDN in the northeast, would cover our therapy for their employees. Other similar arrangements are in active discussion.

While payers are not our direct customers, their coverage and reimbursement policies influence patient and physician selection of obesity treatment. Our commercialization is coverage-centric, focused on payer and employer engagement, in order to obtain support for ReShape vBloc and our ReShape Balloon. We plan to establish a market price for the ReShape vBloc in the United States that is competitive with other available weight loss surgical procedures and comparable to other active implantable devices such as implantable cardioverter defibrillators, neurostimulation devices for chronic pain and depression, and cochlear implant systems.

CMS issued a national coverage determination for several specific types of bariatric surgery in 2006, which we view as positive potential precedent and guidance factors that CMS might use in deciding to cover our vBloc Therapy. Although Medicare policies are often emulated or adopted by other third-party payers, other governmental and private insurance coverage currently varies by carrier and geographic location.

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

Our clinical development strategy is to collaborate closely with regulatory bodies, obesity therapy experts and others involved in the obesity management process, patients and their advocates and scientific experts. We have established credible and open relationships with obesity therapy experts and have identified ReShape vBloc and ReShape Balloon patient ambassadors and we believe these individuals will be important in promoting patient awareness and gaining widespread adoption of the ReShape vBloc, the ReShape Balloon, and the ReShape Vest System.

Expand and Protect Our Intellectual Property Position

We believe that our issued patents and our patent applications encompass a broad platform of neuromodulation therapies, including vagal blocking and combination therapy focused on obesity, diabetes, hypertension and other gastrointestinal disorders. We also have broad patent coverage and pending patent applications for our ReShape Balloon and our ReShape Vest products. We intend to continue to pursue further intellectual property protection through U.S. and foreign patent applications.

Leverage our vBloc Technology for Other Disease States

We intend to continue to conduct research and development for other potential applications for our vBloc Therapy and believe we have a broad technology platform that will support the development of additional clinical applications and therapies for other metabolic and gastrointestinal disorders in addition to obesity.

Alternative Weight Loss Solutions

If we are able to commercialize the ReShape Vest, we believe we will be able to offer three distinct approaches that may be selected by the physician, depending on the severity of the patient's BMI or related co-morbidities. Together, the ReShape Vest, ReShape vBloc and the ReShape Balloon provide a minimally-invasive continuum of care for bariatric patients and their providers.

Concentrate Our Resources on the U.S. Market while Achieving Measured International Expansion

We intend to devote our near-term efforts toward our commercialization in the United States. We intend to explore select international markets to commercialize the ReShape vBloc and the ReShape Balloon as our resources permit, using direct, dealer and distributor sales models as the targeted market best dictates. With the ReShape Vest we intend on collecting data in our clinical trials sufficient to obtain future CE Mark approval and subsequent country approvals.

Our Product Portfolio

ReShape vBloc

ReShape vBloc, our initial product, uses vBloc Therapy to block the gastrointestinal effects of the vagus nerve using high-frequency, low-energy electrical impulses to intermittently interrupt naturally occurring neural impulses on the vagus nerve between the brain and the digestive system. Our therapy controls hunger sensations between meals, limits the expansion of the stomach and reduces the frequency and intensity of stomach contractions, leading to earlier fullness. The resulting physiologic effects of vBloc Therapy produce a feeling of early and prolonged fullness following smaller meal portions. By intermittently blocking the vagus nerve and allowing it to return to full function between therapeutic episodes, our therapy limits the body's natural tendency to circumvent the therapy, which can result in long-term weight loss.

Benefits. We have designed ReShape vBloc to address a significant market opportunity that we believe exists for a patient-friendly, safe, effective, less-invasive and durable therapy that is intended to address the underlying causes of hunger and obesity. Our ReShape vBloc offers each of the following benefits, which we believe could lead to the adoption of vBloc Therapy as the surgical therapy of choice for obesity and its comorbidities:

- **Preserves Normal Anatomy**. The ReShape vBloc is designed to deliver therapy that blocks the neural signals that influence a patient's hunger and sense of fullness without altering digestive system anatomy.

Accordingly, patients should experience fewer and less severe side effects compared to treatments that incorporate anatomical alterations.

- **Allows Continued Ingestion and Digestion of Foods Found in a Typical, Healthy Diet.** Because our therapy leaves the digestive anatomy unaltered, patients are able to maintain a more consistent nutritional balance compared to conventional surgical approaches, thus allowing them to effect positive changes in their eating behavior in a non-forced and potentially more consistent way.

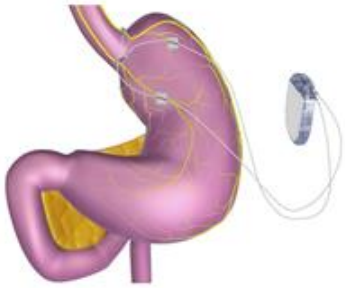
- **May be Implanted on an Outpatient Basis and Adjusted Non-Invasively.** The ReShape vBloc is designed to be laparoscopically implanted within a 60-90 minute procedure, allowing patients to leave the hospital or clinic on the same day. The implantable system is designed to be turned off and left in place for patients who reach their target weight. When desired, the follow-up physician can simply and non-invasively turn the therapy back on. Alternatively, the implantable system can be removed in a laparoscopic procedure.

- **Offers Favorable Safety Profile.** We have designed our clinical trials to demonstrate the safety of the ReShape vBloc. In our clinical trials to date, including the ReCharge trial, we have not observed any mortality related to our device or any unanticipated adverse device effects. We have also not observed any long-term problematic clinical side effects in any patients, including in those patients who have been using vBloc Therapy for more than one year.

- **Targets Multiple Factors that Contribute to Hunger and Obesity.** We designed vBloc Therapy to target the digestive, metabolic and information transmission functions of the vagus nerve and to affect the perception of hunger and fullness, which together contribute to obesity and its metabolic consequences.

ReShape vBloc, Implantation Procedure and Usage.

ReShape vBloc. Our ReShape vBloc delivers vBloc Therapy via two small electrodes that are laparoscopically implanted and placed in contact with the trunks of the vagus nerve just above the junction between the esophagus and the stomach, near the diaphragm.



The major components of ReShape vBloc include:

- ***Neuroregulator.*** The neuroregulator, a pacemaker-like device, is an implanted device that controls the delivery of vBloc Therapy to the vagus nerve. It is surgically implanted just below, and parallel to, the skin, typically on the side of the body over the ribs.

- ***Lead System.*** Proprietary leads are powered by the neuroregulator and deliver electrical pulses to the vagus nerve via the electrodes. The leads and electrodes are similar to those used in traditional cardiac rhythm management products.

- ***Mobile Charger.*** The mobile charger is an electronic device worn by the patient externally while recharging the device. It connects to the transmit coil and provides information on the battery status of the neuroregulator and the mobile charger.

- ***Transmit Coil.*** The transmit coil is positioned for short periods of time on top of the skin over the implanted neuroregulator to deliver radiofrequency battery charging and therapy programming information across the skin into the device.

- ***Clinician Programmer.*** The clinician programmer connects to the mobile charger to enable clinicians to customize therapy settings as necessary and retrieve reports stored in system components. The reports include patient use and system performance information used to manage therapy. The clinician programmer incorporates our proprietary software and is operated with a commercially available laptop computer.

Implantation Procedure. ReShape vBloc is implanted by a laparoscopically trained surgeon using a procedure that is typically performed within 60-90 minutes. During the procedure, the surgeon laparoscopically implants the electrodes in contact with the vagal nerve trunks and then connects the lead wires to the neuroregulator, which is subcutaneously implanted. The implantation procedure and usage of the ReShape vBloc carry some risks, such as the risks generally associated with laparoscopic procedures as well as the possibility of device malfunction. Adverse events related to the therapy, device or procedure may include, but are not limited to: transient pain at the implant site, heartburn, constipation, nausea, depression, diarrhea, infection, organ or nerve damage, surgical explant or revision, device movement, device malfunction and allergic reaction to the implant.

Usage of ReShape vBloc. The physician activates ReShape vBloc after implantation. vBloc Therapy is then delivered intermittently through the neuroregulator each day as scheduled (recommended during the patient's waking hours when food is consumed) through the neuroregulator. The scheduled delivery of the intermittent pulses blocking the vagus nerve is customized for each patient's weight loss and overall treatment objectives.

The physician is able to download reports to monitor patient use and system performance information. This information is particularly useful to physicians to ensure that patients are properly using the system. Although usage of our ReShape vBloc generally proceeds without complications, as part of the therapy or intentional weight loss, patients in our clinical trials have observed side-effects such as transient pain at the implant site, heartburn, bloating, dysphagia, eructation, cramps, diarrhea, nausea, constipation, and excessive feelings of fullness, especially after meals. In addition, patient noncompliance with properly charging ReShape vBloc may render vBloc Therapy less effective in achieving long-term loss.

The ReShape Balloon

The ReShape Balloon technology, which we acquired in October 2017 in connection with our acquisition of ReShape Medical, is a non-surgical, removable, dual weight loss balloon technology that is approved for people with a body mass index between 30 and 40 with one or more related comorbid conditions who have failed previous attempts to lose weight through diet and exercise. Our ReShape Balloon adds a lower-cost option to our portfolio of products, allowing access to additional patients within the obesity market. This expansion further reinforces our strategy and commitment to the entire continuum of care in obesity.

Benefits: The ReShape Balloon is a non-invasive weight loss solution ideal for patients who have failed at diet and exercise, and who are not indicated for or are afraid of surgery. The ReShape Balloon offers the following benefits:

- **Satiety:** The ReShape Balloon has more potential fill volume to aid in patients' weight loss than any other product on the market. The larger fill volume takes up more room in the stomach, so that patients eat less and feel full longer.

- **Patient Comfort:** Unlike other balloons, we believe that our device differentiates itself with two interconnected balloons designed to better fit the natural contour of the stomach, thereby increasing the level of patient comfort.

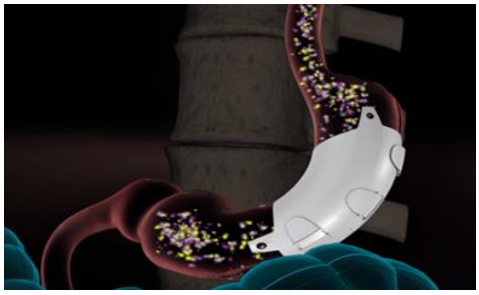
- **Designed for Safety:** The ReShape Balloon is the only intragastric balloon designed to mitigate the potential risk of migration. The dual balloon design allows for one balloon to remain inflated and in the stomach, in the unlikely event the other balloon deflates. Other single balloons can deflate and risk migrating. The ReShape Balloon is inserted through the mouth - endoscopically - during a 20-minute outpatient procedure - with no incisions or scars. After six months, the balloon is removed endoscopically, in a procedure similar to the insertion procedure

- **Customized Aftercare:** For the six months the balloon is in and for six months after the balloon removal, patients obtain monthly customized coaching focused on changing behaviors and relationships with food.

The ReShape Balloon was approved by the FDA in July 2015, and to date, more than 4,000 patients have been treated with this technology. The ReShape Balloon also has received CE Mark approval, but due to limited capital resources, ReShape Medical had not focused on penetrating European markets. The ReShape Balloon was made available to three areas in the Middle East in 2017: Kuwait, Qatar and UAE. Further expansion opportunities will be evaluated based on market opportunity and resources to manage expansion.

The ReShape Vest

The ReShape Vest, which we acquired in May 2017 in connection with our acquisition of BarioSurg, is an investigational, minimally invasive, laparoscopically implanted medical device being studied for weight loss in morbidly obese patients with a BMI of at least 35. This device is designed to restrict the intake of food and provide the feeling of fullness without cutting or permanently removing portions of the stomach, or bypassing, any portion of the gastrointestinal tract. The implantation of the device mimics a traditional weight-loss surgery without permanently altering the anatomy and may not require vitamin supplementation.



In a small pilot study conducted outside the U.S., at 12 months ReShape Vest patients demonstrated a mean percent excess weight loss (%EWL) of 85% and a mean percent total body weight loss (%TBWL) of 30.2%, an average drop in HbA1c (Hemoglobin A1c) of 2.1 points, an average decrease of systolic blood pressure of 13mmHg, an average waist circumference reduction of 38 centimeters, or approximately 15 inches, and an average increase in HDL "good cholesterol" of 29 mg/dl.

Benefits. The ReShape Vest, if approved for sale, would allow us to offer an additional weight loss solution that emulates the effect of conventional weight loss surgery through a procedure that is minimally invasive. The ReShape Vest System potentially offers the following benefits:

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

- **Minimally Invasive Procedure**. Unlike conventional weight loss surgery, which typically is performed in a hospital setting under general anesthesia and requires a hospital stay of up to four days, the ReShape Vest System is inserted laparoscopically in an outpatient procedure.

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

- **Allows Continued Ingestion and Digestion of Foods Found in a Typical, Healthy Diet.** Because the ReShape Vest System also leaves the digestive anatomy largely unaltered, patients are able to maintain a more consistent nutritional balance compared to conventional surgical approaches, thus allowing them to effect positive changes in their eating behavior in a non-forced and potentially more consistent way.

Implantation Procedure. The ReShape Vest is a thin, implantable-grade silicone device that wraps around the stomach, as shown below. The device wraps around the stomach after it has been rearranged into a banana-like shape using sutures, emulating the effect of conventional weight-loss surgery, and is intended to enable gastric volume reduction without permanently changing patient anatomy. By decreasing the cross-sectional area of the stomach, food travels faster through the stomach, resulting in faster gastric emptying. The smaller amount of food in the stomach coupled with restriction is intended to stimulate the stretch receptors along the stomach, which send signals to the brain that the patient should stop eating.

Clinical Data – vBloc Therapy

We have conducted a series of clinical trials to date, which have shown that vBloc Therapy offers physicians a programmable method to selectively and reversibly block the vagus nerve resulting in clinically and statistically significant EWL.

We have not observed any mortality related to our device or any unanticipated adverse device effects in any of our completed or ongoing studies. Reported events include those associated with laparoscopic surgery or any implantable electronic device. The effects of vBloc Therapy include changes in appetite, and, in some patients, effects that may be expected with decreased intra-abdominal vagus nerve activity, such as temporary abdominal discomfort and short episodes of belching, bloating, cramping or nausea.

Findings from our clinical trials have resulted in publication in numerous peer-reviewed journals, including *The Journal of the American Medical Association, Journal of Obesity, Obesity Surgery, Surgery for Obesity and Related Diseases, Journal of Diabetes and Obesity, Surgery and Journal of Neural Engineering*, and data have been presented at several scientific sessions including the American Society for Metabolic and Bariatric Surgery, International Federation for Surgery of Obesity and Metabolic Disorders, the Obesity Surgery Society of Australia & New Zealand and The Obesity Society.

We obtained European CE Mark approval for our ReShape vBloc in 2011 for the treatment of obesity. The CE Mark approval for ReShape vBloc was expanded in 2014 to also include use for the management of Type 2 diabetes in obese patients. Additionally, the final ReShape vBloc components were previously listed on the Australian Register of Therapeutic Goods by the Therapeutic Goods Administration. We believe that, the costs and resources required to successfully commercialize ReShape vBloc internationally are currently beyond our capability and, as result, we made the decision in late 2017 to temporarily abandon CE-marking of ReShape vBloc. Accordingly, we will continue to devote our near-term efforts toward mounting a successful system launch in the United States. We intend to explore select international markets to commercialize ReShape vBloc as our resources permit, using direct, dealer and distributor sales models as the targeted market best dictates.

To date, we have not observed any mortality related to ReShape vBloc or any unanticipated adverse device effects in our human clinical trials. We have also not observed any long-term problematic clinical side effects in any patients. In addition, data from our VBLOC-DM2 ENABLE trial outside the United States demonstrate that vBloc Therapy may hold promise in improving obesity-related comorbidities such as diabetes and hypertension. We are conducting, or plan to conduct, further studies in each of these comorbidities to assess vBloc Therapy's potential in addressing multiple indications.

Below is a more detailed description of our past and ongoing vBloc clinical studies:

ReCharge Trial

In October 2010, we received an unconditional Investigational Device Exemption (IDE) approval from the FDA to conduct a randomized, double-blind, sham-controlled, multicenter pivotal clinical trial, called the ReCharge trial, testing the effectiveness and safety of vBloc Therapy utilizing our second generation ReShape vBloc. Enrollment and implantation in the ReCharge trial was completed in December 2011 in 239 randomized patients (233 implanted) at 10 centers. All patients in the trial received an implanted device and were randomized in a 2:1 allocation to treatment or control groups. The control group received a non-functional device during the trial period. All patients were expected to participate in a standard weight management counseling program. The primary endpoints of efficacy and safety were evaluated at 12 months. The ReCharge trial met its primary safety endpoint with a 3.7% serious adverse event rate, significantly lower than the threshold of 15% ($p<0.0001$). The safety profile at 12 months was further supported by positive cardiovascular signals including a 5.5 mmHg drop in systolic blood pressure, a 2.8 mmHg drop in diastolic blood pressure and a 3.6 bpm drop in average heart rate.

Although the trial did not meet its predefined co-primary efficacy endpoints, it did demonstrate in the ITT population (n=239) a clinically meaningful and statistically significant EWL of 24.4% (approximately 10% TBL) for vBloc Therapy-treated patients, with 52.5% of patients achieving at least 20% EWL. In the per protocol population, the trial demonstrated an EWL of 26.3% for vBloc Therapy-treated patients, with 56.8% of patients achieving at least 20% EWL. As a result of the positive safety and efficacy profile of vBloc Therapy, we used the data from the ReCharge trial to support a PMA application for the ReShape vBloc, which was submitted to the FDA in June 2013 and was accepted for review and filing in July 2013. An Advisory Panel meeting was held on June 17, 2014 to review our PMA application for approval of the ReShape vBloc. The Advisory Panel voted 8 to 1 "in favor" that the ReShape vBloc is safe when used as designed and voted 4 to 5 "against" on the issue of a reasonable assurance of efficacy. The final vote, on whether the relative benefits outweighed the relative risk, was 6 to 2 "in favor," with 1 abstention. We received FDA approval on January 14, 2015 for vBloc Therapy, delivered via the ReShape vBloc, for the treatment of adult patients with obesity who have a BMI of at least 40 to 45 kg/m2, or a BMI of at least 35 to 39.9 kg/m2 with a related health condition such as high blood pressure or high cholesterol levels, and who have tried to lose weight in a supervised weight management program and failed within the past five years.

Further analysis of the 12 month data show that in the primary analysis (ITT) population (n=239), vBloc Therapy-treated patients achieved a 24.4% average EWL (approximately 10% TBL) compared to 15.9% for sham control patients. This 8.5% difference demonstrated statistical superiority over sham control ($p=0.002$), but not super-superiority at the pre-specified 10% margin ($p=0.705$). In total, 52.5% of vBloc Therapy-treated patients had 20% or more EWL compared to 32.5% in the control group ($p=0.004$), and 38.3% of vBloc Therapy-treated patients had 25% or more EWL compared to 23.4% in the sham control group ($p=0.02$). While the respective co-primary endpoint targets of 55% and 45% were not met, the endpoint targets were within the 95% confidence intervals for the observed rates and therefore the observed rates were not significantly lower than these pre-specified rates. These efficacy data demonstrate vBloc Therapy's positive effect on weight loss.

In the per protocol group, which included only those patients who received therapy per the trial design (n=211), the vBloc Therapy-treated patients had a 26.3% average EWL (approximately 10% TBL) compared to 17.3% for the sham control group ($p=0.003$). In total, 56.8% of vBloc Therapy-treated patients achieved at least 20% EWL, which was above the predefined threshold of 55% compared to 35.4% in the sham control group ($p=0.004$). 41.8% of vBloc Therapy-treated patients also achieved at least 25% EWL in this population, which is slightly less than the predefined threshold of 45%, compared to 26.2% in the sham control group ($p=0.03$).

Additionally, two-thirds of vBloc Therapy-treated patients achieved at least 5% TBL at 12 months. According to the CDC, 5% TBL can have significant health benefits on obesity related risk factors, or comorbidities, including

reduction in blood pressure, improvements in Type 2 diabetes and reductions in triglycerides and cholesterol. Further analysis of our data at 12 months showed a meaningful impact on these comorbidities as noted in the below table showing the improvements seen at 10% TBL, the average weight loss in vBloc Therapy-treated patients.

Risk Factor	10% TBL
Systolic BP (mmHg)	(9)
Diastolic BP (mmHg)	(6)
Heart Rate (bpm)	(6)
Total Cholesterol (mg/dL)	(15)
LDL (mg/dL)	(9)
Triglycerides (mg/dL)	(41)
HDL (mg/dL)	3
Waist Circumference (inches)	(7)
HbA1c (%)	(0.5)

Approximately 93% of patients reached the 12 month assessment in the trial, consistent with a rigorously executed trial. vBloc Therapy-treated patients maintained their weight loss at 18 months and 24 months with an EWL of 23.5% and 21.1%, respectively. The trial's positive safety profile also continued throughout this reported time period.

VBLOC-DM2 ENABLE Trial

Enrollment of the VBLOC-DM2 ENABLE trial began in 2008. The VBLOC-DM2 ENABLE trial is designed to evaluate the efficacy and safety of vBloc Therapy on obese subjects as well as its effect on glucose regulation in approximately 30 patients who are using the ReShape vBloc. The trial is an international, open-label, prospective, multi-center study. At each designated trial endpoint the efficacy of vBloc Therapy is evaluated by measuring average percentage EWL, HbA1c (blood sugar), FPG (fasting plasma glucose), blood pressure, calorie intake, appetite and other endpoints at one week, one month, three, six, 12 and 18 months and longer. The following results were reported at 12 month intervals.

- Percent EWL (from implant, Company updated interim data):

Visit (post-device activation)	% EWL	N
12 Months	(24.5)	26
24 Months	(22.7)	22
36 Months	(24.3)	18

- HbA1c change in percentage points (Baseline HbA1c = 7.8 ± 0.2%) (Company updated interim data):

Visit (post-device activation)	% HbA1c change	N
12 Months	(1)	26
24 Months	(0.5)	24
36 Months	(0.6)	17

- Fasting Plasma Glucose change (Baseline 151.4 + 6.5 mg/dl average) (Company updated interim data):

Visit (post-device activation)	Glucose change (mg/dl)	N
12 Months	(27.6)	25
24 Months	(20.3)	24
36 Months	(24)	17

- Change in mean arterial pressure (MAP) in hypertensive patients (baseline 99.5 mmHg) (Company updated interim data):

Visit (post-device activation)	MAP change (mmHg)	N
12 Months	(7.8)	14
24 Months	(7.5)	12
36 Months	(7.3)	10

To date, no deaths related to our device or unanticipated adverse device effects have been reported during the VBLOC-DM2 ENABLE trial and the safety profile is similar to that seen in the other vBloc trials.

Caloric Intake Sub-study: A sub-study, conducted as part of the VBLOC-DM2 ENABLE trial, evaluated 12-month satiety and calorie intake in 10 patients with Type 2 diabetes mellitus enrolled in the trial. Follow-up measures among patients enrolled in the sub-study included EWL, 7-day diet records assessed by a nutritionist, calorie calculations and visual analogue scale (VAS) questions to assess satiety by 7-day or 24-hour recall at the following time periods: baseline, 4 and 12 weeks and 6 and 12 months post device initiation. A validated program, Food Works™, was used to determine calorie and nutrition content. Results include:

- Mean EWL for the sub-study was 33±5% ($p<0.001$) at 12 months;
- Calorie intake decreased by 45% ($p<0.001$), 48% ($p<0.001$), 38% ($p<0.001$) and 30% ($p=0.02$), at 4 and 12 weeks, 6 months and 12 months, respectively, from a baseline of 2,062 kcal/day; and
- VAS recall data, using a repeated measures analysis, documented fullness at the beginning of meals ($p=0.005$), less food consumption ($p=0.02$) and less hunger at the beginning of meal ($p=0.03$) corroborating the reduction in caloric intake.

ReNew Trial

The ReNew Trial is a Post Approval Study required by the FDA as a condition of approval. ReNew is a five-year, multi-center trial to evaluate the long-term safety and efficacy of the Maestro Rechargeable System in treating obesity in 200 patients at 10 to 15 sites. The ReNew trial contains both randomized and observational cohorts. The first implantation of the ReNew trial was in August 2017 and we expect enrollment for the ReNew trial to continue throughout 2018, 2019 and 2020.

Kaiser Diabetes Trial

On April 26, 2017, we entered into a Clinical Trial Agreement with Southern California Permanente Medical Group (“Southern”), a division of Kaiser Permanente, with an effective date of June 1, 2017. Under the agreement, we are sponsoring an investigator-initiated three-year, 60 patient study with Southern to study vBloc Therapy as a treatment for Type 2 diabetic patients with obesity. As sponsor of the study, we are obligated to pay Southern approximately $3.4 million over three years to fund the study. This study is expected to have patient enrollment to continue through 2018.

All clinical data generated during the study will be disclosed to us and may be used for any purpose stated in the informed consent form or otherwise in compliance with applicable law. We will have the right to publish, present or use any final results arising out of the study. We believe that results of the study will aid in our efforts to obtain insurance reimbursement from payers.

vBloc Now Registry

In June 2017, we launched our vBloc Now program. The vBloc Now program provides qualified patients battling obesity the opportunity to receive vBloc Therapy, including the device, procedure, and vBloc Achieve follow up program, at an affordable price in exchange for sharing detailed health data with us. The program is available for a limited time, will reduce patient total out-of-pocket costs, and compete with leading covered bariatric surgery procedures as well as other low-cost weight loss devices

In addition, the vBloc Now program provides us with additional commercial data concerning vBloc Therapy in order to enhance our case with third-party payers that the ReShape vBloc can have a clinically meaningful level of effectiveness in reducing the incidence of diabetes and other comorbidities in certain patients. We will collect real-world outcome data in 125 patients from select vBloc institutes in the vBloc Now program. While we do not expect to recognize any revenues in conjunction with the vBloc Now program, we anticipate that vBloc Now program expenses will be offset by a reduction in marketing and advertising expenses and will not increase the Company's overall operating expenses.

Clinical Data – ReShape Balloon

REDUCE Trial

The REDUCE study, which was ReShape Medical's U.S. prospective randomized pivotal trial, demonstrated that patients who underwent the ReShape Non-Surgical Weight Loss Procedure lost 2.3 times more excess weight at six months compared to control patients treated with diet and exercise alone, and 55% of patients treated with the ReShape Balloons lost at least 25% of their excess weight. Additionally, there were significant and sustained improvements in co-morbidities and strong patient satisfaction, along with maintenance of two-thirds of the weight loss, through twelve months of study follow up.

In 2009, ReShape Medical received an unconditional IDE approval from the FDA to conduct the REDUCE trial. The REDUCE trial was ReShape Medical's U.S. prospective, sham-controlled, double blinded, randomized, multicenter pivotal trial, testing the effectiveness and safety of the DUO® Integrated Dual Balloon System. Enrollment and insertion in the REDUCE Trial was completed in February 2014. There were 326 patients enrolled (187 treatment; 139 control) and, of those, 265 insertions were completed (187 treatment and 78 control). The control group received 24 weeks of diet and exercise counselling. After 24 weeks of counselling control subjects either exited the trial or, if willing and eligible, were treated with the DUO device. Patients who underwent the ReShape Non-Surgical Weight Loss Procedure using the DUO® Integrated Dual Balloon System lost 2.3 times more excess weight at six months compared to control patients treated with diet and exercise alone. Fifty-five percent (55%) of patients treated with the ReShape Balloons lost at least 25% of their excess weight. Additionally, there were significant and sustained improvements in co-morbidities, quality of life and strong patient satisfaction, along with maintenance of two-thirds of the weight loss, through 12 months of study follow up.

The following co-morbidity results were reported:

Mean Systolic Blood Pressure Levels in Study Subjects During Study Follow-Up

Visit Interval	Systolic Blood Pressure Mean (SD)	N
Baseline	130.4 (13.9)	187
Week 12	-8.2 (14.2)	173
Week 24	-8.3 (15.6)	169
Week 36	-9.3 (16.2)	123
Week 48	-6.6 (15.8)	136

Mean Systolic Blood Pressure Levels During Study Follow-Up in Subjects with Established Hypertension at Baseline

Visit Interval	Systolic Blood Pressure Mean (SD)	N
Baseline	136.5 (15.8)	54
Week 12	-11.9 (13.9)	48
Week 24	-12.9 (19.0)	48
Week 36	-14.5 (16.7)	34
Week 48	-11.1 (18.6)	39

Mean Fasting Insulin Levels in Study Subjects During Study Follow-Up

Visit Interval	Fasting Insulin Mean (SD)	N
Baseline	17.84 (19.88)	185
Week 12	-4.76 (20.84)	170
Week 24	-3.80 (22.20)	167
Week 36	-0.70 (22.46)	118
Week 48	-1.05 (21.47)	130

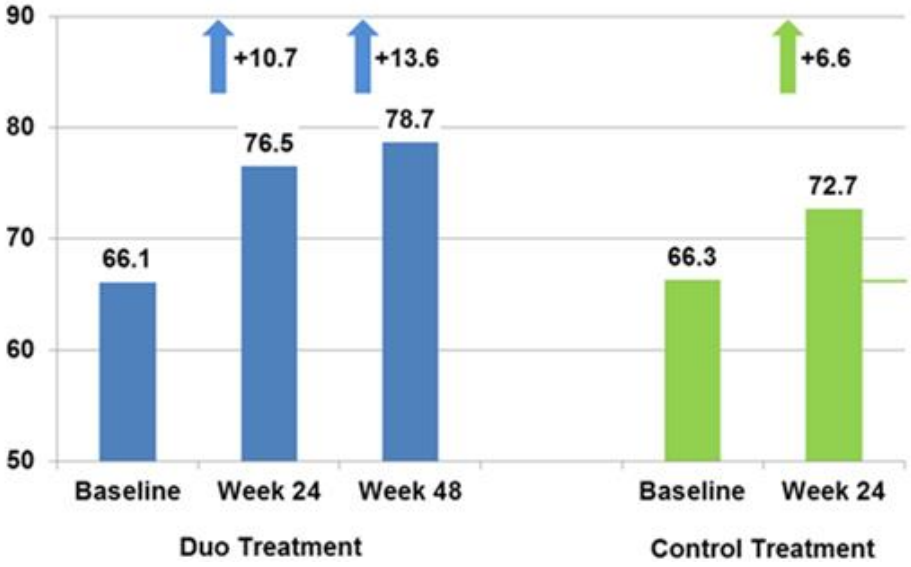
Mean Hemoglobin A1c Levels in Study Subjects During Study Follow-Up

Visit Interval	Fasting Insulin Mean (SD)	N
Baseline	5.66 (0.69)	187
Week 12	-0.13 (0.35)	171
Week 24	-0.22 (0.35)	168
Week 36	-0.26 (0.42)	120
Week 48	-0.19 (0.34)	133

The total Impact of Weight on Quality of Life-Lite (IWQoL) scores improved for both groups, with a greater improvement seen at Weeks 24 and 48 for treatment subjects compared with control subjects. These changes are both statistically and clinically significant, including the larger response in treatment subjects compared with control subjects.

These clinically significant findings are depicted in the following chart:

IWQoL-Lite Scores at Baseline and Follow-Up



The overall safety profile of the ReShape Duo Integrated Dual Balloon System in the REDUCE Pivotal Trial was favorable. There were no unanticipated adverse device effects, no deaths, no intestinal obstructions and no gastric perforations. Procedural risk was consistent with low risk endoscopic interventions. Accommodative symptoms occurred, generally diminished or resolved within the first week of treatment. There was a low rate of device- or procedure-related SAEs (7.5%). The gastric ulceration rate was substantially reduced by a minor design modification to the device.

REDUCE PAS

The REDUCE PAS is a Post Approval Study Required by the FDA as a condition of approval. REDUCE PAS is a 48-month open-label, single arm study to demonstrate safety and efficacy of the ReShape Dual Balloon System in 250 patients in 15 trial sites. The first insertion was September 2016 and enrollment is expected to continue through 2018, completing early 2019.

Clinical Data – ReShape Vest

ReShape Vest ENDURE Trial

The ReShape Vest was studied internationally in the ENDURE trial, which was a non-randomized, single center pilot designed to evaluate the safety and efficacy of the ReShape Vest. Of the 17 patients enrolled, 14 have completed their 12-month follow-up visit. Results from these 14 patients show that the ReShape Vest demonstrated a mean excess weight loss (%EWL) of 85.5% compared to approximately 75% and 65% for gastric bypass and sleeve gastrectomy. The patients also experienced an average HgA1c decrease of 2.1%, and an average waist circumference reduction of 38 cm, or 15 inches. The ReShape Vest will continue to be studied in upcoming trials in the US and internationally.

Our Research and Development

Current R&D Focus

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

- supporting the current ReShape vBloc and ReShape Balloon;
- testing and developing the ReShape Vest;
- developing the next-generation ReShape vBloc and ReShape Balloon;
- identifying the effect of vagal blocking on nerve and organ function; and
- investigating the ReShape vBloc and ReShape Vest platforms for the treatment of gastrointestinal disorders and comorbidities in addition to obesity.

We have spent a significant portion of our capital resources on research and development. Our research and development expenses were $5.8 million in 2017, $5.1 million in 2016, $8.1 million in 2015 and $11.0 million in 2014. Having obtained FDA approval in January 2015, our main focus has been on commercialization efforts, resulting in decreases in spending on research and development in each of 2015 and 2016 compared to 2014, when we were still working through the FDA approval process.

Other Diseases and Disorders

We believe that our vBloc Therapy and ReShape Vest may have the potential, if validated through appropriate clinical studies, to treat a number of additional gastrointestinal disorders or comorbidities frequently associated with obesity, including the following:

- ***Type 2 Diabetes.*** Type 2 diabetes is an escalating global health epidemic often related to obesity that affects nearly 200 million people worldwide, 50 million in the United States alone. Those with diabetes are susceptible to cardiovascular morbidity and mortality, and up to two out of three people with diabetes have high blood pressure. We believe that vBloc Therapy has significant potential in treating metabolic syndrome (diabetes with high blood pressure). We have launched an international feasibility trial, VBLOC-DM2 ENABLE, to further explore the efficacy of vBloc Therapy in this patient population and have reported preliminary findings in the “Our Clinical Experience” section above. vBloc Therapy for patients with Type 2 diabetes will continue to be studied primarily in our Kaiser Diabetes Trial.

- ***Hypertension.*** Blood pressure normally rises and falls throughout the day. When it consistently stays too high for too long, it is called hypertension. Globally, nearly one billion people have high blood pressure (hypertension); of these, two-thirds are in developing countries. About one in three American adults has high blood pressure or hypertension. Hypertension is one of the most important causes of premature death worldwide and the problem is growing; in 2025, an estimated 1.56 billion adults will be living with hypertension. Hypertension kills nearly 8 million people every year worldwide. We believe that vBloc Therapy may improve mean systolic and diastolic blood pressure in hypertensive patients. We completed a subgroup analysis of patients from an earlier clinical trial and have included an evaluation of the blood pressure effects of vBloc Therapy in our international feasibility trial, VBLOC-DM2 ENABLE, to further explore the efficacy of vBloc Therapy in this patient population and have reported preliminary findings in the “Our Clinical Experience” section above.

- ***Pancreatitis.*** Primary and recurrent cases of acute pancreatitis are estimated to number from 150,000 to 200,000 annually, resulting in approximately 80,000 hospital admissions each year in the United States. In animal studies, we have shown that vBloc Therapy suppresses pancreatic exocrine secretion, suggesting its potential efficacy in treating pancreatitis.

- ***Other Gastrointestinal Disorders.*** We believe that vBloc Therapy may have potential in a number of other gastrointestinal disorders, including irritable bowel syndrome and inflammatory bowel disease.

None of the above conditions were included in our ReShape vBloc PMA application that was approved by the FDA on January 14, 2015, nor are they approved for sale internationally. Additional approvals will be required to market the ReShape vBloc or ReShape Vest for these indications in the United States or internationally.

Our Intellectual Property

Our success will depend in part on our ability to obtain and defend patent protection for our products and processes, to preserve our trade secrets and to operate without infringing or violating the proprietary rights of third parties. We own numerous U.S. and foreign patents, and have numerous patent applications pending, most of which pertain to treating gastrointestinal disorders and we believe provide us with broad intellectual property protection covering electrically-induced vagal blocking and methods for treating obesity. Assuming timely payment of maintenance fees as they become due, many of these patents will expire in 2023. Our acquisition of the ReShape Vest included four U.S. patents, one pending U.S. patent application, four foreign patents, and five pending foreign patent applications. The patents we acquired related to the ReShape Vest will expire between 2028 and 2034. We have also received or applied for patents in Europe, Australia, China, India and Japan. These applications primarily pertain to our vagal blocking technology and its application to obesity as well as other gastrointestinal disorders. The applications that we acquired related to the ReShape Vest primarily pertain to methods of gastric restriction for treating obesity. Our acquisition of the ReShape Balloon included broad coverage for multi-balloon gastric implants and methods for its placement and retrieval. Patent coverage also includes methods of manufacturing and additional therapy applications. There are 35 patents granted in the US, Europe, Canada, and Japan with additional U.S. and international patent applications pending. The key patents we acquired in connection with our acquisition of ReShape Medical will expire between 2027 and 2030.

We also register the trademarks and trade names through which we conduct our business. In the United States we have registered trademarks for vBLOC®, ENTEROMEDICS®, MAESTRO®, RESHAPE®, RESHAPE DUO®, and RESHAPE MEDICAL®, RESHAPE® DUAL BALLOON each registered with the United States Patent and Trademark Office, and trademark applications for vBLOC POWER TO CHOOSE, RESHAPE vBLOC , vBLOC ACHIEVE, RESHAPE VEST, and VBLOC POWER TO CHOOSE AND DESIGN. In addition, some or all of the marks vBLOC, ENTEROMEDICS, MAESTRO, MAESTRO SYSTEM ORCHESTRATING OBESITY SOLUTIONS, vBLOC POWER TO CHOOSE, vBLOC POWER TO CHOOSE AND DESIGN, RESHAPE, RESHAPE DUO, RESHAPE MEDICAL and RESHAPE LIFESCIENCES are the subject of either a trademark registration or application for registration in Australia, Brazil, Canada, China, the European Community, India, Kuwait, Mexico, Saudi Arabia, Switzerland and the United Arab Emirates. We believe that we have common law trademark rights to RESHAPE VEST.

In addition to our patents, we rely on confidentiality and proprietary information agreements to protect our trade secrets and proprietary knowledge. These confidentiality and proprietary information agreements generally provide that all confidential information developed or made known to individuals by us during the course of their relationship with us is to be kept confidential and not disclosed to third parties, except in specific circumstances. The agreements also provide for ownership of inventions conceived during the course of such agreements. If our proprietary information is shared or our confidentiality agreements are breached, we may not have adequate remedies, or our trade secrets may otherwise become known to or independently developed by competitors.

Sales and Distribution

We started the process of building a sales force and a controlled expansion of our operations and hired three new executives in January 2016 to oversee this expansion. Throughout 2015, 2016, and 2017 our sales force called directly on bariatric surgeons and gastroenterologists at commercially-driven bariatric centers of excellence that met our certification criteria. Additionally, in 2016, through a distribution agreement with Academy Medical, VA medical facilities now offer the ReShape vBloc as a treatment option to veteran healthcare benefits. We intend to continue to build on these efforts in 2018 through self-pay patient and veteran focused direct-to-patient marketing and key opinion leader and center specific partnering.

In 2017, we acquired ReShape Medical and trained the existing vBloc sales team on the ReShape Balloon. The three vBloc sales specialists combined with the 10 existing ReShape Balloon sales team member, resulting in a sales

force of 13 with two area directors and a VP of Sales. Additionally, one VP sales executive is now responsible for the US VA business and international sales. In 2018, we expect to continue to increase our direct sales organization.

Our sales representatives are supported by field clinical experts who are responsible for training, technical support, and other support services at various implant centers. Our sales representatives with the assistance of three field-based marketing specialists implement consumer marketing programs and provide surgical centers and implanting surgeons with educational patient materials.

We market directly to patients but sell ReShape vBloc and our ReShape Balloon to select surgical centers throughout the United States that have patients that would like to treat obesity and its comorbidities. The surgical centers then sell our product to the patients and implant. In 2015, 2016, and 2017, almost all the patients that purchased ReShape vBloc or the ReShape Balloon paid for the therapy themselves and did not receive reimbursement from an insurance provider, with the exception of veterans who received the ReShape vBloc through Veteran Administration Hospitals and, as we announced in December 2017, the employees of a major telecom company who subscribe to CarePlus supplemental insurance who received full reimbursement for the ReShape Balloon procedure.

We plan to build on these efforts in 2018 with self-pay and veteran focused direct-to-patient marketing, key opinion leader and center-specific partnering, and a multi-faceted reimbursement strategy.

In January 2018, we launched a limited time and scope pilot program selling private-labeled meal replacements and nutritional products that are manufactured and fulfilled by third-party vendors. This program is primarily designed to serve individuals who may have interest in, but do not qualify for treatment with our ReShape vBloc or ReShape Balloon devices. This program includes a customized nutrition program designed by, and weekly support from, a registered dietician. We will evaluate this pilot program in order to determine whether to continue it on a long-term basis.

On July 25, 2017, we entered into a Collaboration Agreement with Galvani Bioelectronics Limited (“Galvani”). Under the Collaboration Agreement, we will modify our ReShape vBloc for use in pre-clinical research by Galvani. We will receive payments for our development work and supply under this agreement. We will retain all rights, title, and ownership in the intellectual property for the new device, which will be licensed to Galvani. Galvani has been granted a right of first negotiation for the potential exclusive or non-exclusive supply by us of the developed device, exercisable at Galvani’s election. We believe that this collaboration is an example of opportunities that may exist to leverage the company’s intellectual property portfolio and custom development services to provide third party sales and licensing opportunities. Galvani is a joint venture between GlaxoSmithKline and Verily Life Sciences (an Alphabet company) that was established in 2016 to enable the research, development and commercialization of bioelectronic medicines

Our Manufacturers and Suppliers

We have designed and developed all of the elements of ReShape vBloc, except for the clinician programmer hardware, which uses a commercially available laptop computer. We use third parties to manufacture ReShape vBloc to minimize our capital investment, help control costs and take advantage of the expertise these third parties have in the large-scale production of medical devices. We do not currently plan to manufacture ReShape vBloc ourselves. We have designed and developed all of the elements of the recently acquired ReShape Balloon system and manufacture it in-house, with the exception of accessories in the form of a guidewire, pump and tubing, which are all commercially available but private-labeled for the Company.

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

Given that we rely on third-party manufacturers and suppliers for the production of our products, our ability to increase production going forward will depend upon the experience, certification levels and large scale production capabilities of our suppliers and manufacturers. Qualified suppliers and contract manufacturers have been and will continue to be selected to supply products on a commercial scale according to our proprietary specifications. Because we manufacture the majority of the ReShape Balloon in-house, our ability to increase production will depend upon our

ability to hire and retain additional qualified personnel as well as the ability of our suppliers to meet increased demand. We have modestly increased our inventory levels to support commercial forecasts as we expand our implanting centers and intend to continue to increase our inventory levels as we determine necessary. Our FDA approval process required us to name and obtain approval for the suppliers of key components of ReShape vBloc and ReShape Balloon.

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

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

Government Regulations

Device Classification and Regulations

United States

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

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

The FFDCA provides two basic review procedures for medical devices. Certain products may qualify for a submission authorized by Section 510(k) of the FFDCA, where the manufacturer submits to the FDA a premarket notification of the manufacturer's intention to commence marketing the product. The manufacturer must, among other things, establish that the product to be marketed is substantially equivalent to another legally marketed product. Marketing may commence when the FDA issues a letter finding substantial equivalence. If a medical device does not

qualify for the 510(k) procedure, the manufacturer must file a premarket approval (PMA) application with the FDA. This procedure requires more extensive pre-filing clinical and preclinical testing than the 510(k) procedure and involves a significantly longer FDA review process. A PMA is required to establish the safety and effectiveness of the device and a key component of a PMA submission is the pivotal clinical trial data, as discussed in more detail below.

Premarket Approval

Our ReShape vBloc and our ReShape Balloon are medical devices that required PMAs from the FDA to market in the United States. The FDA approved ReShape vBloc in January of 2015 and the ReShape Balloon in July of 2015 with post-approval conditions intended to ensure the safety and effectiveness of the devices. Failure to comply with the conditions of approval can result in material adverse enforcement action, including the loss or withdrawal of the approvals. Even after approval of the PMAs, new PMAs or supplemental PMAs will be required for significant modifications to the manufacturing process, labeling, use and design of a device that is approved through the premarket approval process. Premarket approval supplements often require submission of the same type of information as a PMA except that the supplement is limited to information needed to support any changes from the device covered by the original PMA. In addition, holders of an approved PMA are required to submit annual reports to the FDA that include relevant information on the continued use of the device.

The ReShape Vest will likely be considered a Class III Long Term Implantable (LTI) product by the FDA requiring the premarket approval (PMA) path. A pivotal trial for the ReShape Vest will likely include approximately 250 implanted patients monitored up to three years. Other implantable devices for the treatment of obesity relied on 12 month endpoints for the PMA submission with annual follow-up visits up to five years and we expect the pivotal trial for the ReShape Vest to be similar. A US pivotal trial requires FDA Investigational Device Exemption (IDE) submission and approval. We expect to submit our IDE application to the FDA in the second quarter of 2018 and expect the first U.S. PMA implants of the ReShape Vest to take place in the third quarter of 2018. Our goal is to obtain PMA approval by the end of 2021. We intend to initiate a CE Mark trial in the European Union of 65 patients with a 12-month weight loss and safety endpoint with a minimum 24-month follow up. We expect the first EU implants will start in the second quarter of 2018. Our goal is to obtain CE mark approval by the second quarter of 2020.

Clinical Trials

A clinical trial is almost always required to support a PMA. Clinical trials for a “significant risk” device such as ours require submission to the FDA of an application for an IDE for clinical studies to be conducted within the United States. The IDE application must be supported by appropriate data, such as animal and laboratory testing results, showing that it is safe to test the device in humans and that the testing protocol is scientifically sound. Clinical trials for a significant risk device in the United States may begin once the IDE application is approved by the FDA and by the Institutional Review Boards (IRBs) overseeing the clinical trial at the various investigational sites.

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

Pervasive and Continuing U.S. Regulation

Numerous regulatory requirements apply. These include:

- Quality System Regulation, which requires manufacturers to follow design, testing, control, documentation, complaint handling and other quality assurance procedures during the design and manufacturing processes;

- regulations which govern product labels and labeling, prohibit the promotion of products for unapproved or “off-label” uses and impose other restrictions on labeling and promotional activities;

- medical device reporting regulations, which require that manufacturers report to the FDA if their device may have caused or contributed to a death or serious injury or malfunctioned in a way that would likely cause or contribute to a death or serious injury if it were to recur;
- notices of correction or removal and recall regulations;
- periodic reporting of progress related to clinical trials, post approval studies required as conditions of PMA approval and relevant changes to information contained within the PMA approval; and
- reporting of transfers of value and payments to physicians and teaching hospitals.

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

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

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

International Regulations

International sales of medical devices are subject to foreign government regulations, which vary substantially from country to country. The time required to obtain approval by a foreign country may be longer or shorter than that required for FDA approval, and the requirements may differ. The primary regulatory environment in Europe is that of the European Economic Community (EEC), which consists of 28 European Union (EU) member states encompassing nearly all the major countries in Europe. Additional countries that are not part of the EU, but are part of the European Economic Area (EEA), and other countries, such as Switzerland, have voluntarily adopted laws and regulations that mirror those of the EEC with respect to medical devices. The EEC has adopted Directive 90/385/EEC as amended by 2007/47/EC for active implantable medical devices and numerous standards that govern and harmonize the national laws and standards regulating the design, manufacture, clinical trials, labeling and adverse event reporting for medical devices that are marketed in member states. Medical devices that comply with the requirements of the national law of the member state in which their Notified Body is located will be entitled to bear CE marking, indicating that the device conforms to applicable regulatory requirements, and, accordingly, can be commercially marketed within the EEA and other countries that recognize this mark for regulatory purposes.

We obtained European CE Mark approval for our ReShape vBloc in 2011 for the treatment of obesity. The CE Mark approval for our ReShape vBloc was expanded in 2014 to also include use for the management of Type 2 diabetes in obese patients. The method of assessing conformity with applicable regulatory requirements varies depending on the

class of the device, but for our ReShape vBloc (which is considered an Active Implantable Medical Device (AIMD) in Australia and the EEA, and falls into Class III within the United States), the method involved a combination of self-assessment and issuance of declaration of conformity by the manufacturer of the safety and performance of the device, and a third-party assessment by a Notified Body of the design of the device and of our quality system. A Notified Body is a private commercial entity that is designated by the national government of a member state as being competent to make independent judgments about whether a product complies with applicable regulatory requirements. The assessment included, among other things, a clinical evaluation of the conformity of the device with applicable regulatory requirements. We use DEKRA Certification B.V. (formerly known as KEMA Quality) in the Netherlands as the Notified Body for our CE marking approval process. We believe that the costs and resources required to successfully commercialize ReShape vBloc internationally are currently beyond our capability and as result, we made decisions in 2016 and late 2017, respectively, to temporarily abandon the AIMD and CE-marking of ReShape vBloc.

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

We are also subject to the regulatory frameworks for medical devices in certain countries in the Middle East where we sell our products, including our sales of the ReShape Balloon in Kuwait, Qatar and the UAE. These medical device laws vary from country to country, but include approval and registration requirements. In addition, certain of these countries require that the registered distributor of a product be wholly owned by nationals of that particular country. Therefore, we rely on our distributors on those countries to comply with the applicable regulatory requirements.

Patient Privacy Laws

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

Employees

As of December 31, 2017, we had 83 employees. All of these employees are located in the United States.

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

Executive Officers

The following table sets forth information regarding our executive officers, including their ages, as of March 15, 2018:

Name	Age	Position
Dan W. Gladney	65	President and Chief Executive Officer
Scott P. Youngstrom	58	Chief Financial Officer and Senior Vice President, Finance

Dan W. Gladney has served as our President and Chief Executive Officer since November 16, 2015 and as Chairman of our board of directors since October 14, 2016. Mr. Gladney joined the Company on November 2, 2015 as President-Elect and a member of the board of directors. Prior to joining us, Mr. Gladney served as Chairman and Chief Executive Officer of Lanx, Inc., a medical device company focused on developing and commercializing innovative devices for spinal surgery. Prior to his time at Lanx, Inc., Mr. Gladney was a Healthcare Operating Partner at Norwest Equity Partners (NEP) from 2008 until 2010, where he was responsible for strategic planning, business growth and corporate governance for NEP portfolio companies and executing new investment opportunities for the firm. Prior to joining NEP, Mr. Gladney served as President and Chief Executive Officer of several medical device companies, including Heart Leaflet Technologies and Acist Medical Systems, both of which were acquired by The Bracco Group. He also served as Chairman, Chief Executive Officer and President of Compex Technologies, a publicly traded

orthopedic and health and wellness electro therapy company, from 2002 until 2006. Mr. Gladney currently serves on the board of directors of Aria CV, Inc. and has been a member of a number of other private and public company boards. After the sale of Lanx, he acted as a private investor and small business consultant.

Scott P. Youngstrom is our Senior Vice President, Finance and has served as our Chief Financial Officer since October 3, 2016. Mr. Youngstrom has over 25 years of strategic financial and operational experience in a variety of medical device companies, most recently having served as Chief Financial Officer and Vice President, Finance at Galil Medical, a leading developer of cryotherapy technology. Prior to Galil Medical, from 2009-2014, Mr. Youngstrom served as Vice President, Chief Operating Officer, and Chief Financial Officer at DGIMED Ortho, Inc., a developer of orthopedic medical devices. Mr. Youngstrom has previously served as Chief Financial Officer and Vice President, Finance with Anulex Technologies, Enpath Medical, Compex Technologies, Acist Medical Systems, and Cardiotronics.

Our Corporate Information

We were incorporated in Minnesota in December 2002 as two separate legal entities, Alpha Medical, Inc. and Beta Medical, Inc., both of which were owned 100% by a common stockholder. In October 2003, the two entities were combined and we changed our name to EnteroMedics Inc. In 2004 we reincorporated in Delaware. On October 23, 2017 we changed the company name from EnteroMedics Inc. to ReShape Lifesciences Inc. (NASDAQ: RSLS).

We file reports and other information with the Securities and Exchange Commission (SEC) including annual reports on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K and proxy or information statements. Those reports and statements as well as all amendments to those documents filed or furnished pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended (1) are available at the SEC's Public Reference Room at 100 F Street, N.E., Washington, DC 20549, (2) may be obtained by sending an electronic message to the SEC at publicinfo@sec.gov or by sending a fax to the SEC at 1-202-777-1027, (3) are available at the SEC's internet site (http://www.sec.gov), which contains reports, proxy and information statements and other information regarding issuers that file electronically with the SEC and (4) are available free of charge through our website as soon as reasonably practicable after electronic filing with, or furnishing to, the SEC. You may obtain information on the operation of the Public Reference Room by calling the SEC at 1-800-SEC-0330.

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

ITEM 1A. *RISK FACTORS*

Risks Related to Our Recently Completed Acquisition of ReShape Medical and BarioSurg

Our acquisitions of ReShape Medical in October 2017 and BarioSurg in May 2017 could adversely affect our operations, financial results and financial condition.

In October 2017, we acquired ReShape Medical, Inc., a privately-held medical technology company that develops, manufactures and markets the ReShape® Dual Weight Loss Balloon (the "ReShape Balloon"), an FDA-approved, minimally invasive intragastric balloon designed to treat obesity patients with a body mass index (BMI) between 30 and 40, with one or more related comorbid conditions. In May 2017, we acquired BarioSurg, Inc., a privately held medical device company that developed the proprietary, minimally invasive and reversible device, the Gastric Vest, which we now refer to as the ReShape Vest, to treat obesity and related comorbidities. In addition, we may pursue additional acquisitions of other companies or product lines. A successful acquisition depends on our ability to identify, negotiate, complete and integrate such acquisition and to obtain any necessary financing. With respect to our acquisitions of ReShape Medical and BarioSurg and any future acquisitions, we may experience:

- difficulties in integrating the acquired businesses and their respective personnel and products into our existing business;

- difficulties in integrating commercial organizations; difficulties or delays in realizing the anticipated benefits of the acquisition;

- diversion of our management's time and attention from other business concerns; challenges due to limited or no direct prior experience in new markets or countries we may enter; inability to successfully develop new products and services on a timely basis that address our new market opportunities post-acquisition;

- inability to compete effectively against companies already serving the broader market opportunities expected to be available to us post-acquisition;

- unanticipated costs and other contingent liabilities; and any unforeseen compliance risks and accompanying financial and reputational exposure or loss not uncovered in the due diligence process and which are imputed to our company, such as compliance with federal laws and regulations, the advertising and promotion regulations under the federal Food, Drug and Cosmetic Act, the Anti-kickback Statute, the False Claims Act, the Physician Sunshine Payments Act and other applicable laws.

We have invested, and expect to continue to invest, significant cash and other resources in connection with our acquisition of ReShape Medical and BarioSurg and our development of the ReShape Balloon and the ReShape Vest. The consideration we paid to acquire ReShape Medical and BarioSurg included approximately $5 million and $2 million in cash, respectively, and our efforts to continue the development of, and to successfully commercialize, the acquired products and technologies will require significant cash expenditures. There can be no assurance that we will be successful in our efforts. Should we be unable to obtain adequate financing or generate sufficient revenue in the future, our business, results of operations, liquidity and financial condition could be materially and adversely harmed.

The U.S. Food and Drug Administration (FDA) has published an announcement to alert health care providers of unanticipated deaths involving the ReShape Balloon, which could harm our business.

The FDA has published an announcement to alert health care providers of five reports of unanticipated deaths that occurred within one month of the placement of an intragastric balloon, one of which involved the ReShape Balloon. The announcement indicated that the root cause or incidence of patient death in these cases had not been found and the FDA was not able to definitively attribute the deaths to the balloon devices or their respective insertion procedures. The announcement also indicated that the FDA had received an additional report of a death related to potential complications associated with an esophageal perforation related to the ReShape Balloon. If these adverse events occur more frequently or other serious adverse effects are detected in liquid-filled intragastric balloons, the ReShape Balloon product may be subject to adverse FDA action or additional communications from the FDA, which could harm our business. In addition, we believe that the FDA announcement has negatively impacted, and may continue to negatively impact, our sales of the ReShape Balloon, which could have an adverse effect on our business, results of operations, liquidity and financial condition.

If we do not achieve the contemplated benefits of our acquisitions of ReShape Medical and BarioSurg, our business and financial condition may be materially impaired.

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

- the possibility that the acquisitions may not further our business strategy as we expected;

- the possibility that the revenue from our ReShape Balloon may be lower than we expected;

- the possibility that we may not be able to obtain the required regulatory approvals for the ReShape Vest; and the possibility that we may not be able to commercialize the ReShape Vest.

As a result of these risks, we may not achieve the anticipated strategic and financial benefits of the ReShape Medical and BarioSurg acquisitions.

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

The ReShape Vest that we acquired as part of acquisition of BarioSurg is in the early stages of development and has not yet reached the clinical trial stage. Our ability to market the ReShape Vest in the United States and abroad depends upon our ability to demonstrate the safety, and in the case of the United States, efficacy, of the product with clinical data to support our requests for regulatory approval. The ReShape Vest may not be found to be safe and, where required, effective in clinical trials and may not ultimately be approved for marketing by U.S. or foreign regulatory authorities, which would have a negative impact on our net sales.

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

Our Board of Directors and executive officers are able to influence matters requiring stockholder approval and could discourage the purchase of our outstanding shares at a premium.

As of December 31, 2017, Dr. Raj Nihalani, the founder and former Chief Executive Officer of BarioSurg and our Chief Technology Officer, beneficially owned approximately 15.1% of our outstanding common stock. Under a voting agreement entered into in connection with our acquisition of BarioSurg, Dr. Nihalani agreed to vote all shares of our common stock he owns in accordance with the recommendation of our Board of Directors and granted an irrevocable proxy to our Board of Directors to vote his shares in accordance with the terms of the voting agreement. In addition, as of December 31, 2017, HealthCor Partners Fund II, L.P. (“HealthCor”) beneficially owned approximately 8.5% of our outstanding common stock. Michael Y. Mashaal, M.D., a member of our Board of Directors, is managing director of the investment manager of HealthCor and therefore may be deemed to beneficially own the shares held by HealthCor. In connection with our acquisition of ReShape Medical, we entered into a voting and standstill agreement with HealthCor and each other former ReShape Medical stockholder who holds at least 5% of our outstanding common stock (on an as-converted basis) after the acquisition pursuant to which such stockholders agreed to (i) vote all shares of our common stock in the same manner as and in the same proportion as the votes cast on the matter by the holders of our voting securities entitled to vote on the matter, unless such requirement is waived by our Board of Directors, and (ii) certain customary standstill provisions pursuant to which such stockholders will refrain from various actions that might relate to the acquisition of control of our company, such as making proposals to acquire our company or launching a proxy context.

Collectively, our directors and executive officers as a group beneficially own approximately 25% of our outstanding common stock. As a result of Dr. Nihalani’s and Dr. Mashaal’s share ownership and the voting agreements described above, our Board of Directors and executive officers are able to influence matters requiring stockholder approval, such as the election of directors and approval of significant corporate transactions. The interests of our Board of Directors and executive officers may differ from the interests of our other stockholders. For example, our Board of Directors and executive officers could oppose a third party offer to acquire us that the other stockholders might consider attractive. In such case and in similar situations, our other stockholders may disagree with our Board of Directors and executive officers as to whether the action opposed or supported by our Board of Directors and executive officers is in the best interest of our stockholders.

The shares of series C convertible preferred stock issued in connection with our acquisition of ReShape Medical have certain rights and preferences senior to our common stock.

In connection with the ReShape Medical merger, we issued 187,772 shares of newly created non-voting series C convertible preferred stock, which shares became convertible into 18,777,200 shares of voting common stock upon the post-closing approval of our stockholders in accordance with the NASDAQ Stock Market Rules. On December 19, 2017, the date of stockholder approval, 82,384 shares of series C convertible preferred stock automatically converted into 8,238,400 shares of common stock. The remaining 95,388 shares of series C convertible preferred stock are

convertible at the option of their holders into approximately 9.5 million shares of common stock, provided that the former ReShape Medical holders will not be permitted to convert their shares of series C convertible preferred stock into shares of common stock to the extent such conversion would cause them to holder more than 49.0% of our outstanding voting securities at the time of any such conversion. In general, the series C convertible preferred stock is entitled to receive dividends (on an as-if-converted-to-common stock basis) actually paid on shares of common stock when, as and if such dividends are paid on shares of common stock. No other dividends will be paid on shares of series C convertible preferred stock. While the series C convertible preferred stock generally does not have voting rights, as long as any shares of series C convertible preferred stock remain outstanding, we cannot, without the affirmative vote of holders of a majority of the then-outstanding shares of series C convertible preferred stock, (a) alter or change adversely the powers, preferences or rights given to the series C convertible preferred stock (including by the designation, authorization, or issuance of any shares of preferred stock that purports to have equal rights with, or be senior in rights or preferences to, the series C convertible preferred stock), (b) alter or amend the series C convertible preferred stock certificate of designation, (c) amend our certificate of incorporation or other charter documents in any manner that adversely affects any rights of the holders of series C convertible preferred stock, (d) increase the number of authorized shares of series C convertible preferred stock or (e) enter into any agreement with respect to any of the foregoing. The series C convertible preferred stock has a liquidation preference of $274.8774 per share, or $2.748774 per underlying share of common stock. Holders of the series C convertible preferred stock have the right to convert their shares into shares of common stock instead of receiving the liquidation preference.

Risks Related to Our Business and Industry

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

Our independent registered public accounting firm's report on our December 31, 2017 audited financial statements includes an explanatory paragraph referring to our ability to continue as a going concern. The proceeds from any future financings that we may be able to obtain, if any, together with our other available cash, may not be sufficient to fund our operating expenses, capital expenditures and other cash requirements. Should we be unable to obtain adequate financing or generate sufficient revenue in the future, our business, result of operations, liquidity and financial condition would be materially and adversely harmed, and we would be unable to continue as a going concern. These events and circumstances could have a material adverse effect on our ability to raise additional capital and on the market value of our common stock and the warrants offered hereby. Moreover, should we experience a cash shortage that requires us to curtail or cease our operations, or should we be unable to continue as a going concern, you could lose all or part of your investments in our securities.

We currently are not generating revenue from operations that is significant relative to our level of operating expenses, and we do not anticipate generating revenue sufficient to offset operating costs in the short-term to mid-term. We have financed our operations to date principally through the sale of equity securities, debt financing and interest earned on investments. Our history of operating losses, limited cash resources and lack of certainty regarding obtaining significant third-party reimbursement for our products or timing thereof, raise substantial doubt about our ability to continue as a going concern absent a strengthening of our cash position. As of December 31, 2017, we had $10.2 million of cash and cash equivalents to fund our operations through early 2018. On April 2, 2018 the Company announced that it had entered into a securities purchase agreement with an institutional investor providing for the purchase and sale in a registered direct offering of shares of series D convertible preferred stock and a warrant to purchase shares of common stock for a purchase price of $6.0 million. The transaction is expected to close on or about April 4, 2018 and the Company expects to receive net proceeds of approximately $5.25 million after deducting placement agent fees and other offering expenses.

Our anticipated operations include plans to (i) integrate the sales and operations of our company with the newly acquired ReShape Medical in order to expand sales of both the ReShape Balloon and ReShape vBloc as well as to obtain cost savings synergies, (ii) expand the controlled commercial launch of ReShape vBloc Therapy, delivered via ReShape vBloc, (iii) continue development of the ReShape Vest, (vi) seek opportunities to leverage our intellectual property portfolio and custom development services to provide third party sales and licensing opportunities, and (v) explore and capitalize on synergistic opportunities to expand our portfolio and offer future minimally invasive treatments and therapies in the obesity continuum of care. We believe that we have the flexibility to manage the growth of our expenditures and operations depending on the amount of available cash flows, which could include reducing expenditures for marketing, clinical and product development activities. However, we will ultimately need to achieve

sufficient revenues from product sales and obtain additional debt or equity financing in addition to the proceeds from this offering to support our operations.

If we are unsuccessful in our pursuit of various funding options, we will be unable to continue as a going concern.

Management is currently pursuing various funding options, including seeking additional equity financing, to continue the development of, and to successfully commercialize, the ReShape vBloc, the ReShape Balloon and the ReShape Vest. There can be no assurance that we will be successful in our efforts. Should we be unable to obtain adequate financing or generate sufficient revenue in the future, our business, result of operations, liquidity and financial condition would be materially and adversely harmed, and we would be unable to continue as a going concern. Additionally, there can be no assurance that, assuming we are able to strengthen our cash position, we will achieve sufficient revenue or profitable operations to continue as a going concern.

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

We are a medical device company with a limited operating history upon which you can evaluate our business. We received FDA approval to sell our vBloc System, which we now refer to as ReShape vBloc, in the United States on January 14, 2015 and we have had commercial sales within the United States since 2015. We have also completed the regulatory process required to sell our ReShape vBloc in Australia, the European Economic Area and other countries that recognize the European CE Mark, and have not generated revenue from commercial sales outside of the United States since 2012 and then only on a limited basis in Australia and the Middle East. Because we believe that the costs and resources required to successfully commercialize ReShape vBloc internationally are currently beyond our capability, we made the decision in late 2017 to temporarily abandon CE-marking of ReShape vBloc. Similarly, we discontinued the regulatory processes required to sell ReShape vBloc in Australia in 2016.

We have been engaged in research and development and clinical trials since our inception in 2002 and have invested substantially all of our time and resources in developing our vBloc Therapy, which we have begun to commercialize in the form of our ReShape vBloc. The success of our business will depend on our ability to establish a sales force, make sales and control costs, as well as our ability to obtain additional regulatory approvals needed to market new versions of our ReShape vBloc or ReShape Balloon or regulatory approvals needed to market our ReShape Vest and any other products we may develop in the future, all of which we may be unable to do. If we are unable to successfully market our ReShape vBloc and ReShape Balloon for their indicated use or develop and commercialize the ReShape Vest, we may never become profitable and may have to cease operations as a result. Our lack of a significant operating history also limits your ability to make a comparative evaluation of us, our products and our prospects.

We have incurred losses since inception and we anticipate that we will continue to incur losses for the foreseeable future.

We have incurred losses in each year since our formation in 2002. Our net loss applicable to common stockholders for the fiscal years ended December 31, 2017, 2016 and 2015 was $33.8 million, $23.4 million and $25.5 million, respectively. We have funded our operations to date principally from the sale of securities and the issuance of indebtedness. Development of a new medical device, including conducting clinical trials and seeking regulatory approvals, is a long, expensive and uncertain process. Although we have received the regulatory approval required to sell our ReShape vBloc in the United States and have the approvals required for sales in the European Economic Area and other countries that recognize the European CE Mark, we have only generated limited revenue from commercial sales in the United States and have not generated revenue from commercial sales outside of the United States since 2012 and then only on a limited basis in Australia and the Middle East. Because we believe that the costs and resources required to successfully commercialize ReShape vBloc internationally are currently beyond our capability, we made the decision in late 2017 to temporarily abandon CE-marking of ReShape vBloc. Similarly, we discontinued the regulatory processes required to sell ReShape vBloc in Australia in 2016.

We expect to incur significant sales and marketing expenses prior to recording sufficient revenue to offset these expenses. We expect our general and administrative expenses to increase as we continue to add the infrastructure necessary to support our initial commercial sales, market the ReShape Balloon, develop the ReShape Vest, operate as a public company and develop our intellectual property portfolio. For these reasons, we expect to continue to incur significant operating losses for the next several years. These losses, among other things, have had and will continue to

have an adverse effect on our stockholders' equity and working capital. Because of the numerous risks and uncertainties associated with developing new medical devices, we are unable to predict the extent of any future losses or when we will become profitable, if ever.

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

Our operations have consumed substantial amounts of cash since inception. We expect to continue to spend substantial amounts on the development and commercialization of our products and on research and development, including conducting current and future clinical trials for our ReShape vBloc, ReShape Balloon, ReShape Vest (if approved for sale) and subsequent versions of our products. Cash used in operations was $24.6 million, $20.7 million, and $22.6 million for the fiscal years ended December 31, 2017, 2016 and 2015, respectively. We expect that our cash used in operations will continue to be significant in the upcoming years, and that we will need to raise additional capital to commercialize our ReShape vBloc in the United States, the European Economic Area, other countries that recognize the European CE Mark and other international markets, to explore other indications for the ReShape vBloc and ReShape Balloon, to develop the ReShape Vest, to continue our research and development programs, and to fund our ongoing operations.

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

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

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

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

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

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

The Sarbanes-Oxley Act requires, among other things, that we maintain effective internal controls for financial reporting and disclosure. In particular, we are required to perform system and process evaluation and testing of our internal controls over financial reporting to allow management to report on the effectiveness of our internal controls over financial reporting, as required by Section 404 of the Sarbanes-Oxley Act. Our testing may reveal deficiencies in our internal controls over financial reporting that are deemed to be material weaknesses. Specifically, we have identified a material weakness in our internal controls over financial reporting as of December 31, 2017 related to our purchase accounting related to our acquisition or BarioSurg. In our allocation of the BarioSurg purchase price, we failed to record a $7.6 million deferred income tax liability related to the indefinite-lived intangible asset, In- Process Research and Development, with an offsetting increase in Goodwill in our condensed consolidated balance sheets. We do not believe that these balance sheet misstatements related to non-cash items as of June 30, 2017 and September 30, 2017 were material to our financial statements on those dates taken as a whole. However, the omission of this deferred tax liability led to what we have concluded to be a material weakness in internal control over financial reporting. Specifically, because the unrecorded deferred tax liability relates to an indefinite-lived intangible asset, we cannot offset the deferred tax liability with available deferred tax assets when determining our net deferred tax position under generally accepted accounting principles. As a result, when the unrecorded deferred tax liability required remeasurement due to the December 22, 2017 enactment of the Tax Cuts and Jobs Act, this in turn required recognition of a $2.3 million income tax benefit in our consolidated statement of operations for the quarter and year ended December 31, 2017.

We have incurred and continue to expect to incur significant expense and devote substantial management effort toward ensuring compliance with Section 404. Moreover, if we do not comply with the requirements of Section 404, or if we identify additional deficiencies in our internal controls that are deemed to be material weaknesses, the market price of our stock could decline and we could be subject to sanctions or investigations by NASDAQ, the SEC or other regulatory authorities, which would entail expenditure of additional financial and management resources.

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

In the United States, there have been and continue to be a number of legislative initiatives to contain healthcare costs. The Patient Protection and Affordable Care Act, as amended, (the Affordable Care Act) as well as any future healthcare reform legislation, may have a significant impact on our business. The impact of the Affordable Care Act on the health care industry is extensive and includes, among other things, the federal government assuming a larger role in the health care system, expanding healthcare coverage of United States citizens and mandating basic healthcare benefits. The Affordable Care Act contains many provisions designed to generate the revenues necessary to fund the coverage expansions and to reduce costs of Medicare and Medicaid, including imposing a 2.3% excise tax on domestic sales of many medical devices by manufacturers that began in 2013. Although a moratorium was placed on the medical device excise tax through 2019, if Congress does not pass legislation further extending or otherwise eliminating the excise tax, our sales and selling, general and administrative expenses may be adversely effected in the future.

Congress is considering legislation to replace or repeal elements or all of the Affordable Care Act. In addition, there have been recent public announcements by members of Congress and the new presidential administration regarding

their plans to repeal and replace the Affordable Care Act. Further, President Trump signed an Executive Order directing federal agencies with authorities and responsibilities under the Affordable Care Act to waive, defer, grant exemptions from, or delay the implementation of any provision of the Affordable Care Act that would impose a fiscal or regulatory burden on states, individuals, healthcare providers, health insurers, or manufacturers of pharmaceuticals or medical devices. At this time, it is not clear whether the Affordable Care Act will be repealed in whole or in part, and, if it is repealed, whether it will be replaced in whole or in part by another plan and what impact those changes will have on coverage and reimbursement for healthcare items and services covered by plans that were authorized by the Affordable Care Act. We expect that additional state and federal healthcare reform measures will be adopted in the future, any of which could limit the amounts that federal and state governments will pay for healthcare products and services, and also indirectly affect the amounts that private payers are willing to pay. In addition, any healthcare reforms enacted in the future may, like the Affordable Care Act, be phased in over a number of years but, if enacted, could reduce our revenue, increase our costs, or require us to revise the ways in which we conduct business or put us at risk for loss of business. In addition, our results of operations, financial position and cash flows could be materially adversely affected by changes under the Affordable Care Act and changes under any federal or state legislation adopted in the future.

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

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

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

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

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

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

The health care industry is highly competitive, subject to rapid change and significantly affected by new product introductions and other market activities of industry participants. The obesity treatment market in which we operate has grown significantly in recent years and is expected to continue to expand as technology continues to evolve and

awareness of the need to treat the obesity epidemic grows. Although we are not aware of any competitors in the neuroblocking market, we face potential competition from pharmaceutical and surgical obesity treatments. Many of our competitors in the obesity treatment field have significantly greater financial resources and expertise in research and development, manufacturing, preclinical testing, clinical trials, obtaining regulatory approvals and marketing approved products than we do. Smaller or early-stage companies may also prove to be significant competitors, particularly if they pursue competing solutions through collaborative arrangements with large and established companies, such as Allergan, Apollo Endosurgery, Boston Scientific, LivaNova PLC, Johnson & Johnson, Medtronic or St. Jude Medical. Our competitors may develop and patent processes or products earlier than us, obtain regulatory approvals for competing products more rapidly than we are able to and develop more effective, safer and less expensive products or technologies that would render our products non-competitive or obsolete.

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

We currently rely on information technology and telephone networks and systems, including the Internet, to process and transmit sensitive electronic information and will rely on such systems to manage or support a variety of business processes and activities, including sales, billing, customer service, procurement and supply chain, manufacturing, and distribution. We use enterprise information technology systems to record, process, and summarize financial information and results of operations for internal reporting purposes and to comply with regulatory financial reporting, legal, and tax requirements.

Our information technology systems, some of which are managed by third-parties, may be susceptible to damage, disruptions or shutdowns due to computer viruses, attacks by computer hackers, failures during the process of upgrading or replacing software, databases or components thereof, power outages, hardware failures, telecommunication failures, user errors or catastrophic events. We are not aware of any breaches of our information technology infrastructure. Despite the precautionary measures we have taken to prevent breakdowns in our information technology and telephone systems, if our systems suffer severe damage, disruption or shutdown and we are unable to effectively resolve the issues in a timely manner, our business and operating results may suffer.

Selling products for human consumption involves inherent legal and other risks, including product contamination, spoilage, tampering, allergens or other adulteration, which could lead to product liability or other claims.

In January 2018, we launched a limited time and scope pilot program selling private-labeled meal replacements and nutritional products that are manufactured and fulfilled by third-party vendors. This program is primarily designed to serve individuals who may have interest in, but do not qualify for, treatment with our ReShape vBloc or ReShape Balloon devices. This program includes a customized nutrition program designed by, and weekly support from, a registered dietitian. We rely on our third-party vendors to ensure that the products they manufacture and sell comply with applicable regulatory, health and safety, and other legal requirements. We also rely on our third-party vendors to ensure that the products are safe for human consumption and that any nutritional advice is appropriate under the circumstances. However, any product liability or other claims related to our meal replacement and nutritional products or services could significantly damage our reputation and consumer confidence in our products and could materially and adversely affect our business.

Risks Associated with Development and Commercialization of the ReShape vBloc, ReShape Balloon and ReShape Vest

Our efforts to commercialize our ReShape vBloc, ReShape Balloon and ReShape Vest may not succeed or may encounter delays which could significantly harm our ability to generate revenue.

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

- we may not be able to obtain the regulatory approvals required for our ReShape Vest or for any future modifications to our ReShape vBloc or ReShape Balloon;

- our products may not be accepted in the marketplace by physicians, patients and third-party payers;
- sales of our ReShape Balloon may be negatively impacted by the FDA announcement to alert health care providers of unanticipated deaths involving the ReShape Balloon;
- the price of our products, associated costs of the surgical procedure and treatment and the availability of sufficient third-party reimbursement for the system implantation and follow-up procedures;
- appropriate reimbursement and/or coding options may not exist to enable billing for the system implantation and follow-up procedures;
- we may not be able to sell our products at a price that allows us to meet the revenue targets necessary to generate enough revenue for profitability;
- the frequency and severity of any side effects of our products;
- physicians and potential patients may not be aware of the perceived effectiveness and sustainability of the results of our products;
- we, or the investigators of our products, may not be able to have information on the outcome of the trials published in medical journals;
- the availability and perceived advantages and disadvantages of alternative treatments;
- any rapid technological change may make our products obsolete;
- we may not be able to have our products manufactured in commercial quantities or at an acceptable cost;
- we may not have adequate financial or other resources to complete the development and commercialization of our products or to develop sales and marketing capabilities for our products; and
- we may be sued for infringement of intellectual property rights and could be enjoined from manufacturing or selling our products.

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

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

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

The production and marketing of our ReShape Vest and our ongoing research and development, preclinical testing and clinical trial activities are subject to extensive regulation and review by numerous governmental authorities both in the United States and abroad. U.S. and foreign regulations applicable to medical devices are wide-ranging and govern, among other things, the development, testing, marketing and premarket review of new medical devices, in addition to regulating manufacturing practices, reporting, advertising, exporting, labeling and record keeping procedures. We are

required to obtain regulatory approval before we can market our ReShape Vest in the United States and certain foreign countries. The regulatory process will require significant time, effort and expenditures to bring products to market, and it is possible that our ReShape Vest will not be approved for sale. Even if regulatory approval of our ReShape Vest is granted, it may not be granted within the timeframe that we expect, which could have an adverse effect on our operating results and financial condition. Even after our ReShape Vest is approved by the FDA, we may have ongoing responsibilities under FDA regulations, non-compliance of which could result in the subsequent withdrawal of such approvals, or such approvals could be withdrawn due to the occurrence of unforeseen problems following initial approval. We also are subject to medical device reporting regulations that require us to report to the FDA if any of our products causes or contributes to a death or serious injury or if a malfunction were it to occur might cause or contribute to a death or serious injury. Any failure to obtain regulatory approvals on a timely basis or the subsequent withdrawal of such approvals could prevent us from successfully marketing our products, which could adversely affect our business and operating results.

While we previously had received approval from the regulatory body of the European Economic Area to market our ReShape vBloc for the treatment of obesity, that approval will lapse March 31, 2018 and we have not received, and may never receive, approval from the regulatory bodies of any other foreign countries.

We do not have the necessary regulatory approvals to market our ReShape vBloc in any foreign market other than the European Economic Area for which we received CE Mark approval for our ReShape vBloc in March 2011 for the treatment of obesity and other countries which accept these regulatory approvals. The CE Mark approval for our ReShape vBloc was expanded in 2014 to also include use for the management of Type 2 diabetes in obese patients. This CE Mark approval lapses March 31, 2018. Additionally, the ReShape vBloc was previously listed on the Australian Register of Therapeutic Goods (ARTG). We commenced commercialization of our ReShape vBloc product in Australia and the Middle East in 2012, but have not generated revenue from commercial sales outside of the United States since 2012 as we focused our resources on the U.S. regulatory approval process and commercialization of ReShape vBloc in the United States and we do not know when, or if, we will have the resources to commercialize our ReShape vBloc internationally.

In order to market our ReShape vBloc outside of the United States, we will need to establish and comply with the numerous and varying regulatory requirements of other countries regarding safety and efficacy. Approval procedures vary among countries and can involve additional product testing and additional administrative review periods. The time required to obtain approval in other countries may differ from that required to obtain FDA approval. The regulatory approval process in other countries may also include all of the risks detailed below.

Regulatory approval in one country does not ensure regulatory approval in another, but a failure or delay in obtaining regulatory approval in one country may negatively impact the regulatory process in others. While the ReShape vBloc was previously listed on the ARTG and has European CE Marking until March 31, 2018 we cannot assure you when, or if, we will be able to restart sales in, Australia or the Middle East, commence sales or obtain approval to market our ReShape vBloc product in other countries outside the United States.

Because vBloc Therapy represents a novel way to effect weight loss in the treatment of obesity, and because there is a large population of obese patients who might be eligible for treatment, it is possible that other regulatory bodies will review an application for approval of our ReShape vBloc with greater scrutiny, which could cause that process to be lengthier and more involved than that for products without such characteristics. Such regulatory bodies can delay, limit or deny approval of our ReShape vBloc for many reasons, including our inability to demonstrate safety or effectiveness to their satisfaction, insufficient or inadequate data from our clinical trials, the facilities of our third-party manufacturers or suppliers may not meet applicable requirements; and changes in the regulatory bodies' approval policies, expectations with regard to the type or amount of scientific data required or adoption of new regulations may require additional data or additional clinical studies.

We have limited data and experience regarding the safety and efficacy of the ReShape vBloc. Any long-term data that is generated may not be positive or consistent with our limited short-term data, which would affect market acceptance of these products.

Because our technology is relatively new in the treatment of obesity, we have performed clinical trials only with limited patient populations. The long-term effects of using the ReShape vBloc in a large number of patients have not

been studied and the results of short-term clinical use of the ReShape vBloc do not necessarily predict long-term clinical benefits or reveal long-term adverse effects.

Clinical trials conducted with the ReShape vBloc have involved procedures performed by physicians who are very technically proficient. Consequently, both short and long-term results reported in these studies may be significantly more favorable than typical results achieved by physicians, which could negatively impact market acceptance of the ReShape vBloc and materially harm our business.

We may be unable to complete our current clinical trials or any additional clinical trials, or we may experience significant delays in completing those clinical trials, which could impact market acceptance of our ReShape vBloc and ReShape Balloon products and impair our financial position.

We continue to evaluate the vBloc Therapy in human clinical trials, including the EMPOWER trial, the ReCharge trial and the ReNew trial. We continue to evaluate the ReShape Balloon product in the ReShape Post Approval Study. Conducting a clinical trial, which involves screening, assessing, testing, treating and monitoring patients at several sites across the country and possibly internationally, and coordinating with patients and clinical institutions, is a complex and uncertain process.

The completion of our ongoing and future clinical trials, could be delayed, suspended or terminated for several reasons, including:

- ongoing discussions with regulatory authorities regarding the scope or design of our preclinical results or clinical trial or requests for supplemental information with respect to our preclinical results or clinical trial results;
- our failure or inability to conduct the clinical trials in accordance with regulatory requirements;
- sites currently participating in the trial may drop out of the trial, which may require us to engage new sites or petition the FDA for an expansion of the number of sites that are permitted to be involved in the trial;
- patients may not remain in or complete, clinical trials at the rates we expect;
- patients may experience serious adverse events or side effects during the trial, which, whether or not related to our product, could cause the FDA or other regulatory authorities to place the clinical trial on hold;
- clinical investigators may not perform our clinical trials on our anticipated schedule or consistent with the clinical trial protocol and good clinical practices;
- we may be unable to obtain a sufficient supply of ReShape vBloc or ReShape Balloon product necessary for the timely conduct of the clinical trials; and
- we may not have the financial resources necessary to fund the clinical trials on a timely basis.

Although we believe that we have adequate personnel and procedures in place to manage the clinical trial process, the complexity of managing this process while also commercializing our products and fulfilling our disclosure and other obligations to our stockholders, lenders, regulators and other constituents could result in our inadvertently taking actions outside the clinical trial process, which could adversely impact the trial. As is always the case, if the FDA ultimately determined that such actions materially violated the protocol for the trial, the FDA could suspend, terminate or reject the results of the clinical trial and require us to repeat the process.

If our clinical trials are delayed, it will take us longer to ultimately commercialize a product and generate revenue or the delay could result in our being unable to do so. Moreover, our development costs will increase if we have material delays in our clinical trials or if we need to perform more or larger clinical trials than planned.

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

We rely on clinical investigators and clinical sites to enroll patients in our clinical trials and other third parties to manage the trials and to perform related data collection and analysis. However, we may not be able to control the amount and timing of resources that clinical sites may devote to our clinical trials. If these clinical investigators and clinical sites fail to enroll a sufficient number of patients in our clinical trials, ensure compliance by patients with clinical protocols or comply with regulatory requirements, we will be unable to complete these trials, which could prevent us from obtaining or maintaining regulatory approvals for our product. Our agreements with clinical investigators and clinical trial sites for clinical testing place substantial responsibilities on these parties and, if these parties fail to perform as expected, our trials could be delayed or terminated. If these clinical investigators, clinical sites or other third parties do not carry out their contractual duties or obligations or fail to meet expected deadlines, or if the quality or accuracy of the clinical data they obtain is compromised due to their failure to adhere to our clinical protocols, regulatory requirements or for other reasons, our clinical trials may be extended, delayed or terminated, or the clinical data may be rejected by the FDA, adversely affecting our ability to successfully commercialize our product.

Modifications to the ReShape vBloc or ReShape Balloon may require additional approval from regulatory authorities, which may not be obtained or may delay our commercialization efforts.

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

Our neuroblocking therapy for the treatment of obesity is a unique form of treatment. Physicians may not widely adopt our ReShape vBloc and vBloc Therapy unless they determine, based on experience, long-term clinical data and published peer reviewed journal articles, that vBloc Therapy provides a safe and effective alternative to other existing treatments for obesity.

We believe we are the first and only company currently pursuing neuroblocking therapy for the treatment of obesity. Physicians tend to be slow to change their medical treatment practices because of the time and skill required to learn a new procedure, the perceived liability risks arising from the use of new products and procedures, and the uncertainty of third-party coverage and reimbursement. Physicians may not widely adopt our ReShape vBloc and vBloc Therapy unless they determine, based on experience, long-term clinical data and published peer reviewed journal articles, that the use of our vBloc Therapy provides a safe and effective alternative to other existing treatments for obesity, including pharmaceutical solutions and bariatric surgical procedures.

We cannot provide any assurance that the data collected from our current and planned clinical trials will be sufficient to demonstrate that our vBloc Therapy is an attractive alternative to other obesity treatment procedures. We rely on experienced and highly trained surgeons to perform the procedures in our clinical trials and both short-and long-term results reported in our clinical trials may be significantly more favorable than typical results of practicing physicians, which could negatively impact rates of adoption of our ReShape vBloc and vBloc Therapy. We believe that published peer-reviewed journal articles and recommendations and support by influential physicians regarding our ReShape vBloc and vBloc Therapy will be important for market acceptance and adoption, and we cannot assure you that we will receive these recommendations and support, or that supportive articles will be published.

If we fail to obtain adequate coding, coverage or payment levels for our product by governmental healthcare programs and other third-party payers, there may be no commercially viable markets for our ReShape vBloc or other products we may develop or our target markets may be much smaller than expected.

Healthcare providers generally rely on third-party payers, including governmental payers, such as Medicare and Medicaid in the United States, as well as private healthcare insurers, to adequately cover and reimburse the cost of medical devices. Importantly, third-party payers are increasingly challenging the price of medical products and services and instituting cost containment measures to control or significantly influence the purchase of medical products and services. We expect that third-party payers will continue to attempt to contain or reduce the costs of healthcare by challenging the prices charged for healthcare products and services. If reimbursement for our ReShape vBloc and the related surgery and facility costs is unavailable or limited in scope or amount, or if pricing is set at unsatisfactory levels, market acceptance of our ReShape vBloc will be impaired and our future revenue, if any, would be adversely affected. As such, even though we have obtained FDA approval for our ReShape vBloc and began to market it in 2015, the availability and level of third-party coverage and reimbursement could substantially affect our ability to successfully commercialize our ReShape vBloc and other products we may develop.

The efficacy, safety, ease of use and cost-effectiveness of our ReShape vBloc and of any competing products will, in part, determine the availability and level of coverage and payment. In particular, we expect that securing coding, coverage and payment for our ReShape vBloc will be more difficult if healthcare providers and obese individuals do not consider the percentage of EWL from a pre-implementation baseline that our clinical trials have demonstrated to be clinically meaningful, whether or not regulatory agencies consider the improvement of patients treated in clinical trials to have been clinically meaningful.

In some international markets, pricing of medical devices is subject to government control. In the United States and international markets, we expect that both government and third-party payers will continue to attempt to contain or reduce the costs of healthcare by challenging the prices charged for healthcare products and services. If payment for our ReShape vBloc and the related surgery and facility costs is unavailable or limited in scope or amount, or if pricing is set at unsatisfactory levels, market acceptance of our ReShape vBloc will be impaired and our future revenue, if any, would be adversely affected.

We cannot predict the likelihood or pace of any significant regulatory or legislative action in any of these areas, nor can we predict whether or in what form healthcare legislation being formulated by various governments will be passed. We also cannot predict with precision what effect such governmental measures would have if they were ultimately enacted into law. However, in general, we believe that such legislative activity will likely continue. If adopted, such measures can be expected to have an impact on our business.

If we or our suppliers fail to comply with ongoing regulatory requirements, or if we experience unanticipated product problems, our ReShape vBloc or ReShape Balloon could be subject to restrictions or withdrawal from the market.

Completion of our clinical trials and continued commercialization of our ReShape vBloc and ReShape Balloon will require access to manufacturing facilities that meet applicable regulatory standards to manufacture a sufficient supply of our products. We rely solely on third parties to manufacture and assemble our ReShape vBloc product and do not currently plan to manufacture or assemble our ReShape vBloc product ourselves in the future. While we currently manufacture the ReShape Balloon in our own facility, for both ReShape vBloc and ReShape Balloon products, we rely on outside suppliers and service providers to deliver materials and services that comply with standards set by the FDA and other regulators.

Any product for which we obtain marketing approval, along with the manufacturing processes, post-approval clinical data and promotional activities for such product, will be subject to continual review and periodic inspections by our European Notified Body and the FDA and other regulatory bodies. In particular we and our manufacturers and suppliers are required to comply with ISO requirements, Good Manufacturing Practices, which for medical devices is called the Quality System Regulation (QSR), and other regulations which cover the methods and documentation of the design, testing, production, control, quality assurance, labeling, packaging, storage and shipping of any product for which we obtain marketing approval. The FDA enforces the QSR through inspections, which may be unannounced, and the CE system enforces its certification through inspections and audits as well. Our quality system has received certification of compliance to the requirements of ISO 13485:2003 and will have to continue to successfully complete such inspections to maintain regulatory approvals for sales outside of the United States. Failure by us or one of our

manufacturers or suppliers to comply with statutes and regulations administered by the FDA, CE authorities and other regulatory bodies, or failure to adequately respond to any observations, could result in enforcement actions against us or our manufacturers or suppliers, including, restrictions on our product or manufacturing processes, withdrawal of the product from the market, voluntary or mandatory recall, fines, suspension of regulatory approvals, product seizures, injunctions or the imposition of civil or criminal penalties.

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

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

We are subject to medical device reporting regulations that require us to report to the FDA, Competent Authorities or other governmental authorities in other countries if our products cause or contribute to a death or serious injury or malfunction in a way that would be reasonably likely to contribute to death or serious injury if the malfunction were to recur. The FDA and similar governmental authorities in other countries have the authority to require the recall of our products in the event of material deficiencies or defects in design or manufacturing. A government mandated, or voluntary, recall by us could occur as a result of component failures, manufacturing errors or design defects, including defects in labeling. Any recall would divert managerial and financial resources and could harm our reputation with customers. There can be no assurance that there will not be product recalls in the future or that such recalls would not have a material adverse effect on our business. Once the product is approved and implanted in a large number of patients, infrequently occurring adverse events may appear that were not observed in the clinical trials. This could cause health authorities in countries where the product is available to take regulatory action, including marketing suspension and recall.

We recently received two Form 483s from the FDA. This could lead to a warning letter, which could have a material adverse effect on our business.

In December 2017, following an inspection of our St. Paul, Minnesota facility, the FDA issued us a Form 483. The Form 483 identified seven observations, including (i) that procedures for corrective and preventive actions have not been adequately established, (ii) certain product components that do not conform to specifications were not adequately controlled, (iii) certain processes have not been adequately validated according to established procedures, (iv) our risk analysis for certain procedures is incomplete, (v) two instances where we did not report adverse patient events to the FDA, (vi) procedures to ensure that all purchased or received products and services conform to specified requirements have not been adequately established, and (vii) quality audits were not performed at defined intervals to determine whether the quality system activities and results comply with quality system procedures.

In February 2018, following an inspection of our San Clemente, California facility, the FDA issued us another Form 483, which identified two observations. The first observation relates to inconsistencies in our documentation of the resolution of certain self-identified corrective actions. The second observation relates to multiple instances of ReShape Medical, both before and after our acquisition of the company, reporting adverse patient events related to implanted ReShape Balloons to the FDA after the required 30 day deadline, all of which were either submitted to the FDA shortly after the deadline or were caused by technical issues with the FDA submission portal.

Following our receipt of each Form 483, we agreed to take corrective and preventive actions to fully address the FDA observations. The outcome of these matters is presently uncertain. We cannot assure you that the FDA will conclude that our corrective and preventive actions are adequate to address the observations. If the FDA were to find that we failed to comply with applicable regulations, the FDA could institute a wide variety of enforcement actions, ranging from a public warning letter to more severe sanctions such as fines and civil money penalties against us or our officers; delays in clearing or approving, or refusal to clear or approve, our products; withdrawal or suspension of approval of our

products; product recall or seizure; interruption of production; operating restrictions; injunctions; or criminal prosecution.

We may not be successful in our efforts to utilize our vBloc Therapy to treat comorbidities associated with obesity and other gastrointestinal diseases and disorders.

As part of our long-term business strategy, we plan to research the application of our vBloc Therapy to treat comorbidities associated with obesity and other gastrointestinal diseases and disorders. Research to identify new target applications requires substantial technical, financial and human resources, whether or not any new applications for our vBloc Therapy are ultimately identified. We may be unable to identify or pursue other applications of our technology. Even if we identify potential new applications for our vBloc Therapy, investigating the safety and efficacy of our therapy requires extensive clinical testing, which is expensive and time-consuming. If we terminate a clinical trial in which we have invested significant resources, our prospects will suffer, as we will have expended resources on a program that will not provide a return on our investment and missed the opportunity to allocate those resources to potentially more productive uses. We will also need to obtain regulatory approval for these new applications, as well as achieve market acceptance and an acceptable level of reimbursement.

We depend on a limited number of manufacturers and suppliers of various critical components for our products. The loss of any of these manufacturer or supplier relationships could prevent or delay commercialization of our products.

We rely entirely on third parties to manufacture our ReShape vBloc product and to supply us with all of the critical components of our products, including our leads, implantable batteries, neuroregulators, transmit coils and controllers. Additionally, we rely on third party suppliers to provide the materials necessary for us to manufacture the ReShape Balloon. If any of our existing suppliers were unable or unwilling to meet our demand for product components, or if the components or finished products that they supply do not meet quality and other specifications, completion of our clinical trials or commercialization of our product could be delayed. Alternatively, if we have to switch to a replacement manufacturer or replacement supplier for any of our product components, we may face additional regulatory delays, and the manufacture and delivery of our products could be interrupted for an extended period of time, which could delay completion of our clinical trials or commercialization of our products.

If our device manufacturers or our suppliers are unable to provide an adequate supply of our products, our growth could be limited and our business could be harmed.

In order to produce our products in the quantities that we anticipate will be required to meet anticipated market demand, we will need our manufacturers to increase, or scale-up, the production process by a significant factor over our current level of production. There are technical challenges to scaling-up manufacturing capacity and developing commercial-scale manufacturing facilities that may require the investment of substantial additional funds by us or our manufacturers and hiring and retaining additional management and technical personnel who have the necessary manufacturing experience. If we or our manufacturers are unable to do so, we may not be able to meet future demand, if any. We may also represent only a small portion of our supplier’s or manufacturer’s business and if they become capacity constrained they may choose to allocate their available resources to other customers that represent a larger portion of their business. We currently anticipate that we will continue to rely on third-party manufacturers and suppliers for the production of our products. If we are unable to obtain a sufficient supply of our products or the materials necessary to manufacture our products, our revenue, business and financial prospects would be adversely affected.

If we are unable to establish sales and marketing capabilities or enter into and maintain arrangements with third parties to market and sell our ReShape vBloc and ReShape Balloon products, our business may be harmed.

We have limited experience as a company in sales, marketing and distribution of our product and began the process of developing a sales and marketing organization in 2015 and have continued its development in 2016, 2017 and into 2018. We market our products in the United States through a direct sales force supported by field technical managers who provide training, technical and other support services to our customers. We have begun to develop the necessary sales and marketing infrastructure in order to commercialize our product, but developing a sales force is expensive and time consuming and we may be unable to develop an effective sales and marketing organization on a timely basis, if at all, or maintain our current sales and marketing capabilities, either of which would delay or prevent us from generating enough revenue to become profitable. Our sales force will be competing with the experienced and well-funded marketing and sales organizations of our more established competitors. If we are unable to establish and maintain

our own sales and marketing capabilities, we will need to contract with third parties to market and sell our product. In this event, our profit margins would likely be lower than if we performed these functions ourselves. In addition, we would necessarily be relying on the skills and efforts of others for the successful marketing of our product. If we are unable to establish and maintain effective sales and marketing capabilities, independently or with others, we may not be able to generate product revenue and may not become profitable.

When we have sufficient resources to commercialize our ReShape vBloc internationally, we intend to use direct, dealer and distributor sales models as the targeted geography best dictates. With the acquisition of ReShape Medical in October 2017, we have distributor agreements to sell the ReShape Balloon in the Middle East.

To generate sales and launch the commercialization of our product in other geographic regions we may need to identify and enter into other third-party distributor agreements. There is no assurance that we can do so on economically acceptable terms or that if we do so, that a third-party distributor will be successful in selling our product.

The commercialization of our products in countries outside the United States will expose our business to certain risks associated with international operations.

When we have sufficient resources to do so, we intend to commercialize our products in the European Economic Area, Australia and the Middle East and other international markets in which we obtain necessary regulatory approvals. Conducting international operations will subject us to unique risks, including:

- unfamiliar legal requirements with which we would need to comply;
- fluctuations in currency exchange rates;
- potentially adverse tax consequences, including the complexities of foreign value added tax systems and restrictions on the repatriation of earnings;
- increased financial accounting and reporting burdens and complexities; and
- reduced or varied protection for intellectual property rights in some countries.

The occurrence of any one of these risks could negatively affect our business and results of operations generally. Additionally, operating in international markets requires significant management attention. We cannot be certain that investments required to establish operations in other countries will produce desired levels of revenues or profitability.

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

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

We may be unable to manage our growth effectively.

Our business strategy entails significant future growth. For example, we will have to expand existing operations in order to commercialize our ReShape vBloc, ReShape Balloon and develop our ReShape Vest, conduct additional clinical trials, increase our contract manufacturing capabilities, hire and train new personnel to handle the marketing and sales of our product, assist patients and healthcare providers in obtaining reimbursement for the use of our product and create and develop new applications for our technology. This growth may place significant strain on our management and financial and operational resources. Successful growth is also dependent upon our ability to implement appropriate financial and management controls, systems and procedures. Our ability to effectively manage growth depends on our success in

attracting and retaining highly qualified personnel, for which the competition may be intense. If we fail to manage these challenges effectively, our business could be harmed.

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

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

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

We may be subject to product liability claims even if it appears that the claimed injury is due to the actions of others. For example, we rely on the expertise of surgeons and other associated medical personnel to perform the medical procedure to implant and remove our products and to perform the related therapy. If these medical personnel are not properly trained or are negligent, the therapeutic effect of our products may be diminished or the patient may suffer critical injury, which may subject us to liability. In addition, an injury that is caused by the negligence of one of our suppliers in supplying us with a defective component that injures a patient could be the basis for a claim against us. A product liability claim, regardless of its merit or eventual outcome, could result in decreased demand for our products; injury to our reputation; diversion of management's attention; withdrawal of clinical trial participants; significant costs of related litigation; substantial monetary awards to patients; product recalls or market withdrawals; loss of revenue; and the inability to commercialize our products under development.

Risks Related to Intellectual Property

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

Our commercial success depends in part on our ability to obtain protection in the United States and other countries for our ReShape vBloc and vBloc Therapy, ReShape Balloon and ReShape Vest by establishing and maintaining intellectual property rights relating to or incorporated into our technology and products. We own numerous U.S. and foreign patents and have numerous patent applications pending, most of which pertain to treating gastrointestinal disorders and the treatment of obesity. We have also received or applied for patents in Europe, Australia, China, India, Japan, Israel and Canada. In addition, we are the exclusive licensee of three U.S. patents owned by the Mayo Foundation for Medical Education and Research, which are unrelated to our vBloc Therapy. Our pending and future patent applications may not issue as patents or, if issued, may not issue in a form that will provide us any competitive advantage. We expect to incur substantial costs in obtaining patents and, if necessary, defending our proprietary rights. The patent positions of medical device companies, including ours, can be highly uncertain and involve complex and evolving legal and factual questions. We do not know whether we will obtain the patent protection we seek, or that the protection we do obtain will be found valid and enforceable if challenged. If we fail to obtain adequate protection of our intellectual property, or if any protection we obtain is reduced or eliminated, others could use our intellectual property without compensating us, resulting in harm to our business. We may also determine that it is in our best interests to voluntarily challenge a third-party's products or patents in litigation or administrative proceedings, including patent interferences, re-examinations or under more recently promulgated Inter Partes Review proceedings, depending on when

the patent application was filed. In the event that we seek to enforce any of our owned or exclusively licensed patents against an infringing party, it is likely that the party defending the claim will seek to invalidate the patents we assert, which, if successful could result in the loss of the entire patent or the relevant portion of our patent, which would not be limited to any particular party. Any litigation to enforce or defend our patent rights, even if we were to prevail, could be costly and time-consuming and could divert the attention of our management and key personnel from our business operations. Even if we were to prevail in any litigation, we cannot assure you that we can obtain an injunction that prevents our competitors from practicing our patented technology. Our competitors may independently develop similar or alternative technologies or products without infringing any of our patent or other intellectual property rights, or may design around our proprietary technologies.

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

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

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

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

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

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

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

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

Specifically, on April 20, 2017, Fulfillium, Inc. filed a complaint in the United States District Court for the District of Delaware accusing ReShape Medical, our wholly owned subsidiary, of trade secret misappropriation and patent infringement of U.S. Patent Nos. 9,445,930 and 9,456,915, which we are currently in the process of defending. The defense and prosecution of intellectual property suits, USPTO interference proceedings, reexamination proceedings, or under more recently promulgated Inter Partes Review proceedings, depending on when the patent application was filed, or opposition proceedings and related legal and administrative proceedings, are both costly and time consuming and could result in substantial uncertainty to us. Litigation or regulatory proceedings may also be necessary to enforce patent or other intellectual property rights of ours or to determine the scope and validity of other parties' proprietary rights. Any litigation, opposition or interference proceedings, with or without merit, may result in substantial expense to us, cause significant strain on our financial resources, divert the attention of our technical and management personnel and harm our reputation. We may not have the financial resources to defend our patents from infringement or claims of invalidity. An adverse determination in any litigation could subject us to significant liabilities to third parties, require us to seek licenses from or pay royalties to third parties or prevent us from manufacturing, selling or using our proposed products, any of which could have a material adverse effect on our business and prospects.

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

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

Risks Relating to Ownership of Our Common Stock

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

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

- the denial or delay of regulatory clearances or approvals of our product or receipt of regulatory approval of competing products;
- our ability to accomplish clinical, regulatory and other product development milestones and to do so in accordance with the timing estimates we have publicly announced;
- changes in policies affecting third-party coverage and reimbursement in the United States and other countries;
- changes in government regulations and standards affecting the medical device industry and our product;
- ability of our products to achieve market success;
- the performance of third-party contract manufacturers and component suppliers;
- our ability to develop sales and marketing capabilities;
- actual or anticipated variations in our results of operations or those of our competitors;
- announcements of new products, technological innovations or product advancements by us or our competitors;
- developments with respect to patents and other intellectual property rights;
- sales of common stock or other securities by us or our stockholders in the future;
- additions or departures of key scientific or management personnel;
- disputes or other developments relating to proprietary rights, including patents, litigation matters and our ability to obtain patent protection for our technologies;
- the trading volume of our common stock;
- changes in earnings estimates or recommendations by securities analysts, failure to obtain or maintain analyst coverage of our common stock or our failure to achieve analyst earnings estimates;
- public statements by analysts or clinicians regarding their perceptions of our clinical results or the effectiveness of our products;
- decreases in market valuations of medical device companies; and
- general market conditions and other factors unrelated to our operating performance or the operating performance of our competitors.

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

Our inability to comply with the listing requirements of the NASDAQ Stock Market could result in our common stock being delisted, which could affect its market price and liquidity and reduce our ability to raise capital.

We are required to meet certain qualitative and financial tests (including a minimum closing bid price of $1.00 per share for our common stock) to maintain the listing of our common stock on the NASDAQ Stock Market. If we do not maintain compliance with the continued listing requirements for the NASDAQ Stock Market within specified periods and subject to permitted extensions, our common stock may be recommended for delisting (subject to any appeal we would file). If our common stock were delisted, it could be more difficult to buy or sell our common stock and to obtain accurate quotations, and the price of our stock could suffer a material decline. Delisting would also impair our ability to raise capital.

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

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

Offers or availability for sale of a substantial number of shares of our common stock may cause the price of our common stock to decline.

The shares of common stock issued to the former ReShape Medical equity holders in connection with the merger were issued in a transaction intended to be exempt from registration under the Securities Act of 1933. Therefore, those shares are not currently freely tradable under the federal securities laws (further described in Note 4 to the financial statements). We may also issue additional registered or unregistered shares of our common stock in connection with acquisitions or corporate alliances. If our stockholders sell substantial amounts of our common stock in the public market upon the expiration of any statutory holding period under Rule 144, it could create a circumstance commonly referred to as an “overhang” and in anticipation of which the market price of our common stock could fall. The existence of an overhang, whether or not sales have occurred or are occurring, also could make more difficult our ability to raise additional financing through the sale of equity or equity-related securities in the future at a time and price that we deem reasonable or appropriate.

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

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

In addition, in connection with the ReShape Medical merger, we issued 187,772 shares of newly created non-voting series C convertible preferred stock, which shares became convertible into 18,777,200 shares of voting common stock upon the post-closing approval of our stockholders in accordance with the NASDAQ Stock Market Rules. On December 19, 2017, the date of stockholder approval, 82,384 shares of series C convertible preferred stock automatically converted into 8,238,400 shares of common stock. The remaining 95,388 shares of series C convertible preferred stock are convertible at the option of their holders into approximately 9.5 million shares of common stock, provided that the former ReShape Medical holders will not be permitted to convert their shares of series C convertible preferred stock into

shares of common stock to the extent such conversion would cause them to holder more than 49.0% of our outstanding voting securities at the time of any such conversion.

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

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

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

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

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

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

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

ITEM 1B. ***UNRESOLVED STAFF COMMENTS***

Not applicable.

ITEM 2. ***PROPERTIES***

We lease approximately 28,388 square feet of lab and office space in St. Paul, Minnesota. The original lease agreement began October 1, 2008 and was set to expire September 30, 2015. On August 25, 2015 we entered into an amendment extending the term of the lease for three years until September 30, 2018.

In connection with our acquisition of BarioSurg in May 2017, we acquired approximately 1,949 square feet of office space in Lake Forest, California under an operating lease that expires September 30, 2018.

In connection with our acquisition of ReShape Medical in October 2017, we acquired (i) approximately 14,479 square feet of office/warehouse space in San Clemente, California under an operating lease that expires June 30, 2022 and (ii) approximately 8,000 square feet of office and manufacturing space in San Clemente, California under an operating lease that expires October 31, 2019.

ITEM 3. ***LEGAL PROCEEDINGS***

On February 28, 2017, the Company received a class action and derivative complaint filed on February 24, 2017 in U. S. District Court for the District of Delaware by Vinh Du, one of the Company's shareholders. The complaint names as defendants ReShape Lifesciences, the board of directors and four members of our senior management, namely, Scott Youngstrom, Nick Ansari, Peter DeLange and Paul Hickey, and contains a purported class action claim for breach of fiduciary duty against the board of directors and derivative claims for breach of fiduciary duty against the board of directors and unjust enrichment against our senior management. The allegations in the complaint relate to the increase in the number of shares authorized for grant under our Second Amended and Restated 2003 Stock Incentive Plan (the "Plan"), which was approved by our shareholders at the Special Meeting of Shareholders held on December 12, 2016 (the "Special Meeting"), and to our subsequent grant of stock options on February 8, 2017, to the Company's Directors and senior management to purchase an aggregate of 1,093,450 shares of our common stock (the "Option Grants"). In the complaint, the plaintiff contends that (i) the number of shares authorized for grant under the Plan, as adjusted by the board of directors after the Special Meeting for the subsequent recapitalization of the Company, resulted from an alleged breach of fiduciary duties by the board of directors, and (ii) our senior management was allegedly unjustly enriched by the subsequent Option Grants. The plaintiff seeks relief in the form of an order rescinding the Plan as approved by the shareholders at the Special Meeting, an order cancelling the Option Grants, and an award to plaintiff for his costs, including fees and disbursements of attorneys, experts and accountants. On April 17, 2017, we filed a motion to dismiss the complaint based on the plaintiff's failure to satisfy Delaware's demand requirement for a derivative action and failure to state a valid claim. The court denied the motion to dismiss on November 30, 2017. Discovery is on-going. We believe the allegations in the complaint are without merit, and intend to defend the action vigorously.

On April 20, 2017, Fulfillium, Inc. filed a Complaint against the Company in the United States District Court for the District of Delaware, which alleged misappropriation of trade secrets and infringement of two United States Patents. On July 28, 2017, ReShape Medical moved to dismiss both the misappropriation of trade secret claim and the claims of patent infringement, and to transfer the litigation to the United States District Court for the Central District of California. On October 10, 2017, Fulfillium filed a motion to amend its Complaint to add SV Health Investors, LLC as a co-defendant; that motion is fully briefed and pending. On October 16, 2017, the Court granted ReShape Medical's motion to dismiss the trade secret and willful infringement claims. The Court also ordered the case transferred to the United States District Court for the Central District of California. On November 20, 2017, Fulfillium filed an Amended Complaint, which abandoned certain trade secret claims, and expanded upon allegations regarding other of its trade secret claims and claims for willful infringement. On December 6, 2017, ReShape Medical moved to dismiss those amended claims and for reconsideration of denial of its prior motion to dismiss certain patent infringement claims; both motions were denied on February 7, 2018. On February 5, 2018, Fulfillium filed a second motion to further amend its Complaint to add a claim of infringement of another Fulfillium patent. ReShape Medical opposed that motion. On February 21, 2018, ReShape Medical filed its Answer and Counterclaims to the Amended Complaint, including counterclaims for declarations of non-infringement, invalidity, unenforceability and/or co-inventorship of the asserted Fulfillium patents and state-law tort claims against Fulfillium and its founder personally. Fulfillium and its founder have not yet responded to those counterclaims. At the initial case management conference held on March 19, 2018, the Court

ordered that Fulfillium's motions to amend be stricken and ordered Fulfillium to file a consolidated motion to amend. The Court encouraged the parties to confer to narrow the disputes for the Court's consideration, and indicated that Fulfillium need not respond to ReShape Medical's counterclaims until the scope of the amended complaint was decided. The Court assigned key dates for the litigation, including close of fact discovery on September 15, 2018, last day for filing motions on September 19, 2018, pretrial conference on November 19, 2018 and first day of trial on December 4, 2018. The Company intends to vigorously defend itself against Fulfillium, Inc.'s claims and to vigorously pursue its counterclaims.

We currently are unable to estimate the losses or range of losses for these two matters where there is a reasonable possibility of a loss or it is probable that a loss may have ben incurred.

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

ITEM 4. ***MINE SAFETY DISCLOSURES***

Not applicable.

PART II.

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

Market For Our Common Stock

Our common stock has been traded on the NASDAQ Stock Market since our initial public offering (IPO) on November 15, 2007, initially under the symbol "ETRM"and, after our name change on October 23, 2017, under the symbol "RSLS." Prior to November 15, 2007, there was no public market for our common stock. Our stock was traded on the NASDAQ Global Market from its initial listing at the time of our IPO until January 21, 2010. Subsequently, in anticipation of not curing our deficiencies with the continued listing requirements of the NASDAQ Global Market, we requested and were approved to transfer to the NASDAQ Capital Market, effective January 22, 2010.

As of February 28, 2018, there were approximately 63 holders of record of our common stock and 30,957,113 shares of common stock outstanding. No dividends have been paid on our common stock to date, and we do not anticipate paying any dividends in the foreseeable future.

The following table sets forth the high and low sales prices of our common stock as quoted on the NASDAQ Stock Market for the periods indicated. These prices have been adjusted to reflect the 1-for-70 reverse split of our common stock that was effected after trading on December 27, 2016 and the 1-for-15 reverse split of our common stock that was effected after trading on January 6, 2016.

Price Range of Common Stock

	Price Range	
	High	Low
Fiscal 2016		
First Quarter	$ 157.50	$ 57.40
Second Quarter	$ 86.80	$ 18.90
Third Quarter	$ 31.50	$ 7.70
Fourth Quarter	$ 9.80	$ 1.95
Fiscal 2017		
First Quarter	$ 30.41	$ 1.75
Second Quarter	$ 6.48	$ 4.00
Third Quarter	$ 5.20	$ 1.60
Fourth Quarter	$ 2.60	$ 1.23

The closing price for our common stock as reported by the NASDAQ Stock Market on March 29, 2018 was $1.45 per share.

Securities Authorized for Issuance Under Equity Compensation Plans

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

Unregistered Sales of Equity Securities

Other than as previously reported in our Current Reports on Form 8-K filed on May 23, 2017 and October 3, 2017, as amended, during the period covered by this report, we did not sell any securities which were not registered under the Securities Act of 1933, as amended.

Uses of Proceeds from Sale of Registered Securities

None.

Dividend Policy

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

Issuer Purchases of Equity Securities

None.

ITEM 6. ***SELECTED FINANCIAL DATA***

Not applicable.

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

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

Overview

We are a medical technology company focused on the design, development and commercialization of transformative technology to treat obesity and metabolic diseases. Our growing and differentiated product portfolio is utilized by bariatric surgeons, general surgeons, and gastroenterologists. We believe obesity is a global epidemic and that the majority of patients need treatment options that are anatomy friendly and provide for weight loss and comorbidity improvements along with long-term, ongoing obesity support and prevention. We were incorporated in Minnesota on December 19, 2002 as "EnteroMedics Inc." and later reincorporated in Delaware on July 22, 2004. In October 2017 we changed our name to "ReShape Lifesciences Inc."

On January 14, 2015, the vBloc® System, our initial product, which we now refer to as ReShape vBloc, received U.S. Food and Drug Administration (FDA) approval for vBloc Therapy, delivered via the ReShape vBloc, for the treatment of adult patients with obesity who have a Body Mass Index (BMI) of at least 40 to 45 kg/m2, or a BMI of at least 35 to 39.9 kg/m2 with a related health condition such as high blood pressure or high cholesterol levels, and who have tried to lose weight in a supervised weight management program and failed within the past five years vBloc Therapy is delivered via a pacemaker-like device that helps patients feel full and eat less by intermittently blocking hunger signals on the vagus nerve. Our therapy limits the expansion of the stomach, helps control hunger sensations between meals, reduces the frequency and intensity of stomach contractions and produces a feeling of early and prolonged fullness. In 2015 we began a controlled commercial launch of the ReShape vBloc at select surgical centers in the United States and had our first commercial sales. During 2015, we initiated a controlled expansion of our commercial operations and began building a sales force, which, in 2015 and 2016, called directly on key opinion leaders and bariatric surgeons at commercially-driven surgical centers that met our certification criteria. Additionally, beginning in 2016, through a distribution agreement with Academy Medical, LLC, U.S. Department of Veterans Affairs (VA) medical facilities began to offer the ReShape vBloc as a treatment option for veterans, at little to no cost to veterans in accordance with their veteran healthcare benefits. Our goal for the ReShape vBloc remains broad coverage and reimbursement for vBloc Therapy. We believe that the most significant barrier to adoption for patients who want vBloc Therapy has been cost and lack of payer coverage.

On May 22, 2017, we acquired the Gastric Vest System™, which we now refer to as the ReShape Vest, through our acquisition of BarioSurg. The ReShape Vest System is an investigational, minimally invasive, laparoscopically implanted medical device being studied for weight loss in morbidly obese patients. The device wraps around the stomach, emulating the effect of conventional weight-loss surgery, and is intended to enable gastric volume reduction without permanently changing patient anatomy. The acquisition was completed under the terms of a merger agreement pursuant to which BarioSurg became a wholly-owned subsidiary of our company. The aggregate merger consideration we paid for all of the outstanding shares of capital stock and outstanding options of BarioSurg was: (i) 1.38 million shares of our common stock, (ii) 1.0 million shares of our newly created conditional convertible preferred stock, which shares converted into 5.0 million shares of our common stock upon the post-closing approval of our stockholders in accordance with the NASDAQ Stock Market Rules, and (iii) $2 million in cash.

On October 2, 2017, we acquired ReShape Medical, Inc., a privately-held medical technology company that develops, manufactures and markets the ReShape® Integrated Dual Balloon, which now we refer to as the ReShape Balloon, an FDA-approved, minimally invasive intragastric balloon designed to treat obesity patients with a BMI between 30 and 40, with at least one related comorbidity. The aggregate merger consideration we paid for all of the outstanding shares of capital stock and securities convertible into shares of capital stock of ReShape Medical was: (i) approximately 2.4 million shares of our common stock, (ii) 187,772 shares of newly created series C convertible preferred stock, which shares became convertible into approximately 18.8 million shares of common stock upon the post-closing approval of our stockholders in accordance with the NASDAQ Stock Market Rules, and (iii) approximately

$5 million in cash. The ReShape Balloon provides a new option for individuals who have not succeeded at diet and exercise alone, and do not want or do not qualify for bariatric surgery. Two connected balloons are placed into the stomach during a short, outpatient endoscopic procedure. The balloons remain in the stomach for six months and are then removed endoscopically. During balloon treatment, and for six more months following removal of the balloons, the patient receives access to nutritional counseling and access to exclusive tools to help them achieve their weight loss goals. The ReShape Balloon was approved by the FDA in July of 2015 and has had CE-marking in Europe since 2011.

We have a limited operating history and our ReShape vBloc and ReShape Balloon products only recently received U.S. Food and Drug Administration (FDA) approval to sell our product in the United States. Since our formation and until the 2017 acquisitions of BarioSurg and ReShape Medical, we have devoted substantially all of our resources to the development and commercialization of the vBloc System. With the addition of the ReShape Balloon product from ReShape Medical and if we are able to commercialize the ReShape Vest acquired from BarioSurg, we believe we will be able to offer three distinct approaches to treating obesity that may be selected by the physician, depending on the severity of the patient's BMI or related co-morbidities. Together, we believe the ReShape Vest, ReShape vBloc and the ReShape Balloon provide a minimally-invasive continuum of care for bariatric patients and their providers.

The following financing transactions occurred in 2017 to fund the Company's operations and acquisitions:

- On January 23, 2017, we closed an underwritten public offering consisting of units of common stock, convertible preferred stock and warrants to purchase common stock. Gross proceeds of the offering were $19.0 million, prior to deducting underwriting discounts and commissions and offering expenses of approximately $2.5 million.

- During 2017, common stock warrants for 559,670 shares of common stock were exercised by warrant holders with proceeds to the Company of $3.3 million.

- On August 16, 2017, we closed an underwritten public offering consisting of units of Series B Convertible Preferred Stock and warrants to purchase common stock. Gross proceeds of the offering were $20.0 million, prior to deducting underwriting discounts and commissions and offering expenses of approximately $2.0 million.

We currently are not generating revenue from operations that is significant relative to our level of operating expenses, and we do not anticipate generating revenue sufficient to offset operating costs in the short-term to mid-term. We have financed our operations to date principally through the sale of equity securities, debt financing and interest earned on investments. Our history of operating losses, limited cash resources and lack of certainty regarding obtaining significant third-party reimbursement for ReShape vBloc or timing thereof, raise substantial doubt about our ability to continue as a going concern absent a strengthening of our cash position. As of December 31, 2017, we had $10.2 million of cash and cash equivalents to fund our operations through early 2018. Our anticipated operations include plans to (i) integrate the sales and operations of our company with the newly acquired ReShape Medical in order to expand sales of both the ReShape Balloon and ReShape vBloc as well as to obtain cost savings synergies, (ii) expand the controlled commercial launch of ReShape vBloc Therapy, delivered via ReShape vBloc, (iii) continue development of the ReShape Vest, (vi) seek opportunities to leverage our intellectual property portfolio and custom development services to provide third party sales and licensing opportunities, and (v) explore and capitalize on synergistic opportunities to expand our portfolio and offer future minimally invasive treatments and therapies in the obesity continuum of care. We believe that we have the flexibility to manage the growth of our expenditures and operations depending on the amount of available cash flows, which could include reducing expenditures for marketing, clinical and product development activities. However, we will ultimately need to achieve sufficient revenues from product sales and obtain additional debt or equity financing in addition to the proceeds from this offering to support our operations.

Critical Accounting Policies and Significant Judgments and Estimates

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

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

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

Revenue Recognition

Revenue is recognized when persuasive evidence of an arrangement exists, title or risk of loss has passed, the selling price is fixed or determinable and collection is reasonably assured. Products are sold through direct sales or medical device distributors. ReShape vBloc revenue is recognized upon sale to a bariatric center or a medical device distributor when no right of return or price protection exists. ReShape Balloon revenue is typically recognized when title is passed, usually at point of shipment. A provision for returns reducing revenues is recorded only if product sales provide for a right of return. No provision for returns was recorded for the years ended December 31, 2015 and December 31, 2016, as vBloc product sales recorded did not provide for rights of return. A provision for returns of $39,000 was recorded in the fourth quarter of 2017 to estimate potential returns of the ReShape Balloon product.

Revenues for services are recognized when earned, subject to limitations, if any, related to multiple deliverables. We evaluate each element in these multiple-element arrangements to determine whether they represent a separate unit of accounting and recognize each element as the services are performed or as product is shipped.

Inventory

We account for inventory at the lower of cost or market and record any long-term inventory as other assets in the consolidated balance sheets. We establish inventory reserves for obsolescence based upon projected sales and for defect based upon specific identification of defective or unsalable units. As of December 31, 2017 and 2016, respectively, there was $1.0 million and 676,000 of long-term inventory included as other assets.

Goodwill and Other Intangible Assets

We evaluate long-lived assets, including finite-lived intangible assets, for impairment by comparison of the carrying amounts to future net undiscounted cash flows expected to be generated by such assets when events or changes in circumstances indicate the carrying amount of an asset may not be recoverable. Should an impairment exist, the impairment loss would be measured based on the excess carrying value of the asset over the asset's fair value or estimates of future discounted cash flows.

For goodwill and indefinite-lived intangible assets, in-process research and development, we review for impairment annually and upon the occurrence of certain events as required by Accounting Standards Codification ("ASC") Topic 350, "Intangibles — Goodwill and Other." Goodwill and indefinite-lived intangible assets are tested at least annually for impairment and more frequently if events or changes in circumstances indicate that the asset might be impaired. We review goodwill for impairment by first assessing qualitative factors to determine whether it is more likely than not that the fair value of a reporting unit is less than its carrying amount as a basis for determining whether it is necessary to perform the two-step goodwill impairment test. If we are able to determine that it is not more likely than not that the fair value of a reporting unit is less than its carrying amount, we would conclude that goodwill is not impaired. If the carrying amount of a reporting unit is zero or negative, the second step of the impairment test is performed to measure the amount of impairment loss, if any, when it is more likely than not that a goodwill impairment exists. We did not record any losses for impairment during the year ended December 31, 2017.

Stock-Based Compensation

We account for share-based payments using the fair value method, which requires compensation expense to be recognized using a fair-value-based method for costs related to all share-based payments including stock options. Companies are required to estimate the fair value of share-based payment awards on the date of grant using an option-pricing model. Calculating stock-based compensation expense requires the input of highly subjective assumptions, which represent our best estimates and involve inherent uncertainties and the application of management's judgment. Estimates of stock-based compensation expenses are significant to our consolidated financial statements, but these expenses are

based on the Black-Scholes pricing model and will never result in the payment of cash by us. All option grants are expensed on a straight-line basis over the vesting period.

The application of share-based payment principles may be subject to further interpretation and refinement over time. There are significant differences among option valuation models, and this may result in a lack of comparability with other companies that use different models, methods and assumptions. If factors change and we employ different assumptions in the application of share-based payment accounting in future periods, or if we decide to use a different valuation model, the compensation expense that we record in the future may differ significantly from what we have recorded in the current period and could materially affect our operating loss, net loss and net loss per share.

The fair value method is applied to all share-based payment awards issued to employees and where appropriate, nonemployees, unless another source of literature applies.

Net Operating Losses and Tax Credit Carryforwards

At December 31, 2017, we had federal gross net operating loss carryforwards of approximately $253.8 million. These net operating loss carryforwards will expire in varying amounts from 2022 through 2037, if not utilized. The Internal Revenue Code (IRC) imposes restrictions on the utilization of various carryforward tax attributes in the event of a change in ownership of the Company, as defined by IRC Section 382. In addition, IRC Section 382 may limit our tax credits and our built-in items of deduction, including capitalized start-up costs and research and development costs. During 2011, we completed an IRC Section 382 review and the results of this review indicate ownership changes have occurred which would cause a limitation on the utilization of carryforward attributes. Our gross net operating loss carryforwards, start-up costs and research and development credits are all subject to limitation. Under these tax provisions, the limitation is applied first to any built-in losses, then to any net operating losses and then to any general business credits. It is likely that ownership changes have occurred since we completed our IRC Section 382 review in 2011 and could result in further limitations on the utilization of carryforward attributes. A valuation allowance has been established to reserve for the potential benefits of the remaining carryforwards and tax credits in our consolidated financial statements to reflect the uncertainty of future taxable income required to utilize available tax loss carryforwards and other deferred tax assets. We have applied the valuation allowance to our net deferred tax assets, however, an extreme limitation under Section 382 could result in impact to our effective tax rate due to the presence of deferred tax liabilities from recent acquisitions.

Financial Overview

Revenue

We received FDA approval on January 14, 2015 for vBloc Therapy. In 2015 we began a controlled commercial launch at select surgical centers in the United States and had our first commercial sales. During 2015, we initiated a controlled expansion of our commercial operations and started the process of building a sales force. Our direct sales force is supported by field clinical engineers who provide training, technical and other support services to our customers. Throughout 2016, our sales force called directly on key opinion leaders and bariatric surgeons at commercially-driven surgical centers that met our certification criteria. Additionally, in 2016, through a distribution agreement with Academy Medical, VA medical facilities began offering ReShape vBloc as a treatment option to veterans using their veteran healthcare benefits. With the acquisition of ReShape Medical and the ReShape Balloon in October 2017, we began the process of integrating our sales forces and offering both ReShape vBloc and the ReShape Balloon to bariatric surgeons, general surgeons and gastroenterologists. In 2017, we also began offering the ReShape Balloon product to customers in certain Middle East countries via third party distribution agreements. Also in 2017, we provided certain custom development services based on our intellectual property portfolio. In 2018 we also intend to build on our previous efforts with self-pay and veteran patient focused direct-to-patient marketing, key opinion leader and center specific partnering, and a multi-faceted reimbursement strategy and to continue to pursue ReShape Balloon sales opportunities, particularly in the Middle East and Canada.

In 2015, our first year of commercial activity, we sold 24 ReShape vBloc units for $292,000 in revenue and in 2016, we sold 62 ReShape vBloc units for $787,000 in revenue. In 2017, our total revenues were $1.3 million, $718,000 from 2017 fourth quarter revenue from ReShape Balloon sales resulting from the acquisition of ReShape Medical, $250,000 from service revenue and $319,000 from the sale of 29 ReShape vBloc units.

Both ReShape vBloc and the ReShape Balloon remain relatively new products in the United States and internationally and it is difficult to predict the amount of revenue they, or the investigational-stage ReShape Vest, will generate going forward. In any event, such revenue will only modestly reduce our continued losses resulting from our research and development and other activities.

Service and Other Revenue

Service revenue is comprised of custom development services provided to third parties based on our intellectual property portfolio. Other revenue includes amounts billed to customers for shipping.

Selling, General and Administrative Expenses

Our selling, general and administrative expenses consist primarily of compensation for executive, finance, market development and administrative personnel, including stock-based compensation. Other significant expenses include costs associated with attending medical conferences and trade shows, professional fees for legal services, including legal services associated with our efforts to obtain and maintain broad protection for the intellectual property related to our products, reimbursement development, including costs associated with the vBloc Now program, and accounting services, cash management fees, consulting fees and travel expenses.

Research and Development Expenses

Our research and development expenses primarily consist of engineering, product development, quality assurance and clinical and regulatory expenses, incurred in the development of our three products, ReShape vBloc, ReShape Vest and the ReShape Balloon. Research and development expenses also include employee compensation, including stock-based compensation, consulting services, outside services, materials, clinical trial expenses, including supplies, devices, explants and revisions, depreciation and travel. We expense research and development costs as they are incurred.

Results of Operations

Comparison of the Years Ended December 31, 2017 and 2016

Product Sales Revenue. Revenues from product sales totaled $1.0 million for the year end December 31, 2017 compared with $787,000 for the year ended December 31, 2016. The increase was driven by $692,000 fourth quarter 2017 ReShape Balloon product sales subsequent to the October 2, 2017 acquisition of ReShape Medical. The increase due to ReShape Balloon product sales was partially offset by a $467,000 decline in sales of ReShape vBloc. During 2017, 28 units of ReShape vBloc product were sold compared with 62 during 2016. The decline in ReShape vBloc sales was driven primarily by the Company's 2017 focus on the vBloc Now program, which provides qualified patients battling obesity the opportunity to receive vBloc Therapy, including the device, procedure, and follow up program at an affordable price in exchange for sharing detailed health data with the Company. The Company intends to use the data to enhance its case with third-party payers that vBloc Reshape can provide a clinically meaningful level of weight loss while also providing a positive impact on diabetes and other comorbidities in certain patients.

Service and Other Revenue. During the 2017 third quarter, the Company provided certain custom development services totaling $250,000 based on its intellectual property portfolio that had been requested and contracted for by a third party. Other revenue includes amounts billed customers for shipping ReShape Balloon product.

Cost of Goods Sold. Cost of goods sold was $765,000 for the year ended December 31, 2017 compared to $431,000 for the year ended December 31, 2016. The $334,000 increase was primarily driven by fourth quarter sales of the ReShape Balloon product. Gross margin for product sales was 24.4% for 2017 compared with 45.2% for 2016. The decrease in gross margin percentage reflects fourth quarter 2017 sales of lower margin ReShape Balloon product compared with ReShape vBloc product.

Cost of Service and Other Revenue. Cost of service and other revenue reflects the cost of custom development services provided by the Company as well as the cost of shipping revenues.

Selling, General and Administrative Expenses. Selling, general and administrative expenses were $26.0 million for the year ended December 31, 2017, compared to $18.0 million for the year ended December 31, 2016. The increase

of $8.0 million was primarily driven by $4.0 million of fourth quarter operating 2017 expenses from ReShape Medical, which included approximately $645,000 of non-cash intangible amortization expenses, $1.1 million of acquisition and integration expenses related to the 2017 acquisitions of BarioSurg and ReShape Medical, $2.1 million of increased stock compensation expenses, $812,000 of expenses related to the 68 ReShape vBloc units implanted in conjunction with the vBloc Now program, $584,000 increase in severance costs driven by the fourth quarter 2017 reduction in executive and administration positions after the ReShape Medical acquisition and a $480,000 increase in other professional fees. These increases were partially offset by a $676,000 decrease in advertising and marketing expenses and $552,000 of other payroll related expenses.

Research and Development Expenses. Research and development expenses were $5.8 million for the year ended December 31, 2017 compared with $5.2 million for the year ended December 31, 2016, an increase of 11.7 percent. The increase of $606,000 was driven by $832,000 of expenses related to research and development of the ReShape Vest, acquired with the acquisition of BarioSurg on May 22, 2017, and approximately $283,000 of fourth quarter 2017 research and development expenses from ReShape Medical, which was acquired October 2, 2017. These increases were partially offset by decreases of approximately $509,000 due to reduced payroll-related and supply expenses, primarily related to the ReShape vBloc product.

Interest Expense. Interest expense was $4,000 for the year ended December 31, 2017 compared with $4.1 million for the year ended December 31, 2016. The decrease of $4.1 million from 2016 was driven by the absence of any remaining balances of convertible notes, which were all paid off by December 31, 2016.

Change in Value of Warrant Liability. The change in the value of the common stock warrant liability for our Series A Warrants and Note Warrants increased $283,000 during the year ended December 31, 2017, primarily the result of the marking to market of the Series A Warrants and the Note Warrants for 48,272 common shares as of the date of their exercise. The 2017 exercises of these warrants occurred during the first two quarters of 2017, generally at points in time when the Company's stock price had increased from $2.00 at December 31, 2016 to levels higher than the exercise price of the warrants. The value of the common stock warrant liability for our Series A and Note Warrants decreased $3.5 million during the year ended December 31, 2016. The fair market value of the warrant liability is calculated using the Black-Scholes valuation model, and was primarily driven by the reduction in the Company's stock price during 2016, from $136.50 at December 31, 2015 to $2.00 at December 31, 2016.

Comparison of the Years Ended December 31, 2016 and 2015

Sales. Sales were $787,000 for the year ended December 31, 2016 compared with $292,000 for the year ended December 31, 2016. The increase of $495,000 is the result of the continued controlled commercial launch of ReShape vBloc at select surgical centers in the United States which resulted in sales of 62 units during 2016 versus 24 units during 2015. We received FDA approval to sell ReShape vBloc on January 14, 2015.

Cost of Goods Sold. Cost of goods sold were $431,000 for the year ended December 31, 2016 compared to $125,000 for the year ended December 31, 2015. The increase was driven primarily by the 158% increase in the number of units sold in 2016 over 2015. Gross margin percentage for 2016 was 45.2% versus 57.2% for the prior year. The decline in gross margin percentage was primarily due to higher supply chain costs in 2016 than in 2015.

Selling, General and Administrative Expenses. Selling, general and administrative expenses were $18.0 million for the year ended December 31, 2016, compared to $19.9 million for the year ended December 31, 2015. The decrease of $1.9 million, or 9.6%, was primarily due to a $3.4 million decrease in payroll-related expenses, partially offset by a $1.1 million increase in professional services expenses and a $366,000 increase in severance expenses. The increase in professional services expenses were the result of increasing commercialization efforts as we continued the controlled commercial launch of ReShape vBloc at select surgical centers in the United States.

Research and Development Expenses. Research and development expenses were $5.2 million for the year ended December 31, 2016, compared to $8.1 million for the year ended December 31, 2015. The decrease of $3.0 million or 36.5%, was primarily due to decreases of $2.0 million, $436,000 and $119,000 in payroll-related expenses, supply expenses and professional services expenses, respectively. The decreases are the result of a continued shift away from a research and development focus toward commercialization of ReShape vBloc.

Interest Expense. Interest expense was $4.1 million for the year ended December 31, 2016, compared to $939,000 for the year ended December 31, 2015. The increase of $3.2 million was driven by interest costs from the three Note closings that occurred on November 9, 2015, January 11, 2016 and May 2, 2016, and increased interest costs due to conversions of remaining amounts due under the Notes into common shares by holders of the Notes during the year ended December 31, 2016, and, as a result, accelerations of "make whole" interest amounts due under the Notes. Additionally, $277,000 in debt issuance costs were expensed during the quarter ended June 30, 2016.

Change in Value of Warrant Liability. The value of the common stock warrant liability increased $217,000 for the year ended December 31, 2016, compared to the year ended December 31, 2015. Common stock warrant liabilities were recorded during the year ended December 31, 2015 for the Series A Warrants on July 8, 2015 and for the Note Warrants issued on November 9, 2015. In addition, Note Warrants were issued on January 11, 2016 and May 2, 2016. The decline in the value of the warrants was driven by the decrease in the Company's stock price, which declined throughout 2016, from $136.50 per share on December 31, 2015 to $2.00 on December 31, 2016.

Warrants Expense. In August, 2017, we issued warrants to former holders of the senior amortizing convertible notes issued in November, 2015 as consideration for the waiver by each of the former note holders of their right to participate in future securities offerings by the Company, which resulted in $4.4 million of warrants expense for the year ended December 31, 2017.

Income tax benefit. The revaluation of our deferred income taxes upon enactment of the Tax Cuts and Jobs Act on December 22, 2017 resulted in $2.3 million of income tax benefit for the year ended December 31, 2017.

Liquidity and Capital Resources

As of December 31, 2017, we had $10.2 million in cash bank deposits. While we had no short-term money market funds or other investments at December 31, 2017, we periodically invest in short-term money market funds that are not considered to be bank deposits and are not insured or guaranteed by the Federal Deposit Insurance Company or other government agency. These money market funds seek to preserve the value of the investment at $1.00 per share; however, it is possible to lose money investing in these funds. Periodically, we invest cash in excess of immediate requirements in accordance with our investment policy, primarily with a view to liquidity and capital preservation. At times, such deposits may be in excess of insured limits. We have not experienced any losses on our deposits of cash and cash equivalents.

We have financed our operations to date principally through the sale of equity securities, debt financing and interest earned on investments. As of December 31, 2017, we had $10.2 million of cash and cash equivalents to fund operations into early 2018. The following financing transactions occurred in 2015, 2016, 2017 and early 2018 to fund the Company's operations:

April 2018* (*see Note 19, "Subsequent Events," to the Consolidated Financial Statements on Form 10-K for the Year Ended December 31, 2017)

- On April 2, 2018 the Company announced that it had entered into a securities purchase agreement with an institutional investor providing for the purchase and sale in a registered direct offering of shares of series D convertible preferred stock and a warrant to purchase shares of common stock for a purchase price of $6.0 million. The transaction is expected to close on or about April 4, 2018 and the Company expects to receive net proceeds of approximately $5.25 million after deducting placement agent fees and other offering expenses.

2015, 2016 and 2017

- On July 8, 2015, we closed a public offering of units consisting of common stock and the Series A Warrants. Gross proceeds of the offering were $16.0 million, prior to deducting offering expenses of approximately $1.4 million

- On November 4, 2015 we entered into a securities purchase agreement (the Purchase Agreement) with institutional investors to issue up to $25.0 million of senior amortizing convertible notes (the Notes) and Note

Warrants, in three separate closings. $1.5 million of the Notes was funded at the first closing on November 9, 2015 (the First Closing).

- An additional $11.0 million of the Notes was funded at the second closing on January 11, 2016 (the Second Closing).

- An additional $6.25 million of the Notes was funded at the third closing on May 2, 2016 (the Third Closing).

- On January 23, 2017, we closed an underwritten public offering consisting of units of common stock, convertible preferred stock and warrants to purchase common stock. Gross proceeds of the offering were $19.0 million, prior to deducting underwriting discounts and commissions and offering expenses of approximately $2.5 million.

- During 2017, common stock warrants for 559,670 shares of common stock were exercised by warrant holders with proceeds to the Company of $3.3 million.

- On August 16, 2017, we closed an underwritten public offering consisting of units of Series B Convertible Preferred Stock and warrants to purchase common stock. Gross proceeds of the offering were $20.0 million, prior to deducting underwriting discounts and commissions and offering expenses of approximately $2.0 million.

Our anticipated operations include plans to (i) integrate the sales and operations of the Company with the newly acquired ReShape Medical in order to expand sales of both the ReShape Balloon and ReShape vBloc as well as to obtain cost savings synergies, (ii) expand the controlled commercial launch of vBloc Therapy, delivered via the ReShape vBloc System, (iii) continue development of the ReShapec Vest, (vi) seek opportunities to leverage our intellectual property portfolio and custom development services to provide third party sales and licensing opportunities, and (v) explore and capitalize on synergistic opportunities to expand our portfolio and offer future minimally invasive treatments and therapies in the obesity continuum of care. The Company believes that it has the flexibility to manage the growth of its expenditures and operations depending on the amount of available cash flows, which could include reducing expenditures for marketing, clinical and product development activities. However, we will ultimately need to achieve sufficient revenues from product sales and obtain additional debt or equity financing to support its operations.

Management is currently pursuing various funding options, including seeking additional equity or debt financing approximately one or two times per year as well as a strategic merger or other transaction to obtain additional funding or expand its product line to continue the development of, and to successfully commercialize, the ReShape Balloon, the ReShape vBloc System and the ReShape Vest. While the acquisition of ReShape Medical does provide incremental revenues to the Company, the cost to further develop and commercialize the ReShape Balloon is expected to significantly exceed revenues for the foreseeable future. While there can be no assurance that the Company will be successful in its efforts, the Company has a long history of raising equity financing to fund its development activities. Should the Company be unable to obtain adequate financing in the near term, the Company's business, result of operations, liquidity and financial condition would be materially and negatively affected, and the Company would be unable to continue as a going concern. Additionally, there can be no assurance that, assuming the Company is able to strengthen its cash position, it will achieve sufficient revenue or profitable operations to continue as a going concern.

Sales Agreement—July 2015

On July 8, 2015, we closed a public offering, where we sold 30,476 units at an aggregate price of $525.00 per unit, for gross proceeds of $16.0 million, before deducting estimated offering expenses of approximately $1.4 million, of which $532,000 was assigned to the warrants issued with each unit sold. Each unit consisted of: (A)(i) one share of common stock or (ii) one pre-funded Series C warrant to purchase one share of common stock at an exercise price equal to $525.00 per share (Series C Warrant); and (B) one Series A warrant to purchase one share of common stock at an exercise price equal initially to $630.00 per share (Series A Warrant). Each purchaser of a unit could elect to receive a Series C Warrant in lieu of a share of common stock. No Series C Warrants were issued.

The Series A Warrants are exercisable for a period of 42 months from the closing date of the public offering. The exercise price and number of shares of common stock issuable on the exercise of the Series A Warrants are subject to adjustment upon the issuance of any shares of common stock or securities convertible into shares of common stock

below the then-existing exercise price, with certain exceptions, and in the event of any stock split, reverse stock split, recapitalization, reorganization or similar transaction. The holder of the Series A Warrant does not have the right to exercise any portion of the Series A Warrant if the holder, together with its affiliates, would, subject to certain limited exceptions, beneficially own in excess of 9.99% of our common stock outstanding immediately after the exercise or 4.99% as may be elected by the purchaser.

The exercise price of the Series A Warrants was reduced to $168.00 per share on November 9, 2015 as a result of the issuance of the Notes and was further reduced to $67.90 per share on January 29, 2016, the 16th trading day following the First Reverse Stock Split, per the terms of the Series A Warrants and was further reduced at various times during the year ended December 31, 2016 as a result of installment and acceleration payments made on the Notes. As of December 31, 2016, the exercise price of the Series A Warrants was $2.80 per share and on January 20, 2017, the 16th trading day following the Second Reverse Stock Split, the exercise price of the Series A Warrants was adjusted to $2.18 per share, per the terms of the Series A Warrants.

Senior Amortizing Convertible Notes

On November 4, 2015, we entered into the Purchase Agreement to issue and sell to four institutional investors 7% senior amortizing convertible notes due 2017 in three separate closings. The Notes were initially convertible into shares of our common stock at a price equal to $304.50 per share with an aggregate principal amount of $25.0 million. Each Note was sold with a Note Warrant with an exercise price of $325.50 per share. We issued and sold Notes and Note Warrants for aggregate total proceeds of $12.5 million in the First Closing and Second Closing. Subsequent to the Second Closing, we entered into the First Amendment, which provided that the scheduled third closing would be divided into two separate closings, issued and sold Notes and Note Warrants for aggregate total proceeds of $6.25 million in the Third Closing. After the Third Closing, we entered into the Second Amendment, which set a deadline of December 30, 2016 for the final closing and provided the consent of the holders of the Notes to we reduce the conversion price of the Notes from time to time in order to incentivize the holders of the Notes to convert their Notes into shares of our common stock. As the final closing did not occur prior to the December 30, 2016 deadline, the remaining $6.25 million of Notes was not funded. Additionally, after entering into the Second Amendment, we reduced the conversion price of the Notes frequently in order to incentivize the holders of the Notes to convert all of the outstanding amounts outstanding under the Notes. As of December 31, 2016, all of the Notes were fully repaid.

During the year ended December 31, 2016, $18.7 million of aggregate principal amount of Notes were converted by holders of the Notes into approximately 2,632,000 shares of the Company’s common stock.

Description of the Notes

The Notes were payable in monthly installments, accrued interest at a rate of 7.0% per annum from the date of issuance and had a maturity date 24 months after the First Closing. The Notes were repayable, at the Company’s election, in either cash or shares of our common stock at a discount to the then-current market price. The Notes were also convertible from time to time, at the election of the holders, into shares of our common stock at an initial conversion price of $304.50 per share. The conversion price was adjusted to $76.30 per share on January 29, 2016, the 16th trading day following the First Reverse Stock Split, per the terms of the Notes. The Notes also allowed us to reduce the conversion price from time-to-time, upon the holders’ consent, which was provided in the Second Amendment.

The holder of each Note has the right to convert any portion of such Note unless the holder, together with its affiliates, beneficially owned in excess of 4.99% of the number of shares of our common stock outstanding immediately after giving effect to the conversion, as such percentage ownership was determined in accordance with the terms of the Notes. The holders were also able to increase or decrease such percentage to any other percentage, but in no event above 9.99%, provided that any increase of such percentage would not be effective until 61 days after providing us notice.

The First Closing occurred on November 9, 2015. At the First Closing, we issued and sold Notes with an aggregate principal amount of $1.5 million, along with Note Warrants exercisable for 1,679 shares. During the quarter ended September 30, 2016, all remaining principal and interest amounts outstanding under the Notes issued at the First Closing were paid off via conversions to common shares.

The Second Closing occurred on January 11, 2016 after we received approval of the offering by the Company’s stockholders and the satisfaction of certain customary closing conditions. At the Second Closing, we issued and sold

Notes with an aggregate principal amount of $11.0 million, along with Note Warrants exercisable for 12,312 shares. The fair value of Note Warrants issued on January 11, 2016 was determined to be $515,000 using a Black-Scholes valuation model and the following assumptions: (1) dividend yield of 0%; (2) expected volatility of 85.90%; (3) weighted average risk –free interest rate of 1.58%; and (4) expected life of 5.0 years. During the year and quarter ended December 31, 2016, all remaining principal and interest amounts outstanding under Notes issued at the Second Closing were paid off via conversions to common shares.

The Third Closing occurred on May 2, 2016 after we entered into the First Amendment and satisfied certain closing conditions. At the Third Closing, we issued and sold Notes with an aggregate principal amount of $6.25 million, along with Note Warrants exercisable for 6,995 shares. The fair value of the Note Warrants issued on May 2, 2016 was determined to be $150,195 using a Black-Scholes valuation model and the following assumptions: (1) dividend yield of 0%; (2) expected volatility of 89.28%; (3) weighted average risk –free interest rate of 1.32%; and (4) expected life of 5.0 years. During the quarter and year ended December 31, 2016, all remaining principal and interest amounts outstanding under Notes issued at the Third Closing were paid off via conversions to common shares.

The following table summarizes the installment amounts and additional conversions by the holders of the Notes through December 31, 2016:

First Closing:

	Principal	Interest	Total	Common Shares
Installment amount at December 31, 2015	$ 65,217	$ 23,651	$ 88,868	814
Holder conversions during the quarter ended December 31, 2015	18,261	2,375	20,636	189
Total installments and conversions, December 31, 2015	83,478	26,026	109,504	1,003
Installment amount at February 29, 2016	65,217	23,681	88,898	1,314
Installment amount at March 31, 2016	65,217	14,827	80,044	1,271
Holder conversions during the quarter ended March 31, 2016	104,784	12,762	117,546	1,524
Total installments and conversions, March 31, 2016	318,696	77,296	395,992	5,112
Installment amount at April 30, 2016	65,217	13,853	79,070	1,454
Installment amount at May 31, 2016	65,217	13,082	78,299	2,121
Installment amount at June 30, 2016	54,217	11,275	65,492	3,590
Holder conversions during the quarter ended June 30, 2016	1,627	174	1,801	29
Total installments and conversions, June 30, 2016	504,974	115,680	620,654	12,306
Installment amount at July 31, 2016	65,217	10,148	75,365	5,521
Installment amount at August 31, 2016	46,957	5,830	52,787	4,593
Holder conversions during the quarter ended September 30, 2016	882,852	78,634	961,486	72,528
Total installments and conversions, September 30, 2016 and December 31, 2016	$ 1,500,000	$ 210,292	$ 1,710,292	94,948

Second Closing:

	Principal	Interest	Total	Common Shares
Installment amount at March 2, 2016	$ 404,762	$ 149,300	$ 554,062	*
Holder conversions during the quarter ended March 31, 2016	987,000	124,050	1,111,050	14,974
Total installments and conversions, March 31, 2016	1,391,762	273,350	1,665,112	14,974
Installment amount at April 29, 2016	404,762	149,497	554,259	10,190
Installment amount at May 31, 2016	291,428	86,518	377,946	10,238
Installment amount at June 30, 2016	404,762	82,913	487,675	22,842
Holder conversions during the quarter ended June 30, 2016	25,373	2,995	28,368	414
Total installments and conversions, June 30, 2016	2,518,087	595,273	3,113,360	58,658
Installment amount at July 31, 2016	213,429	47,457	260,886	19,113
Installment amount at August 31, 2016	631,429	116,511	747,940	64,810
Installment amount at September 30, 2016	404,762	45,846	450,608	51,698
Holder conversions during the quarter ended September 30, 2016	4,868,679	418,847	5,287,526	418,253
Total installments and conversions, September 30, 2016	8,636,386	1,223,934	9,860,320	612,532
Installment amount at Oct 31, 2016	340,000	24,738	364,738	70,665
Installment amount at Nov 30, 2016	291,429	27,528	318,957	81,952
Installment amount at December 31, 2016	156,867	11,425	168,292	57,453
Holder conversions during the quarter ended December 31, 2016	1,575,318	122,624	1,697,942	450,385
Total installments and conversions, December 31, 2016	$ 11,000,000	$ 1,410,249	$ 12,410,249	1,272,987

Third Closing:

	Principal	Interest	Total	Common Shares
Installment amount at June 30, 2016	$ 212,158	$ 90,659	$ 302,817	16,600
Holder conversions during the quarter ended June 30, 2016	—	—	—	—
Total installments and conversions, June 30, 2016	212,158	90,659	302,817	16,600
Installment amount at July 31, 2016	147,368	32,374	179,742	13,168
Cash Payment – July 31, 2016 installment	42,105	6,107	48,212	*
Installment amount at August 31, 2016	336,842	62,059	398,901	34,684
Installment amount at September, 2016	263,158	41,822	304,980	34,523
Holder conversions during the quarter ended September 30, 2016	1,915,698	175,092	2,090,790	155,272
Total installments and conversions, September 30, 2016	2,917,329	408,113	3,325,442	254,247
Installment amount at Oct 31, 2016	221,053	35,004	256,057	48,192
Installment amount at Nov 30, 2016	221,053	31,259	252,312	64,828
Installment amount at December 31, 2016	221,053	14,526	235,579	81,872
Holder conversions during the quarter ended December 31, 2016	2,669,512	170,359	2,839,871	816,707
Total installments and conversions, December 31, 2016	$ 6,250,000	$ 659,261	$ 6,909,261	1,265,846

* Cash payments

Description of the Note Warrants

Each Note Warrant was exercisable immediately and for a period of 60 months from the date of the issuance of the Warrant. The Note Warrants entitled the holders of the Note Warrants to purchase, in aggregate, 27,982 shares of our common stock upon the completion of the Third Closing, subject to certain adjustments. The Note Warrants were

initially exercisable at an exercise price equal to $325.50, subject to adjustment on the eighteen month anniversary of issuance, and certain other adjustments. The exercise price and number of shares of common stock issuable on the exercise of the Note Warrants were subject to adjustment upon the issuance of any shares of common stock or securities convertible into shares of common stock below the then-existing exercise price, with certain exceptions, and in the event of any stock split, reverse stock split, recapitalization, reorganization or similar transaction. The holder of each Note Warrant did not have the right to exercise any portion of such Note Warrant if the holder, together with its affiliates, beneficially owns in excess of 4.99% of the number of shares of the Company's common stock outstanding immediately after giving effect to the exercise, as such percentage ownership is determined in accordance with the terms of the Note Warrants. However, any holder could increase or decrease such percentage to any other percentage, but in no event above 9.99%, provided that any increase of such percentage would not be effective until 61 days after providing us notice.

The exercise price of the Note Warrants issued November 9, 2015 was reduced to $76.30 per share on January 29, 2016, the 16th trading day following the First Reverse Stock Split, per the terms of the Note Warrants. Per the terms of the Note Warrants, the exercise price of each of the Note Warrants issued January 11, 2016 and May 2, 2016 remained $325.50 until January 20, 2017, the 16th trading day following the Second Reverse Stock Split, at which point the exercise price of all of the Note Warrants was adjusted to $2.18 per share. All remaining Note Warrants were exercised during the first quarter of 2017.

Net Cash Used in Operating Activities

Net cash used in operating activities was $24.6 million, $20.7 million and $22.6 million for the years ended December 31, 2017, 2016 and 2015, respectively. Net cash used in operating activities primarily reflects the net loss for those periods, less noncash expenses for stock-based compensation, depreciation and amortization, provision for doubtful accounts, change in value of warrant liability, and partially offset by changes in operating assets and liabilities. The increase in net cash used in operations is primarily due to incremental cash needed for the operations of BarioSurg and ReShape Medical.

Net Cash Used in Investing Activities

Net cash used in investing activities was $6.4 million, $14,000 and $39,000 for the years ended December 31, 2017, 2016 and 2015, respectively. In 2017, $6.2 million of cash, net of cash acquired, was used as part of the consideration paid to acquire BarioSurg and ReShape Medical. Additionally, net cash used in investing activities is primarily related to the purchase of property and equipment.

Net Cash Provided by Financing Activities

Net cash provided by financing activities was $37.8 million, $16.1 million and $19.0 million for the years ended December 31, 2017, 2016 and 2015, respectively. For the year ended December 31, 2017, net cash provided by financing activities was primarily the result of approximately $37.4 million of gross proceeds of from the issuance of common stock, convertible preferred stock and warrants in January and August of 2017, less issuance costs of approximately $2.9 million along with $3.3 million of proceeds from warrants exercised.

For the year ended December 31, 2016, net cash provided by financing activities was primarily the result of gross proceeds from the Second Closing and Third Closing of the Notes, which totaled $17.3 million, less cash principal payments on Notes of $447,000 and debt issuance costs of $750,000.

For the year ended December 31, 2015, net cash provided by financing activities was primarily the result of gross proceeds of $16.0 million from the July 8, 2015 public offering, $6.7 million from issuances of common stock and warrants and $1.5 million in gross proceeds from the issuance of the Notes on November 9, 2015. These increases were offset by $1.7 million in financing costs, $477,000 of debt issuance costs and principal repayments of $3.0 million on our long-term debt.

Operating Capital and Capital Expenditure Requirements

We received FDA approval on January 14, 2015 for vBloc Therapy, delivered via the vBloc System, and began a controlled commercial launch at select bariatric centers of excellence in the United States. In 2015, our first year of

commercial activity, we sold 24 ReShape vBloc units for $292,000 in revenue and in 2016, we sold 62 ReShape vBloc units for $787,000 in revenue. In 2017, our total revenues were $1.3 million, $718,000 from 2017 fourth quarter revenue resulting from the acquisition of ReShape Medical, $250,000 from service revenue and $319,000 from the sale of 28 ReShape vBloc units. We have incurred and expect to continue to incur significant sales, marketing, clinical, and R&D expenses prior to recording sufficient revenue to offset these expenses. Additionally, our selling, general and administrative expenses have continued, as we build the infrastructure necessary to support our expanding commercial sales, operate as a public company and develop our intellectual property portfolio. For these reasons, we expect to continue to incur operating losses for the next several years. We have financed our operations to date principally through the sale of equity securities, debt financing and interest earned on cash investments.

Our anticipated operations include plans to (i) integrate the sales and operations of the Company with the newly acquired ReShape Medical in order to expand sales of both the ReShape Balloon and ReShape vBloc as well as to obtain cost savings synergies, (ii) expand the controlled commercial launch of vBloc Therapy, delivered via the ReShape vBloc System, (iii) continue development of the ReShape Vest, (vi) seek opportunities to leverage our intellectual property portfolio and custom development services to provide third party sales and licensing opportunities, and (v) explore and capitalize on synergistic opportunities to expand our portfolio and offer future minimally invasive treatments and therapies in the obesity continuum of care. The Company believes that it has the flexibility to manage the growth of its expenditures and operations depending on the amount of available cash flows, which could include reducing expenditures for marketing, clinical and product development activities. However, we will ultimately need to achieve sufficient revenues from product sales and obtain additional debt or equity financing to support its operations.

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

Our forecast of the period of time through which our financial resources will be adequate to support our operations, the costs to complete development of products and the cost to commercialize our products are forward-looking statements and involve risks and uncertainties, and actual results could vary materially and negatively as a result of a number of factors, including the factors discussed in Part I, Item 1A, *Risk Factors*, of our Annual Report on Form 10-K. We have based these estimates on assumptions that may prove to be wrong, and we could utilize our available capital resources sooner than we currently expect.

Management is currently pursuing various funding options, including seeking additional equity or debt financing approximately one or two times per year as well as a strategic merger or other transaction to obtain additional funding or expand its product line to continue the development of, and to successfully commercialize, the ReShape Balloon, the ReShape vBloc System and the ReShape Vest. While the acquisition of ReShape Medical does provide incremental revenues to the Company, the cost to further develop and commercialize the ReShape Balloon is expected to significantly exceed revenues for the foreseeable future. While there can be no assurance that the Company will be successful in its efforts, the Company has a long history of raising equity financing to fund its development activities. Should the Company be unable to obtain adequate financing in the near term, the Company's business, result of operations, liquidity and financial condition would be materially and negatively affected, and the Company would be unable to continue as a going concern. Additionally, there can be no assurance that, assuming the Company is able to strengthen its cash position, it will achieve sufficient revenue or profitable operations to continue as a going concern.

Because of the numerous risks and uncertainties associated with the development of medical devices, such as our vBloc System, we are unable to estimate the exact amounts of capital outlays and operating expenditures necessary to

complete the development of the products and successfully deliver a commercial product to the market. Our future capital requirements will depend on many factors, including, but not limited to, the following:

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

Contractual Obligations

On August 25, 2015, we entered into an amendment extending the term of the operating lease for our St. Paul, Minnesota location for three years until September 30, 2018, with monthly base rent ranging from $18,925 to $20,345.

In connection with our acquisition of BarioSurg in May 2017, we assumed an operating lease for office space in Lake Forest, California with monthly base rent of $2,818 that expires September 30, 2018.

In connection with our acquisition of ReShape Medical in October 2017, we assumed (i) an operating lease for office/warehouse space in San Clemente, California with monthly base rent ranging from $24,614 to $27,510 that expires June 30, 2022 and (ii) an operating lease for office and manufacturing space in San Clemente, California with monthly base rent of $10,877 that expires October 31, 2019.

The following table summarizes our contractual obligations as of December 31, 2017 and the effect those obligations are expected to have on our financial condition and liquidity position in future periods:

	Payments Due By Period				
Contractual Obligations	**Total**	**Less Than 1 Year**	**1-3 Years**	**3-5 Years**	**More than 5 Years**
Operating lease	$ 1,865,049	$ 633,695	$ 738,344	$ 493,010	$ —
Total contractual cash obligations	$ 1,865,049	$ 633,695	$ 738,344	$ 493,010	$ —

The table above reflects only payment obligations that are fixed and determinable based on our current agreements.

Off-balance-sheet Arrangements

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

Recent Accounting Pronouncements

In April 2015, FASB issued *Simplifying the Presentation of Debt Issuance Costs, (Accounting Standards Update No. 2015-03 (ASU 2015-03))*, which changes the presentation of debt issuance costs in the financial statements. Under ASU 2015-03, an entity presents such costs in the balance sheet as a direct deduction from the recognized debt liability rather than as an asset. Amortization of the costs is reported as interest expense. This guidance will be effective for interim and annual reporting periods beginning after December 15, 2015. We have evaluated the impact of adopting ASU 2015-03 and do not believe the new guidance will have a material effect on our financial position, results of operations or cash flows.

In May 2014, FASB issued *Revenue from Contracts with Customers, Topic 606 (Accounting Standards Update No. 2014-09 (ASU 2014-09))*, which outlines a single comprehensive revenue model for entities to use in accounting for revenue arising from contracts with customers. The guidance supersedes most current revenue recognition guidance, including industry-specific guidance, and requires a company to recognize revenue to depict the transfer of goods or services to a customer at an amount that reflects the consideration it expects to receive in exchange for those goods or services. ASU 2014-09 is effective for fiscal years and interim periods within those years beginning after December 15, 2017. The guidance permits two methods of adoption: retrospectively to each prior reporting period presented (full retrospective method), or retrospectively with the cumulative effect of initially applying the guidance recognized at the date of initial application (modified retrospective method). In 2016, the FASB issued further guidance that offers narrow scope improvements and clarifies certain implementation issues related to revenue recognition, including principal versus agent considerations, the identification of performance obligations and licensing. These additional updates have the same effective date as the new revenue guidance. The new standard and its related amendments are collectively known as “ASC 606.”

We adopted ASC 606 using the modified retrospective method as of January 1, 2018. This approach was applied to all contracts not completed as of January 1, 2018. In addition to the enhanced footnote disclosures related to customer contracts, we anticipate that the most significant impact of the new standard will relate to the timing of revenue recognition for product sales with conditional rebates. No other significant changes to the accounting for revenue are expected.

We have completed our quantitative assessment and the impact of adoption of ASC 606 did not have a material impact on the Company’s consolidated financial position, results of operations, equity or cash flows. As part of completing this assessment, we updated and enhanced our internal controls over financial reporting.

In February 2016 FASB issued Accounting Standards Update No. 2016-02 Leases (Topic 842) that changes the recognition of lease assets and lease liabilities by lessees for those leases classified as operating lease. The amendments in this Update are effective for fiscal years beginning after December 15, 2018, including interim periods within those fiscal years for a public business entity. Early adoption is permitted. Management is evaluating the standard's impact on the consolidated financial statements.

In March 2016, FASB issued Improvements to Employee Share-Based Payment Accounting, (Accounting Standards Update No. 2016-09 (ASU 2016-09)), which is intended to simplify several aspects of the accounting for share-based payment transactions, including the income tax consequences, classification of awards as either equity or liabilities, the estimation of forfeitures, shares withheld for taxes and classification of shares withheld for taxes on the statement of cash flows. As part of the adoption of this guidance the Company has elected to account for forfeitures of share-based awards as they occur. The Company prospectively adopted ASU 2016-09 as required on January 1, 2017 and the adoption did not have a material effect on its consolidated financial statements.

In January 2017 FASB issued Accounting Standards Update No. 2017-04 Intangibles—Goodwill and Other (Topic 350) Simplifying the Test for Goodwill Impairment. Under the amendments in this update an entity should perform its annual, or interim, goodwill impairment test by comparing the fair value of a reporting unit with its carrying amount. An entity should recognize an impairment charge for the amount by which the carrying amount exceeds the reporting unit's fair value; however, the loss recognized should not exceed the total amount of goodwill allocated to that reporting unit. Additionally, an entity should consider income tax effects from any tax deductible goodwill on the carrying amount of the reporting unit when measuring the goodwill impairment loss, if applicable. The amendments in this Update are required for public business entities in fiscal years beginning after December 15, 2019. The adoption of this standard is not expected to have a material impact to the Company's consolidated financial statements.

In July 2017, FASB issued ASU 2017-11, Earnings Per Share (Topic 260); Distinguishing Liabilities from Equity (Topic 480); Derivatives and Hedging (Topic 815): (Part I) Accounting for Certain Financial Instruments with Down Round Features, (Part II) Replacement of the Indefinite Deferral for Mandatorily Redeemable Financial Instruments of Certain Nonpublic Entities and Certain Mandatorily Redeemable Noncontrolling Interests with a Scope Exception. The amendments in this update are intended to simplify the accounting for certain equity-linked financial instruments and embedded features with down round features that result in the strike price being reduced on the basis of the pricing of future equity offerings. Under the new guidance, a down round feature will no longer need to be considered when determining whether certain financial instruments or embedded features should be classified as liabilities or equity instruments. That is, a down round feature will no longer preclude equity classification when assessing whether an instrument or embedded feature is indexed to an entity's own stock. In addition, the amendments clarify existing disclosure requirements for equity-classified instruments. These amendments are effective for fiscal years, and interim periods within those years, beginning after December 15, 2018, with early adoption permitted. We early adopted the applicable amendments in the third quarter of 2017 on a retrospective basis, which permitted the Company to classify the warrants issued along with its Series B Convertible Preferred Stock in August 2017 (Note 11) containing such down round provisions to equity instruments to stockholders' equity.

In August 2014, FASB issued *Disclosure of Uncertainties About an Entity's Ability to Continue as a Going Concern*, (Accounting Standards Update No. 2014-15 (ASU 2014-15)), which provides a framework for entities to evaluate going concern issues as well as potential related disclosures. This guidance became effective and the Company adopted it for the year ended December 31, 2016. See Note 3, Liquidity and Management's Plans.

Various other accounting standards and interpretations have been issued with 2017 effective dates and effective dates subsequent to December 31, 2017. We have evaluated the recently issued accounting pronouncements that are currently effective or will be effective in 2017 and believe that none of them have had or will have a material effect on our financial position, results of operations or cash flows.

ITEM 7A. *QUANTITATIVE AND QUALITATIVE DISCLOSURE ABOUT MARKET RISK*

Our exposure to market risk is confined to our cash and cash equivalents. As of December 31, 2017 we had $10.2 million in cash and cash equivalents. The goals of our investment policy are preservation of capital, fulfillment of liquidity needs and fiduciary control of cash and investments. We also seek to maximize income from our investments without assuming significant risk. To achieve our goals, we may maintain a portfolio of cash equivalents and investments in a variety of securities of high credit quality. The securities in our investment portfolio, if any, are not leveraged, are classified as either available for sale or held-to-maturity and are, due to their very short-term nature, subject to minimal interest rate risk. We currently do not hedge interest rate exposure. Because of the short-term maturities of our cash equivalents, we do not believe that an increase in market rates would have any material negative impact on interest income recognized in our statement of operations. We have no investments denominated in foreign currencies and therefore our investments are not subject to foreign currency exchange risk.

ITEM 8. *FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA*

Index to Financial Statements

Report of Independent Registered Public Accounting Firm

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

Opinion on the Financial Statements

We have audited the accompanying consolidated balance sheets of ReShape Lifesciences Inc. and subsidiaries (the "Company") as of December 31, 2017 and 2016, the related consolidated statements of operations, stockholders' equity, and cash flows, for each of the three years in the period ended December 31, 2017, and the related notes (collectively referred to as the "financial statements"). In our opinion, the financial statements present fairly, in all material respects, the financial position of the Company as of December 31, 2017 and 2016, and the results of its operations and its cash flows for each of the three years in the period ended December 31, 2017, in conformity with accounting principles generally accepted in the United States of America.

Going Concern

The accompanying financial statements have been prepared assuming that the Company will continue as a going concern. As discussed in Note 3 to the financial statements, the Company does not expect to generate sufficient operating revenue to sustain its operations in the near-term, and will require additional debt or equity financing, which raises substantial doubt about its ability to continue as a going concern. Management's plans in regard to these matters are also described in Note 3. The financial statements do not include any adjustments that might result from the outcome of this uncertainty.

Basis for Opinion

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

We conducted our audit in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether due to error or fraud. The Company is not required to have, nor were we engaged to perform, an audit of its internal control over financial reporting. As part of our audit, we are required to obtain an understanding of internal control over financial reporting but not for the purpose of expressing an opinion on the effectiveness of the Company’s internal control over financial reporting. Accordingly, we express no such opinion.

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

/s/ DELOITTE & TOUCHE LLP
Minneapolis, MN
April 2, 2018
We have served as the Company's auditor since 2006.

RESHAPE LIFESCIENCES INC.

Consolidated Balance Sheets

	December 31, 2017	December 31, 2016
ASSETS		
Current assets:		
Cash and cash equivalents	$ 10,163,208	$ 3,310,787
Accounts receivable (net of allowance for bad debts of $155,872 and $20,000 at December 31, 2017 and 2016, respectively)	488,613	143,692
Inventory	2,817,112	1,789,578
Prepaid expenses and other current assets	467,783	476,624
Total current assets	13,936,716	5,720,681
Property and equipment, net	438,621	200,720
Goodwill	27,186,620	—
Other intangible assets, net	46,152,577	—
Other assets	990,015	1,119,405
Total assets	$ 88,704,549	$ 7,040,806
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Accounts payable	$ 1,088,271	$ 1,311,706
Accrued expenses	5,955,518	2,751,415
Total current liabilities	7,043,789	4,063,121
Deferred income taxes	5,292,291	—
Common stock warrant liability	1,600	39,119
Total liabilities	12,337,680	4,102,240
Commitments and contingencies (Note 16)		
Stockholders' equity:		
Preferred stock, 5,000,000 shares authorized:		
Series A convertible preferred stock, $0.01 par value; zero shares outstanding at December 31, 2017 and 2016; 12,531 and zero shares issued at December 31, 2017 and 2016, respectively	—	—
Conditional convertible preferred stock, $0.01 par value; 1,000,181 and zero shares issued and zero outstanding at December 31, 2017 and 2016	—	—
Series B convertible preferred stock, $0.01 par value; 20,000 shares issued and 6,055 and zero shares outstanding at December 31, 2017 and December 31, 2016, respectively	61	—
Series C convertible preferred stock, $0.01 par value; 187,772 shares issued and 95,388 and zero shares outstanding at December 31, 2017 and December 31, 2016, respectively	954	—
Common stock, $0.01 par value; 275,000,000 and 300,000,000 shares authorized at December 31, 2017 and 2016, respectively; 30,957,113 and 2,736,621 shares issued and outstanding at December 31, 2017 and December 31, 2016, respectively	309,571	27,366
Additional paid-in capital	410,815,637	303,852,582
Accumulated deficit	(334,759,354)	(300,941,382)
Total stockholders' equity	76,366,869	2,938,566
Total liabilities and stockholders' equity	$ 88,704,549	$ 7,040,806

See accompanying notes to consolidated financial statements.

RESHAPE LIFESCIENCES INC.

Consolidated Statements of Operations

	Year Ended December 31,		
	2017	2016	2015
Product sales	$ 1,011,377	$ 786,660	$ 292,000
Service and other revenue	275,777	—	—
Total revenue	1,287,154	786,660	292,000
Cost of goods sold	764,805	431,476	125,047
Cost of service and other revenue	171,581	—	—
Total cost of revenue	936,386	431,476	125,047
Gross profit	350,768	355,184	166,953
Operating expenses:			
Selling, general and administrative	25,983,547	17,981,525	19,892,424
Research and development	5,775,098	5,169,286	8,141,323
Total operating expenses	31,758,645	23,150,811	28,033,747
Operating loss	(31,407,877)	(22,795,627)	(27,866,794)
Other income (expense):			
Interest income	1,066	5,837	1,819
Interest expense	(3,874)	(4,104,003)	(939,182)
Warrants expense	(4,438,149)	—	—
Change in value of warrant liability	(283,097)	3,512,816	3,295,536
Other, net	(652)	20,133	9,874
Income (loss) before income taxes	(36,132,583)	(23,360,844)	(25,498,747)
Income tax benefit	2,314,611	—	—
Net loss	$ (33,817,972)	$ (23,360,844)	$ (25,498,747)
Net loss per share—basic and diluted	$ (3.07)	$ (37.53)	$ (298.97)
Shares used to compute basic and diluted net loss per share	11,022,299	622,431	85,290

See accompanying notes to consolidated financial statements.

RESHAPE LIFESCIENCES INC.

Consolidated Statements of Stockholders' Equity

	Preferred Stock		Common Stock		Additional Paid-in Capital	Accumulated Deficit	Total Stockholders' Equity
	Shares	Amount	Shares	Amount			
Balance December 31, 2014	—	—	66,332	$ 663	$ 258,745,523	$ (252,081,791)	$ 6,664,395
Net loss	—	—	—	—	—	(25,498,747)	(25,498,747)
Employee stock-based compensation expense	—	—	—	—	6,974,489	—	6,974,489
Nonemployee stock-based compensation expense	—	—	—	—	(34,712)	—	(34,712)
Issuance of common stock through "at-the-market" equity offerings in 2015 for cash from $1,162.00 to $1,589.00 per share, net of financing costs of $259,560	—	—	4,604	46	6,392,326	—	6,392,372
Issuance of common stock, net of warrants to purchase approximately 301,905 shares of common stock valued at $6,003,932, in registered public offering in July 2015 for cash at an aggregate price of $525.00 per unit, net of financing costs of $929,920	—	—	30,476	305	9,065,843	—	9,066,148
Issuance of common stock for payments made in shares on convertible notes payable	—	—	1,003	10	109,494	—	109,504
Balance December 31, 2015	—	—	102,415	$ 1,024	$ 281,252,963	$ (277,580,538)	$ 3,673,449
Net loss	—	—	—	—	—	(23,360,844)	(23,360,844)
Employee stock-based compensation expense	—	—	—	—	2,327,402	—	2,327,402
Nonemployee stock-based compensation expense	—	—	—	—	3,535	—	3,535
Common stock financing costs	—	—	—	—	(28,000)	—	(28,000)
Exercise of 1,428 warrants in 2016 for cash at $3.50 per share	—	—	1,428	14	4,986	—	5,000
Issuance of common stock for payments made in shares on convertible notes payable	—	—	2,632,778	26,328	20,291,696	—	20,318,024
Balance December 31, 2016	—	—	2,736,621	27,366	303,852,582	(300,941,382)	2,938,566
Net loss	—	—	—	—	—	(33,817,972)	(33,817,972)
Employee stock-based compensation expense	—	—	—	—	4,252,567	—	4,252,567
Nonemployee stock-based compensation expense	—	—	—	—	184,230	—	184,230
Issuance of common stock, series A convertible preferred stock and warrants to purchase approximately 2,359,894 shares of common stock, in underwritten public offering in January 2017 for cash at an aggregate price of $5.31 per unit, net of financing costs of $2,505,244	12,531	125	1,218,107	12,181	16,481,598	—	16,493,904
Issuance of common stock and conditional convertible preferred stock related to May 2017 acquisition of BarioSurg, Inc.	1,000,181	10,002	1,380,684	13,807	26,235,154		26,258,963
Issuance of series B convertible preferred stock and warrants to purchase 8,700,000 shares of common stock in firm commitment underwritten public offering in August 2017 for cash at an aggregate price of $1,000.00 per unit, net of financing costs of $2,019,761	20,000	200	—	—	17,980,039	—	17,980,239
Issuance of warrants to former holders of convertible notes to purchase 2,575,000 shares of common stock valued at $4,438,149	—	—	—	—	4,438,149	—	4,438,149
Issuance of common stock and series C convertible preferred stock related to October 2017 acquisition of ReShape Medical, Inc.	187,772	1,878	2,356,729	23,567	33,957,912		33,983,357
Conversions of convertible preferred stock into common stock	(1,119,041)	(11,190)	22,665,302	226,653	(215,463)	—	—
Exercise of warrants into 599,670 shares of common stock for cash	—	—	599,670	5,997	3,648,869	—	3,654,866
Balance December 31, 2017	101,443	$ 1,015	30,957,113	$ 309,571	$ 410,815,637	$ (334,759,354)	$ 76,366,869

See accompanying notes to consolidated financial statements.

RESHAPE LIFESCIENCES INC.

Consolidated Statements of Cash Flows

	Year Ended December 31,		
	2017	2016	2015
Cash flows from operating activities:			
Net loss	$ (33,817,972)	$ (23,360,844)	$ (25,498,747)
Adjustments to reconcile net loss to net cash used in operating activities:			
Depreciation	205,513	139,576	189,491
Provision for doubtful accounts	12,666	20,000	—
Deferred income taxes	(2,314,611)	—	—
Stock-based compensation	4,436,797	2,330,937	6,939,777
Warrants issued to former holders of convertible notes	4,438,149	—	—
Amortization of commitment fees, debt issuance costs and original issue discount	—	1,836,340	825,735
Amortization of intangible assets	719,950	—	—
Change in value of warrant liability	283,097	(3,512,816)	(3,295,536)
Change in operating assets and liabilities:			
Accounts receivable	28,103	(105,625)	(55,116)
Inventory	68,441	(103,254)	(705,805)
Prepaid expenses and other current assets	182,584	354,732	(409,822)
Other assets	212,274	(600,634)	349,709
Accounts payable	(223,435)	1,139,656	(222,636)
Accrued expenses	1,180,236	(891,060)	(235,351)
Accrued interest payable	—	2,097,199	(487,739)
Net cash used in operating activities	(24,588,208)	(20,655,793)	(22,606,040)
Cash flows from investing activities:			
Acquisitions, net of cash acquired	(6,230,567)	—	—
Purchases of property and equipment	(137,123)	(14,000)	(38,915)
Net cash used in investing activities	(6,367,690)	(14,000)	(38,915)
Cash flows from financing activities:			
Proceeds from warrants exercised	3,334,176	5,000	—
Proceeds from sale of common stock and warrants for purchase of common stock (January 2017)	6,468,148	—	22,651,932
Proceeds from sale of convertible preferred stock (January 2017)	12,531,000		
Proceeds from sale of convertible preferred stock (August 2017)	20,000,000		
Common stock financing costs	(2,505,244)	(28,000)	(1,721,794)
Preferred stock financing costs	(2,019,761)		
Proceeds from convertible notes payable	—	17,250,000	1,500,000
Repayments on convertible notes payable	—	(446,867)	—
Repayments on notes payable	—	—	(3,000,000)
Debt issuance costs	—	(726,793)	(477,110)
Net cash provided by financing activities	37,808,319	16,053,340	18,953,028
Net increase in cash and cash equivalents	6,852,421	(4,616,453)	(3,691,927)
Cash and cash equivalents:			
Beginning of period	3,310,787	7,927,240	11,619,167
End of period	$ 10,163,208	$ 3,310,787	$ 7,927,240
Supplemental disclosure:			
Cash paid for interest	$ 3,874	$ 155,407	$ 601,185
Noncash investing and financing activities:			
Issuance of convertible preferred shares and common shares for acquisitions	$ 60,242,320	$ —	$ —
Conversion of convertible notes and interest payable	$ —	$ —	$ 109,504

See accompanying notes to consolidated financial statements.

ReShape Lifesciences Inc.

Notes to Consolidated Financial Statements

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

Description of Business

ReShape Lifesciences Inc. (the Company) is focused on the design, development and commercialization of transformative technology to treat obesity and metabolic diseases. The Company was incorporated in the state of Minnesota on December 19, 2002, originally as two separate legal entities, Alpha Medical, Inc. and Beta Medical, Inc., both of which were owned 100% by a common stockholder. Effective October 1, 2003, the two entities were combined and the combined entity changed its name to EnteroMedics Inc. The Company reincorporated in Delaware on July 22, 2004. The Company has devoted substantially all of its resources to recruiting personnel, developing its product technology, obtaining patents to protect its intellectual property, commercialization activities and raising capital and has recently commenced commercial operations in the United States deriving revenues from its primary business activity in 2015. On May 22, 2017, the Company acquired BarioSurg, Inc. (BarioSurg), a company developing the Gastric Vest System and on October 2, 2017 it acquired ReShape Medical, Inc. (ReShape Medical), a company that develops, manufactures and markets a minimally invasive intragastric balloon resigned to treat certain obesity patients. ReShape Medical LLC became a wholly-owned subsidiary of the Company on October 2, 2017 and its balance sheet and statement operations for the period October 2, 2017 through December 31, 2017 are included with the Company's 2017 consolidated financial statements. Subsequent to the acquisition of ReShape Medical, the Company relocated its headquarters from St. Paul, Minnesota to San Clemente, California.

EnteroMedics Europe Sárl (EnteroMedics Europe), a wholly owned subsidiary of the Company, was formed in January 2006. EnteroMedics Europe is a Swiss entity established as a means to conduct clinical trials in Switzerland. Upon establishment there were 20 shares of EnteroMedics Europe issued and outstanding with a par value of 1,000 Swiss Francs. The Company purchased 100% of the shares and then issued one share to a fiduciary agent. The one share is the property of the Company and is held by the fiduciary in a fiduciary capacity under terms of the Fiduciary Agreement. The functional currency of EnteroMedics Europe has been determined to be the U.S. Dollar.

On October 23, 2017, the Company announced that it had changed its name from "EnteroMedics Inc." to "ReShape Lifesciences Inc." effective October 23, 2017. In addition, in connection with the name change, the Company's ticker symbol was changed to "RSLS" which became effective at the start of trading on October 23, 2017, and the Company's common stock continued to trade on The NASDAQ Capital Market.

During 2016, the Company's board of directors and stockholders approved two reverse stock splits (collectively, the Reverse Stock Splits). Neither reverse stock split changed the par value of the Company's common stock or the number of preferred shares authorized by the Company's certificate of incorporation. The first reverse stock split was a 1-for-15 reverse split (the First Reverse Stock Split) of the Company's outstanding common stock that became effective after trading on January 6, 2016. The First Reverse Stock Split also decreased the number of shares of common stock authorized by the Company's certificate of incorporation proportionately, and proportional adjustments were also made to the Company's outstanding stock options and warrants and the number of shares authorized under the Company's Amended and Restated 2003 Stock Incentive Plan . In connection with the First Reverse Stock Split, an amendment to the Company's certificate of incorporation was also approved to increase the number of shares of the Company's common stock authorized for issuance to 150 million shares, effective immediately after the First Reverse Stock Split on January 6, 2016.

The second reverse stock split was a 1-for-70 reverse split (the Second Reverse Stock Split) of the Company's outstanding common stock that became effective after trading on December 27, 2016 pursuant to the Company's Sixth Amended and Restated Certificate of Incorporation. In connection with the Second Reverse Stock Split, proportional adjustments were also made to the Company's outstanding stock options and warrants. Additionally, in connection with the Second Reverse Stock Split, a second amendment was approved to increase the number of shares of the Company's common stock authorized for issuance to 300 million shares, effective after the Second Reverse Stock Split on December 27, 2016.

All share and per-share amounts have been retroactively adjusted to reflect the Reverse Stock Splits for all periods presented.

On October 26, 2017, the Company filed a Certificate of Amendment to its Sixth Amended and Restated Certificate of Incorporation to reduce the number of authorized shares of the Company's common stock from 300 million to 275 million.

Risks and Uncertainties

The Company is focused on the design, development and commercialization of transformative technology to treat obesity and metabolic diseases and its growing and differentiated product portfolio is utilized by bariatric surgeons, general surgeons, and gastroenterologists. We believe obesity is a global epidemic and that the majority of patients need treatment options that are anatomy friendly and provide for weight loss and comorbidity improvements along with long-term, ongoing obesity support and prevention.

We have a limited operating history and the Company's products require approval from the U.S. Food and Drug Administration (FDA) or corresponding foreign regulatory agencies prior to commercial sales. On January 14, 2015, the vBloc® System, our initial product, which we now refer to as ReShape vBloc, received U.S. Food and Drug Administration (FDA) approval for vBloc Therapy, delivered via the ReShape vBloc. vBloc Therapy is delivered via a pacemaker-like device that helps patients feel full and eat less by intermittently blocking hunger signals on the vagus nerve. Our therapy limits the expansion of the stomach, helps control hunger sensations between meals, reduces the frequency and intensity of stomach contractions and produces a feeling of early and prolonged fullness.

On May 22, 2017 the Company acquired the Gastric Vest System (ReShape Vest) through the acquisition of BarioSurg, Inc. The ReShape Vest is an investigational, minimally invasive, laparoscopically implanted medical device being studied for weight loss in obese and morbidly obese patients. The ReShape Vest wraps around the stomach after it has been rearranged into a banana-like shape using sutures, emulating the effect of conventional weight-loss surgery, and is intended to enable gastric volume reduction without permanently changing patient anatomy.

On October 2, 2017 the Company acquired ReShape Medical, a privately-held medical technology company that develops, manufactures and markets the ReShape® Dual Weight Loss Balloon (the ReShape Balloon), an FDA-approved, minimally invasive intragastric balloon designed to treat obesity patients with a body mass index (BMI) between 30 and 40, with one or more related comorbid conditions. The acquisition of and results of operations for ReShape Medical for the period October 2, 2017 through December 31, 2017 are included in these consolidated financial statements.

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

The Company's activities are subject to significant risks and uncertainties, including the ability to obtain additional financing, and there can be no assurance that the Company will be successful in obtaining additional financing on favorable terms, or at all. If adequate funds are not available, the Company may have to further reduce its cost structure until financing is obtained and/or delay development or commercialization of products or license to third parties the rights to commercialize products or technologies that the Company would otherwise seek to commercialize.

(2) Summary of Significant Accounting Policies

Basis of Presentation

The Company has prepared the accompanying consolidated financial statements in conformity with accounting principles generally accepted in the United States of America. The Company's fiscal year ends on December 31.

Use of Estimates

The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the amounts reported in the financial statements and accompanying notes. Actual results could differ from those estimates.

Principles of Consolidation

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

Concentration of Credit Risk

Financial instruments that potentially subject the Company to significant concentrations of credit risk consist primarily of cash and cash equivalents. Cash and cash equivalents are primarily deposited in demand and money market accounts. At times, such deposits may be in excess of insured limits. Investments in money market funds are not considered to be bank deposits and are not insured or guaranteed by the federal deposit insurance company or other government agency. These money market funds seek to preserve the value of the investment at $1.00 per share; however, it is possible to lose money investing in these funds. The Company has not experienced any losses on its deposits of cash and cash equivalents.

Fair Value of Financial Instruments

Carrying amounts of certain of the Company's financial instruments, including cash and cash equivalents, accounts receivable, prepaid expenses and other current assets, accounts payable and accrued liabilities approximate fair value due to their short maturities. The Company's common stock warrants are required to be reported at fair value and the Company elected to report its senior amortizing convertible notes at fair value. The fair values of common stock warrants and investments in debt and equity securities, if any, are disclosed in Note 6. The 2015 and 2016 fair values of the Company's senior amortizing convertible notes is disclosed in Notes 6 and 10.

Common Stock Warrant Liability

The common stock warrants that were issued in connection with the July 8, 2015 public offering (the Series A Warrants) and the common stock warrants issued in connection with the November 9, 2015, January 11, 2016 and May 2, 2016 senior amortizing convertible notes (the Note Warrants) are classified as a liability in the consolidated balance sheets, as the common stock warrants issued provide for certain anti-dilution protections in the event shares of common stock or securities convertible into shares of common stock are issued below the then-existing exercise price. The fair value of these common stock warrants is re-measured at each financial reporting period and immediately before exercise, with any changes in fair value being recognized as a component of other income (expense) in the consolidated statements of operations.

Cash and Cash Equivalents

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

Short-Term Investments

The Company considers all investments with maturities greater than three months and less than one year at the time of purchase as short-term investments and classifies them as either available for sale or held to maturity. The Company also considers certain investments with maturities greater than one year but which are also held for liquidity purposes and are available for sale as short-term investments.

Available-for-sale securities are carried at fair value based on quoted market prices, with the unrealized gains and losses included in other comprehensive income within stockholders' equity in the consolidated balance sheets. Realized

gains and losses and declines in value judged to be other than temporary on available-for-sale securities are included in interest and other income. Interest and dividends on securities classified as available for sale are included in interest income. The cost of securities sold is based on the specific identification method.

Short-term investments in debt securities which the Company has the positive intent and ability to hold to maturity are reported at cost, adjusted for premiums and discounts that are recognized in interest income, using the interest method, over the period to maturity. Unrealized losses on held-to-maturity securities reflecting a decline in value determined to be other than temporary are charged to income.

Inventory

The Company accounts for inventory at the lower of cost or market and records any long-term inventory as other assets in the consolidated balance sheets. The Company establishes inventory reserves for obsolescence based upon projected sales and for defect based upon specific identification of defective or unsalable units.

Property and Equipment, Net

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

Impairment of Long-Lived Assets, Intangible Assets and Goodwill

The Company evaluates its long-lived assets, including its finite-lived intangible assets, for impairment by comparison of the carrying amounts to future net undiscounted cash flows expected to be generated by such assets when events or changes in circumstances indicate the carrying amount of an asset may not be recoverable. Should an impairment exist, the impairment loss would be measured based on the excess carrying value of the asset over the asset's fair value or estimates of future discounted cash flows.

For goodwill and indefinite-lived intangible assets, in-process research and development, the Company reviews for impairment annually and upon the occurrence of certain events as required by Accounting Standards Codification ("ASC") Topic 350, "Intangibles — Goodwill and Other." Goodwill and indefinite-lived intangible assets are tested at least annually for impairment and more frequently if events or changes in circumstances indicate that the asset might be impaired. The Company reviews goodwill for impairment by first assessing qualitative factors to determine whether it is more likely than not that the fair value of a reporting unit is less than its carrying amount as a basis for determining whether it is necessary to perform the two-step goodwill impairment test. If the Company is able to determine that it is not more likely than not that the fair value of a reporting unit is less than its carrying amount, the Company would conclude that goodwill is not impaired. If the carrying amount of a reporting unit is zero or negative, the second step of the impairment test is performed to measure the amount of impairment loss, if any, when it is more likely than not that a goodwill impairment exists. The Company did not record any losses for impairment during the year ended December 31, 2017.

Income Taxes

Income taxes are accounted for under the asset and liability method. Deferred tax assets and liabilities are recognized for the future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax bases and operating loss and tax credit carry-forwards. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in the years in which those temporary differences are expected to be recovered or settled. The effect on deferred tax assets and liabilities of a change in tax rates is recognized in income in the period that includes the enactment date. A valuation allowance for deferred income tax assets is recorded when it is more likely than not that some portion or all of the deferred income tax assets will not be realized. The Company has provided a full valuation allowance against the net deferred tax assets, excluding deferred tax liabilities for indefinite-lived intangible assets, as of December 31, 2017 and 2016 (see Note 12).

The Company's policy is to classify interest and penalties related to income taxes as income tax expense in the consolidated statements of operations.

Medical Device Excise Tax

On January 14, 2015, the Company received FDA approval for vBloc Therapy, delivered via the vBloc Rechargeable System, and starting in the second quarter of 2015 revenues were generated from sales in the United States. As a result, the Company is now required to pay a quarterly medical device tax under the Affordable Care Act, which imposes a 2.3% excise tax on the sale of certain medical devices, including ReShape vBloc and the ReShape Balloon, by device manufactures, producers or importers (the Medical Device Tax). The Medical Device Tax was effective on sales of devices made after December 31, 2012. The Company records the Medical Device Tax as an operating expense in the consolidated statements of operations, which totaled $1,363 for 2015. A moratorium was placed on the Medical Device Tax for 2016 and 2017 and, consequently, the Company was not required to pay the Medical Device Tax in 2016 or 2017. In January 2018, the moratorium was extended to 2018 and 2019.

Comprehensive Loss

Comprehensive loss is defined as the change in equity of a company during a period from transactions and other events and circumstances excluding transactions resulting from distributions to owners. There was no difference from reported net loss for the years ended December 31, 2017, 2016 and 2015.

Revenue Recognition

Revenue is recognized when persuasive evidence of an arrangement exists, title or risk of loss has passed, the selling price is fixed or determinable and collection is reasonably assured. Products are sold through direct sales or medical device distributors. ReShape vBloc revenue is recognized upon sale to a bariatric center or a medical device distributor when no right of return or price protection exists. ReShape balloon revenue is typically recognized when title is passed, usually at point of shipment. A provision for returns reducing revenues is recorded only if product sales provide for a right of return. No provision for returns was recorded for the years ended December 31, 2015 and December 31, 2016, as vBloc product sales recorded did not provide for rights of return. A provision for returns of $39,000 was recorded in the fourth quarter of 2017 to estimate potential returns of ReShape balloon product.

Revenues for services are recognized when earned, subject to limitations, if any, related to multiple deliverables. We evaluate each element in these multiple-element arrangements to determine whether they represent a separate unit of accounting and recognize each element as the services are performed or as product is shipped.

Shipping and Handling

The Company records amounts invoiced to its customers for outbound freight and shipping as other revenue and the related expense as cost of goods sold.

Research and Development Expenses

Research and development expenses are charged to expense as incurred. Research and development expenses include, but are not limited to, product development, clinical trial expenses, including supplies, devices, explants and revisions, quality assurance, regulatory expenses, payroll and other personnel expenses, materials and consulting costs.

Patent Costs

Costs associated with the submission of a patent application are expensed as incurred given the uncertainty of the patents resulting in probable future economic benefits to the Company. Patent-related legal expenses included in general and administrative costs were $305,000, $269,000, and $200,000 for the years ended December 31, 2017, 2016 and 2015, respectively.

Stock-Based Compensation

The fair value method is applied to all share-based payment awards issued to employees and where appropriate, nonemployees, unless another source of literature applies. When determining the measurement date of a nonemployee's share-based payment award, the Company measures the stock options at fair value and remeasures such stock options to the current fair value until the performance date has been reached. All option grants are expensed on a straight-line basis over the vesting period.

Net Loss Per Share

Basic net loss per share is computed by dividing net loss by the weighted-average number of common shares outstanding during the period. Diluted net loss per share is based on the weighted-average common shares outstanding during the period plus dilutive potential common shares calculated using the treasury stock method. Such potentially dilutive shares are excluded when the effect would be to reduce a net loss per share. The Company's potential dilutive shares, which include outstanding common stock options and warrants, have not been included in the computation of diluted net loss per share for all periods as the result would be anti-dilutive.

The following table sets forth the computation of basic and diluted net loss per share for the years ended December 31, 2017, 2016 and 2015:

	Year Ended December 31,		
	2017	2016	2015
Numerator:			
Net loss	$ (33,817,972)	$ (23,360,844)	$ (25,498,747)
Denominator for basic and diluted net loss per share:			
Weighted-average common shares outstanding	11,022,299	622,431	85,290
Net loss per share—basic and diluted	$ (3.07)	$ (37.53)	$ (298.97)

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

	December 31,	
	2017	2016
Stock options outstanding	3,830,447	19,840
Common shares underlying convertible preferred stock	12,172,725	—
Warrants to purchase common stock	14,308,337	55,044

Segment Reporting

Operating segments are defined as components of an enterprise for which discrete financial information is available that is evaluated regularly by the chief operating decision maker ("CODM") in deciding how to allocate resources and in assessing performance. Our CODM is the Chief Executive Officer.

Under the provisions of ASC 280, *Segment Reporting*, we have determined that we have one operating segment related to the design, development and commericialization of transformative technology to treat obesity and metabolic diseases. The CODM evaluates operating performance and allocates resources on a total portfolio basis.

Recently Issued Accounting Standards

In May 2014, FASB issued *Revenue from Contracts with Customers, Topic 606 (Accounting Standards Update No. 2014-09 (ASU 2014-09))*, which outlines a single comprehensive revenue model for entities to use in accounting for revenue arising from contracts with customers. The guidance supersedes most current revenue recognition guidance, including industry-specific guidance, and requires a company to recognize revenue to depict the transfer of goods or services to a customer at an amount that reflects the consideration it expects to receive in exchange for those goods or services. ASU 2014-09 is effective for fiscal years and interim periods within those years beginning after December 15, 2017. The guidance permits two methods of adoption: retrospectively to each prior reporting period presented (full

retrospective method), or retrospectively with the cumulative effect of initially applying the guidance recognized at the date of initial application (modified retrospective method). In 2016, the FASB issued further guidance that offers narrow scope improvements and clarifies certain implementation issues related to revenue recognition, including principal versus agent considerations, the identification of performance obligations and licensing. These additional updates have the same effective date as the new revenue guidance. The new standard and its related amendments are collectively known as “ASC 606.”

We adopted ASC 606 using the modified retrospective method as of January 1, 2018. This approach was applied to all contracts not completed as of January 1, 2018. In addition to the enhanced footnote disclosures related to customer contracts, we anticipate that the most significant impact of the new standard will relate to the timing of revenue recognition for product sales with conditional rebates. No other significant changes to the accounting for revenue are expected.

We have completed our quantitative assessment and the impact of adoption of ASC 606 did not have a material impact on the Company’s consolidated financial position, results of operations, equity or cash flows. As part of completing this assessment, we updated and enhanced our internal controls over financial reporting.

In February 2016 FASB issued Accounting Standards Update No. 2016-02 Leases (Topic 842) that changes the recognition of lease assets and lease liabilities by lessees for those leases classified as operating lease. The amendments in this Update are effective for fiscal years beginning after December 15, 2018, including interim periods within those fiscal years for a public business entity. Early adoption is permitted. Management is evaluating the standard's impact on the consolidated financial statements.

In March 2016, FASB issued Improvements to Employee Share-Based Payment Accounting, (Accounting Standards Update No. 2016-09 (ASU 2016-09)), which is intended to simplify several aspects of the accounting for share-based payment transactions, including the income tax consequences, classification of awards as either equity or liabilities, the estimation of forfeitures, shares withheld for taxes and classification of shares withheld for taxes on the statement of cash flows. As part of the adoption of this guidance the Company has elected to account for forfeitures of share-based awards as they occur. The Company prospectively adopted ASU 2016-09 as required on January 1, 2017 and the adoption did not have a material effect on its consolidated financial statements.

In January 2017 FASB issued Accounting Standards Update No. 2017-04 Intangibles—Goodwill and Other (Topic 350) Simplifying the Test for Goodwill Impairment. Under the amendments in this update an entity should perform its annual, or interim, goodwill impairment test by comparing the fair value of a reporting unit with its carrying amount. An entity should recognize an impairment charge for the amount by which the carrying amount exceeds the reporting unit’s fair value; however, the loss recognized should not exceed the total amount of goodwill allocated to that reporting unit. Additionally, an entity should consider income tax effects from any tax deductible goodwill on the carrying amount of the reporting unit when measuring the goodwill impairment loss, if applicable. The amendments in this Update are required for public business entities in fiscal years beginning after December 15, 2019. The adoption of this standard is not expected to have a material impact to the Company’s consolidated financial statements.

In July 2017, FASB issued ASU 2017-11, Earnings Per Share (Topic 260); Distinguishing Liabilities from Equity (Topic 480); Derivatives and Hedging (Topic 815): (Part I) Accounting for Certain Financial Instruments with Down Round Features, (Part II) Replacement of the Indefinite Deferral for Mandatorily Redeemable Financial Instruments of Certain Nonpublic Entities and Certain Mandatorily Redeemable Noncontrolling Interests with a Scope Exception. The amendments in this update are intended to simplify the accounting for certain equity-linked financial instruments and embedded features with down round features that result in the strike price being reduced on the basis of the pricing of future equity offerings. Under the new guidance, a down round feature will no longer need to be considered when determining whether certain financial instruments or embedded features should be classified as liabilities or equity instruments. That is, a down round feature will no longer preclude equity classification when assessing whether an instrument or embedded feature is indexed to an entity's own stock. In addition, the amendments clarify existing disclosure requirements for equity-classified instruments. These amendments are effective for fiscal years, and interim periods within those years, beginning after December 15, 2018, with early adoption permitted. We early adopted the applicable amendments in the third quarter of 2017 on a retrospective basis, which permitted the Company to classify the warrants issued along with its Series B Convertible Preferred Stock in August 2017 (Note 11) containing such down round provisions to equity instruments to stockholders’ equity.

Various other accounting standards and interpretations have been issued with 2017 effective dates and effective dates subsequent to December 31, 2017. The Company has evaluated the recently issued accounting pronouncements that are currently effective or will be effective in 2018 and believe that none of them have had or will have a material effect on the Company's financial position, results of operations or cash flows.

(3) Liquidity and Management's Plans

The accompanying consolidated financial statements have been prepared assuming the Company will continue as a going concern. The Company currently is not generating revenue from operations that is significant relative to its level of operating expenses, and does not anticipate generating revenue sufficient to offset operating costs in the short-term to mid-term. The Company has financed its operations to date principally through the sale of equity securities, debt financing and interest earned on investments. The Company's history of operating losses, limited cash resources and lack of certainty regarding obtaining significant third-party reimbursement for its products, raise substantial doubt about our ability to continue as a going concern absent a strengthening of our cash position. As of December 31, 2017, the Company had $10.2 million of cash and cash equivalents to fund its operations into early 2018.

The following financing transactions occurred in 2015, 2016 and 2017 to fund the Company's operations and acquisitions:

- On July 8, 2015, the Company closed a public offering of units consisting of common stock and the Series A Warrants. Gross proceeds of the offering were $16.0 million, prior to deducting offering expenses of approximately $1.4 million

- On November 4, 2015 the Company entered into a securities purchase agreement (the Purchase Agreement) with institutional investors to issue up to $25.0 million of senior amortizing convertible notes (the Notes) and Note Warrants, in three separate closings. $1.5 million of the Notes was funded at the first closing on November 9, 2015 (the First Closing).

- An additional $11.0 million of the Notes was funded at the second closing on January 11, 2016 (the Second Closing).

- An additional $6.25 million of the Notes was funded at the third closing on May 2, 2016 (the Third Closing).

- On January 23, 2017, the Company closed an underwritten public offering consisting of units of common stock, convertible preferred stock and warrants to purchase common stock. Gross proceeds of the offering were $19.0 million, prior to deducting underwriting discounts and commissions and offering expenses of approximately $2.5 million.

- During 2017, common stock warrants for 559,670 shares of common stock were exercised by warrant holders with proceeds to the Company of $3.3 million.

- On August 16, 2017, the Company closed an underwritten public offering consisting of units of Series B Convertible Preferred Stock and warrants to purchase common stock. Gross proceeds of the offering were $20.0 million, prior to deducting underwriting discounts and commissions and offering expenses of approximately $2.0 million.

- On April 2, 2018 the Company announced that it had entered into a securities purchase agreement with an institutional investor providing for the purchase and sale in a registered direct offering of shares of series D convertible preferred stock and a warrant to purchase shares of common stock for a purchase price of $6.0 million. The transaction is expected to close on or about April 4, 2018 and the Company expects to receive net proceeds of approximately $5.25 million after deducting placement agent fees and other offering expenses.

The Company's anticipated operations include plans to (i) integrate the sales and operations of the Company with the newly acquired ReShape Medical in order to expand sales of both the ReShape Balloon and ReShape vBloc as well as to obtain cost savings synergies, (ii) expand the controlled commercial launch of vBloc Therapy, delivered via the ReShape vBloc System, (iii) continue development of the ReShape Vest, (vi) seek opportunities to leverage the Company's intellectual property portfolio and custom development services to provide third party sales and licensing opportunities, and (v) explore and capitalize on synergistic opportunities to expand our portfolio and offer future minimally invasive treatments and therapies in the obesity continuum of care. The Company believes that it has the flexibility to manage the growth of its expenditures and operations depending on the amount of available cash flows, which could include reducing expenditures for marketing, clinical and product development activities. However, the Company will ultimately need to achieve sufficient revenues from product sales and obtain additional debt or equity financing to support its operations.

Management is currently pursuing various funding options, including seeking additional equity or debt financing approximately one or two times per year as well as a strategic merger or other transaction to obtain additional funding or expand its product line to continue the development of, and to successfully commercialize, the ReShape Balloon, the ReShape vBloc System and the ReShape Vest. While the acquisition of ReShape Medical does provide incremental revenues to the Company, the cost to further develop and commercialize the ReShape Balloon is expected to significantly exceed revenues for the foreseeable future. While there can be no assurance that the Company will be successful in its efforts, the Company has a long history of raising equity financing to fund its development activities. Should the Company be unable to obtain adequate financing in the near term, the Company's business, result of operations, liquidity and financial condition would be materially and negatively affected, and the Company would be unable to continue as a going concern. Additionally, there can be no assurance that, assuming the Company is able to strengthen its cash position, it will achieve sufficient revenue or profitable operations to continue as a going concern. The consolidated financial statements do not include any adjustments that might be necessary if the Company is unable to continue as a going concern.

(4) Acquisitions

BarioSurg, Inc.

On May 22, 2017, the Company entered into an Agreement and Plan of Merger (the "Merger Agreement") to acquire all of the ownership interests of BarioSurg, Inc. ("BarioSurg"), a company developing the Gastric Vest System (which we now refer to as the "ReShape Vest"), an investigational, minimally invasive, laparoscopically implanted medical device being studied for weight loss in obese and morbidly obese patients.

The consideration paid by the Company for all of the outstanding shares of capital stock and outstanding options of BarioSurg consisted of: (i) 1.38 million shares of common stock, par value $0.01 per share, of the Company ("Company Common Stock"), (ii) 1.0 million shares of newly created conditional convertible preferred stock, par value $0.01 per share, of the Company ("Company Preferred Stock"), which shares converted into 5.0 million shares of Company Common Stock on October 25, 2017 upon the post-closing approval of the Company's stockholders in accordance with the NASDAQ Stock Market Rules, and (iii) $2.0 million in cash. At the closing of the Merger, 100,018 shares of Company Preferred Stock were deposited with an escrow agent to fund-post closing indemnification obligations of BarioSurg's former stockholders. The total consideration paid by the Company, preliminarily valued at $28.3 million, includes: (a) $2.0 million in cash paid from our existing cash balances and (b) $26.3 million from the issuance of Company Common Stock and Company Preferred Stock. The preliminary valuation of the Company Common Stock and Company Preferred Stock took into account (i) the conversion ratio of the Company Preferred Stock, (ii) the closing prices of our common stock on the NASDAQ Stock Market on the date the transaction was announced, and (iii) a 19% discount for lack of marketability related to the shares issued in the transaction.

The purchase price consideration of $28.3 million does not include expenses of $454,000 for legal, accounting, audit, valuation and other services that were incurred from the May 22, 2017 acquisition date through December 31, 2017 as part of the transaction and were expensed as incurred.

The transaction was accounted for as a business combination and the following table summarizes the estimated fair values of the assets acquired and liabilities assumed as a result of the BarioSurg acquisition. The excess of the cost of the acquisition over the fair value of assets acquired was recorded as goodwill. The assessment of fair value and the

determination of deferred tax assets aquired is preliminary, and is based on information that was available at the time the consolidated financial statements were prepared. Accordingly, the allocation of purchase price to intangible assets and to deferred tax assets and liabilities to the acquired intangible assets is preliminary and, therefore, subject to adjustment in future periods.

Cash	$	151,280
Property and equipment		3,000
Goodwill		14,004,573
In Process Research & Development		20,720,939
Trademarks/tradenames		1,090,363
Covenant not to compete		75,884
Other assets		5,826
Current liabilities assumed		(186,000)
Deferred income tax liability		(7,606,902)
Net assets acquired	$	28,258,963

We believe that the amount of goodwill relative to identifiable intangible assets relates to several factors including (i) potential synergies related to market opportunities for multiple product offerings, (ii) future technology, and (iii) initial relationships and awareness of the Gastric Vest.

In-process research and development ("IPR&D") consists of the Gastric Vest, which has not yet been clinically tested in the United States and has not yet been approved by the FDA. Acquired IPR&D assets are initially recognized at fair value and are classified as indefinite-lived assets until the successful completion or abandonment of the associated research and development efforts. The value assigned to IPR&D was determined by estimating the net cash flows from the Gastric Vest development project and discounting the net cash flows to their present value. During the development period, this asset will not be amortized as charges to earnings; instead, this asset will be subject to periodic impairment testing. Upon successful completion of the development process for the acquired IPR&D, the asset would then be considered a finite-lived intangible asset and amortization will commence. Trademarks/tradenames were valued using the relief from royalty method and are being amortized over a 10-year period. The covenant not to compete was valued using the comparative business valuation method-income approach and is being amortized over a three-year period. The values of these intangible assets are considered Level 3 measurements.

In the fourth quarter of 2017, the Company determined that a deferred tax liability of $7.6 million related to the IPR&D asset acquired in the BarioSurg acquisition, along with an equal amount of additional goodwill, should have been included in the Company's initial purchase price allocation and reported on its balance sheet as of June 30, 2017 and September 30, 2017. The Company has corrected this error as of December 31, 2017 and believes the effect of the error, which had no impact on previously reported quarterly net loss, is immaterial to the previously filed quarterly financial statements as of June 30 and September 30, 2017. The deferred tax liability was remeasured as of December 22, 2017, with the enactment of the Tax Cuts and Jobs Act, which resulted in a $2.3 million income tax benefit being recognized in the consolidated statement of operations for the year ended December 31, 2017 (see also Note 12).

The results of this acquisition, zero revenues and a $832,000 loss for the 2017 year-to-date period through December 31, 2017, are included in our consolidated operations beginning May 22, 2017.

At a Special Meeting of Shareholders on October 25, 2017, Company shareholders approved the conversion of 1,000,181 shares of conditional convertible preferred stock held by the former shareholders of BarioSurg, Inc. into 5,000,905 shares of common stock.

Unaudited Pro Forma Information-BarioSurg Acquisition

The following unaudited pro forma financial information presents our combined results of operations as if the acquisition of BarioSurg and the related issuance of Company common stock had occurred on January 1, 2016. Pro forma information reflects adjustments that give effect to pro forma events that are directly attributable to the acquisition, factually supportable and expected to have a continuing impact on the combined results following the acquisition. In addition, the unaudited pro forma financial information do not purport to be indicative of the results that

would have actually been obtained if the acquisition had occurred as of January 1, 2016 or that may be obtained in the future, and do not reflect future synergies, integration costs, or other such costs or savings.

	Year Ended December 31,	
	2017	2016
Revenues	$ 1,287,154	$ 786,660
Net loss	$ (33,760,443)	$ (23,996,256)
Net loss per share—basic and diluted	$ (2.92)	$ (11.98)

The unaudited pro forma results include adjustments due to increases in amortization expense and acquisition related costs. The per share unaudited pro forma results also reflect adjustment of weighted average common shares outstanding to reflect the assumed issuance of 1.38 million shares of Company Common Stock as of January 1, 2016.

ReShape Medical, Inc.

On October 2, 2017 the Company acquired ReShape Medical, Inc., a privately-held medical technology company that develops, manufactures and markets the ReShape® Dual Weight Loss Balloon, an FDA and CE marked approved, minimally invasive intragastric balloon designed to treat obesity patients with a body mass index (BMI) between 30 and 40, with one or more related comorbid conditions.

The consideration paid by the Company for ReShape Medical consisted of: (i) 2,356,729 shares of Company Common Stock, par value $0.01 per share, (ii) 187,772 shares of series C convertible preferred stock (which became convertible into 18,777,200 shares of common stock upon the December 19, 2017 approval of the Company's stockholders under NASDAQ rules, of which 8.3 million shares of common stock were automatically converted on that date), and (iii) approximately $5.0 million in cash, which amount was immediately used to pay ReShape Medical's outstanding senior secured indebtedness and certain transaction expenses of ReShape Medical.

The total consideration paid by the Company, preliminarily valued at $39.0 million, includes: (a) $5.0 million in cash paid from our existing cash balances and (b) $34.0 million from the issuance of the common stock and the series C convertible preferred stock. The preliminary valuation of the common stock and series C preferred stock took into account (i) the conversion ratio of the series C convertible preferred stock, (ii) the closing price of our common stock on the NASDAQ Stock Market on the date the transaction was announced, and (iii) a 20% discount for lack of marketability related to the shares issued in the transaction. The common stock and series C convertible preferred stock issued to the the former ReShape Medical equity holders in connection with the transaction, including any common stock acquired via conversion of series C convertible preferred stock to common stock, are subject to six month holding period, volume and other limitations under Rule 144.

The purchase price consideration of $39.0 million does not include expenses of $736,000 for legal, accounting, audit, valuation and other services that were incurred from the October 2, 2017 acquisition date through December 31, 2017 as part of the transaction and were expensed as incurred.

The transaction was accounted for as a business combination and the following table summarizes the estimated fair values of the assets acquired and liabilities assumed as a result of the ReShape Medical acquisition. The excess of the cost of the acquisition over the fair value of assets acquired was recorded as goodwill. The assessment of fair value and the determination of deferred tax assets acquired is preliminary and is based on information that was available at the

time the consolidated condensed financial statements were prepared. Accordingly, the allocation of purchase price to the intangible assets and to deferred tax assets and liabilities is preliminary and subject to adjustment in future periods.

Cash	$	617,229
Accounts receivable		385,690
Inventory		1,095,975
Prepaid expenses and other current assets		173,743
Property and equipment		303,291
Goodwill		13,182,047
Developed technology		18,451,360
Trademarks/tradenames		2,780,448
Customer relationships		3,753,533
Other assets		77,058
Current liabilities assumed		(1,837,941)
Net assets acquired	$	38,982,433

We believe that the amount of goodwill relative to identifiable intangible assets relates to several factors including (i) potential synergies related to market opportunities for multiple product offerings, (ii) future technology, and (iii) intact workforce.

Developed technology consists of the ReShape® Dual Weight Loss Balloon (the ReShape Balloon), an FDA-approved, minimally invasive intragastric balloon designed to treat obesity patients with a body mass index (BMI) between 30 and 40, with one or more related comorbid conditions. The acquired developed technology assets are valued by estimating cash flows using an income approach and they are amortized over a 12-year period, consistent with the remaining lives of the technology's key patents. Trademarks/tradenames are valued using the relief from royalty method and are being amortized over a 10-year period. Customer relationships are valued using the with-and-without method under the income approach and are being amortized over 5 years. The values of these intangible assets are considered Level 3 measurements.

The results of this acquisition for the period beginning with the October 2, 2017 acquisition date through December 31, 2017 are included in our 2017 statement of operations and include $718,000 of revenue and a $4.1 million loss.

At a Special Meeting of the Stockholders on December 19, 2017, Company stockholders approved the issuance of up to 18,777,200 shares of common stock upon the conversion of 187,772 shares of series C convertible preferred stock issued to the former equity holders of ReShape Medical. On that date, 82,384 shares of series C convertible preferred stock automatically converted into 8,238,400 shares of common stock and an additional 10,000 shares of series C convertible preferred stock were optionally converted into 1,000,000 shares of common stock.

Unaudited Pro Forma Information – ReShape Medical Acquisition

The following unaudited pro forma financial information presents our combined results of operations as if the acquisition of ReShape Medical and the related issuance of company common stock had occurred on January 1, 2016. Pro forma information reflects adjustments that give effect to pro forma events that are directly attributable to the acquisition, factually supportable and expected to have a continuing impact on the combined results following the acquisition. In addition, the unaudited pro forma financial information do not purport to be indicative of the results that

would have actually been obtained if the acquisition had occurred as of January 1, 2016 or that may be obtained in the future, and do not reflect future synergies, integration costs, or other such costs or savings.

	Year Ended December 31,	
	2017	2016
Revenues	$ 3,874,908	$ 6,745,933
Net loss	$ (46,871,794)	$ (43,195,299)
Net loss per share—basic and diluted	$ (3.66)	$ (14.50)

The unaudited pro forma results include adjustments due to increases in amortization expense and acquisition related costs. The per share unaudited pro forma results also reflect adjustment of weighted average common shares outstanding to reflect the assumed issuance of 2.36 million shares of the Company's common stock as of January 1, 2016.

(5) Goodwill and Other Intangible Assets

Allocations of purchase prices related to the acquisitions of BarioSurg and ReShape Medical during the year ended December 31, 2017 resulted in the recording of $27.2 million of goodwill and $46.9 million of other intangible assets as discussed in Note 4.

The following table summarizes the activity of intangible assets, excluding goodwill for the year ended December 31, 2017:

	Useful Life (years)	Gross Carrying Amount	Accumulated Amortization	Impairment	Net Book Value
In Process Research & Development	indefinite	$ 20,720,939	$ —	$ —	$ 20,720,939
Trademarks/Tradenames	10	3,870,811	(133,116)	—	3,737,695
Covenant not to compete	3	75,884	(14,755)	—	61,129
Developed technology	12	18,451,360	(384,402)	—	18,066,958
Customer relationships	5	3,753,533	(187,677)	—	3,565,856
Total		$ 46,872,527	$ (719,950)	$ —	$ 46,152,577

The following table summarizes the expected amortization of intangible assets as of December 31, 2017:

Year ending December 31,	
2018	$ 2,700,696
2019	2,700,696
2020	2,685,940
2021	2,675,401
2022	2,487,722
Thereafter	12,181,183
	$ 25,431,638

(6) Fair Value Measurements

Fair value of financial assets and liabilities is defined as the price that would be received to sell an asset or transfer a liability in an orderly transaction between market participants at the measurement date. A fair value hierarchy has been established that prioritizes the inputs to valuation techniques used to measure fair value. The hierarchy gives the highest priority to unadjusted quoted prices in active markets for identical assets or liabilities (Level 1 measurements) and the lowest priority to unobservable inputs (Level 3 measurements). The three levels of the fair value hierarchy are described below:

- Level 1—Unadjusted quoted prices in active markets that are accessible at the measurement date for identical, unrestricted assets or liabilities.

- Level 2—Quoted prices for similar assets and liabilities in active markets, quoted prices for identical or similar assets or liabilities in markets that are not active or model-derived valuations for which all significant inputs are observable, either directly or indirectly.

- Level 3—Prices or valuation techniques that require inputs that are both significant to the fair value measurement and unobservable.

The Company did not hold any short-term investments classified as available for sale or held to maturity as of December 31, 2017 and 2016.

The fair value of each of the Company's common stock warrant liability is calculated using a Black-Scholes valuation model and is classified as Level 2 in the fair value hierarchy. The fair values are presented below along with valuation assumptions:

	Series A Warrants	
	December 31, 2017	December 31, 2016
Risk-free interest rates	1.76 %	1.20 %
Expected life	12 months	24 months
Expected dividends	— %	— %
Expected volatility	193.28 %	122.03 %
Fair value	$ 1,600	$ 36,000

	December 31, 2016		
	November 2015 Note Warrants	January 2016 Note Warrants	May 2016 Note Warrants
Risk-free interest rates	1.47 %	1.93 %	1.93 %
Expected life	46 months	48 months	52 months
Expected dividends	— %	— %	— %
Expected volatility	102.29 %	108.57 %	106.37 %
Fair value	$ 449	$ 1,633	$ 1,037

During the year ended December 31, 2016 all the amounts outstanding under the Notes were paid off via conversions into shares of common stock.

(7) Inventory

The Company accounts for inventory at the lower of cost or market and records any long-term inventory as other assets in the consolidated balance sheets. There was approximately $1.0 million and $676,000 of long-term inventory, primarily consisting of raw materials, as of December 31, 2017 and 2016, respectively.

Current inventory consists of the following as of:

	December 31,	
	December 31, 2017	December 31, 2016
Raw materials	$ 707,919	$ 335,606
Work-in-process	1,494,278	1,437,957
Finished goods	614,915	16,015
Inventory	$ 2,817,112	$ 1,789,578

(8) Property and Equipment

Property and equipment consists of the following as of:

	December 31, 2017	December 31, 2016
Furniture and equipment	$ 2,393,644	$ 2,302,878
Computer hardware and software	887,059	596,292
Leasehold improvements	123,542	62,651
	3,404,245	2,961,821
Less accumulated depreciation and amortization	(2,965,624)	(2,761,101)
Property and equipment, net	$ 438,621	$ 200,720

(9) Accrued Expenses

Accrued expenses consist of the following:

	December 31, 2017	December 31, 2016
Professional service related expenses	$ 2,643,342	$ 1,858,912
Payroll related expenses	2,480,219	507,327
Other expenses	831,957	385,176
Accrued expenses	$ 5,955,518	$ 2,751,415

(10) Senior Amortizing Convertible Notes

On November 4, 2015, the Company entered into the Purchase Agreement to issue and sell to four institutional investors 7% senior amortizing convertible notes due 2017 in three separate closings. The Notes were initially convertible into shares of the Company's common stock at a price equal to $304.50 per share with an aggregate principal amount of $25.0 million. Each Note was sold with Note Warrant with an exercise price of $325.50 per share. The Company issued and sold Notes and Note Warrants for aggregate total proceeds of $12.5 million in the First Closing and Second Closing and after entering into the First Amendment, which provided that the scheduled third closing would be split into two separate closings, issued and sold Notes and Note Warrants for aggregate total proceeds of $6.25 million in the Third Closing. After the Third Closing, the Company entered into the Second Amendment, which set a deadline of December 30, 2016 for the final closing and provided the consent of the holders of the Notes to the Company reducing the conversion price of the Notes from time to time in order to incentivize the holders of the Notes to convert their Notes into shares of the Company's common stock. As the final closing did not occur prior to the December 30, 2016 deadline, the remaining $6.25 million of Notes was not funded. Additionally, after entering into the Second Amendment, the Company reduced the conversion price of the Notes frequently in order to incentivize the holders of the Notes to convert all of the outstanding amounts outstanding under the Notes. As of December 31, 2016, all of the Notes were fully repaid.

During the year ended December 31, 2016, $18.7 million of aggregate principal amount of Notes were converted by holders of the Notes into approximately 2,632,000 shares of the Company's common stock.

Description of the Notes

The Notes were payable in monthly installments, accrued interest at a rate of 7.0% per annum from the date of issuance and had a maturity date 24 months after the First Closing. The Notes were repayable, at the Company's election, in either cash or shares of the Company's common stock at a discount to the then-current market price. The Notes were also convertible from time to time, at the election of the holders, into shares of the Company's common stock at an initial conversion price of $304.50 per share. The conversion price was adjusted to $76.30 per share on January 29, 2016, the 16th trading day following the First Reverse Stock Split, per the terms of the Notes. The Notes also allowed the Company to reduce the conversion price from time-to-time, upon the holders' consent, which was provided for in the Second Amendment.

The holder of each Note had the right to convert any portion of such Note unless the holder, together with its affiliates, beneficially owned in excess of 4.99% of the number of shares of the Company's common stock outstanding

immediately after giving effect to the conversion, as such percentage ownership was determined in accordance with the terms of the Notes. The holders were also able to increase or decrease such percentage to any other percentage, but in no event above 9.99%, provided that any increase of such percentage would not be effective until 61 days after providing notice to the Company.

The Company determined that the conversion feature in the Notes requires bifurcation and liability classification and measurement, at fair value, and requires evaluation at each reporting period. Under Accounting Standards Codification (ASC) 825, Financial Instruments, the FASB provides an alternative to bifurcation and companies may instead elect fair value measurement for the entire instrument, including the debt and conversion feature. The Company elected the fair value alternative in order to simplify its accounting and reporting of the Notes upon issuance. The fair value of the Note Warrants was recorded as a discount to the Notes and amortized to interest expense following the effective interest rate method over the term of the Notes.

The First Closing occurred on November 9, 2015. At the First Closing, the Company issued and sold Notes with an aggregate principal amount of $1.5 million, along with Note Warrants exercisable for 1,679 shares. During the quarter ended September 30, 2016, all remaining principal and interest amounts outstanding under the Notes issued at the First Closing were paid off via conversions to common shares.

The Second Closing occurred on January 11, 2016 after the Company received approval of the offering by the Company’s stockholders and the satisfaction of certain customary closing conditions. At the Second Closing, the Company issued and sold Notes with an aggregate principal amount of $11.0 million, along with Note Warrants exercisable for 12,312 shares. The fair value of Note Warrants issued on January 11, 2016 was determined to be $515,000 using a Black-Scholes valuation model. During the quarter ended December 31, 2016, all remaining principal and interest amounts outstanding under Notes issued at the Second Closing were paid off via conversions to common shares.

The Third Closing occurred on May 2, 2016 after the Company entered into the First Amendment and satisfied certain closing conditions. At the Third Closing, the Company issued and sold Notes with an aggregate principal amount of $6.25 million, along with Note Warrants exercisable for 6,995 shares. The fair value of the Note Warrants issued on May 2, 2016 was determined to be $150,195 using a Black-Scholes valuation model. During the quarter ended December 31, 2016, all remaining principal and interest amounts outstanding under Notes issued at the Third Closing were paid off via conversions to common shares.

On December 31, 2015, the fair value of the outstanding Notes was determined to be $1.3 million using a Binomial Lattice model.

The following table summarizes the installment amounts and additional conversions by the holders of the Notes through December 31, 2016:

First Closing:

	Principal	Interest	Total	Common Shares
Installment amount at December 31, 2015	$ 65,217	$ 23,651	$ 88,868	814
Holder conversions during the quarter ended December 31, 2015	18,261	2,375	20,636	189
Total installments and conversions, December 31, 2015	83,478	26,026	109,504	1,003
Installment amount at February 29, 2016	65,217	23,681	88,898	1,314
Installment amount at March 31, 2016	65,217	14,827	80,044	1,271
Holder conversions during the quarter ended March 31, 2016	104,784	12,762	117,546	1,524
Total installments and conversions, March 31, 2016	318,696	77,296	395,992	5,112
Installment amount at April 30, 2016	65,217	13,853	79,070	1,454
Installment amount at May 31, 2016	65,217	13,082	78,299	2,121
Installment amount at June 30, 2016	54,217	11,275	65,492	3,590
Holder conversions during the quarter ended June 30, 2016	1,627	174	1,801	29
Total installments and conversions, June 30, 2016	504,974	115,680	620,654	12,306
Installment amount at July 31, 2016	65,217	10,148	75,365	5,521
Installment amount at August 31, 2016	46,957	5,830	52,787	4,593
Holder conversions during the quarter ended September 30, 2016	882,852	78,634	961,486	72,528
Total installments and conversions, September 30, 2016 and December 31, 2016	$ 1,500,000	$ 210,292	$ 1,710,292	94,948

Second Closing:

	Principal	Interest	Total	Common Shares
Installment amount at March 2, 2016	$ 404,762	$ 149,300	$ 554,062	*
Holder conversions during the quarter ended March 31, 2016	987,000	124,050	1,111,050	14,974
Total installments and conversions, March 31, 2016	1,391,762	273,350	1,665,112	14,974
Installment amount at April 29, 2016	404,762	149,497	554,259	10,190
Installment amount at May 31, 2016	291,428	86,518	377,946	10,238
Installment amount at June 30, 2016	404,762	82,913	487,675	22,842
Holder conversions during the quarter ended June 30, 2016	25,373	2,995	28,368	414
Total installments and conversions, June 30, 2016	2,518,087	595,273	3,113,360	58,658
Installment amount at July 31, 2016	213,429	47,457	260,886	19,113
Installment amount at August 31, 2016	631,429	116,511	747,940	64,810
Installment amount at September 30, 2016	404,762	45,846	450,608	51,698
Holder conversions during the quarter ended September 30, 2016	4,868,679	418,847	5,287,526	418,253
Total installments and conversions, September 30, 2016	8,636,386	1,223,934	9,860,320	612,532
Installment amount at Oct 31, 2016	340,000	24,738	364,738	70,665
Installment amount at Nov 30, 2016	291,429	27,528	318,957	81,952
Installment amount at December 31, 2016	156,867	11,425	168,292	57,453
Holder conversions during the quarter ended December 31, 2016	1,575,318	122,624	1,697,942	450,385
Total installments and conversions, December 31, 2016	$ 11,000,000	$ 1,410,249	$ 12,410,249	1,272,987

Third Closing

	Principal	Interest	Total	Common Shares
Installment amount at June 30, 2016	$ 212,158	$ 90,659	$ 302,817	16,600
Holder conversions during the quarter ended June 30, 2016	—	—	—	—
Total installments and conversions, June 30, 2016	212,158	90,659	302,817	16,600
Installment amount at July 31, 2016	147,368	32,374	179,742	13,168
Cash Payment – July 31, 2016 installment	42,105	6,107	48,212	*
Installment amount at August 31, 2016	336,842	62,059	398,901	34,684
Installment amount at September, 2016	263,158	41,822	304,980	34,523
Holder conversions during the quarter ended September 30, 2016	1,915,698	175,092	2,090,790	155,272
Total installments and conversions, September 30, 2016	2,917,329	408,113	3,325,442	254,247
Installment amount at Oct 31, 2016	221,053	35,004	256,057	48,192
Installment amount at Nov 30, 2016	221,053	31,259	252,312	64,828
Installment amount at December 31, 2016	221,053	14,526	235,579	81,872
Holder conversions during the quarter ended December 31, 2016	2,669,512	170,359	2,839,871	816,707
Total installments and conversions, December 31, 2016	$ 6,250,000	$ 659,261	$ 6,909,261	1,265,846

* Cash payments

Description of the Note Warrants

Each Note Warrant was exercisable immediately and for a period of 60 months from the date of the issuance of the Note Warrant. After completion of the Third Closing, the Note Warrants entitle their holders to purchase, in aggregate, 27,982 shares of the Company's common stock. The Note Warrants were initially exercisable at an exercise price equal to $325.50, subject to adjustment on the eighteen month anniversary of issuance, and certain other adjustments. The exercise price and number of shares of common stock issuable on the exercise of the Note Warrants was subject to adjustment upon the issuance of any shares of common stock or securities convertible into shares of common stock below the then-existing exercise price, with certain exceptions. Additionally, the exercise price and number of shares of common stock issuable upon the exercise of the Note Warrants were subject to adjustment in the event of any stock split, reverse stock split, recapitalization, reorganization or similar transaction.

The exercise price of the Note Warrants issued November 9, 2015 was reduced to $76.30 per share on January 29, 2016, the 16th trading day following the First Reverse Stock Split, per the terms of the Note Warrants. Per the terms of the Note Warrants, the exercise price of each of the Note Warrants issued January 11, 2016 and May 2, 2016 remained $325.50 until January 20, 2017, the 16th trading day following the Second Reverse Stock Split, at which point the price of all of the Note Warrants was adjusted to $2.18 per share. All remaining Note Warrants were exercised during the first quarter of 2017.

(11) Stock Sales

January 2017 Issuance of Common Stock, Convertible Preferred Stock and Warrants

On January 23, 2017, the Company closed an underwritten public offering consisting of units of common stock, convertible preferred stock and warrants to purchase common stock. Gross proceeds of the offering were $19.0 million, prior to deducting underwriting discounts and commissions and offering expenses of $2.5 million.

The offering was comprised of Class A Units, priced at a public offering price of $5.31 per unit, with each unit consisting of one share of common stock and one five-year warrant (each, a "2017 Warrant") to purchase one share of common stock with an exercise price of $5.84 per share, and Class B Units, priced at a public offering price of $1,000 per unit, with each unit comprised of one share of Series A Preferred Stock (the Preferred Stock), which was convertible into 188 shares of common stock, and 2017 Warrants to purchase 188 shares of common stock. The conversion price of the Preferred Stock issued in the transaction as well as the exercise price of the 2017 Warrants are fixed priced and do

not contain any variable pricing features nor any price based anti-dilutive features apart from customary adjustments for splits and reverse splits of common stock and both have been recorded within Shareholders' Equity in the condensed consolidated balance sheet. The Preferred Stock included a beneficial ownership limitation of 4.99%, but had no dividend preference (except to extent dividends are also paid on the common stock), liquidation preference or other preferences over common stock. The securities comprising the units were issued separately in the offering.

A total of 1,218,107 shares of common stock, 12,531 shares of Preferred Stock convertible into 2,359,894 shares of common stock, and 2017 Warrants to purchase 3,577,994 shares of common stock were issued in the offering including the underwriters' exercise of their over-allotment option to purchase 466,695 shares of common stock and 2017 Warrants to purchase an additional 466,695 shares of common stock.

On January 23 and January 24, 2017 all shares of Preferred Stock issued in conjunction with the offering were converted by their holders into 2,359,894 shares of common stock.

August 2017 Issuance of Convertible Preferred Stock and Warrants

On August 16, 2017, the Company closed a firm commitment underwritten public offering of 20,000 units consisting of one share of Series B Convertible Preferred Stock, par value $0.01 per share (the "Series B Preferred Stock"), which is convertible into 435 shares of Common Stock, at a conversion price of $2.30 per share, and one seven-year warrant to purchase 435 shares of Common Stock at an exercise price of $2.30 per share, at a public offering price of $1,000 per unit.

The net proceeds received by the Company from the sale of the units was approximately $18.0 million, after deducting approximately $2.0 million of underwriting discounts and offering expenses.

The Series B Preferred Stock was determined to not be mandatorily redeemable under ASC 480. Additionally, the Company identified two embedded features within the Series B Preferred Stock: (1) optional conversion by the holder, and (2) redemption in the event of a fundamental change and the Company determined that neither of these embedded features required bifurcation under ASC 815. Since the Series B Preferred Stock is only redeemable in an ordinary liquidation, upon the occurrence of a fundamental transaction which is solely within the Company's control, or in circumstances when all common shareholders are entitled to receive the same form of consideration, the Series B Preferred Stock is presented within permanent equity. The Series B Preferred Stock contains an anti-dilution feature that requires the Company to adjust the conversion price in the event of future stock sales at a lower unit price. In the event anti-dilution provision is triggered, the Company is required to evaluate whether a contingent beneficial conversion feature has been met and, if so, evaluate and account for any value attributable to the contingent beneficial conversion feature.

The warrants issued with the Series B Preferred Stock were also classified in stockholders' equity as they are both indexed to the Company's own stock and meet the scope exception in ASC 815-10-15-74(a) and, accordingly, do not require derivative liability accounting pursuant to ASC 815. The terms of the warrants contain an anti-dilution feature that, if triggered, require the Company to evaluate and account for the value attributable to the reduced warrant exercise price.

As of December 31, 2017, 13,945 of the 20,000 shares of the Series B Preferred Stock issued in the offering had been converted into 6,066,075 shares of Common Stock.

On August 16, 2017, the Company also issued warrants to purchase an aggregate of 2,575,000 shares of Common Stock to certain parties (each, a "Holder") to the Securities Purchase Agreement (as amended, the "Purchase Agreement"), dated November 4, 2015, between the Company and the other parties named therein, as consideration for the waiver by each of the Holders of their right to participate in future securities offerings by the Company, which rights were granted pursuant to the Purchase Agreement. These warrants are in substantially the same form, and on the same terms as, the Warrants issued pursuant to the Offering. Because the Company received no additional consideration or future rights related to the warrants issued to the Holders, the Black Scholes value of the warrants was recorded as $4.4 million of expense as of the August 16, 2017 issuance date. The Black Scholes value was estimated using a risk-free interest rate of 2.03%, an expected life of 7.0 years, expected dividends of zero and expected volatility of 112.03%.

Sales Agreement—July 2015

On July 8, 2015, the Company closed a public offering, where it sold 30,476 units at an aggregate price of $525.00 per unit, for gross proceeds of $16.0 million before deducting estimated offering expenses of approximately $1.4 million, of which $532,000 was assigned to the warrants issued with each unit sold and was recognized immediately as interest expense in the consolidated statements of operations as the warrants are exercisable upon issuance. Each unit consisted of: (A)(i) one share of common stock or (ii) one pre-funded Series C warrant to purchase one share of common stock at an exercise price equal to $525.00 per share (Series C Warrant); and (B) one Series A Warrant with an exercise price initially equal to $630.00 per share (Series A Warrant). Each purchaser of a unit could elect to receive a Series C Warrant in lieu of a share of common stock. No Series C Warrants were issued.

The Series A Warrants are exercisable for a period of 42 months from the closing date of the public offering. The exercise price and number of shares of common stock issuable on the exercise of the Series A Warrants are subject to adjustment upon the issuance of any shares of common stock or securities convertible into shares of common stock below the then-existing exercise price, with certain exceptions, and in the event of any stock split, reverse stock split, recapitalization, reorganization or similar transaction. The holder of the Series A Warrant does not have the right to exercise any portion of the Series A Warrant if the holder, together with its affiliates, would, subject to certain limited exceptions, beneficially own in excess of 9.99% of the Company's common stock outstanding immediately after the exercise or 4.99% as may be elected by the purchaser.

The exercise price of the Series A Warrants issued July 8, 2015 was reduced to $168.00 per share on November 9, 2015 as a result of the issuance of the Notes and was further reduced to $67.90 per share on January 29, 2016, the 16th trading day following the First Reverse Stock Split, per the terms of the Series A Warrants and was further reduced at various times during the year ended December 31, 2016 as a result of installment and acceleration payments made on the Notes. As of December 31, 2016, the exercise price of the warrants was $2.80 per share and on January 20, 2017, the 16th trading day following the Second Reverse Stock Split, the exercise price of the Series A Warrants was adjusted to $2.18 per share, per the terms of the Series A Warrants.

(12) Income Taxes

On December 22, 2017, H.R. 1, originally known as the Tax Cuts and Jobs Act ("2017 Tax Act"), was enacted into law in the United States, resulting in significant changes from previous tax law. The 2017 Tax Act reduces the federal corporate income tax rate to 21% effective January 1, 2018. The rate change resulted in a reduction of our net deferred tax assets, before application of the valuation allowance, of $37.1 million. The Company recorded a $2.3 million tax benefit in the fourth quarter of 2017 related to the remeasurement of the deferred tax liability for the indefinite-lived intangible asset related to the BarioSurg acquisition in May 2017 (see Note 4).

In December 2017, the SEC staff issued Staff Accounting Bulletin No. 118, Income Tax Accounting Implications of the Tax Cuts and Jobs Act ("SAB 118"), which allows for the recording of provisional amounts during a measurement period not to extend beyond one year of the enactment date since the 2017 Tax Act was passed late in the fourth quarter of 2017 and ongoing guidance from the Internal Revenue Service and Treasury is expected over the next 12 months. As a result of the 2017 Tax Act, NOLs generated in taxable years ending after December 31, 2017 have an indefinite carryforward period. The Company continues to evaluate the extent that deductible temporary differences are expected to reverse and generate an indefinite-lived NOL and the related impact on the valuation allowance. The accounting for the valuation allowance is, therefore, considered to be incomplete due to the forthcoming guidance and the Company's ongoing analysis of final year-end data and tax positions. In accordance with SAB 118, a provisional tax benefit of $2.3 million was recorded, and the Company expects to complete its analysis within the measurement period.

The Company has incurred net operating losses (NOLs) since inception. The Company has not reflected any benefit of such net operating loss carryforwards in the accompanying consolidated financial statements.

Income tax expense (benefit) for the three years ended December 31 was as follows:

	2017	2016	2015
Deferred:			
Federal	$ (2,538,611)	$ —	$ —
State	224,000	—	—
Total income tax expense (benefit)	$ (2,314,611)	$ —	$ —

The income tax expense benefit differed from the amount computed by applying the U.S. federal income tax rate of 34% to income before income taxes as a result of the following:

	2017	2016	2015
Computed "expected" tax benefit	34.0 %	34.0 %	34.0 %
Other permanent adjustments	(5.5)%	3.1 %	1.6 %
Research and development credit	0.7 %	0.6 %	0.9 %
Change in Federal tax rate	(102.5)%	— %	— %
Federal valuation allowance	79.7 %	(37.7)%	(36.5)%
	6.4 %	— %	— %

The tax effect of temporary differences that give rise to significant portions of the deferred tax assets as of December 31 is presented below:

	2017	2016
Deferred tax assets (liabilities):		
Start-up costs	$ 4,166,000	$ 6,662,000
Capitalized research and development costs	12,494,000	23,012,000
Reserves and accruals	7,642,000	8,933,000
Property and equipment	46,000	83,000
Research and development credit	4,387,000	2,198,000
Net operating loss carryforwards	63,794,000	41,657,000
Total gross deferred tax assets	92,529,000	82,545,000
Valuation allowance	(86,033,000)	(82,545,000)
Deferred tax assets	6,496,000	—
Intangible assets	(11,788,000)	—
Total gross deferred tax liabilities	(11,788,000)	—
Net deferred tax liability	$ (5,292,000)	$ —

In assessing the realization of deferred tax assets, management considers whether it is more likely than not that some portion or all of the deferred tax assets will not be realized. The ultimate realization of deferred tax assets is dependent upon the generation of future taxable income during periods in which those temporary differences become deductible. In addition, certain limitations imposed under the Internal Revenue Code (IRC) could further limit the Company's realization of these deferred tax assets in the event of changes in ownership of the Company, as defined by IRC Section 382. Based on the level of historical taxable losses, projections of future taxable income (losses) over the periods in which the deferred tax assets can be realized, and consideration of the "more likely than not standard" required by ASC 740, management currently believes the Company will not realize the benefits of these deductible differences, except to the extent of reversing taxable temporary differences. Accordingly, the Company has provided a valuation allowance against the net deferred tax assets, excluding deferred tax liabilities for indefinite-lived intangible assets, as of December 31, 2017 and 2016.

The Company's ability to utilize its net operating loss carryforwards, tax credits, and built-in items of deduction, including capitalized start-up costs and research and development costs, may be substantially limited due to ownership changes that may have occurred or that could occur in the future. These ownership changes may limit the amount of net operating loss carryforwards, credits and built-in items of deduction that can be utilized annually to offset future taxable income. In general, an ownership change, as defined in IRC Section 382, results from a transaction or series of transactions over a three-year period resulting in an ownership change of more than 50% of the outstanding stock of a company by certain stockholders or public groups. During 2011, the Company completed an IRC Section 382 review

and the results of the review indicated that ownership changes had occurred. While the Company has not completed an IRC Section 382 review since 2011, it believes that it is likely that additional ownership changes have occurred since then. Since the Company has experienced an ownership change, utilization of carryforward attributes are subject to an annual limitation, which is determined by first multiplying the value of the Company's common stock at the time of the ownership change by the applicable long-term, tax-exempt rate, and then could be subject to additional adjustments, as required. Any such limitation may result in the expiration of a significant portion of the carryforward attributes before utilization and the permanent loss of built-in items of deduction. Any carryforward attributes that expire prior to utilization or permanent loss of built-in items of deduction as a result of such limitations will be removed from deferred tax assets with a corresponding adjustment to the valuation allowance. Due to the existence of the valuation allowance, it is not expected that any possible limitation will have an impact on the results of operations of the Company.

As of December 31, 2017, the Company has generated or acquired U.S. federal net operating loss carryforwards of approximately $253.8 million. Of the total federal net operating loss, $48.0 million will expire unused as a result of the 2011 Section 382 limitation. The federal net operating loss carryforwards expire in the years 2022 through 2037. The Company's research and development credit carryforwards, if not used, begin to expire in 2024.

Net operating loss carryforwards of the Company are subject to review and possible adjustment by the taxing authorities. With certain exceptions (e.g. the net operating loss carryforwards), the Company is no longer subject to U.S. federal, state or local examinations by tax authorities for years prior to 2014. There are no tax examinations currently in progress.

(13) Stock Options

The Company has adopted the Second Amended and Restated 2003 Stock Incentive Plan (the Plan) that includes both incentive stock options and nonqualified stock options to be granted to employees, officers, consultants, independent contractors, directors and affiliates of the Company. At December 31, 2017 and 2016, according to the Plan 40,000,000 shares were authorized and reserved. Pursuant to the terms of the Plan, the shares authorized under the Plan were not adjusted automatically as part of the Second Reverse Stock Split. Instead, pursuant to the terms of the Plan, the board of directors exercised its power to adjust the number of shares authorized under the Plan as it determines is necessary after a stock split or other similar event to prevent dilution or enlargement of the benefits intended to be made available under the Plan. On February 8, 2017, pursuant to the terms of the Plan, the board of directors adjusted the number of shares authorized under the Plan to 3,000,000 shares as a result of the recapitalization of the Company consisting of the Second Reverse Stock Split and the public offering of the Company's stock which closed on January 23, 2017. Pursuant to the terms of the Plan, the board of directors is required to adjust the number of shares authorized under the Plan as it determines necessary after a recapitalization or other similar corporate transaction to prevent dilution or enlargement of the benefits or potential benefits intended to be made available under the Plan.

On December 19, 2017, the Company's stockholders approved an increase in the number of common shares reserved under the Plan by 5,500,000 shares to a total of 8,500,000 authorized shares.

The board of directors establishes the terms and conditions of all stock option grants, subject to the Plan and applicable provisions of the IRC. Incentive stock options must be granted at an exercise price not less than the fair market value of the common stock on the grant date. The options granted to participants owning more than 10% of the Company's outstanding voting stock must be granted at an exercise price not less than 110% of fair market value of the common stock on the grant date. The options expire on the date determined by the board of directors, but may not extend more than 10 years from the grant date, while incentive stock options granted to participants owning more than 10% of the Company's outstanding voting stock expire five years from the grant date. The vesting period for employees is generally over four years. The vesting period for nonemployees is determined based on the services being provided.

Stock option activity for the Plan is as follows:

	Shares Available For Grant	Outstanding Options		
		Number of Shares [1]	Weighted-Average Exercise Price [1]	Aggregate Intrinsic Value
Balance, December 31, 2014	6,740	12,051	$ 2,597.00	$ 519,546
Shares reserved	—	—	—	
Options granted	(3,238)	3,238	1,104.00	
Options exercised	—	—	—	
Options cancelled	735	(735)	1,942.00	
Balance, December 31, 2015	4,237	14,554	2,298.00	$ —
Shares reserved (1)	2,976,486	—		
Options granted	(2,174)	2,174	45.35	
Options exercised	—	—		
Options cancelled	9,694	(9,694)	2,134.47	
Balance, December 31, 2016	2,988,243	7,034	1,824.87	$ —
Shares reserved (2)	5,500,000	—	—	
Options granted	(2,686,371)	2,686,371	4.26	
Options exercised	—	—	—	
Options cancelled	162,650	(162,650)	16.63	
Balance, December 31, 2017	5,964,522	2,530,755	$ **8.68**	$ —

(1) Reflects the board of directors' February 8, 2017 adjustment of number of shares reserved under the Plan from 40,000,000 to 3,000,000.

(2) Reflects approval by the Company's stockholders to increase the number of shares reserved under the Plan by 5,500,000 on December 19, 2017.

On June 27, 2016 the Company completed an option exchange offer to its employees whereby certain outstanding options to purchase shares of the Company's common stock were tendered by employees in exchange for new options with the exercise price to be set at the then current market price of the Company's common stock. Options to purchase 6,424 shares of the Company's common stock, which included all the options eligible for exchange, were tendered by employees and cancelled by the Company. On the same date, options to purchase 1,083 shares of the Company's common stock were issued with an exercise price of $23.28 per share, which was the Company's closing stock price on June 27, 2016. Because the fair value of the tendered options immediately before the exchange approximated the fair value of the new options granted, no additional compensation expense was recognized.

In addition to the stock options granted pursuant to the Plan, the Company from time to time grants options to individuals as an inducement to accepting positions as employees (Inducement Grants). These Inducement Grants are made at the discretion of the board of directors and are issued outside of the Plan. Inducement Grants are summarized below:

		Outstanding Options		
	Shares Available For Grant	Number of Shares	Weighted-Average Exercise Price	Aggregate Intrinsic Value
Balance, December 31, 2014	—	—	—	
Shares reserved	7,380	—		
Options granted	(7,380)	7,380	$ 262.50	
Options exercised	—	—		
Options cancelled	—	—	—	
Balance, December 31, 2015	—	7,380	262.50	$ —
Shares reserved	5,426			
Options granted	(5,426)	5,426	94.05	
Options exercised	—	—		
Options cancelled	—	—		
Balance, December 31, 2016	—	12,806	191.12	$ —
Shares reserved	1,379,000	—	—	
Options granted	(1,379,000)	1,379,000	2.04	
Options exercised	—	—	—	
Options cancelled	—	(92,114)	4.18	
Balance, December 31, 2017	—	1,299,692	$ 3.75	$ —

Each of the Inducement Grants will vest as follows: 25% of the shares will vest as of one year from the date of the officer's employment agreement, and the remaining 75% of the shares will then vest in equal 2.0833% installments each month thereafter for 36 months. The options awarded as Inducement Grants were not eligible for the option exchange program

The options outstanding, vested and currently exercisable for the Plan and Inducement Grants are set forth by exercise price at December 31, 2017 in the following table:

	Outstanding Options and Expected to Vest			Options Exercisable and Vested		
Exercise Price	Number of Shares Outstanding	Weighted-Average Remaining Contractual Life (Years)	Aggregate Intrinsic Value	Number of Options	Weighted-Average Exercise Price	Aggregate Intrinsic Value
$1.64 to $1.96	310,600	9.8	$ —	—	n/a	$ —
$2.00 to $2.05	2,381,321	9.8	—	—	n/a	—
$4.28 to $7.12	1,122,117	9.2	—	526,896	$ 7.07	—
$11.99 to $96.60	4,172	8.1	—	3,284	79.20	—
$241.50 to $924.00	7,706	7.8	—	4,321	271.43	—
$1,165.50 and over	4,531	5.1	—	4,527	2,537.71	—
	3,830,447	9.6	$ —	539,028	$ 30.88	$ —

Stock-Based Compensation for Nonemployees

Stock-based compensation expenses related to stock options granted to nonemployees is recognized as the stock options are earned. The Company believes that the fair value of the stock options is more reliably measurable than the fair value of the services received. The fair value of the stock options granted is calculated at each reporting date, using the Black-Scholes option-pricing model, until the award vests or there is a substantial disincentive for the nonemployee

not to perform the required services. The fair value for the years ended December 31, 2017 and 2015 was calculated using the following assumptions, defined below:

	Year Ended December 31,		
	2017	2016	2015
Risk-free interest rates	2.34%–2.38%	N/A	0.02%–2.10%
Expected life	9.38 years–10.00 years	N/A	0.08 years–8.51 years
Expected dividends	0%	N/A	0%
Expected volatility	114.94%–131.24%	N/A	37.36%–132.01%

Stock-based compensation expense charged to operations on options granted to nonemployees for the years ended December 31, 2017, 2016 and 2015 was $184,000, $4,000 and $(35,000), respectively.

Employee Stock-Based Awards

Compensation cost for employee stock-based awards is based on the estimated grant-date fair value and is recognized over the vesting period of the applicable award on a straight-line basis. The weighted average estimated fair value of the employee stock options granted for the years ended December 31, 2017, 2016 and 2015 was $2.82, $60.00, and $426.30, per share, respectively.

The Company uses the Black-Scholes pricing model to determine the fair value of stock options. The determination of the fair value of stock-based payment awards on the date of grant is affected by the Company's stock price as well as assumptions regarding a number of complex and subjective variables. These variables include the Company's expected stock price volatility over the term of the awards, actual and projected employee stock option exercise behaviors, risk-free interest rates and expected dividends. The estimated grant-date fair values of the employee stock options were calculated using the Black-Scholes valuation model, based on the following assumptions for the years ended December 31, 2017, 2016 and 2015:

	Year Ended December 31,		
	2017	2016	2015
Risk-free interest rates	1.94%–2.19%	0.87%–1.64%	1.49%–1.80%
Expected life	6.25 years	4.0 years–6.25 years	5.50 years–6.25 years
Expected dividends	0%	0%	0%
Expected volatility	116.49%–119.54%	88.43%–114.38%	83.36%–111.77%

Expected Life. The expected life is based on the "simplified" method described in the SEC Staff Accounting Bulletin, Topic 14: *Share-Based Payment*.

Volatility. The expected volatility was based on the Company's historical volatility.

Risk-Free Interest Rate. The risk-free rate is based on the daily yield curve rate from the U.S. Treasury with remaining terms similar to the expected term on the options.

Dividend Yield. The Company has never declared or paid any cash dividends and does not plan to pay cash dividends in the foreseeable future, and, therefore, used an expected dividend yield of zero in the valuation model.

Forfeitures. The Company is required to estimate forfeitures at the time of grant, and revise those estimates in subsequent periods if actual forfeitures differ from those estimates. The Company uses historical data to estimate pre-vesting option forfeitures and record stock-based compensation expense only for those awards that are expected to vest. All stock-based payment awards are amortized on a straight-line basis over the requisite service periods of the awards, which are generally the vesting periods. If the Company's actual forfeiture rate is materially different from its estimate, the stock-based compensation expense could be significantly different from what the Company has recorded in the current period.

As of December 31, 2017 there was approximately $7.6 million of total unrecognized compensation costs, net of estimated forfeitures, related to unvested stock option awards ($7.5 million of which relate to employee awards), which are expected to be recognized over a weighted-average period of 3.0 years.

There were no stock option exercises for the years ended December 31, 2017, 2016 and 2015.

(14) Warrants

Stock warrant activity is as follows:

	Common Shares	Weighted Average Exercise Price
Balance, December 31, 2014	23,044	$ 1,929.20
Granted (1)	32,155	116.20
Exercised	—	—
Cancelled	(324)	2,299.50
Balance, December 31, 2015	54,875	1,929.20
Granted (1)	19,308	325.50
Exercised	(1,428)	3.50
Cancelled	(17,706)	2,257.50
Balance, December 31, 2016	55,049	238.90
Granted (1)	14,852,994	3.15
Exercised	(599,670)	5.56
Cancelled	(36)	238.90
Balance, December 31, 2017	14,308,337	$ 3.51

(1) See Notes 11 and 14 for discussions relating to the issuance of warrants in 2017, 2016 and 2015.

At December 31, 2017, 2016 and 2015, the weighted-average remaining contractual life of outstanding warrants was 6.08, 2.76 and 2.18 years, respectively. All of the warrants outstanding are currently exercisable at the option of the holder into the equivalent number of shares of common stock.

(15) Related Party Transactions

Consulting Agreement—Anthony Jansz

The Company entered into a consulting agreement with Anthony Jansz, who is a former member of the board of directors, for the period from June 1, 2011 through April 30, 2015. In exchange for consulting services provided, Mr. Jansz was entitled to receive consulting fees and options to purchase 16,663 shares of common stock at a weighted average exercise price of $29.78. Total stock-based compensation expense recorded was approximately $600 for the year ended December 31, 2015. Due to a failure to meet certain performance conditions, 471 shares of the options granted to Mr. Jansz did not vest. In addition to the option grants, the Company paid Mr. Jansz approximately $75,000 in fees and expenses for consulting services provided during the year ended December 31, 2015. No consulting fees or expenses were paid to Mr. Jansz in 2016 or 2017.

Consulting Agreement—Jon Tremmel

Effective August 10, 2015, the Company entered into a one year consulting agreement with Jon Tremmel & Associates, LLC, which is wholly-owned by Jon Tremmel, a member of the board of directors. In exchange for consulting services provided, Mr. Tremmel was entitled to receive consulting fees and an option to purchase 16,666 shares of common stock at $3.45 per share. Total stock-based compensation expense recorded was approximately $3,000 and $13,000 for the years ended December 31, 2016 and 2015, respectively. In addition to the option grant, the Company paid Mr. Tremmel approximately $50,000 in fees and expenses for consulting services provided during the year ended December 31, 2015. No consulting fees or expenses were paid to Mr. Tremmel in 2016 or 2017.

(16) Commitments and Contingencies

Operating Lease

The Company rents its office, warehouse and laboratory facilities in St. Paul, Minnesota under an operating lease, which was originally set to expire on September 30, 2015. On August 25, 2015, the Company entered into an amendment extending the term of the operating lease for three years until September 30, 2018, with monthly base rent ranging from $18,925 to $20,345. Total rent expense recognized for the years ended December 31, 2017, 2016 and 2015, respectively, was $357,000, $229,000 and $262,000. Facility related expenses are included as general and administrative costs on the consolidated statements of operations.

In connection with our acquisition of BarioSurg in May 2017, we assumed an operating lease for office space in Lake Forest, California with monthly base rent of $2,818 that expires September 30, 2018.

In connection with our acquisition of ReShape Medical in October 2017, we assumed (i) an operating lease for office/warehouse space in San Clemente, California with monthly base rent ranging from $24,614 to $27,510 that expires June 30, 2022 and (ii) an operating lease for office and manufacturing space in San Clemente, California with monthly base rent of $10,877 that expires October 31, 2019.

The following is a schedule of total future minimum lease payments due as of December 31, 2017:

Year ending December 31,	
2018	$ 633,695
2019	419,082
2020	319,262
2021	327,949
2022	165,061
	$ 1,865,049

Product Liability Claims

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

Clinical Trials

The Company is evaluating the vBloc System in human clinical trials, including the EMPOWER trial and ReCharge trial. Both of these clinical trials require patients to be followed out to 60 months. The Company is required to pay for patient follow up visits only to the extent they occur. In the event a patient does not attend a follow up visit, the Company has no financial obligation. The Company is also required to pay for explants or revisions, including potential conversions of ReCharge control devices to active devices, should a patient request or be required to have one during the course of the clinical trials. The Company has no financial obligation unless an explant, revision or conversion is requested or required. Clinical trial costs are expensed as incurred.

Litigation

On February 28, 2017, the Company received a class action and derivative complaint filed on February 24, 2017 in U. S. District Court for the District of Delaware by Vinh Du, one of the Company's shareholders. The complaint names as defendants ReShape Lifesciences, the board of directors and four members of our senior management, namely, Scott Youngstrom, Nick Ansari, Peter DeLange and Paul Hickey, and contains a purported class action claim for breach of fiduciary duty against the board of directors and derivative claims for breach of fiduciary duty against the board of directors and unjust enrichment against our senior management. The allegations in the complaint relate to the increase in the number of shares authorized for grant under our Second Amended and Restated 2003 Stock Incentive Plan (the

"Plan"), which was approved by our shareholders at the Special Meeting of Shareholders held on December 12, 2016 (the "Special Meeting"), and to our subsequent grant of stock options on February 8, 2017, to the Company's Directors and senior management to purchase an aggregate of 1,093,450 shares of our common stock (the "Option Grants"). In the complaint, the plaintiff contends that (i) the number of shares authorized for grant under the Plan, as adjusted by the board of directors after the Special Meeting for the subsequent recapitalization of the Company, resulted from an alleged breach of fiduciary duties by the board of directors, and (ii) our senior management was allegedly unjustly enriched by the subsequent Option Grants. The plaintiff seeks relief in the form of an order rescinding the Plan as approved by the shareholders at the Special Meeting, an order cancelling the Option Grants, and an award to plaintiff for his costs, including fees and disbursements of attorneys, experts and accountants. On April 17, 2017, we filed a motion to dismiss the complaint based on the plaintiff's failure to satisfy Delaware's demand requirement for a derivative action and failure to state a valid claim. The court denied the motion to dismiss on November 30, 2017. Discovery is on-going. We believe the allegations in the complaint are without merit, and intend to defend the action vigorously.

On April 20, 2017, Fulfillium, Inc. filed a Complaint against the Company in the United States District Court for the District of Delaware, which alleged misappropriation of trade secrets and infringement of two United States Patents. On July 28, 2017, ReShape Medical moved to dismiss both the misappropriation of trade secret claim and the claims of patent infringement, and to transfer the litigation to the United States District Court for the Central District of California. On October 10, 2017, Fulfillium filed a motion to amend its Complaint to add SV Health Investors, LLC as a co-defendant; that motion is fully briefed and pending. On October 16, 2017, the Court granted ReShape Medical's motion to dismiss the trade secret and willful infringement claims. The Court also ordered the case transferred to the United States District Court for the Central District of California. On November 20, 2017, Fulfillium filed an Amended Complaint, which abandoned certain trade secret claims, and expanded upon allegations regarding other of its trade secret claims and claims for willful infringement. On December 6, 2017, ReShape Medical moved to dismiss those amended claims and for reconsideration of denial of its prior motion to dismiss certain patent infringement claims; both motions were denied on February 7, 2018. On February 5, 2018, Fulfillium filed a second motion to further amend its Complaint to add a claim of infringement of another Fulfillium patent. ReShape Medical opposed that motion. On February 21, 2018, ReShape Medical filed its Answer and Counterclaims to the Amended Complaint, including counterclaims for declarations of non-infringement, invalidity, unenforceability and/or co-inventorship of the asserted Fulfillium patents and state-law tort claims against Fulfillium and its founder personally. Fulfillium and its founder have not yet responded to those counterclaims. At the initial case management conference held on March 19, 2018, the Court ordered that Fulfillium's motions to amend be stricken and ordered Fulfillium to file a consolidated motion to amend. The Court encouraged the parties to confer to narrow the disputes for the Court's consideration, and indicated that Fulfillium need not respond to ReShape Medical's counterclaims until the scope of the amended complaint was decided. The Court assigned key dates for the litigation, including close of fact discovery on September 15, 2018, last day for filing motions on September 19, 2018, pretrial conference on November 19, 2018 and first day of trial on December 4, 2018. The Company intends to vigorously defend itself against Fulfillium, Inc.'s claims and to vigorously pursue its counterclaims.

We currently are unable to estimate the losses or range of losses for these two matters where there is a reasonable possibility of a loss or it is probable that a loss may have ben incurred.

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

(17) Retirement Plan

The Company has a 401(k) profit-sharing plan that provides retirement benefits to employees. Eligible employees may contribute a percentage of their annual compensation, subject to Internal Revenue Service limitations. The Company's matching is at the discretion of the Company's board of directors. For the years ended December 31, 2017, 2016, and 2015, the Company did not provide any matching of employees' contributions.

(18) Quarterly Data (unaudited)

The following table represents certain unaudited quarterly information for each of the eight quarters in the period ended December 31, 2016. In management's opinion, this information has been prepared on the same basis as the audited consolidated financial statements and includes all the adjustments necessary to fairly state the unaudited quarterly results of operations (in thousands, except per share data).

	First Quarter	Second Quarter (1)	Third Quarter (1)(2)	Fourth Quarter (1)(3)(4)
2017:				
Revenue	$ 40	$ 93	$ 360	$ 794
Net loss	$ (7,367)	$ (6,840)	$ (9,994)	$ (9,617)
Basic and diluted net loss per share	$ (1.27)	$ (0.91)	$ (1.06)	$ (0.45)
2016:				
Revenue	$ 72	$ 276	$ 297	$ 142
Net loss	$ (7,409)	$ (4,995)	$ (6,522)	$ (4,434)
Basic and diluted net loss per share	$ (66.14)	$ (33.96)	$ (11.77)	$ (2.65)

(1) The 2017 second, third and fourth quarters contain net losses of $116,000, $327,000 and $389,000, respectively, related to the inclusion of the operations of BarioSurg after its acquisition May 22, 2017.

(2) The 2017 third quarter net loss includes $4.4 million of expense related to warrants issued to purchase 2,575,000 shares of common stock to former holders of the Company's convertible notes as consideration for their waiver of their right to participate in future securities offerings by the Company.

(3) The 2017 fourth quarter contains revenues of $718,000 and net loss of $4.1 million related to the inclusion of the operations of ReShape Medical after its October 2, 2017 acquisition.

(4) The 2017 fourth quarter net loss includes the effect of a $2.3 million tax benefit related to the remeasurement of a deferred tax liability due to the December enactment of the Tax Cuts and Jobs Act by Congress.

(19) Subsequent Events

On April 2, 2018 the Company announced that it had entered into a securities purchase agreement with an institutional investor providing for the purchase and sale in a registered direct offering of shares of series D convertible preferred stock and a warrant to purchase shares of common stock for a purchase price of $6.0 million.

The shares of series D convertible preferred stock will be convertible into an aggregate of 8.0 million shares of common stock at a conversion price of $0.75 per share and the warrants will have a one-year term (or, if later, eight months after the requisite stockholder approval is obtained) and be exercisable for 35 million shares of common stock at an exercise price of $0.75 per share. The Company expects to receive net proceeds of approximately $5.25 million after deducting placement agent fees and other offering expenses. If the requisite stockholder approval is obtained, and if the warrants are exercised in full, the Company would receive an additional $26.25 million in gross proceeds based on the initial warrant exercise price of $0.75 per share. The Company intends to use the net proceeds from the registered direct offering to continue its commercialization efforts, for clinical and product development activities, and for other working capital and general corporate purposes. The closing of the offering is expected to take place on or about April 4, 2018, subject to the satisfaction or waiver of customary closing conditions.

The Company intends to ask its stockholders at its 2018 annual meeting for the requisite approval for the conversion or exercise of the securities described above into shares of common stock exceeding 19.99% of the company's currently outstanding common stock for purposes of the NASDAQ Stock Market Rules and has entered into voting agreements with stockholders representing a majority of the company's outstanding common stock pursuant to which those stockholders have agreed to vote in favor of that proposal.

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

None.

ITEM 9A. *CONTROLS AND PROCEDURES*

Evaluation of Disclosure Controls and Procedures

We maintain disclosure controls and procedures (as defined in Rule 13a-15(e) under the Securities Exchange Act of 1934, as amended (the "Exchange Act")), that are intended to ensure that information that would be required to be disclosed in Exchange Act reports is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms, and that such information is accumulated and communicated to our management, including the Chief Executive Officer and the Chief Financial Officer, as appropriate, to allow timely decisions regarding required disclosure.

We carried out an evaluation, under the supervision, and with the participation of our management, including our Chief Executive Officer and Chief Financial Officer, of the effectiveness of the design and operation of our disclosure controls and procedures as of December 31, 2017. Based on this evaluation, our Chief Executive Officer and Chief Financial Officer concluded that our disclosure controls and procedures were not effective as of December 31, 2017 due to the material weakness in internal control over financial reporting related to the design of its internal control over accounting for acquisition-related deferred income taxes as described below.

Notwithstanding the material weakness in our internal control over financial reporting, we have concluded that the consolidated financial statements and other financial information included in the Original Filing, fairly present in all material respects our financial condition, results of operations and cash flows as of, and for, the periods presented.

Management's Report on Internal Control Over Financial Reporting

Management of the Company is responsible for establishing and maintaining adequate internal control over financial reporting. Internal control over financial reporting is defined in Rule 13a-15(f) promulgated under the Exchange Act as a process, designed by, or under the supervision of the Company's principal executive and principal financial officers and effected by the Company's Board of Directors, management and other personnel, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with accounting principles generally accepted in the United States of America. Internal control over financial reporting includes maintaining records that in reasonable detail accurately and fairly reflect our transactions and disposition of assets; providing reasonable assurance that transactions are recorded as necessary for preparation of our financial statements; providing reasonable assurance that receipts and expenditures are made only in accordance with management and Board authorizations; and providing reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of our assets that could have a material effect on our financial statements.

Management excluded from its assessment the internal control over financial reporting at ReShape Medical, which was acquired on October 2, 2017 and whose assets constituted 48% of consolidated assets and 56% of consolidated revenues as of and for the year ended December 31, 2017. This exclusion was in accordance with Securities and Exchange Commission guidance that an assessment of a recently acquired business may be omitted in management's report on internal control over financial reporting in the year of acquisition.

Because of its inherent limitations, internal control over financial reporting is not intended to provide absolute assurance that a misstatement of our financial statements would be prevented or detected. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions or that the degree of compliance with policies or procedures may deteriorate. Management, with

the participation of the Company's principal executive and principal financial officers, conducted an evaluation of the effectiveness of our internal control over financial reporting as of December 31, 2017 based on the framework and criteria established in Internal Control - Integrated Framework (2013) issued by the Committee of Sponsoring Organizations of the Treadway Commission. This evaluation included review of the documentation of controls, evaluation of the design effectiveness of controls, testing of the operating effectiveness of controls and a conclusion on this evaluation. Based on the foregoing, management concluded that the Company's internal control over financial reporting was not effective as of December 31, 2017 for the reasons described below.

Management has identified a material weakness in the design of its internal control over financial reporting related to accounting for acquisition-related deferred income taxes. We have developed a remediation plan for this material weakness, which is described below under "Remediation Activities."

In connection with the completion of the Company's year-end audit procedures and the preparation of its Annual Report on Form 10-K, management determined an error existed in purchase accounting related to its acquisition of BarioSurg, Inc. that were reflected in the Company's unaudited condensed consolidated balance sheets as of June 30, 2017 and September 30, 2017 . Specifically, in its allocation of the BarioSurg, Inc. purchase price, the Company failed to record a $7.6 million deferred income tax liability related to the indefinite-lived intangible asset, In-Process Research and Development, with an offsetting increase in Goodwill in its condensed consolidated balance sheets. The Company does not believe that these balance sheet misstatements as of June 30, 2017 and September 30, 2017 were material to its financial statements on those dates taken as a whole. However, the omission of this deferred tax liability led to what we have concluded to be a material weakness in internal control over financial reporting. Specifically, because the unrecorded deferred tax liability relates to an indefinite-lived intangible asset, the Company cannot offset the deferred tax liability with available deferred tax assets when determining its net deferred tax position under generally accepted accounting principles. As a result, when the unrecorded deferred tax liability required remeasurement due to the December 22, 2017 enactment of the Tax Cuts and Jobs Act, this in turn required recognition of a $2.3 million income tax benefit in our consolidated statement of operations for the quarter and year ended December 31, 2017. While the Company utilizes the assistance of an external income tax specialist to prepare its annual tax provision, management has concluded there to be a material weakness in the design of the Company's income tax controls in that the specialist was not adequately engaged to assist in the determination of deferred taxes associated with material transactions, such as the business acquisitions occurring in 2017.

This annual report does not include an attestation report of the Company's registered public accounting firm regarding internal control over financial reporting. Management's report was not subject to attestation by the Company's registered public accounting firm pursuant to permanent exemption rules of the Dodd-Frank Wall Street Reform and Consumer Protection Act that permit the Company to provide only management's report in this annual report.

Changes in Internal Control Over Financial Reporting

In conjunction with the acquisitions of BarioSurg and ReShape Medical during the year ended December 31, 2017, the Company implemented new controls over the initial valuation of goodwill and other intangible assets as well as the evaluation of those assets for impairment.

Material Weakness Remediation Activities

The Company, the Audit Committee and the Company's Board of Directors are committed to maintaining a strong internal control environment, and are currently evaluating remediation efforts that will be designed to enhance our control environment. We expect that the remediation efforts will include engaging its external income tax service provider to specifically analyze deferred income tax attributes of acquisitions and other significant transactions and to perform such analysis as promptly as possible after such transactions. Once the remediation plan is finalized and implemented, the identified material weaknesses in internal control over financial reporting will be considered fully addressed when the relevant internal controls have been in operation for a sufficient period of time for our management to conclude that the material weaknesses have been fully remediated and our internal control over financial reporting is effective. The Company will work to design, implement and rigorously test these new controls in order to make these final determinations.

Other than these items and the material weakness noted above, there were no changes in our internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) of the Exchange Act) that occurred during the year

ended December 31, 2017 that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

ITEM 9B. ***OTHER INFORMATION***

None.

PART III.

Certain information required by Part III is omitted from this report, and is incorporated by reference to our Definitive Proxy Statement to be filed with the SEC pursuant to Regulation 14A (the Proxy Statement) in connection with our 2018 Annual Meeting of Stockholders.

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

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

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

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

ITEM 11. *EXECUTIVE COMPENSATION*

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

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

(a) Equity Compensation Plans

The following table sets forth information as of December 31, 2017 with respect to our equity compensation plans:

Plan Category	Number of Securities to be Issued Upon Exercise of Outstanding Options, Warrants and Rights	Weighted-Average Exercise Price of Outstanding Options, Warrants and Rights	Number of Securities Remaining Available for Future Issuance Under Equity Compensation Plans (Excluding Securities Reflected in Second Column)
Equity compensation plans approved by security holders	2,530,755 (1)	$ 8.68	5,964,522 (2)
Equity compensation plans not approved by security holders	1,299,692 (3)	3.75	—
Total	3,830,447	$ 7.01	5,964,522

(1) Consists of options awarded under the Amended and Restated 2003 Stock Incentive Plan, which was amended and restated as the Second Amended and Restated 2003 Stock Incentive Plan (the “Plan) on December 12, 2016.

(2) Represents the maximum number of shares of common stock available to be awarded under the Plan as of December 31, 2017 adjusted to reflect: (i) the Company’s board of directors’ February 8, 2017 action to adjust the number of shares reserved under the Plan from 40,000,000 to 3,000,000 in connection with the Company’s recapitalization and (ii) approval by the Company’s stockholders to increase the number of common shares reserved under the Plan by 5,500,000 on December 19, 2017

(3) Consists of the inducement grants awarded in 2015, 2016 and 2017 to newly hired executives and other employees.

(b) Security Ownership

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

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

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

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

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

PART IV.

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

(a) *Financial Statements and Schedules:* Consolidated Financial Statements for the three years ended December 31, 2017 are included in Part II, Item 8 of this Annual Report on Form 10-K. All schedules are omitted because they are not applicable or the required information is shown in the consolidated financial statements or notes thereto.

(b) *Exhibits:* The list of exhibits on the Exhibit Index on page 108 of this report is incorporated herein by reference.

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

Not applicable

EXHIBIT INDEX

Exhibit Number	Description of Document
1.1	Underwriting Agreement, dated August 11, 2017, among the Company and Ladenburg Thalmann & Co. Inc., as representative of the underwriters named therein (incorporated by reference to Exhibit 1.1 to the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission on August 16, 2017).
2.1	Agreement and Plan of Merger, dated as of May 22, 2017, by and among EnteroMedics Inc., BarioSurg, Inc., Acorn Subsidiary Inc., Acorn Subsidiary Holdings LLC and the Stockholder Representative (incorporated by reference to Exhibit 2.1 to the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission on May 23, 2017).
2.2	Agreement and Plan of Merger, dated as of October 2, 2017, by and among the Company, ReShape Medical, Inc., Nixon Subsidiary Inc., Nixon Subsidiary Holdings LLC and the ReShape Holder Committee (incorporated by reference to Exhibit 2.1 to the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission on October 3, 2017).
3.1	Sixth Amended and Restated Certificate of Incorporation of the Company. (Incorporated herein by reference to Exhibit 3.1 to the Company's Current Report on Form 8-K filed on December 28, 2016 (File No. 1-33818)).
3.2	Form of Certificate of Designation of Series A Preferred Stock. (Incorporated herein by reference to Exhibit 4.1 to the Company's Registration Statement on Form S-1 filed on January 11, 2017 (File No. 333-213704)).
3.3	Form of Series A Preferred Stock Certificate. (Incorporated herein by reference to Exhibit 4.1 to the Company's Registration Statement on Form S-1 filed on January 11, 2017 (File No. 333-213704)).
3.4	Amended and Restated Bylaws of the Company, as currently in effect. (Incorporated herein by reference to Exhibit 3.4 to Amendment No. 1 to the Company's Registration Statement on Form S-1 filed on July 6, 2007 (File No. 333-143265)).
3.5	Certificate of Designation of Conditional Convertible Preferred Stock (incorporated by reference to Exhibit 3.1 to the Company's Current Report on Form 8-K/A filed with the Securities and Exchange Commission on August 1, 2017).
3.6	Certificate of Designation of Series B Convertible Preferred Stock (incorporated by reference to Exhibit 3.1 to the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission on August 16, 2017).
3.7	Certificate of Designation of Series C Convertible Preferred Stock (incorporated by reference to Exhibit 3.1 to the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission on October 3, 2017).
3.8	Certificate of Amendment to Sixth Amended and Restated Certificate of Incorporation of the Company, dated October 20, 2017 (incorporated by reference to Exhibit 3.1 to the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission on October 23, 2017).
3.9	Certificate of Amendment to Sixth Amended and Restated Certificate of Incorporation of the Company, dated October 26, 2017 (incorporated by reference to Exhibit 3.1 to the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission on October 30, 2017).
10.1	Form of Warrant to purchase stock under Loan and Security Agreement, dated April 16, 2012, between the Company and Silicon Valley Bank. (Incorporated herein by reference to Exhibit 10.4 to the Company's Quarterly Report on Form 10-Q filed on May 10, 2012 (File No. 1-33818)).

10.2	Securities Purchase Agreement, dated as of February 22, 2013, by and between Craig-Hallum Capital Group LLC and the Company. (Incorporated herein by reference to Exhibit 1.1 to the Company's Current Report on Form 8-K filed on February 22, 2013 (File No. 1-33818)).
10.3	Form of Common Stock Warrant, dated as of February 22, 2013, by and between the Company and several accredited investors. (Incorporated herein by reference to Exhibit 4.1 to the Company's Current Report on Form 8-K filed on February 22, 2013 (File No. 1-33818)).
10.4	Sales Agreement, dated as of June 13, 2014, by and between Cowen and Company, LLC and the Company. (Incorporated herein by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed on June 13, 2014 (File No. 1-33818)).
10.5	Amendment No. 1 to the Sales Agreement, dated as of August 25, 2015, by and between Cowen and Company, LLC and the Company. (Incorporated herein by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed on September 1, 2015 (File No. 1-33818)).
10.6	Underwriting Agreement, dated as of July 7, 2015, by and between Canaccord Genuity Inc. and the Company. (Incorporated herein by reference to Exhibit 1.1 to the Company's Current Report on Form 8-K filed on July 7, 2015 (File No. 1-33818)).
10.7	Form of Series A Warrant, dated as of July 8, 2015, by and between the Company and several accredited investors. (Incorporated herein by reference to Exhibit 4.1 to the Company's Current Report on Form 8-K filed on July 7, 2015 (File No. 1-33818)).
10.8	Form of Series C Warrant, dated as of July 8, 2015, by and between the Company and several accredited investors. (Incorporated herein by reference to Exhibit 4.2 to the Company's Current Report on Form 8-K filed on July 7, 2015 (File No. 1-33818)).
10.9	Form of Securities Purchase Agreement. (Incorporated herein by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed on November 5, 2015 (File No. 1-33818)).
10.10	Form of Amendment No. 1 to the Securities Purchase Agreement dated November 4, 2015, between the Company and the buyers listed therein. (Incorporated herein by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed on May 6, 2016 (File No. 1-33818)).
10.11	Form of Amendment No. 2 to the Securities Purchase Agreement dated November 4, 2015, as amended by Amendment No.1 thereto dated May 2, 2016, among the Company and the buyers listed therein. (Incorporated herein by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed on July 15, 2016 (File No. 1-33818)).
10.12	Form of Senior Convertible Note. (Incorporated herein by reference to Exhibit 4.1 to the Company's Current Report on Form 8-K filed on November 5, 2015 (File No. 1-33818)).
10.13	Form of Warrant. (Incorporated herein by reference to Exhibit 4.2 to the Company's Current Report on Form 8-K filed on November 5, 2015 (File No. 1-33818)).
10.14	Form of Underwriting Agreement. (Incorporated herein by reference to Exhibit 1.1 to the Company's Registration Statement on Form S-1 filed on January 11, 2017 (File No. 333-213704)).
10.15	Form of Warrant to purchase shares of Common Stock. (Incorporated herein by reference to Exhibit 4.3 to the Company's Registration Statement on Form S-1 filed on January 11, 2017 (File No. 333-213704)).
10.16	Warrant Agency Agreement, by and between the Company and Wells Fargo Bank, National Association, dated January 20, 2017. (Incorporated herein by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed on January 24, 2017 (File No. 1-33818)).
10.17†	Second Amended and Restated 2003 Stock Incentive Plan. (Incorporated herein by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed on February 14, 2017 (File No. 1-33818)).

10.18†	Standard form of Incentive Stock Option Agreement pursuant to the Amended and Restated 2003 Stock Incentive Plan. (Incorporated herein by reference to Exhibit 10.13 to the Company's Registration Statement on Form S-1 filed on May 25, 2007 (File No. 333-143265)).
10.19†	Standard form of Non-Incentive Stock Option Agreement pursuant to the Amended and Restated 2003 Stock Incentive Plan. (Incorporated herein by reference to Exhibit 10.14 to the Company's Registration Statement on Form S-1 filed on May 25, 2007 (File No. 333-143265)).
10.20†	Form of Non-Incentive Stock Option Agreement for the new options granted October 29, 2010 pursuant to the option exchange program. (Incorporated herein by reference to Exhibit 10.7 to the Company's Quarterly Report on Form 10-Q filed on November 8, 2010 (File No. 1-33818)).
10.21†	Standard form of Restricted Stock Agreement. (Incorporated herein by reference to Exhibit 10.15 to the Company's Registration Statement on Form S-1 filed on May 25, 2007 (File No. 333-143265)).
10.22†	Form of Indemnification Agreement entered into by and between the Company and each of its executive officers and directors. (Incorporated herein by reference to Exhibit 10.17 to Amendment No. 1 to the Company's Registration Statement on Form S-1 filed on July 6, 2007 (File No. 333-143265)).
10.23†	Inducement Option Plan. (Incorporated herein by reference to Exhibit 10.4 to the Company's Current Report on Form 8-K filed on January 22, 2016 (File No. 1-33818)).
10.24†	Form of Non-Incentive Stock Option Agreement pursuant to the Inducement Option Plan. (Incorporated herein by reference to Exhibit 10.33 to the Company's Annual Report on Form 10-K filed on March 28, 2016 (File No. 1-33818)).
10.25†	Form of Non-Incentive Stock Option Agreement for New Options granted June 27, 2016 pursuant to the option exchange offer. (Incorporated herein by reference to Exhibit (d)(6) to the Company's Tender Offer Statement under Section 14(d)(1) on Schedule TO filed on May 27, 2016).
10.26†	Executive Employment Agreement, dated October 28, 2015, by and between the Company and Dan W. Gladney. (Incorporated herein by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed on November 2, 2015 (File No. 1-33818)).
10.27†	Form of Non-Incentive Stock Option Agreement for non-plan executive inducement option grants. (Incorporated herein by reference to Exhibit 10.47 to the Company's Annual Report on Form 10-K filed on March 28, 2016 (File No. 1-33818)).
10.28†	Executive Employment Agreement, dated January 19, 2016, by and between the Company and Naqeeb "Nick" Ansari. (Incorporated herein by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed on January 22, 2016 (File No. 1-33818)).
10.29†	Executive Employment Agreement, dated January 18, 2016, by and between the Company and Peter DeLange. (Incorporated herein by reference to Exhibit 10.2 to the Company's Current Report on Form 8-K filed on January 22, 2016 (File No. 1-33818)).
10.30†	Executive Employment Agreement, dated January 22, 2016, by and between the Company and Paul Hickey. (Incorporated herein by reference to Exhibit 10.3 to the Company's Current Report on Form 8-K filed on January 22, 2016 (File No. 1-33818)).
10.31†	Executive Employment Agreement, dated October 3, 2016, by and between the Company and Scott Youngstrom. (Incorporated herein by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed on October 6, 2016 (File No. 1-33818)).
10.32†	Management Incentive Plan. (Incorporated herein by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed on February 12, 2008 (File No. 1-33818)).
10.33†	Amendments to the Management Incentive Plan described in Item 5.02(e). (Incorporated herein by reference to Item 5.02(e) of the Company's Current Report on Form 8-K filed on May 10, 2016 (File No. 1-33818)).
10.34†	Amendments to the Management Incentive Plan described in Item 5.02(e). (Incorporated herein by reference to Item 5.02(e) of the Company's Current Report on Form 8-K filed on September 20, 2016 (File No. 1-33818)).

10.35	Lease Agreement, effective October 1, 2008, by and between the Company and Roseville Properties Management Company. (Incorporated herein by reference to Exhibit 10.23 to the Company's Annual Report on Form 10-K filed on March 12, 2009 (File No. 1-33818)).
10.36	First Amendment to Lease Agreement, entered into August 25, 2015, by and between the Company and Roseville Properties Management Company. (Incorporated herein by reference to Exhibit 10.2 to the Company's Current Report on Form 8-K filed on September 1, 2015 (File No. 1-33818)).
10.37	Exclusive Federal Government Business Channel Sales Agreement, effective April 25, 2016, by and between the Company and Academy Medical, LLC, as amended July 26, 2016. (Incorporated herein by reference to Exhibit 10.1 to the Company's Quarterly Report on Form 10-Q filed on August 12, 2016 (File No. 1-33818)).
10.38*	Lease agreement, entered into January 20, 2017, by and between ReShape Medical, Inc. and San Clemente Holdings, LLC.
10.39*	Lease agreement, entered into March 28, 2008 and as amended, by and between ReShape Medical, Inc. and Richard G. Henderson.
10.40*	Consulting Agreement, entered into March 1, 2017, by and between ReShape Medical, Inc. and Human Capital SAL.
10.41*	International Distributorship Agreement, entered into May 24, 2017, by and between ReShape Medical, Inc. and Al Danah Medical Company.
10.42*	International Distributorship Agreement, entered into May 26, 2017, by and between ReShape Medical, Inc. and Al Zahrawi Medical Supplies LLC.
10.43*	International Distributorship Agreement, entered into May 11, 2017, by and between ReShape Medical, Inc. and Shifli Gulf for Trading Drugs & Equipment and Devices Company.
10.44*	International Distributorship Agreement, entered into July 31, 2017, by and between ReShape Medical, Inc. and Dar Al Zahrawi Medical LLC.
10.45*	Royalty Agreement, entered into December 18, 2006 and as amended, by and between Abdominis, Inc. and Intersect Partners, LLC.
10.46*	Royalty Agreement, entered into December 18, 2006, by and between Abdominis, Inc. and John Alverdy, M.D.
10.47	Clinical Trial Agreement by and between EnteroMedics Inc. and Southern California Permanente Medical Group effective as of June 1, 2017 (Incorporated herein by reference to Exhibit 10.1 to the Company's Quarterly Report on Form 10-Q filed on May 15, 2017 (File No. 1-33818)).
10.48	Voting Agreement and Irrevocable Proxy, dated as of May 22, 2017, by and between EnteroMedics Inc. and Dr. Raj Nihalani (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission on May 23, 2017)
10.49†	Executive Employment Agreement, dated as of May 22, 2017, by and between EnteroMedics Inc. and Dr. Raj Nihalani (incorporated by reference to Exhibit 10.2 to the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission on May 23, 2017)
10.50†	Non-Competition and Non-Solicitation Agreement, dated as of May 22, 2017, by and between EnteroMedics Inc. and Dr. Raj Nihalani (incorporated by reference to Exhibit 10.4 to the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission on May 23, 2017)
10.51	Form of Warrant, dated August 16, 2017 (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission on August 16, 2017).

10.52	Warrant Agency Agreement, by and between the Company and Wells Fargo Bank, National Association, dated August 16, 2017 (incorporated by reference to Exhibit 10.2 to the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission on August 16, 2017).
10.53	Form of Voting and Standstill Agreement between the Company and certain ReShape Medical, Inc. Holders (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission on October 3, 2017).
10.54†	2017 Employment Inducement Incentive Award Plan (Incorporated herein by reference to Exhibit 10.4 to the Company's Quarterly Report on Form 10-Q filed on November 14, 2017 (File No. 1-33818)).
10.55†	Form of Stock Option Grant Notice and Stock Option Agreement under 2017 Employment Inducement Incentive Award Plan (Incorporated herein by reference to Exhibit 10.5 to the Company's Quarterly Report on Form 10-Q filed on November 14, 2017 (File No. 1-33818)).
10.56†	Form of Stock Option Grant Notice and Stock Option Agreement under Second Amended and Restated 2003 Stock Incentive Plan (Incorporated herein by reference to Exhibit 10.6 to the Company's Quarterly Report on Form 10-Q filed on November 14, 2017 (File No. 1-33818)).
10.57†	Second Amended and Restated 2003 Stock Incentive Plan, as amended on December 19, 2017 (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission on December 22, 2017)
14.1	Code of Conduct and Ethics of the Company. (Incorporated herein by reference to Exhibit 14.1 to the Company's Registration Statement on Form S-1 filed on May 25, 2007 (File No. 333-143265)).
23.1*	Consent of Deloitte & Touche LLP, Independent Registered Public Accounting Firm.
24.1*	Power of Attorney (included on signature page to this Form 10-K).
31.1*	Certification of Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
31.2*	Certification of Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
32.1*	Certification of Chief Executive Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
32.2*	Certification of Chief Financial Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
101*	Financial statements from the Annual Report on Form 10-K of the Company for the year ended December 31, 2017, formatted in Extensible Business Reporting Language: (i) the Consolidated Balance Sheets, (ii) the Consolidated Statements of Operations, (iii) the Consolidated Statements of Stockholders' Equity; (iv) the Consolidated Statements of Cash Flows and (v) the Notes to Consolidated Financial Statements.

* Filed herewith.

† Indicates management contract or compensation plan or agreement.

SIGNATURES

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

RESHAPE LIFESCIENCES INC.

By: /S/ DAN W. GLADNEY
Dan W. Gladney
Chairman, President and Chief Executive Officer

Dated: April 2, 2018

POWERS OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints Dan W. Gladney and Scott P. Youngstrom, and each of them, as his true and lawful attorney-in-fact and agent, with full power of substitution and resubstitution, for him and in his name, place and stead, in any and all capacities, to sign any and all amendments to this report, and to file the same, with exhibits thereto and other documents in connection therewith, with the Securities Exchange Commission, granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite and necessary to be done, as fully to all intents and purposes as he might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents, or any of them or their substitutes may lawfully do or cause to be done by virtue hereof.

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

Signature	Title	Date
/S/ DAN W. GLADNEY **Dan W. Gladney**	Chairman of the Board, President, and Chief Executive Officer (principal executive officer)	April 2, 2018
/S/ SCOTT P. YOUNGSTROM **Scott P. Youngstrom**	Senior Vice President and Chief Financial Officer (principal financial and accounting officer)	April 2, 2018
/S/ GARY D. BLACKFORD **Gary D. Blackford**	Director	April 2, 2018
/S/ MICHAEL Y. MASHAAL, M.D. **Michael Y. Mashaal, M.D.**	Director	April 2, 2018
/S/ BOBBY I. GRIFFIN **Bobby I. Griffin**	Director	April 2, 2018
/S/ LORI C. MCDOUGAL **Lori McDougal**	Director	April 2, 2018
/S/ JON T. TREMMEL **Jon T. Tremmel**	Director	April 2, 2018

AIR COMMERCIAL REAL ESTATE ASSOCIATION

STANDARD INDUSTRIAL/COMMERCIAL SINGLE-TENANT LEASE -- GROSS

(DO NOT USE THIS FORM FOR MULTI-TENANT BUILDINGS)

1. **Basic Provisions ("Basic Provisions").**

1.1 **Parties:** This Lease ("Lease"), dated for reference purposes only January 20, 2017, is made by and between San Clemente Holdings, LLC. ("Lessor") and RoShapo Medical Inc., a Delaware Corporation ("Lessee"), (collectively the "Parties," or individually a "Party").

1.2 **Premises:** That certain real property, including all improvements therein or to be provided by Lessor under the terms of this Lease, and commonly known as 1001 Calle Amanecer, San Clemente, located in the County of Orange, State of California, and generally described as (describe briefly the nature of the property and, if applicable, the "Project", if the property is located within a Project) an approximate 14,479 sq.ft. freestanding office/warehouse building ("Premises"). (See also Paragraph 2)

1.3 **Term:** 5 years and 3 months ("Original Term") commencing April 1, 2017 ("Commencement Date") and ending June 30, 2022 ("Expiration Date"). (See also Paragraph 3)

1.4 **Early Possession:** If the Premises are available Lessee may have non-exclusive possession of the Premises commencing March 1, 2017 ("Early Possession Date"). (See also Paragraphs 3.2 and 3.3)

1.5 **Base Rent:** $24,614.30 per month ("Base Rent"), payable on the first day of each month commencing April 1, 2017. (See also Paragraph 4)

☐ If this box is checked, there are provisions in this Lease for the Base Rent to be adjusted. See Paragraph _____

1.6 **Base Rent and Other Monies Paid Upon Execution:**

(a) **Base Rent:** $24,614.30 for the period April 1, 2017 to April 30,2017.

(b) **Security Deposit:** $28,000.00 ("Security Deposit"). (See also Paragraph 5)

(c) **Association Fees:** $897.58 for the period April 1, 2017 thru April 30, 2017

(d) **Other:** $N/A for N/A.

(e) **Total Due Upon Execution of this Lease:** $53,511.58.

1.7 **Agreed Use:** General office and warehouse use for medical supply company (See also Paragraph 6)

1.8 **Insuring Party:** Lessor is the "Insuring Party". The annual "Base Premium" is $2,059.00 (See also Paragraph 8)

1.9 **Real Estate Brokers:** (See also Paragraph 15 and 25)

(a) **Representation:** The following real estate brokers (the "Brokers") and brokerage relationships exist in this transaction (check applicable boxes):

☑ Johnston Pacific Commercial Real Estate, Inc. represents Lessor exclusively ("Lessor's Broker");

☑ CBRE Commercial Real Estate Services represents Lessee exclusively ("Lessee's Broker"); or

☐ _____ represents both Lessor and Lessee ("Dual Agency").

(b) **Payment to Brokers:** Upon execution and delivery of this Lease by both Parties, Lessor shall pay to the Brokers the brokerage fee agreed to in a separate written agreement ~~(or if there is no such agreement, the sum of _____ or _____% of the total Base Rent)~~ for the brokerage services rendered by the Brokers.

1.10 **Guarantor.** The obligations of the Lessee under this Lease are to be guaranteed by N/A ("Guarantor"). (See also Paragraph 37)

1.11 **Attachments.** Attached hereto are the following, all of which constitute a part of this Lease:

☑ an Addendum consisting of Paragraphs 1 through 8;

☑ a plot floor plan depicting the Premises;

☐ a current set of the Rules and Regulations;

☐ a Work Letter;

☐ a energy disclosure addendum is attached;

☑ other (specify): Option to Extend, Disclosure for Lease (Exhibit B), Disclosure Regarding Real Estate Agency Relationship, Parking (Exhibit C)

2. **Premises.**

2.1 **Letting.** Lessor hereby lenses to Lessee, and Lessee hereby leases from Lessor, the Premises, for the term, at the rental, and upon all of the terms, covenants and conditions set forth in this Lease. While the approximate square footage of the Premises may have been used in the marketing of the Premises for purposes of comparison, the Base Rent stated herein is NOT tied to square footage and is not subject to adjustment should the actual size be determined to be different. **Note: Lessee is advised to verify the actual size prior to executing this Lease.**

2.2 **Condition.** Lessor shall deliver the Premises to Lessee broom clean and free of debris on the Commencement Date or the Early Possession Date, whichever first occurs ("Start Date"), and, so long as the required service contracts described in Paragraph 7.1(b) below are obtained by Lessee and in effect within thirty days following the Start Date, warrants that the existing electrical, plumbing, fire sprinkler, lighting, heating, ventilating and air conditioning systems ("HVAC"), loading doors, sump pumps, if any, and all other such elements in the Premises, other than those constructed by Lessee, shall be in good operating condition on said date and that the surface and structural elements of the roof, bearing walls and foundation of any buildings on the Premises (the "Building") shall be free of material defects, and that the Unit does not contain hazardous levels of any mold or fungi defined as toxic under applicable state or federal law. If a non-compliance with said warranty exists as of the Start Date, or if one of such systems or elements should malfunction or fail within the appropriate warranty period, Lessor shall, as Lessor's sole obligation with respect to such matter, except as otherwise provided in this Lease, promptly after receipt of written notice from Lessee setting forth with specificity the nature and extent of such non-compliance, malfunction or failure, rectify same at Lessor's expense. The warranty periods shall be as follows: (i) 6 months as to the HVAC systems, and (ii) 30 days as to the remaining systems and other elements of the Building. If Lessee does not give Lessor the required notice within the appropriate warranty period, correction of any such non-compliance, malfunction or failure shall be the obligation of Lessee at Lessee's sole cost and expense, except for the roof, foundations, and bearing walls which are handled as provided in paragraph 7. Lessor also warrants, that unless otherwise specified in writing, Lessor is unaware of (i) any recorded Notices of Default affecting the Premise; (ii) any delinquent amounts due under any loan secured by the Premises; and (iii) any bankruptcy proceeding affecting the Premises.

2.3 **Compliance.** Lessor warrants that to the best of its knowledge the improvements on the Premises comply with the building codes, applicable laws, covenants or restrictions of record, regulations, and ordinances ("Applicable Requirements") that were in effect at the time that each improvement, or portion thereof, was constructed. Said warranty does not apply to the use to which Lessee will put the Premises, modifications which may be required by the Americans with Disabilities Act or any similar laws as a result of Lessee's use (see Paragraph 50), or to any Alterations or Utility Installations (as defined in Paragraph 7.3(a)) made or to be made by Lessee. **NOTE: Lessee is responsible for determining whether or not the Applicable Requirements, and especially the zoning, are appropriate for Lessee's intended use, and acknowledges that past uses of the Premises may no longer be allowed.** If the Premises do not comply with said warranty, Lessor shall, except as otherwise provided, promptly after receipt of written notice from Lessee setting forth with specificity the nature and extent of such non-compliance, rectify the same at Lessor's expense. If Lessee does not give Lessor written notice of a non-compliance with this warranty with respect to ascertainable defects within 6 months following the Start Date, correction of that non-compliance shall be the obligation of Lessee at Lessee's sole cost and expense. If the Applicable Requirements are hereafter changed so as to require during the term of this Lease the construction of an addition to or an alteration of the Premises and/or Building, the remediation of any Hazardous Substance, or the reinforcement or other physical modification of the Unit, Premises and/or Building ("Capital Expenditure"), Lessor and Lessee shall allocate the cost of such work as follows:

(a) Subject to Paragraph 2.3(c) below, if such Capital Expenditures are required as a result of the specific and unique use of the Premises by Lessee as compared with uses by tenants in general, Lessee shall be fully responsible for the cost thereof, provided, however that if such Capital Expenditure is required during the last 2 years of this Lease and the cost thereof exceeds 6 months' Base Rent, Lessee may instead terminate this Lease unless Lessor notifies Lessee, in writing, within 10 days after receipt of Lessee's termination notice that Lessor has elected to pay the difference between the actual cost thereof and an amount equal to 6 months' Base Rent. If Lessee elects termination, Lessee shall immediately cease the use of the Premises which requires such Capital Expenditure and deliver to Lessor written notice specifying a termination date at least 90 days thereafter. Such termination date shall, however, in no event be later earlier than the last day that Lessee could legally utilize the Premises without commencing such Capital Expenditure.

(b) If such Capital Expenditure is not the result of the specific and unique use of the Premises by Lessee (such as, governmentally mandated seismic modifications arising from Lessee's unique use of the Premises), then Lessor shall pay for such Capital Expenditure and Lessee shall only be obligated to pay, each month during the remainder of the term of this Lease or any extension thereof, on the date that on which the Base Rent is due, an amount equal to 1/144th of the portion of such costs reasonably attributable to the Premises. Lessee shall pay interest on the balance but may prepay its obligation at any time. If, however, such Capital Expenditure is required during the last 2 years of this Lease or if Lessor reasonably determines that it is not economically feasible to pay its share thereof, Lessor shall have the option to terminate this Lease upon 90 days prior written notice to Lessee unless Lessee notifies Lessor, in writing, within 10 days after receipt of Lessor's termination notice that Lessee will pay for such Capital Expenditure. If Lessor does not elect to terminate, and fails to tender its share of any such Capital Expenditure, Lessee may advance such funds and deduct same, with interest, from Rent until Lessor's share of such costs have been fully paid. If Lessee is unable to finance Lessor's share, or if the balance of the Rent due and payable for the remainder of this Lease is not sufficient to fully reimburse Lessee on an offset basis, Lessee shall have the right to terminate this Lease upon 30 days written notice to Lessor. The Parties agree that the Agreed Use of the Premises by Lessee shall not be considered a use which can or does result in remediation of any existing Hazardous Substance Condition effecting the Project.

(c) Notwithstanding the above, the provisions concerning Capital Expenditures are intended to apply only to non-voluntary, unexpected, and new Applicable Requirements. If the Capital Expenditures are instead triggered by Lessee as a result of an actual or proposed change in use, change in intensity of use, or modification to the Premises then, and in that event, Lessee shall either: (i) immediately cease such changed use or intensity of use and/or take such other steps as may be necessary to eliminate the requirement for such Capital Expenditure, or (ii) complete such Capital Expenditure at its own expense. Lessee shall not, however, have any right to terminate this Lease.

2.4 **Acknowledgements.** Lessee acknowledges that: (a) it has been given an opportunity to inspect and measure the Premises, (b) it has been advised by Lessor and/or Brokers to satisfy itself with respect to the size and condition of the Premises (including but not limited to the electrical, HVAC and fire sprinkler systems, security, environmental aspects, and compliance with Applicable Requirements and the Americans with Disabilities Act), and their suitability for Lessee's intended use, (c) Lessee has made such investigation as it deems necessary with reference to such matters and assumes all responsibility therefor as the same relate to its occupancy of the Premises, subject to the express obligations, representations and warranties of Lessor contained herein(d) it is not relying on any representation as to the size of the Premises made by Brokers or Lessor, (e) the square footage of the Premises was not material to Lessee's decision to lease the Premises and pay the Rent stated herein, and (f) neither Lessor, Lessor's agents, nor Brokers have made any oral or written representations or warranties with respect to said matters other than as set forth in this Lease. In addition, Lessor acknowledges that: (i) Brokers have made no representations, promises or warranties concerning Lessee's ability to honor the Lease or suitability to occupy the Premises, and (ii) it is Lessor's sole responsibility to investigate the financial capability and/or suitability of all proposed tenants.

2.5 **Lessee as Prior Owner/Occupant.** The warranties made by Lessor in Paragraph 2 shall be of no force or effect if immediately prior to the Start Date Lessee was the owner or occupant of the Premises. In such event, Lessee shall be responsible for any necessary corrective work.

3. **Term.**

3.1 **Term.** The Commencement Date, Expiration Date and Original Term of this Lease are as specified in Paragraph 1.3.

3.2 **Early Possession.** Any provision herein granting Lessee Early Possession of the Premises is subject to and conditioned upon the Premises being available for such possession prior to the Commencement Date. Any grant of Early Possession only conveys a non-exclusive right to occupy the Premises. If Lessee totally or partially occupies the Premises prior to the Commencement Date, the obligation to pay Base Rent shall be abated for the period of such Early Possession. All other terms of this Lease (including but not limited to the obligations to pay Real Property Taxes and insurance premiums and to maintain the Premises) shall be in effect during such period. Any such Early Possession shall not affect the Expiration Date.

3.3 **Delay In Possession.** Lessor agrees to use its best commercially reasonable efforts to deliver possession of the Premises to Lessee by the Commencement Date. If, despite said efforts, Lessor is unable to deliver possession by such date, Lessor shall not be subject to any liability therefor, nor shall such failure affect the validity of this Lease or change the Expiration Date. Lessee shall not, however, be obligated to pay Rent or perform its other obligations until Lessor delivers possession of the Premises and any period of rent abatement that Lessee would otherwise have enjoyed shall run from the date of delivery of possession and continue for a period equal to what Lessee would otherwise have enjoyed under the terms hereof, but minus any days of delay caused by the acts or omissions of Lessee. If possession is not delivered within 60 days after the Commencement Date, as the same may be extended under the terms of any Work Letter executed by Parties, Lessee may, at its option, by notice in writing within 10 days after the end of such 60 day period, cancel this Lease, in which event the Parties shall be discharged from all obligations hereunder. If such written notice is not received by Lessor within said 10 day period, Lessee's right to cancel shall terminate. If possession of the Premises is not delivered within 120 days after the Commencement Date, this Lease shall terminate unless other agreements are reached between Lessor and Lessee, in writing.

3.4 **Lessee Compliance.** Lessor shall not be required to deliver possession of the Premises to Lessee until Lessee complies with its obligation to provide evidence of insurance (Paragraph 8.5). Pending delivery of such evidence, Lessee shall be required to perform all of its

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obligations under this Lease from and after the Start Date, including the payment of Rent, notwithstanding Lessor's election to withhold possession pending receipt of such evidence of insurance. Further, if Lessee is required to perform any other conditions prior to or concurrent with the Start Date, the Start Date shall occur but Lessor may elect to withhold possession until such conditions are satisfied.

4. **Rent.**

4.1. **Rent Defined.** All monetary obligations of Lessee to Lessor under the terms of this Lease (except for the Security Deposit) are deemed to be rent ("Rent").

4.2 **Payment.** . Lessee shall cause payment of Rent to be received by Lessor in lawful money of the United States, without offset or deduction (except as specifically permitted in this Lease), on or before the day on which it is due. All monetary amounts shall be rounded to the nearest whole dollar. In the event that any invoice prepared by Lessor is inaccurate such inaccuracy shall not constitute a waiver and Lessee shall be obligated to pay the amount set forth in this Lease. Rent for any period during the term hereof which is for less than one full calendar month shall be prorated based upon the actual number of days of said month. Payment of Rent shall be made to Lessor at its address stated herein or to such other persons or place as Lessor may from time to time designate in writing. Acceptance of a payment which is less than the amount then due shall not be a waiver of Lessor's rights to the balance of such Rent, regardless of Lessor's endorsement of any check so stating. In the event that any check, draft, or other instrument of payment given by Lessee to Lessor is dishonored for any reason, Lessee agrees to pay to Lessor the sum of $25 in addition to any Late Charge and Lessor, at its option, may require all future payments to be made by Lessee to be by cashier's check if Lessee breaches its obligation to timely pay Base Rent more than two times in any annual period. Payments will be applied first to accrued late charges and attorney's fees, second to accrued interest, then to Base Rent, Insurance and Real Property Taxes, and any remaining amount to any other outstanding charges or costs.

4.3 **Association Fees.** In addition to the Base Rent, Lessee shall pay to Lessor each month an amount equal to any owner's association or condominium fees levied or assessed against the Premises. Said monies shall be paid at the same time and in the same manner as the Base Rent.

5. **Security Deposit.** Lessee shall deposit with Lessor upon execution hereof the Security Deposit as security for Lessee's faithful performance of its obligations under this Lease. If Lessee fails to pay Rent, or otherwise Defaults under this Lease, Lessor may use, apply or retain all or any portion of said Security Deposit for the payment of any amount already due Lessor, for Rents which will be due in the future, and/ or to reimburse or compensate Lessor for any liability, expense, loss or damage which Lessor may suffer or incur by reason thereof. If Lessor uses or applies all or any portion of the Security Deposit, Lessee shall within 10 days after written request therefor deposit monies with Lessor sufficient to restore said Security Deposit to the full amount required by this Lease. If the Base Rent increases during the term of this Lease, Lessee shall, upon written request from Lessor, deposit additional monies with Lessor so that the total amount of the Security Deposit shall at all times bear the same proportion to the increased Base Rent as the initial Security Deposit bore to the initial Base Rent. Should the Agreed Use be amended to accommodate a material change in the business of Lessee or to accommodate a sublessee or assignee, Lessor shall have the right to increase the Security Deposit to the extent necessary, in Lessor's reasonable judgment, to account for any increased wear and tear that the Premises may suffer as a result thereof. If a change in control of Lessee occurs during this Lease and following such change the financial condition of Lessee is, in Lessor's reasonable judgment, significantly reduced, Lessee shall deposit such additional monies with Lessor as shall be sufficient to cause the Security Deposit to be at a commercially reasonable level based on such change in financial condition. Lessor shall not be required to keep the Security Deposit separate from its general accounts. Within 90 days after the expiration or termination of this Lease, Lessor shall return that portion of the Security Deposit not used or applied by Lessor. Lessor shall upon written request provide Lessee with an accounting showing how that portion of the Security Deposit that was not returned was applied. No part of the Security Deposit shall be considered to be held in trust, to bear interest or to be prepayment for any monies to be paid by Lessee under this Lease.

6. **Use.**

6.1 **Use.** Lessee shall use and occupy the Premises only for the Agreed Use, or any other legal use which is reasonably comparable thereto, and for no other purpose. Lessee shall not use or permit the use of the Premises in a manner that is unlawful, creates damage, waste or a nuisance, or that disturbs occupants of or causes damage to neighboring premises or properties. Other than guide, signal and seeing eye dogs, Lessee shall not keep or allow in the Premises any pets, animals, birds, fish, or reptiles. Lessor shall not unreasonably withhold or delay its consent to any written request for a modification of the Agreed Use, so long as the same will not impair the structural integrity of the Improvements on the Premises or the mechanical or electrical systems therein, and/or is not significantly more burdensome to the Premises. If Lessor elects to withhold consent, Lessor shall within 7 days after such request give written notification of same, which notice shall include an explanation of Lessor's objections to the change in the Agreed Use.

6.2 **Hazardous Substances.**

(a) Reportable Uses Require Consent. The term "Hazardous Substance" as used in this Lease shall mean any product, substance, or waste whose presence, use, manufacture, disposal, transportation, or release, either by itself or in combination with other materials expected to be on the Premises, is either: (i) potentially injurious to the public health, safety or welfare, the environment or the Premises, (ii) regulated or monitored by any governmental authority, or (iii) a basis for potential liability of Lessor to any governmental agency or third party under any applicable statute or common law theory. Hazardous Substances shall include, but not be limited to, hydrocarbons, petroleum, gasoline, and/or crude oil or any products, by-products or fractions thereof. Lessee shall not engage in any activity in or on the Premises which constitutes a Reportable Use of Hazardous Substances without the express prior written consent of Lessor and timely compliance (at Lessee's expense) with all Applicable Requirements. "Reportable Use" shall mean (i) the installation or use of any above or below ground storage tank, (ii) the generation, possession, storage, use, transportation, or disposal of a Hazardous Substance that requires a permit from, or with respect to which a report, notice, registration or business plan is required to be filed with, any governmental authority, and/or (iii) the presence at the Premises of a Hazardous Substance with respect to which any Applicable Requirements requires that a notice be given to persons entering or occupying the Premises or neighboring properties. Notwithstanding the foregoing, Lessee may use any ordinary and customary materials reasonably required to be used in the normal course of the Agreed Use, ordinary office supplies (copier toner, liquid paper, glue, etc.) and common household cleaning materials, so long as such use is in compliance with all Applicable Requirements, is not a Reportable Use, and does not expose the Premises or neighboring property to any meaningful risk of contamination or damage or expose Lessor to any liability therefor. In addition, Lessor may condition its consent to any Reportable Use upon receiving such additional assurances as Lessor reasonably deems necessary to protect itself, the public, the Premises and/or the environment against damage, contamination, injury and/or liability, including, but not limited to, the installation (and removal on or before Lease expiration or termination) of protective modifications (such as concrete encasements) and/or increasing the Security Deposit.

(b) Duty to Inform Lessor. If Lessee knows, or has reasonable cause to believe, that a Hazardous Substance has come to be located in, on, under or about the Premises, other than as previously consented to by Lessor, Lessee shall immediately give written notice of such fact to Lessor, and provide Lessor with a copy of any report, notice, claim or other documentation which it has concerning the presence of such Hazardous Substance.

(c) Lessee Remediation. Lessee shall not cause or permit any Hazardous Substance to be spilled or released in, on, under, or about the Premises (including through the plumbing or sanitary sewer system) and shall promptly, at Lessee's expense, comply with all Applicable Requirements and take all investigatory and/or remedial action reasonably recommended, whether or not formally ordered or required, for the cleanup of any contamination of, and for the maintenance, security and/or monitoring of the Premises or neighboring properties, that was caused or materially contributed to by Lessee, or pertaining to or involving any Hazardous Substance brought onto the Premises during the term of this Lease, by or for Lessee, or any third party.

(d) Lessee Indemnification. Lessee shall indemnify, defend and hold Lessor, its agents, employees, lenders and ground lessor, if any, harmless from and against any and all loss of rents and/or damages, liabilities, judgments, claims, expenses, penalties, and attorneys' and consultants' fees arising out of or involving any Hazardous Substance brought onto the Premises by or for Lessee, or any third party (provided, however, that Lessee shall have no liability under this Lease with respect to underground migration of any Hazardous Substance under the Premises from adjacent properties not caused or contributed to by Lessee). Lessee's obligations shall include, but not be limited to, the effects of any contamination or injury to person, property or the environment created or suffered by Lessee, and the cost of investigation, removal, remediation, restoration and/or abatement, and shall survive the expiration or termination of this Lease. **No termination, cancellation or release agreement entered into by Lessor and Lessee shall release Lessee from its obligations under this Lease with respect to Hazardous Substances, unless specifically so agreed by Lessor in writing at the time of such agreement.**

(e) Lessor Indemnification. Except as otherwise provided in paragraph 8.7, Lessor and its successors and assigns shall indemnify, defend, reimburse and hold Lessee, its employees and lenders, harmless from and against any and all environmental damages, including the cost of remediation and reasonable attorney fees, which result from Hazardous Substances which existed on the Premises prior to Lessee's occupancy or which are caused by the gross negligence or willful misconduct of Lessor, its agents or employees. Lessor's obligations, as and when required by the Applicable Requirements, shall include, but not be limited to, the cost of investigation, removal, remediation, restoration and/or abatement, and shall survive the expiration or termination of this Lease.

(f) Investigations and Remediations. Lessor shall retain the responsibility and pay for any investigations or remediation measures required by governmental entities having jurisdiction with respect to the existence of Hazardous Substances on the Premises prior to Lessee's occupancy, unless such remediation measure is required as a result of Lessee's use (including "Alterations", as defined in paragraph 7.3(a)

below) of the Premises, in which event Lessee shall be responsible for such payment. Lessee shall cooperate fully in any such activities at the request of Lessor, including allowing Lessor and Lessor's agents to have reasonable access to the Premises at reasonable times in a way that minimizes disruption to Lessee's occupancy and business as much as practical in order to carry out Lessor's investigative and remedial responsibilities.

(g) **Lessor Termination Option.** If a Hazardous Substance Condition (see Paragraph 9.1(e)) occurs during the term of this Lease, unless Lessee is legally responsible therefor (in which case Lessee shall make the investigation and remediation thereof required by the Applicable Requirements and this Lease shall continue in full force and effect, but subject to Lessor's rights under Paragraph 6.2(d) and Paragraph 13), Lessor may, at Lessor's option, either (i) investigate and remediate such Hazardous Substance Condition, if required, as soon as reasonably possible at Lessor's expense, in which event this Lease shall continue in full force and effect, or (ii) if the estimated cost to remediate such condition exceeds 12 times the then monthly Base Rent or $100,000, whichever is greater, give written notice to Lessee, within 30 days after receipt by Lessor of knowledge of the occurrence of such Hazardous Substance Condition, of Lessor's desire to terminate this Lease as of the date 60 days following the date of such notice. In the event Lessor elects to give a termination notice, Lessee may, within 10 days thereafter, give written notice to Lessor of Lessee's commitment to pay the amount by which the cost of the remediation of such Hazardous Substance Condition exceeds an amount equal to 12 times the then monthly Base Rent or $100,000, whichever is greater. Lessee shall provide Lessor with said funds or satisfactory assurance thereof within 30 days following such commitment. In such event, this Lease shall continue in full force and effect, and Lessor shall proceed to make such remediation as soon as reasonably possible after the required funds are available. If Lessee does not give such notice and provide the required funds or assurance thereof within the time provided, this Lease shall terminate as of the date specified in Lessor's notice of termination.

6.3 **Lessee's Compliance with Applicable Requirements.** Except as otherwise provided in this Lease, Lessee shall, at Lessee's sole expense, fully, diligently and in a timely manner, materially comply with all Applicable Requirements, the requirements of any applicable fire insurance underwriter or rating bureau, and the reasonable recommendations of Lessor's engineers and/or consultants which relate in any manner to the Premises, without regard to whether said Applicable Requirements are now in effect or become effective after the Start Date. Lessee shall, within 10 days after receipt of Lessor's written request, provide Lessor with copies of all permits and other documents, and other information evidencing Lessee's compliance with any Applicable Requirements specified by Lessor, and shall immediately upon receipt, notify Lessor in writing (with copies of any documents involved) of any threatened or actual claim, notice, citation, warning, complaint or report pertaining to or involving the failure of Lessee or the Premises to comply with any Applicable Requirements. Likewise, Lessee shall immediately give written notice to Lessor of: (i) any water damage to the Premises of which it has actual knowledge and any suspected seepage, pooling, dampness or other condition conducive to the production of mold; or (ii) any mustiness or other odors that might indicate the presence of mold in the Premises. In addition, Lessee shall provide Lessor with copies of its business license, certificate of occupancy and/or any similar document within 10 days of the receipt of a written request therefor.

6.4 **Inspection; Compliance.** Lessor and Lessor's "Lender" (as defined in Paragraph 30) and consultants shall have the right to enter into Premises at any time, in the case of an emergency, and otherwise at reasonable times after reasonable notice, for the purpose of inspecting the condition of the Premises and for verifying compliance by Lessee with this Lease. The cost of any such inspections shall be paid by Lessor, unless a violation of Applicable Requirements, or a Hazardous Substance Condition (see paragraph 9.1) is found to exist or be imminent, or the inspection is requested or ordered by a governmental authority. In such case, Lessee shall upon request reimburse Lessor for the cost of such inspection, so long as such inspection is reasonably related to the violation or contamination. In addition, Lessee shall provide copies of all relevant material safety data sheets (MSDS) to Lessor within 10 days of the receipt of a written request therefor.

7. Maintenance; Repairs; Utility Installations; Trade Fixtures and Alterations.

7.1 Lessee's Obligations.

(a) **In General.** Subject to the provisions of Paragraph 2.2 (Condition), 2.3 (Compliance), 6.3 (Lessee's Compliance with Applicable Requirements), 7.2 (Lessor's Obligations), 9 (Damage or Destruction), and 14 (Condemnation), Lessee shall, at Lessee's sole expense, keep the Premises, Utility Installations (intended for Lessee's exclusive use, no matter where located), and Alterations in good order, condition and repair (whether or not the portion of the Premises requiring repairs, or the means of repairing the same, are reasonably or readily accessible to Lessee, and whether or not the need for such repairs occurs as a result of Lessee's use, any prior use, the elements or the age of such portion of the Premises), including, but not limited to, all equipment or facilities, such as plumbing, HVAC equipment, electrical, lighting facilities, boilers, pressure vessels, fire protection system, fixtures, walls (interior and exterior), ceilings, floors, windows, doors, plate glass, skylights, landscaping, driveways, parking lots, fences, retaining walls, signs, sidewalks and parkways located in, on, or adjacent to the Premises. Lessee is also responsible for keeping the roof and roof drainage clean and free of debris. Lessor shall keep the surface and structural elements of the roof, foundations, and bearing walls in good repair (see paragraph 7.2). Lessee, in keeping the Premises in good order, condition and repair, shall exercise and perform good maintenance practices, specifically including the procurement and maintenance of the service contracts required by Paragraph 7.1(b) below. Lessee's obligations shall include restorations, replacements or renewals when necessary to keep the Premises and all improvements thereon or a part thereof in good order, condition and state of repair. Lessee shall, during the term of this Lease, keep the exterior appearance of the Building in a first-class condition (including, e.g. graffiti removal) consistent with the exterior appearance of other similar facilities of comparable age and size in the vicinity, including, when necessary, the exterior repainting of the Building.

(b) **Service Contracts.** Lessee shall, at Lessee's sole expense, procure and maintain contracts, with copies to Lessor, in customary form and substance for, and with contractors specializing and experienced in the maintenance of the following equipment and improvements, if any, if and when installed on the Premises: (i) HVAC equipment, (ii) boiler, and pressure vessels, (iii) fire extinguishing systems, including fire alarm and/or smoke detection, (iv) landscaping and irrigation systems, and (v) clarifiers. However, Lessor reserves the right, upon notice to Lessee, to procure and maintain any or all of such service contracts, and Lessee shall reimburse Lessor, upon demand, for the cost thereof.

(c) **Failure to Perform.** If Lessee fails to perform Lessee's obligations under this Paragraph 7.1, Lessor may enter upon the Premises after 10 days' prior written notice to Lessee (except in the case of an emergency, in which case no notice shall be required), perform such obligations on Lessee's behalf, and put the Premises in good order, condition and repair, and Lessee shall promptly pay to Lessor a sum equal to 115% of the cost thereof.

(d) **Replacement.** Subject to Lessee's indemnification of Lessor as set forth in Paragraph 8.7 below, and without relieving Lessee of liability resulting from Lessee's failure to exercise and perform good maintenance practices, if an item described in Paragraph 7.1(b) cannot be repaired other than at a cost which is in excess of 50% of the cost of replacing such item, then such item shall be replaced by Lessor, and the cost thereof shall be prorated between the Parties (but only to the extent this Lease expressly requires Lessee to pay for some or all of such replacements in other provisions of this Lease and if not the cost thereof shall be borne by Lessor) and Lessee shall only be obligated to pay, each month during the remainder of the term of this Lease, on the date on which Base Rent is due, an amount equal to the product of multiplying the cost of such replacement by a fraction, the numerator of which is one, and the denominator of which is 144 (ie. 1/144th of the cost per month). Lessee shall pay interest on the unamortized balance but may prepay its obligation at any time.

7.2 Lessor's Obligations. Subject to the provisions of Paragraphs 2.2 (Condition), 2.3 (Compliance), 9 (Damage or Destruction) and 14 (Condemnation), it is intended by the Parties hereto that Lessor have no obligation, in any manner whatsoever, to repair and maintain the Premises, or the equipment therein, all of which obligations are intended to be that of the Lessee, except for the surface and structural elements of the roof, foundations and bearing walls, the repair of which shall be the responsibility of Lessor upon receipt of written notice that such a repair is necessary. It is the intention of the Parties that the terms of this Lease govern the respective obligations of the Parties as to maintenance and repair of the Premises, and they expressly waive the benefit of any statute now or hereafter in effect to the extent it is inconsistent with the terms of this Lease.

7.3 Utility Installations; Trade Fixtures; Alterations.

(a) **Definitions.** The term "**Utility Installations**" refers to all floor and window coverings, air and/or vacuum lines, power panels, electrical distribution, security and fire protection systems, communication cabling, lighting fixtures, HVAC equipment, plumbing, and fencing in or on the Premises. The term "**Trade Fixtures**" shall mean Lessee's machinery and equipment that can be removed without doing material damage to the Premises. The term "**Alterations**" shall mean any modification of the improvements, other than Utility Installations or Trade Fixtures, whether by addition or deletion. "**Lessee Owned Alterations and/or Utility Installations**" are defined as Alterations and/or Utility Installations made by Lessee that are not yet owned by Lessor pursuant to Paragraph 7.4(a).

(b) **Consent.** Lessee shall not make any Alterations or Utility Installations to the Premises without Lessor's prior written consent. Lessee may, however, make non-structural Alterations or Utility Installations to the interior of the Premises (excluding the roof) without such consent but upon notice to Lessor, as long as they are not visible from the outside, do not involve puncturing, relocating or removing the roof or any existing walls, will not affect the electrical, plumbing, HVAC, and/or life safety systems, do not trigger the requirement for additional modifications and/or improvements to the Premises resulting from Applicable Requirements, such as compliance with Title 24, and the cumulative cost thereof during this Lease as extended does not exceed a sum equal to 3 month's Base Rent in the aggregate or a sum equal to one month's Base Rent in any one year. Notwithstanding the foregoing, Lessee shall not make or permit any roof penetrations and/or install anything on the roof without the prior written approval of Lessor. Lessor may, as a precondition to granting such approval, require Lessee to utilize a contractor chosen and/or approved by Lessor. Any Alterations or Utility Installations that Lessee shall desire to make and which require the consent of the Lessor shall be presented to Lessor in written form with detailed plans. Consent shall be deemed conditioned upon Lessee's: (i) acquiring all applicable governmental permits, (ii) furnishing Lessor with copies of both the permits and the plans and specifications prior to commencement of the work, and (iii) compliance with all conditions of said permits and other Applicable Requirements in a prompt and expeditious manner. Any Alterations or Utility Installations shall be performed in a

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workmanlike manner with good and sufficient materials. Lessee shall promptly upon completion furnish Lessor with as-built plans and specifications. For work which costs an amount in excess of one month's Base Rent, Lessor may condition its consent upon Lessee providing a lien and completion bond in an amount equal to 150% of the estimated cost of such Alteration or Utility Installation and/or upon Lessee's posting an additional Security Deposit with Lessor.

(c) Liens; Bonds. Lessee shall pay, when due, all claims for labor or materials furnished or alleged to have been furnished to or for Lessee at or for use on the Premises, which claims are or may be secured by any mechanic's or materialmen's lien against the Premises or any interest therein. Lessee shall give Lessor not less than 10 days notice prior to the commencement of any work in, on or about the Premises, and Lessor shall have the right to post notices of non-responsibility. If Lessee shall contest the validity of any such lien, claim or demand, then Lessee shall, at its sole expense defend and protect itself, Lessor and the Premises against the same and shall pay and satisfy any such adverse judgment that may be rendered thereon before the enforcement thereof. If Lessor shall require, Lessee shall furnish a surety bond in an amount equal to 150% of the amount of such contested lien, claim or demand, indemnifying Lessor against liability for the same. If Lessor elects to participate in any such action, Lessee shall pay Lessor's attorneys' fees and costs.

7.4 Ownership; Removal; Surrender; and Restoration.

(a) Ownership. Subject to Lessor's right to require removal or elect ownership as hereinafter provided, all Alterations and Utility Installations made by Lessee shall be the property of Lessee, but considered a part of the Premises. Lessor may, at any time, elect in writing to be the owner of all or any specified part of the Lessee Owned Alterations and Utility Installations. Unless otherwise instructed per paragraph 7.4(b) hereof, all Lessee Owned Alterations and Utility Installations shall, at the expiration or termination of this Lease, become the property of Lessor and be surrendered by Lessee with the Premises.

(b) Removal. By delivery to Lessee of written notice from Lessor not earlier than 90 and not later than 30 days prior to the end of the term of this Lease, Lessor may require that any or all Lessee Owned Alterations or Utility Installations be removed by the expiration or termination of this Lease. Lessor may require the removal at any time of all or any part of any Lessee Owned Alterations or Utility Installations made without the required consent.

(c) Surrender; Restoration. Lessee shall surrender the Premises by the Expiration Date or any earlier termination date, with all of the improvements, parts and surfaces thereof broom clean and free of debris, and in good operating order, condition and state of repair, ordinary wear and tear excepted. "Ordinary wear and tear" shall not include any damage or deterioration that would have been prevented by good maintenance practice. Notwithstanding the foregoing, if this Lease is for 12 months or less, then Lessee shall surrender the Premises in the same condition as delivered to Lessee on the Start Date with NO allowance for ordinary wear and tear. Lessee shall repair any damage occasioned by the installation, maintenance or removal of Trade Fixtures, Lessee owned Alterations and/or Utility Installations, furnishings, and equipment as well as the removal of any storage tank installed by or for Lessee. Lessee shall remove from the Premises any and all Hazardous Substances brought onto the Premises by or for Lessee, or any third party (except Hazardous Substances which were deposited via underground migration from areas outside of the Premises) to the level specified in Applicable Requirements. Trade Fixtures shall remain the property of Lessee and shall be removed by Lessee. Any personal property of Lessee not removed on or before the Expiration Date or any earlier termination date shall be deemed to have been abandoned by Lessee and may be disposed of or retained by Lessor as Lessor may desire. The failure by Lessee to timely vacate the Premises pursuant to this Paragraph 7.4(c) without the express written consent of Lessor shall constitute a holdover under the provisions of Paragraph 26 below.

8. Insurance; Indemnity.

8.1 Payment of Premium Increases.

(a) Lessee shall pay to Lessor any insurance cost increase ("Insurance Cost Increase") occurring during the term of this Lease. Insurance Cost Increase is defined as any increase in the actual cost of the insurance required under Paragraph 8.2(b), 8.3(a) and 8.3(b), over and above the Base Premium as hereinafter defined calculated on an annual basis. Insurance Cost Increase shall include but not be limited to increases resulting from the nature of Lessee's occupancy, any act or omission of Lessee, requirements of the holder of mortgage or deed of trust covering the Premises, increased valuation of the Premises and/or a premium rate increase. The parties are encouraged to fill in the Base Premium in paragraph 1.8 with a reasonable premium for the Required Insurance based on the Agreed Use of the Premises. If the parties fail to insert a dollar amount in Paragraph 1.8, then the Base Premium shall be the lowest annual premium reasonably obtainable for the Required Insurance as of the commencement of the Original Term for the Agreed Use of the Premises. In no event, however, shall Lessee be responsible for any portion of the increase in the premium cost attributable to liability insurance carried by Lessor under Paragraph 8.2(b) in excess of $2,000,000 per occurrence.

(b) Lessee shall pay any such Insurance Cost Increase to Lessor within 30 days after receipt by Lessee of a copy of the premium statement or other reasonable evidence of the amount due. If the insurance policies maintained hereunder cover other property besides the Premises, Lessor shall also deliver to Lessee a statement of the amount of such Insurance Cost Increase attributable only to the Premises showing in reasonable detail the manner in which such amount was computed. Premiums for policy periods commencing prior to, or extending beyond the term of this Lease, shall be prorated to correspond to the term of this Lease.

8.2 Liability Insurance.

(a) Carried by Lessee. Lessee shall obtain and keep in force a Commercial General Liability policy of insurance protecting Lessee and Lessor as an additional insured against claims for bodily injury, personal injury and property damage based upon or arising out of the ownership, use, occupancy or maintenance of the Premises and all areas appurtenant thereto. Such insurance shall be on an occurrence basis providing single limit coverage in an amount not less than $1,000,000 per occurrence with an annual aggregate of not less than $2,000,000. Lessee shall add Lessor as an additional insured by means of an endorsement at least as broad as the Insurance Service Organization's "Additional Insured-Managers or Lessors of Premises" Endorsement. The policy shall not contain any intra-insured exclusions as between insured persons or organizations, but shall include coverage for liability assumed under this Lease as an "insured contract" for the performance of Lessee's indemnity obligations under this Lease. The limits of said insurance shall not, however, limit the liability of Lessee nor relieve Lessee of any obligation hereunder. Lessee shall provide an endorsement on its liability policy(ies) which provides that its insurance shall be primary to and not contributory with any similar insurance carried by Lessor, whose insurance shall be considered excess insurance only.

(b) Carried by Lessor. Lessor shall maintain liability insurance as described in Paragraph 8.2(a), in addition to, and not in lieu of, the insurance required to be maintained by Lessee. Lessee shall not be named as an additional insured therein.

8.3 Property Insurance - Building, Improvements and Rental Value.

(a) Building and Improvements. The Insuring Party shall obtain and keep in force a policy or policies in the name of Lessor, with loss payable to Lessor, any ground-lessor, and to any Lender insuring loss or damage to the Premises. The amount of such insurance shall be equal to the full insurable replacement cost of the Premises, as the same shall exist from time to time, or the amount required by any Lender, but in no event more than the commercially reasonable and available insurable value thereof. Lessee Owned Alterations and Utility Installations, Trade Fixtures, and Lessee's personal property shall be insured by Lessee not by Lessor. If the coverage is available and commercially appropriate, such policy or policies shall insure against all risks of direct physical loss or damage (except the perils of flood and/or earthquake unless required by a Lender or included in the Base Premium), including coverage for debris removal and the enforcement of any Applicable Requirements requiring the upgrading, demolition, reconstruction or replacement of any portion of the Premises as the result of a covered loss. Said policy or policies shall also contain an agreed valuation provision in lieu of any coinsurance clause, waiver of subrogation, and inflation guard protection causing an increase in the annual property insurance coverage amount by a factor of not less than the adjusted U.S. Department of Labor Consumer Price Index for All Urban Consumers for the city nearest to where the Premises are located. If such insurance coverage has a deductible clause, the deductible amount shall not exceed $5,000 per occurrence, and Lessee shall be liable for such deductible amount in the event of an insured Loss.

(b) Rental Value. The Insuring Party shall obtain and keep in force a policy or policies in the name of Lessor with loss payable to Lessor and any Lender, insuring the loss of the full Rent for one year with an extended period of indemnity for an additional 180 days ("Rental Value Insurance"). Said insurance shall contain an agreed valuation provision in lieu of any coinsurance clause, and the amount of coverage shall be adjusted annually to reflect the projected Rent otherwise payable by Lessee, for the next 12 month period. Lessee shall be liable for any deductible amount in the event of such loss.

(c) Adjacent Premises. If the Premises are part of a larger building, or of a group of buildings owned by Lessor which are adjacent to the Premises, the Lessee shall pay for any increase in the premiums for the property insurance of such building or buildings if said increase is caused by Lessee's acts, omissions, use or occupancy of the Premises.

8.4 Lessee's Property; Business Interruption Insurance; Worker's Compensation Insurance.

(a) Property Damage. Lessee shall obtain and maintain insurance coverage on all of Lessee's personal property, Trade Fixtures, and Lessee Owned Alterations and Utility Installations. Such insurance shall be full replacement cost coverage with a deductible of not to exceed $1,000 $10,000 per occurrence. The proceeds from any such insurance shall be used by Lessee for the replacement of personal property, Trade Fixtures and Lessee Owned Alterations and Utility Installations.

(b) Business Interruption. Lessee shall obtain and maintain loss of income and extra expense insurance in amounts as will reimburse Lessee for direct or indirect loss of earnings attributable to all perils commonly insured against by prudent lessees in the business of Lessee or attributable to prevention of access to the Premises as a result of such perils.

(c) Worker's Compensation Insurance. Lessee shall obtain and maintain Worker's Compensation insurance in such amount as may be required by Applicable Requirements. Such policy shall include a 'Waiver of Subrogation' endorsement. Lessee shall provide Lessor with a

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copy of such endorsement along with the certificate of insurance or copy of the policy required by paragraph 8.5.

(d) **No Representation of Adequate Coverage.** Lessor makes no representation that the limits or forms of coverage of insurance specified herein are adequate to cover Lessee's property, business operations or obligations under this Lease.

8.5 **Insurance Policies.** Insurance required herein shall be by companies maintaining during the policy term a "General Policyholders Rating" of at least A-, VII, as set forth in the most current issue of "Best's Insurance Guide", or such other rating as may be required by a Lender. Lessee shall not do or permit to be done anything which invalidates the required insurance policies. Lessee shall, prior to the Start Date, deliver to Lessor certified copies of policies of such insurance or certificates with copies of the required endorsements evidencing the existence and amounts of the required insurance. No such policy shall be cancelable or subject to modification except after 30 days prior written notice to Lessor. Lessee shall, at least 10 days prior to the expiration of such policies, furnish Lessor with evidence of renewals or "insurance binders" evidencing renewal thereof, or Lessor may order such insurance and charge the cost thereof to Lessee, which amount shall be payable by Lessee to Lessor upon demand. Such policies shall be for a term of at least one year, or the length of the remaining term of this Lease, whichever is less. If either Party shall fail to procure and maintain the insurance required to be carried by it, the other Party may, but shall not be required to, procure and maintain the same.

8.6 **Waiver of Subrogation.** Without affecting any other rights or remedies, Lessee and Lessor each hereby release and relieve the other, and waive their entire right to recover damages against the other, for loss of or damage to its property arising out of or incident to the perils required to be insured against herein. The effect of such releases and waivers is not limited by the amount of insurance carried or required, or by any deductibles applicable hereto. The Parties agree to have their respective property damage insurance carriers waive any right to subrogation that such companies may have against Lessor or Lessee, as the case may be, so long as the insurance is not invalidated thereby.

8.7 **Indemnity.** Except for Lessor's gross negligence or willful misconduct, Lessee shall indemnify, protect, defend and hold harmless the Premises, Lessor and its agents, Lessor's master or ground lessor, partners and Lenders, from and against any and all claims, loss of rents and/or damages, liens, judgments, penalties, attorneys' and consultants' fees, expenses and/or liabilities arising out of, involving, or in connection with, the use and/or occupancy of the Premises by Lessee. If any action or proceeding is brought against Lessor by reason of any of the foregoing matters, Lessee shall upon notice defend the same at Lessee's expense by counsel reasonably satisfactory to Lessor and Lessor shall cooperate with Lessee in such defense. Lessor need not have first paid any such claim in order to be defended or indemnified.

8.8 **Exemption of Lessor and its Agents from Liability.** Notwithstanding the negligence or breach of this Lease by Lessor or its agents, neither Lessor nor its agents shall be liable under any circumstances for: (i) injury or damage to the person or goods, wares, merchandise or other property of Lessee, Lessee's employees, contractors, invitees, customers, or any other person in or about the Premises, whether such damage or injury is caused by or results from fire, steam, electricity, gas, water or rain, indoor air quality, the presence of mold or from the breakage, leakage, obstruction or other defects of pipes, fire sprinklers, wires, appliances, plumbing, HVAC or lighting fixtures, or from any other cause, whether the said injury or damage results from conditions arising upon the Premises or upon other portions of the building of which the Premises are a part, or from other sources or places, (ii) any damages arising from any act or neglect of any other tenant of Lessor or from the failure of Lessor or its agents to enforce the provisions of any other lease in the Project, or (iii) injury to Lessee's business or for any loss of income or profit therefrom. Instead, it is intended that Lessee's sole recourse in the event of such damages or injury be to file a claim on the insurance policy(ies) that Lessee is required to maintain pursuant to the provisions of paragraph 8.

8.9 **Failure to Provide Insurance.** Lessee acknowledges that any failure on its part to obtain or maintain the insurance required herein will expose Lessor to risks and potentially cause Lessor to incur costs not contemplated by this Lease, the extent of which will be extremely difficult to ascertain. Accordingly, for any month or portion thereof that Lessee does not maintain the required insurance and/or does not provide Lessor with the required binders or certificates evidencing the existence of the required insurance, the Base Rent shall be automatically increased, without any requirement for notice to Lessee, by an amount equal to 10% of the then existing Base Rent or $100, whichever is greater. The parties agree that such increase in Base Rent represents fair and reasonable compensation for the additional risk/ costs that Lessor will incur by reason of Lessee's failure to maintain the required insurance. Such increase in Base Rent shall in no event constitute a waiver of Lessee's Default or Breach with respect to the failure to maintain such insurance, prevent the exercise of any of the other rights and remedies granted hereunder, nor relieve Lessee of its obligation to maintain the insurance specified in this Lease.

9. Damage or Destruction.

9.1 **Definitions.**

(a) **"Premises Partial Damage"** shall mean damage or destruction to the improvements on the Premises, other than Lessee Owned Alterations and Utility Installations, which can reasonably be repaired in 6 months or less from the date of the damage or destruction. Lessor shall notify Lessee in writing within 30 days from the date of the damage or destruction as to whether or not the damage is Partial or Total.

(b) **"Premises Total Destruction"** shall mean damage or destruction to the Premises, other than Lessee Owned Alterations and Utility Installations and Trade Fixtures, which cannot reasonably be repaired in 6 months or less from the date of the damage or destruction. Lessor shall notify Lessee in writing within 30 days from the date of the damage or destruction as to whether or not the damage is Partial or Total.

(c) **"Insured Loss"** shall mean damage or destruction to improvements on the Premises, other than Lessee Owned Alterations and Utility Installations and Trade Fixtures, which was caused by an event required to be covered by the insurance described in Paragraph 8.3(a), irrespective of any deductible amounts or coverage limits involved.

(d) **"Replacement Cost"** shall mean the cost to repair or rebuild the improvements owned by Lessor at the time of the occurrence to their condition existing immediately prior thereto, including demolition, debris removal and upgrading required by the operation of Applicable Requirements, and without deduction for depreciation.

(e) **"Hazardous Substance Condition"** shall mean the occurrence or discovery of a condition involving the presence of, or a contamination by, a Hazardous Substance, in, on, or under the Premises which requires restoration.

9.2 **Partial Damage - Insured Loss.** If a Premises Partial Damage that is an Insured Loss occurs, then Lessor shall, at Lessor's expense, repair such damage (but not Lessee's Trade Fixtures or Lessee Owned Alterations and Utility Installations) as soon as reasonably possible and this Lease shall continue in full force and effect; provided, however, that Lessee shall, at Lessor's election, make the repair of any damage or destruction the total cost to repair of which is $10,000 or less, and, in such event, Lessor shall make any applicable insurance proceeds available to Lessee on a reasonable basis for that purpose. Notwithstanding the foregoing, if the required insurance was not in force or the insurance proceeds are not sufficient to effect such repair, the Insuring Party shall promptly contribute the shortage in proceeds (except as to the deductible which is Lessee's responsibility) as and when required to complete said repairs. In the event, however, such shortage was due to the fact that, by reason of the unique nature of the improvements, full replacement cost insurance coverage was not commercially reasonable and available, Lessor shall have no obligation to pay for the shortage in insurance proceeds or to fully restore the unique aspects of the Premises unless Lessee provides Lessor with the funds to cover same, or adequate assurance thereof, within 10 days following receipt of written notice of such shortage and request therefor. If Lessor receives said funds or adequate assurance thereof within said 10 day period, the party responsible for making the repairs shall complete them as soon as reasonably possible and this Lease shall remain in full force and effect. If such funds or assurance are not received, Lessor may nevertheless elect by written notice to Lessee within 10 days thereafter to: (i) make such restoration and repair as is commercially reasonable with Lessor paying any shortage in proceeds, in which case this Lease shall remain in full force and effect, or (ii) have this Lease terminate 30 days thereafter. Lessee shall not be entitled to reimbursement of any funds contributed by Lessee to repair any such damage or destruction. Premises Partial Damage due to flood or earthquake shall be subject to Paragraph 9.3, notwithstanding that there may be some insurance coverage, but the net proceeds of any such insurance shall be made available for the repairs if made by either Party.

9.3 **Partial Damage - Uninsured Loss.** If a Premises Partial Damage that is not an Insured Loss occurs, unless caused by a negligent or willful act of Lessee (in which event Lessee shall make the repairs at Lessee's expense), Lessor may either: (i) repair such damage as soon as reasonably possible at Lessor's expense, in which event this Lease shall continue in full force and effect, or (ii) terminate this Lease by giving written notice to Lessee within 30 days after receipt by Lessor of knowledge of the occurrence of such damage. Such termination shall be effective 60 days following the date of such notice. In the event Lessor elects to terminate this Lease, Lessee shall have the right within 10 days after receipt of the termination notice to give written notice to Lessor of Lessee's commitment to pay for the repair of such damage without reimbursement from Lessor. Lessee shall provide Lessor with said funds or satisfactory assurance thereof within 30 days after making such commitment. In such event this Lease shall continue in full force and effect, and Lessor shall proceed to make such repairs as soon as reasonably possible after the required funds are available. If Lessee does not make the required commitment, this Lease shall terminate as of the date specified in the termination notice.

9.4 **Total Destruction.** Notwithstanding any other provision hereof, if a Premises Total Destruction occurs, this Lease shall terminate 60 days following such Destruction. If the damage or destruction was caused by the gross negligence or willful misconduct of Lessee, Lessor shall have the right to recover Lessor's damages from Lessee, except as provided in Paragraph 8.6.

9.5 **Damage Near End of Term.** If at any time during the last 6 months of this Lease there is damage for which the cost to repair exceeds one month's Base Rent, whether or not an Insured Loss, Lessor may terminate this Lease effective 60 days following the date of occurrence of such damage by giving a written termination notice to Lessee within 30 days after the date of occurrence of such damage. Notwithstanding the foregoing, if Lessee at that time has an exercisable option to extend this Lease or to purchase the Premises, then Lessee may preserve this Lease by, (a) exercising such option and (b) providing Lessor with any shortage in insurance proceeds (or adequate assurance thereof) needed to make the repairs on or before the earlier of (i) the date which is 10 days after Lessee's receipt of Lessor's written notice purporting to terminate this Lease, or (ii)

the day prior to the date upon which such option expires. If Lessee duly exercises such option during such period and provides Lessor with funds (or adequate assurance thereof) to cover any shortage in insurance proceeds, Lessor shall, at Lessor's commercially reasonable expense, repair such damage as soon as reasonably possible and this Lease shall continue in full force and effect. If Lessee fails to exercise such option and provide such funds or assurance during such period, then this Lease shall terminate on the date specified in the termination notice and Lessee's option shall be extinguished.

9.6 **Abatement of Rent; Lessee's Remedies.**

(a) Abatement. In the event of Premises Partial Damage or Premises Total Destruction or a Hazardous Substance Condition for which Lessee is not responsible under this Lease, the Rent payable by Lessee for the period required for the repair, remediation or restoration of such damage shall be abated in proportion to the degree to which Lessee's use of the Premises is impaired, but not to exceed the proceeds received from the Rental Value insurance. All other obligations of Lessee hereunder shall be performed by Lessee, and Lessor shall have no liability for any such damage, destruction, remediation, repair or restoration except as provided herein.

(b) Remedies. If Lessor is obligated to repair or restore the Premises and does not commence, in a substantial and meaningful way, such repair or restoration within 90 days after such obligation shall accrue, Lessee may, at any time prior to the commencement of such repair or restoration, give written notice to Lessor and to any Lenders of which Lessee has actual notice, of Lessee's election to terminate this Lease on a date not less than 60 days following the giving of such notice. If Lessee gives such notice and such repair or restoration is not commenced within 30 days thereafter, this Lease shall terminate as of the date specified in said notice. If the repair or restoration is commenced within such 30 days, this Lease shall continue in full force and effect provided that Lessor prosecutes such repair or restoration to completion with reasonable diligence. "Commence" shall mean either the unconditional authorization of the preparation of the required plans, or the beginning of the actual work on the Premises, whichever first occurs.

9.7 **Termination; Advance Payments.** Upon termination of this Lease pursuant to Paragraph 6.2(g) or Paragraph 9, an equitable adjustment shall be made concerning advance Base Rent and any other advance payments made by Lessee to Lessor. Lessor shall, in addition, return to Lessee so much of Lessee's Security Deposit as has not been, or is not then required to be, used by Lessor.

10. **Real Property Taxes.**

10.1 **Definition.** As used herein, the term "Real Property Taxes" shall include any form of assessment; real estate, general, special, ordinary or extraordinary, or rental levy or tax (other than inheritance, personal income or estate taxes); improvement bond; and/or license fee imposed upon or levied against any legal or equitable interest of Lessor in the Premises or the Project, Lessor's right to other income therefrom, and/or Lessor's business of leasing, by any authority having the direct or indirect power to tax and where the funds are generated with reference to the Building address. Real Property Taxes shall also include any tax, fee, levy, assessment or charge, or any increase therein: (i) imposed by reason of events occurring during the term of this Lease, including but not limited to, a change in the ownership of the Premises, and (ii) levied or assessed on machinery or equipment provided by Lessor to Lessee pursuant to this Lease.

10.2

(a) Payment of Taxes. Lessor shall pay the Real Property Taxes applicable to the Premises provided, however, that Lessee shall pay to Lessor the amount, if any, by which Real Property Taxes applicable to the Premises increase over the fiscal tax year during which the Commencement Date Occurs ("Tax Increase"). Payment of any such Tax Increase shall be made by Lessee to Lessor within 30 days after receipt of Lessor's written statement setting forth the amount due and computation thereof. If any such taxes shall cover any period of time prior to or after the expiration or termination of this Lease, Lessee's share of such taxes shall be prorated to cover only that portion of the tax bill applicable to the period that this Lease is in effect. In the event Lessee incurs a late charge on any Rent payment, Lessor may estimate the current Real Property Taxes, and require that the Tax Increase be paid in advance to Lessor by Lessee monthly in advance with the payment of the Base Rent. Such monthly payment shall be an amount equal to the amount of the estimated installment of the Tax Increase divided by the number of months remaining before the month in which said installment becomes delinquent. When the actual amount of the applicable Tax Increase is known, the amount of such equal monthly advance payments shall be adjusted as required to provide the funds needed to pay the applicable Tax Increase. If the amount collected by Lessor is insufficient to pay the Tax Increase when due, Lessee shall pay Lessor, upon demand, such additional sums as are necessary to pay such obligations. Advance payments may be intermingled with other moneys of Lessor and shall not bear interest. In the event of a Breach by Lessee in the performance of its obligations under this Lease, then any such advance payments may be treated by Lessor as an additional Security Deposit.

(b) Additional Improvements. Notwithstanding anything to the contrary in this Paragraph 10.2, Lessee shall pay to Lessor upon demand therefor the entirety of any increase in Real Property Taxes assessed by reason of Alterations or Utility Installations placed upon the Premises by Lessee or at Lessee's request or by reason of any alterations or improvements to the Premises made by Lessor subsequent to the execution of this Lease by the Parties.

10.3 **Joint Assessment.** If the Premises are not separately assessed, Lessee's liability shall be an equitable proportion of the Tax Increase for all of the land and improvements included within the tax parcel assessed, such proportion to be conclusively determined by Lessor from the respective valuations assigned in the assessor's work sheets or such other information as may be reasonably available.

10.4 **Personal Property Taxes.** Lessee shall pay, prior to delinquency, all taxes assessed against and levied upon Lessee Owned Alterations, Utility Installations, Trade Fixtures, furnishings, equipment and all personal property of Lessee. When possible, Lessee shall cause its Lessee Owned Alterations and Utility Installations, Trade Fixtures, furnishings, equipment and all other personal property to be assessed and billed separately from the real property of Lessor. If any of Lessee's said property shall be assessed with Lessor's real property, Lessee shall pay Lessor the taxes attributable to Lessee's property within 10 days after receipt of a written statement setting forth the taxes applicable to Lessee's property.

11. **Utilities and Services.** Lessee shall pay for all water, gas, heat, light, power, telephone, trash disposal and other utilities and services supplied to the Premises, together with any taxes thereon. If any such services are not separately metered or billed to Lessee, Lessee shall pay a reasonable proportion, to be determined by Lessor, of all charges jointly metered or billed. There shall be no abatement of rent and Lessor shall not be liable in any respect whatsoever for the inadequacy, stoppage, interruption or discontinuance of any utility or service due to riot, strike, labor dispute, breakdown, accident, repair or other cause beyond Lessor's reasonable control or in cooperation with governmental request or directions.

12. **Assignment and Subletting.**

12.1 **Lessor's Consent Required.**

(a) Lessee shall not voluntarily or by operation of law assign, transfer, mortgage or encumber (collectively, "assign or assignment") or sublet all or any part of Lessee's interest in this Lease or in the Premises without Lessor's prior written consent. Landlord's consent shall not be withheld, delayed or conditioned unreasonably.

(b) Unless Lessee is a corporation and its stock is publicly traded on a national stock exchange, a change in the control of Lessee shall constitute an assignment requiring consent. The transfer, on a cumulative basis, of ~~25%~~ 50% or more of the voting control of Lessee shall constitute a change in control for this purpose.

(c) The involvement of Lessee or its assets in any transaction, or series of transactions (by way of merger, sale, acquisition, financing, transfer, leveraged buy-out or otherwise), whether or not a formal assignment or hypothecation of this Lease or Lessee's assets occurs, which results or will result in a reduction of the Net Worth of Lessee by an amount greater than 25% of such Net Worth as it was represented at the time of the execution of this Lease or at the time of the most recent assignment to which Lessor has consented, or as it exists immediately prior to said transaction or transactions constituting such reduction, whichever was or is greater, shall be considered an assignment of this Lease to which Lessor may withhold its consent. "Net Worth of Lessee" shall mean the net worth of Lessee (excluding any guarantors) established under generally accepted accounting principles.

(d) An assignment or subletting without consent shall, at Lessor's option, be a Default curable after notice per Paragraph 13.1(d), or a noncurable Breach without the necessity of any notice and grace period. If Lessor elects to treat such unapproved assignment or subletting as a noncurable Breach, Lessor may either: (i) terminate this Lease, or (ii) upon 30 days written notice, increase the monthly Base Rent to 110% of the Base Rent then in effect. Further, in the event of such Breach and rental adjustment, (i) the purchase price of any option to purchase the Premises held by Lessee shall be subject to similar adjustment to 110% of the price previously in effect, and (ii) all fixed and non-fixed rental adjustments scheduled during the remainder of the Lease term shall be increased to 110% of the scheduled adjusted rent.

(e) Lessee's remedy for any breach of Paragraph 12.1 by Lessor shall be limited to compensatory damages and/or injunctive relief.

(f) Lessor may reasonably withhold consent to a proposed assignment or subletting if Lessee is in Default at the time consent is requested provided that no default shall be deemed to take place until after the giving of notice and the passage of time to cure to the extent provided in this Lease.

(g) Notwithstanding the foregoing, allowing a de minimis portion of the Premises, ie. 20 square feet or less, to be used by a third party vendor in connection with the installation of a vending machine or payphone shall not constitute a subletting.

12.2 **Terms and Conditions Applicable to Assignment and Subletting.**

(a) Regardless of Lessor's consent, no assignment or subletting shall: (i) be effective without the express written assumption by such assignee or sublessee of the obligations of Lessee under this Lease, (ii) release Lessee of any obligations hereunder, or (iii) alter the primary liability of Lessee for the payment of Rent or for the performance of any other obligations to be performed by Lessee.

(b) Lessor may accept Rent or performance of Lessee's obligations from any person other than Lessee pending approval or disapproval of an assignment. Neither a delay in the approval or disapproval of such assignment nor the acceptance of Rent or performance shall

constitute a waiver or estoppel of Lessor's right to exercise its remedies for Lessee's Default or Breach.

(c) Lessor's consent to any assignment or subletting shall not constitute a consent to any subsequent assignment or subletting.

(d) In the event of any Default or Breach by Lessee, Lessor may proceed directly against Lessee, any Guarantors or anyone else responsible for the performance of Lessee's obligations under this Lease, including any assignee or sublessee, without first exhausting Lessor's remedies against any other person or entity responsible therefor to Lessor, or any security held by Lessor.

(e) Each request for consent to an assignment or subletting shall be in writing, accompanied by information relevant to Lessor's determination as to the financial and operational responsibility and appropriateness of the proposed assignee or sublessee, including but not limited to the intended use and/or required modification of the Premises, if any, together with a fee of $500 as consideration for Lessor's considering and processing said request. Lessee agrees to provide Lessor with such other or additional information and/or documentation as may be reasonably requested. (See also Paragraph 36)

(f) Any assignee of, or sublessee under, this Lease shall, by reason of accepting such assignment, entering into such sublease, or entering into possession of the Premises or any portion thereof, be deemed to have assumed and agreed to conform and comply with each and every term, covenant, condition and obligation herein to be observed or performed by Lessee during the term of said assignment or sublease, other than such obligations as are contrary to or inconsistent with provisions of an assignment or sublease to which Lessor has specifically consented to in writing.

(g) Lessor's consent to any assignment or subletting shall not transfer to the assignee or sublessee any Option granted to the original Lessee by this Lease unless such transfer is specifically consented to by Lessor in writing. (See Paragraph 39.2)

12.3 **Additional Terms and Conditions Applicable to Subletting.** The following terms and conditions shall apply to any subletting by Lessee of all or any part of the Premises and shall be deemed included in all subleases under this Lease whether or not expressly incorporated therein:

(a) Lessee hereby assigns and transfers to Lessor all of Lessee's interest in all Rent payable on any sublease, and Lessor may collect such Rent and apply same toward Lessee's obligations under this Lease; provided, however, that until a Breach shall occur in the performance of Lessee's obligations, Lessee may collect said Rent. In the event that the amount collected by Lessor exceeds Lessee's then outstanding obligations any such excess shall be refunded to Lessee. Lessor shall not, by reason of the foregoing or any assignment of such sublease, nor by reason of the collection of Rent, be deemed liable to the sublessee for any failure of Lessee to perform and comply with any of Lessee's obligations to such sublessee. Lessee hereby irrevocably authorizes and directs any such sublessee, upon receipt of a written notice from Lessor stating that a Breach exists in the performance of Lessee's obligations under this Lease, to pay to Lessor all Rent due and to become due under the sublease. Sublessee shall rely upon any such notice from Lessor and shall pay all Rents to Lessor without any obligation or right to inquire as to whether such Breach exists, notwithstanding any claim from Lessee to the contrary.

(b) In the event of a Breach by Lessee, Lessor may, at its option, require sublessee to attorn to Lessor, in which event Lessor shall undertake the obligations of the sublessor under such sublease from the time of the exercise of said option to the expiration of such sublease; provided, however, Lessor shall not be liable for any prepaid rents or security deposit paid by such sublessee to such sublessor or for any prior Defaults or Breaches of such sublessor.

(c) Any matter requiring the consent of the sublessor under a sublease shall also require the consent of Lessor.

(d) No sublessee shall further assign or sublet all or any part of the Premises without Lessor's prior written consent.

(e) Lessor shall deliver a copy of any notice of Default or Breach by Lessee to the sublessee, who shall have the right to cure the Default of Lessee within the grace period, if any, specified in such notice. The sublessee shall have a right of reimbursement and offset from and against Lessee for any such Defaults cured by the sublessee.

(f) Neither the use by nor the subletting to a parent or subsidiary of Lessee or to any subsidiary of any subsidiary or parent of Lessee of all or a portion of the Premises shall be deemed an assignment of sublease or other transfer requiring Lessor's consent hereafter.

13. **Default; Breach; Remedies.**

13.1 **Default; Breach.** A "Default" is defined as a failure by the Lessee to comply with or perform any of the terms, covenants, conditions or Rules and Regulations under this Lease. A "Breach" is defined as the occurrence of one or more of the following Defaults, and the failure of Lessee to cure such Default within any applicable grace period:

(a) The abandonment of the Premises; or the vacating of the Premises without providing a commercially reasonable level of security, or where the coverage of the property insurance described in Paragraph 8.3 is jeopardized as a result thereof, or without providing reasonable assurances to minimize potential vandalism.

(b) The failure of Lessee to make any payment of Rent or any Security Deposit required to be made by Lessee hereunder which failure continues for five days following the delivery of written notice to Lessee, whether to Lessor or to a third party, when due, to provide reasonable evidence of insurance or surety bond, or to fulfill any obligation under this Lease which endangers or threatens life or property, where such failure continues for a period of 3 business days following written notice to Lessee. THE ACCEPTANCE BY LESSOR OF A PARTIAL PAYMENT OF RENT OR SECURITY DEPOSIT SHALL NOT CONSTITUTE A WAIVER OF ANY OF LESSOR'S RIGHTS, INCLUDING LESSOR'S RIGHT TO RECOVER POSSESSION OF THE PREMISES.

(c) The failure of Lessee to allow Lessor and/or its agents access to the Premises or the commission of waste, act or acts constituting public or private nuisance, and/or an illegal activity on the Premises by Lessee, where such actions continue for a period of 3 business days following written notice to Lessee. In the event that Lessee commits waste, a nuisance or an illegal activity a second time then, the Lessor may elect to treat such conduct as a non-curable Breach rather than a Default.

(d) The failure by Lessee to provide (i) reasonable written evidence of compliance with Applicable Requirements to the extent Lessee is responsible under this Lease for compliance with such Applicable Requirements, (ii) the service contracts, (iii) the rescission of an unauthorized assignment or subletting, (iv) an Estoppel Certificate or financial statements, (v) a requested subordination, (vi) evidence concerning any guaranty and/or Guarantor, (vii) any document requested under Paragraph 42, (viii) material safety data sheets (MSDS), or (ix) any other documentation or information which Lessor may reasonably require of Lessee under the terms of this Lease, where any such failure continues for a period of 10 days following written notice to Lessee.

(e) A Default by Lessee as to the terms, covenants, conditions or provisions of this Lease, or of the rules adopted under Paragraph 40 hereof, other than those described in subparagraphs 13.1(a), (b), (c) or (d), above, where such Default continues for a period of 30 days after written notice; provided, however, that if the nature of Lessee's Default is such that more than 30 days are reasonably required for its cure, then it shall not be deemed to be a Breach if Lessee commences such cure within said 30 day period and thereafter diligently prosecutes such cure to completion.

(f) The occurrence of any of the following events: (i) the making of any general arrangement or assignment for the benefit of creditors; (ii) becoming a "debtor" as defined in 11 U.S.C. §101 or any successor statute thereto (unless, in the case of a petition filed against Lessee, the same is dismissed within 60 days); (iii) the appointment of a trustee or receiver to take possession of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease, where possession is not restored to Lessee within 30 days; or (iv) the attachment, execution or other judicial seizure of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease, where such seizure is not discharged within 30 days; provided, however, in the event that any provision of this subparagraph (e) is contrary to any applicable law, such provision shall be of no force or effect, and not affect the validity of the remaining provisions.

(g) The discovery that any financial statement of Lessee or of any Guarantor given to Lessor was materially false.

(h) If the performance of Lessee's obligations under this Lease is guaranteed: (i) the death of a Guarantor, (ii) the termination of a Guarantor's liability with respect to this Lease other than in accordance with the terms of such guaranty, (iii) a Guarantor's becoming insolvent or the subject of a bankruptcy filing, (iv) a Guarantor's refusal to honor the guaranty, or (v) a Guarantor's breach of its guaranty obligation on an anticipatory basis, and Lessee's failure, within 60 days following written notice of any such event, to provide written alternative assurance or security, which, when coupled with the then existing resources of Lessee, equals or exceeds the combined financial resources of Lessee and the Guarantors that existed at the time of execution of this Lease.

13.2 **Remedies.** If Lessee fails to perform any of its affirmative duties or obligations, within 10 days after written notice (or in case of an emergency, without notice), Lessor may, at its option, perform such duty or obligation on Lessee's behalf, including but not limited to the obtaining of reasonably required bonds, insurance policies, or governmental licenses, permits or approvals. Lessee shall pay to Lessor an amount equal to 115% of the costs and expenses incurred by Lessor in such performance upon receipt of an invoice therefor. In the event of a Breach, Lessor may, with or without further notice or demand, and without limiting Lessor in the exercise of any right or remedy which Lessor may have by reason of such Breach:

(a) Terminate Lessee's right to possession of the Premises by any lawful means, in which case this Lease shall terminate and Lessee shall immediately surrender possession to Lessor. In such event Lessor shall be entitled to recover from Lessee: (i) the unpaid Rent which had been earned at the time of termination; (ii) the worth at the time of award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that the Lessee proves could have been reasonably avoided; (iii) the worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of such rental loss that the Lessee proves could be reasonably avoided; and (iv) any other amount necessary to compensate Lessor for all the detriment proximately caused by the Lessee's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, including but not limited to the cost of recovering possession of the Premises, expenses of reletting, including necessary renovation and alteration of the Premises, reasonable attorneys' fees, and that portion of any leasing commission paid by Lessor in connection with this Lease applicable to the unexpired term of

this Lease. The worth at the time of award of the amount referred to in provision (iii) of the immediately preceding sentence shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of the District within which the Premises are located at the time of award plus one percent. Efforts by Lessor to mitigate damages caused by Lessee's Breach of this Lease shall not waive Lessor's right to recover any damages to which Lessor is otherwise entitled. If termination of this Lease is obtained through the provisional remedy of unlawful detainer, Lessor shall have the right to recover in such proceeding any unpaid Rent and damages as are recoverable therein, or Lessor may reserve the right to recover all or any part thereof in a separate suit. If a notice and grace period required under Paragraph 13.1 was not previously given, a notice to pay rent or quit, or to perform or quit given to Lessee under the unlawful detainer statute shall also constitute the notice required by Paragraph 13.1. In such case, the applicable grace period required by Paragraph 13.1 and the unlawful detainer statute shall run concurrently, and the failure of Lessee to cure the Default within the greater of the two such grace periods shall constitute both an unlawful detainer and a Breach of this Lease entitling Lessor to the remedies provided for in this Lease and/or by said statute.

(b) Continue the Lease and Lessee's right to possession and recover the Rent as it becomes due, in which event Lessee may sublet or assign, subject only to reasonable limitations. Acts of maintenance, efforts to relet, and/or the appointment of a receiver to protect the Lessor's interests, shall not constitute a termination of the Lessee's right to possession.

(c) Pursue any other remedy now or hereafter available under the laws or judicial decisions of the state wherein the Premises are located. The expiration or termination of this Lease and/or the termination of Lessee's right to possession shall not relieve Lessee from liability under any indemnity provisions of this Lease as to matters occurring or accruing during the term hereof or by reason of Lessee's occupancy of the Premises.

13.3 **Inducement Recapture.** Any agreement for free or abated rent or other charges, the cost of tenant improvements for Lessee paid for or performed by Lessor, or for the giving or paying by Lessor to or for Lessee of any cash or other bonus, inducement or consideration for Lessee's entering into this Lease, all of which concessions are hereinafter referred to as "**Inducement Provisions**," shall be deemed conditioned upon Lessee's full and faithful performance of all of the terms, covenants and conditions of this Lease. Upon Breach of this Lease by Lessee, any such Inducement Provision shall automatically be deemed deleted from this Lease and of no further force or effect, and any rent, other charge, bonus, inducement or consideration theretofore abated, given or paid by Lessor under such an Inducement Provision shall be immediately due and payable by Lessee to Lessor, notwithstanding any subsequent cure of said Breach by Lessee. The acceptance by Lessor of rent or the cure of the Breach which initiated the operation of this paragraph shall not be deemed a waiver by Lessor of the provisions of this paragraph unless specifically so stated in writing by Lessor at the time of such acceptance.

13.4 **Late Charges.** Lessee hereby acknowledges that late payment by Lessee of Rent will cause Lessor to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges, and late charges which may be imposed upon Lessor by any Lender. Accordingly, if any Rent shall not be received by Lessor within 5 days after such amount shall be due, then, without any requirement for notice to Lessee, Lessee shall immediately pay to Lessor a one-time late charge equal to 10% of each such overdue amount or $100, whichever is greater. The Parties hereby agree that such late charge represents a fair and reasonable estimate of the costs Lessor will incur by reason of such late payment. Acceptance of such late charge by Lessor shall in no event constitute a waiver of Lessee's Default or Breach with respect to such overdue amount, nor prevent the exercise of any of the other rights and remedies granted hereunder. In the event that a late charge is payable hereunder, whether or not collected, for 3 consecutive installments of Base Rent, then notwithstanding any provision of this Lease to the contrary, Base Rent shall, at Lessor's option, become due and payable quarterly in advance.

13.5 **Interest.** Any monetary payment due Lessor hereunder, other than late charges, not received by Lessor, when due shall bear interest from the 31st day after it was due. The interest ("**Interest**") charged shall be computed at the rate of 10% per annum but shall not exceed the maximum rate allowed by law. Interest is payable in addition to the potential late charge provided for in Paragraph 13.4.

13.6 **Breach by Lessor.**

(a) **Notice of Breach.** Lessor shall not be deemed in breach of this Lease unless Lessor fails within a reasonable time to perform an obligation required to be performed by Lessor. For purposes of this Paragraph, a reasonable time shall in no event be less than 30 days after receipt by Lessor, and any Lender whose name and address shall have been furnished Lessee in writing for such purpose, of written notice specifying wherein such obligation of Lessor has not been performed; provided, however, that if the nature of Lessor's obligation is such that more than 30 days are reasonably required for its performance, then Lessor shall not be in breach if performance is commenced within such 30 day period and thereafter diligently pursued to completion.

(b) **Performance by Lessee on Behalf of Lessor.** In the event that neither Lessor nor Lender cures said breach within 30 days after receipt of said notice, or if having commenced said cure they do not diligently pursue it to completion, then Lessee may elect to cure said breach at Lessee's expense and offset from Rent the actual and reasonable cost to perform such cure, provided however, that such offset shall not exceed an amount equal to the greater of one month's Base Rent or the Security Deposit, reserving Lessee's right to seek reimbursement from Lessor for any such expense in excess of such offset. Lessee shall document the cost of said cure and supply said documentation to Lessor.

14. **Condemnation.** If the Premises or any portion thereof are taken under the power of eminent domain or sold under the threat of the exercise of said power (collectively "**Condemnation**"), this Lease shall terminate as to the part taken as of the date the condemning authority takes title or possession, whichever first occurs. If more than 10% of the Building, or more than 25% of that portion of the Premises not occupied by any building, is taken by Condemnation, Lessee may, at Lessee's option, to be exercised in writing within 10 days after Lessor shall have given Lessee written notice of such taking (or in the absence of such notice, within 10 days after the condemning authority shall have taken possession) terminate this Lease as of the date the condemning authority takes such possession. If Lessee does not terminate this Lease in accordance with the foregoing, this Lease shall remain in full force and effect as to the portion of the Premises remaining, except that the Base Rent shall be reduced in proportion to the reduction in utility of the Premises caused by such Condemnation. Condemnation awards and/or payments shall be the property of Lessor, whether such award shall be made as compensation for diminution in value of the leasehold, the value of the part taken, or for severance damages; provided, however, that Lessee shall be entitled to any compensation paid by the condemnor for Lessee's relocation expenses, loss of business goodwill and/or Trade Fixtures, without regard to whether or not this Lease is terminated pursuant to the provisions of this Paragraph. All Alterations and Utility Installations made to the Premises by Lessee, for purposes of Condemnation only, shall be considered the property of the Lessee and Lessee shall be entitled to any and all compensation which is payable therefor. In the event that this Lease is not terminated by reason of the Condemnation, Lessor shall repair any damage to the Premises caused by such Condemnation.

15. **Brokerage Fees.**

15.1 **Additional Commission.** In addition to the payments owed pursuant to Paragraph 1.9 above, Lessor agrees that: (a) if Lessee exercises any Option, (b) if Lessee or anyone affiliated with Lessee acquires any rights to the Premises or other premises owned by Lessor and located within the same Project, if any, within which the Premises is located, (c) if Lessee remains in possession of the Premises, with the consent of Lessor, after the expiration of this Lease, or (d) if Base Rent is increased, whether by agreement or operation of an escalation clause herein, then, Lessor shall pay Brokers a fee in accordance with the fee schedule of the Brokers in effect at the time the Lease was executed.

15.2 **Assumption of Obligations.** Any buyer or transferee of Lessor's interest in this Lease shall be deemed to have assumed Lessor's obligation hereunder. Brokers shall be third party beneficiaries of the provisions of Paragraphs 1.9, 15, 22 and 31. If Lessor fails to pay to Brokers any amounts due as and for brokerage fees pertaining to this Lease when due, then such amounts shall accrue interest. In addition, if Lessor fails to pay any amounts to Lessee's Broker when due, Lessee's Broker may send written notice to Lessor and Lessee of such failure and if Lessor fails to pay such amounts within 10 days after said notice, Lessee shall pay said monies to its Broker and offset such amounts against Rent. In addition, Lessee's Broker shall be deemed to be a third party beneficiary of any commission agreement entered into by and/or between Lessor and Lessor's Broker for the limited purpose of collecting any brokerage fee owed.

15.3 **Representations and Indemnities of Broker Relationships.** Lessee and Lessor each represent and warrant to the other that it has had no dealings with any person, firm, broker or finder (other than the Brokers, if any) in connection with this Lease, and that no one other than said named Brokers is entitled to any commission or finder's fee in connection herewith. Lessee and Lessor do each hereby agree to indemnify, protect, defend and hold the other harmless from and against liability for compensation or charges which may be claimed by any such unnamed broker, finder or other similar party by reason of any dealings or actions of the Indemnifying Party, including any costs, expenses, attorneys' fees reasonably incurred with respect thereto.

16. **Estoppel Certificates.**

(a) Each Party (as "**Responding Party**") shall within 10 days after written notice from the other Party (the "**Requesting Party**") execute, acknowledge and deliver to the Requesting Party a statement in writing in form similar to the then most current "**Estoppel Certificate**" form published by the AIR Commercial Real Estate Association, plus such additional information, confirmation and/or statements as may be reasonably requested by the Requesting Party.

(b) If the Responding Party shall fail to execute or deliver the Estoppel Certificate within such 10 day period, the Requesting Party may execute an Estoppel Certificate stating that: (i) the Lease is in full force and effect without modification except as may be represented by the Requesting Party, (ii) there are no uncured defaults in the Requesting Party's performance, and (iii) if Lessor is the Requesting Party, not more than one month's rent has been paid in advance. Prospective purchasers and encumbrancers may rely upon the Requesting Party's Estoppel Certificate, and the Responding Party shall be estopped from denying the truth of the facts contained in said Certificate. In addition, Lessee acknowledges that any failure on its part to provide such an Estoppel Certificate will expose Lessor to risks and potentially cause Lessor to incur costs not contemplated by this Lease, the extent of which will be extremely difficult to ascertain. Accordingly, should the Lessee fail to execute and/or deliver a requested Estoppel

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Certificate in a timely fashion the monthly Base Rent shall be automatically increased, without any requirement for notice to Lessee, by an amount equal to 10% of the then existing Base Rent or $100, whichever is greater for remainder of the Lease. The Parties agree that such increase in Base Rent represents fair and reasonable compensation for the additional risk/costs that Lessor will incur by reason of Lessee's failure to provide the Estoppel Certificate. Such increase in Base Rent shall in no event constitute a waiver of Lessee's Default or Breach with respect to the failure to provide the Estoppel Certificate nor prevent the exercise of any of the other rights and remedies granted hereunder.

(c) If Lessor desires to finance, refinance, or sell the Premises, or any part thereof, Lessee and all Guarantors shall within 10 days after written notice from Lessor deliver to any potential lender or purchaser designated by Lessor such financial statements as may be reasonably required by such lender or purchaser, including but not limited to Lessee's financial statements for the past 3 years. All such financial statements shall be received by Lessor and such lender or purchaser in confidence and shall be used only for the purposes herein set forth.

17. **Definition of Lessor.** The term "Lessor" as used herein shall mean the owner or owners at the time in question of the fee title to the Premises, or, if this is a sublease, of the Lessee's interest in the prior lease. In the event of a transfer of Lessor's title or interest in the Premises or this Lease, Lessor shall deliver to the transferee or assignee (in cash or by credit) any unused Security Deposit held by Lessor. Upon such transfer or assignment and delivery of the Security Deposit, as aforesaid, the prior Lessor shall be relieved of all liability with respect to the obligations and/or covenants under this Lease thereafter to be performed by the Lessor. Subject to the foregoing, the obligations and/or covenants in this Lease to be performed by the Lessor shall be binding only upon the Lessor as hereinabove defined.

18. **Severability.** The invalidity of any provision of this Lease, as determined by a court of competent jurisdiction, shall in no way affect the validity of any other provision hereof.

19. **Days.** Unless otherwise specifically indicated to the contrary, the word "days" as used in this Lease shall mean and refer to calendar days.

20. **Limitation on Liability.** The obligations of Lessor under this Lease shall not constitute personal obligations of Lessor or its partners, members, directors, officers or shareholders, and Lessee shall look to the Premises, and to no other assets of Lessor, for the satisfaction of any liability of Lessor with respect to this Lease, and shall not seek recourse against Lessor's partners, members, directors, officers or shareholders, or any of their personal assets for such satisfaction.

21. **Time of Essence.** Time is of the essence with respect to the performance of all obligations to be performed or observed by the Parties under this Lease.

22. **No Prior or Other Agreements; Broker Disclaimer.** This Lease contains all agreements between the Parties with respect to any matter mentioned herein, and no other prior or contemporaneous agreement or understanding shall be effective. Lessor and Lessee each represents and warrants to the Brokers that it has made, and is relying solely upon, its own investigation as to the nature, quality, character and financial responsibility of the other Party to this Lease and as to the use, nature, quality and character of the Premises. Brokers have no responsibility with respect thereto or with respect to any default or breach hereof by either Party.

23. **Notices.**

23.1 **Notice Requirements.** All notices required or permitted by this Lease or applicable law shall be in writing and may be delivered in person (by hand or by courier) or may be sent by regular, certified or registered mail or U.S. Postal Service Express Mail, with postage prepaid, or by facsimile transmission, or by email, and shall be deemed sufficiently given if served in a manner specified in this Paragraph 23. The addresses noted adjacent to a Party's signature on this Lease shall be that Party's address for delivery or mailing of notices. Either Party may by written notice to the other specify a different address for notice, except that upon Lessee's taking possession of the Premises, the Premises shall constitute Lessee's address for notice. A copy of all notices to Lessor shall be concurrently transmitted to such party or parties at such addresses as Lessor may from time to time hereafter designate in writing.

23.2 **Date of Notice.** Any notice sent by registered or certified mail, return receipt requested, shall be deemed given on the date of delivery shown on the receipt card, or if no delivery date is shown, the postmark thereon. If sent by regular mail the notice shall be deemed given 72 hours after the same is addressed as required herein and mailed with postage prepaid. Notices delivered by United States Express Mail or overnight courier that guarantees next day delivery shall be deemed given 24 hours after delivery of the same to the Postal Service or courier. Notices delivered by hand, or transmitted by facsimile transmission or by email shall be deemed delivered upon actual receipt. If notice is received on a Saturday, Sunday or legal holiday, it shall be deemed received on the next business day.

24. **Waivers.**

(a) No waiver by Lessor of the Default or Breach of any term, covenant or condition hereof by Lessee, shall be deemed a waiver of any other term, covenant or condition hereof, or of any subsequent Default or Breach by Lessee of the same or of any other term, covenant or condition hereof. Lessor's consent to, or approval of, any act shall not be deemed to render unnecessary the obtaining of Lessor's consent to, or approval of, any subsequent or similar act by Lessee, or be construed as the basis of an estoppel to enforce the provision or provisions of this Lease requiring such consent.

(b) The acceptance of Rent by Lessor shall not be a waiver of any Default or Breach by Lessee. Any payment by Lessee may be accepted by Lessor on account of moneys or damages due Lessor, notwithstanding any qualifying statements or conditions made by Lessee in connection therewith, which such statements and/or conditions shall be of no force or effect whatsoever unless specifically agreed to in writing by Lessor at or before the time of deposit of such payment.

(c) THE PARTIES AGREE THAT THE TERMS OF THIS LEASE SHALL GOVERN WITH REGARD TO ALL MATTERS RELATED THERETO AND HEREBY WAIVE THE PROVISIONS OF ANY PRESENT OR FUTURE STATUTE TO THE EXTENT THAT SUCH STATUTE IS INCONSISTENT WITH THIS LEASE.

25. **Disclosures Regarding The Nature of a Real Estate Agency Relationship.**

(a) When entering into a discussion with a real estate agent regarding a real estate transaction, a Lessor or Lessee should from the outset understand what type of agency relationship or representation it has with the agent or agents in the transaction. Lessor and Lessee acknowledge being advised by the Brokers in this transaction, as follows:

(i) Lessor's Agent. A Lessor's agent under a listing agreement with the Lessor acts as the agent for the Lessor only. A Lessor's agent or subagent has the following affirmative obligations: To the Lessor: A fiduciary duty of utmost care, integrity, honesty, and loyalty in dealings with the Lessor. To the Lessee and the Lessor: a. Diligent exercise of reasonable skills and care in performance of the agent's duties. b. A duty of honest and fair dealing and good faith. c. A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the Parties. An agent is not obligated to reveal to either Party any confidential information obtained from the other Party which does not involve the affirmative duties set forth above.

(ii) Lessee's Agent. An agent can agree to act as agent for the Lessee only. In these situations, the agent is not the Lessor's agent, even if by agreement the agent may receive compensation for services rendered, either in full or in part from the Lessor. An agent acting only for a Lessee has the following affirmative obligations. To the Lessee: A fiduciary duty of utmost care, integrity, honesty, and loyalty in dealings with the Lessee. To the Lessee and the Lessor: a. Diligent exercise of reasonable skills and care in performance of the agent's duties. b. A duty of honest and fair dealing and good faith. c. A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the Parties. An agent is not obligated to reveal to either Party any confidential information obtained from the other Party which does not involve the affirmative duties set forth above.

(iii) Agent Representing Both Lessor and Lessee. A real estate agent, either acting directly or through one or more associate licenses, can legally be the agent of both the Lessor and the Lessee in a transaction, but only with the knowledge and consent of both the Lessor and the Lessee. In a dual agency situation, the agent has the following affirmative obligations to both the Lessor and the Lessee: a. A fiduciary duty of utmost care, integrity, honesty and loyalty in the dealings with either Lessor or the Lessee. b. Other duties to the Lessor and the Lessee as stated above in subparagraphs (i) or (ii). In representing both Lessor and Lessee, the agent may not without the express permission of the respective Party, disclose to the other Party that the Lessor will accept rent in an amount less than that indicated in the listing or that the Lessee is willing to pay a higher rent than that offered. The above duties of the agent in a real estate transaction do not relieve a Lessor or Lessee from the responsibility to protect their own interests. Lessor and Lessee should carefully read all agreements to assure that they adequately express their understanding of the transaction. A real estate agent is a person qualified to advise about real estate. If legal or tax advice is desired, consult a competent professional.

(b) Brokers have no responsibility with respect to any default or breach hereof by either Party. The Parties agree that no lawsuit or other legal proceeding involving any breach of duty, error or omission relating to this Lease may be brought against Broker more than one year after the Start Date and that the liability (including court costs and attorneys' fees), of any Broker with respect to any such lawsuit and/or legal proceeding shall not exceed the fee received by such Broker pursuant to this Lease; provided, however, that the foregoing limitation on each Broker's liability shall not be applicable to any gross negligence or willful misconduct of such Broker.

(c) Lessor and Lessee agree to identify to Brokers as "Confidential" any communication or information given Brokers that is considered by such Party to be confidential.

26. **No Right To Holdover.** Lessee has no right to retain possession of the Premises or any part thereof beyond the expiration or termination of this Lease. In the event that Lessee holds over, then the Base Rent shall be increased to 150% of the Base Rent applicable immediately preceding the expiration or termination. Holdover Base Rent shall be calculated on monthly basis. Nothing contained herein shall be construed as consent by Lessor to any holding over by Lessee.

27. **Cumulative Remedies.** No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

28. **Covenants and Conditions; Construction of Agreement.** All provisions of this Lease to be observed or performed by Lessee are both covenants and conditions. In construing this Lease, all headings and titles are for the convenience of the Parties only and shall not be considered a part of this Lease. Whenever required by the context, the singular shall include the plural and vice versa. This Lease shall not be construed as if prepared by one of the Parties, but rather according to its fair meaning as a whole, as if both Parties had prepared it.

29. **Binding Effect; Choice of Law.** This Lease shall be binding upon the Parties, their personal representatives, successors and assigns and be governed by the laws of the State in which the Premises are located. Any litigation between the Parties hereto concerning this Lease shall be initiated in the county in which the Premises are located.

30. **Subordination; Attornment; Non-Disturbance.**

30.1 **Subordination.** This Lease and any Option granted hereby shall be subject and subordinate to any ground lease, mortgage, deed of trust, or other hypothecation or security device (collectively, "Security Device"), now or hereafter placed upon the Premises, to any and all advances made on the security thereof, and to all renewals, modifications, and extensions thereof. Lessee agrees that the holders of any such Security Devices (in this Lease together referred to as "Lender") shall have no liability or obligation to perform any of the obligations of Lessor under this Lease. Any Lender may elect to have this Lease and/or any Option granted hereby superior to the lien of its Security Device by giving written notice thereof to Lessee, whereupon this Lease and such Options shall be deemed prior to such Security Device, notwithstanding the relative dates of the documentation or recordation thereof.

30.2 **Attornment.** In the event that Lessor transfers title to the Premises, or the Premises are acquired by another upon the foreclosure or termination of a Security Device to which this Lease is subordinated (i) Lessee shall, subject to the non-disturbance provisions of Paragraph 30.3, attorn to such new owner, and upon request, enter into a new lease, containing all of the terms and provisions of this Lease, with such new owner for the remainder of the term hereof, or, at the election of the new owner, this Lease will automatically become a new lease between Lessee and such new owner, and (ii) Lessor shall thereafter be relieved of any further obligations hereunder and such new owner shall assume all of Lessor's obligations, except that such new owner shall not: (a) be liable for any act or omission of any prior lessor or with respect to events occurring prior to acquisition of ownership; (b) be subject to any offsets or defenses which Lessee might have against any prior lessor, (c) be bound by prepayment of more than one month's rent, or (d) be liable for the return of any security deposit paid to any prior lessor which was not paid or credited to such new owner.

30.3 **Non-Disturbance.** With respect to Security Devices entered into by Lessor after the execution of this Lease, Lessee's subordination of this Lease shall be subject to receiving a commercially reasonable non-disturbance agreement (a "Non-Disturbance Agreement") from the Lender which Non-Disturbance Agreement provides that Lessee's possession of the Premises, and this Lease, including any options to extend the term hereof, will not be disturbed so long as Lessee is not in Breach hereof and attorns to the record owner of the Premises. Further, within 60 days after the execution of this Lease, Lessor shall, if requested by Lessee, use its commercially reasonable efforts to obtain a Non-Disturbance Agreement from the holder of any pre-existing Security Device which is secured by the Premises. In the event that Lessor is unable to provide the Non-Disturbance Agreement within said 60 days, then Lessee may, at Lessee's option, directly contact Lender and attempt to negotiate for the execution and delivery of a Non-Disturbance Agreement.

30.4 **Self-Executing.** The agreements contained in this Paragraph 30 shall be effective without the execution of any further documents; provided, however, that, upon written request from Lessor or a Lender in connection with a sale, financing or refinancing of the Premises, Lessee and Lessor shall execute such further writings as may be reasonably required to separately document any subordination, attornment and/or Non-Disturbance Agreement provided for herein.

31. **Attorneys' Fees.** If any Party or Broker brings an action or proceeding involving the Premises whether founded in tort, contract or equity, or to declare rights hereunder, the Prevailing Party (as hereafter defined) in any such proceeding, action, or appeal thereon, shall be entitled to reasonable attorneys' fees. Such fees may be awarded in the same suit or recovered in a separate suit, whether or not such action or proceeding is pursued to decision or judgment. The term, "Prevailing Party" shall include, without limitation, a Party or Broker who substantially obtains or defeats the relief sought, as the case may be, whether by compromise, settlement, judgment, or the abandonment by the other Party or Broker of its claim or defense. The attorneys' fees award shall not be computed in accordance with any court fee schedule, but shall be such as to fully reimburse all attorneys' fees reasonably incurred. In addition, Lessor shall be entitled to attorneys' fees, costs and expenses incurred in the preparation and service of notices of Default and consultations in connection therewith, whether or not a legal action is subsequently commenced in connection with such Default or resulting Breach ($200 is a reasonable minimum per occurrence for such services and consultation).

32. **Lessor's Access; Showing Premises; Repairs.** Lessor and Lessor's agents shall have the right to enter the Premises at any time, in the case of an emergency, and otherwise at reasonable times after reasonable prior notice for the purpose of showing the same to prospective purchasers, lenders, or tenants, and making such alterations, repairs, improvements or additions to the Premises as Lessor may deem necessary or desirable and the erecting, using and maintaining of utilities, services, pipes and conduits through the Premises and/or other premises as long as there is no material adverse effect to Lessee's use of the Premises. All such activities shall be without abatement of rent or liability to Lessee.

33. **Auctions.** Lessee shall not conduct, nor permit to be conducted, any auction upon the Premises without Lessor's prior written consent. Lessor shall not be obligated to exercise any standard of reasonableness in determining whether to permit an auction.

34. **Signs.** Lessor may place on the Premises ordinary "For Sale" signs at any time and ordinary "For Lease" signs during the last 6 months of the term hereof. Except for ordinary "for sublease" signs, Lessee shall not place any sign upon the Premises without Lessor's prior written consent. All signs must comply with all Applicable Requirements.

35. **Termination; Merger.** Unless specifically stated otherwise in writing by Lessor, the voluntary or other surrender of this Lease by Lessee, the mutual termination or cancellation hereof, or a termination hereof by Lessor for Breach by Lessee, shall automatically terminate any sublease or lesser estate in the Premises; provided, however, that Lessor may elect to continue any one or all existing subtenancies. Lessor's failure within 10 days following any such event to elect to the contrary by written notice to the holder of any such lesser interest, shall constitute Lessor's election to have such event constitute the termination of such interest.

36. **Consents.** Except as otherwise provided herein, wherever in this Lease the consent of a Party is required to an act by or for the other Party, such consent shall not be unreasonably withheld or delayed. Lessor's actual reasonable costs and expenses (including but not limited to architects', attorneys', engineers' and other consultants' fees) incurred in the consideration of, or response to, a request by Lessee for any Lessor consent, including but not limited to consents to an assignment, a subletting or the presence or use of a Hazardous Substance, shall be paid by Lessee upon receipt of an invoice and supporting documentation therefor provided that Lessee shall not be obligated to pay more than $1,000 for legal fees in this connection. Lessor's consent to any act, assignment or subletting shall not constitute an acknowledgment that no Default or Breach by Lessee of this Lease exists, nor shall such consent be deemed a waiver of any then existing Default or Breach, except as may be otherwise specifically stated in writing by Lessor at the time of such consent. The failure to specify herein any particular condition to Lessor's consent shall not preclude the imposition by Lessor at the time of consent of such further or other conditions as are then reasonable with reference to the particular matter for which consent is being given. In the event that either Party disagrees with any determination made by the other hereunder and reasonably requests the reasons for such determination, the determining party shall furnish its reasons in writing and in reasonable detail within 10 business days following such request.

37. **Guarantor.**

37.1 **Execution.** The Guarantors, if any, shall each execute a guaranty in the form most recently published by the AIR Commercial Real Estate Association.

37.2 **Default.** It shall constitute a Default of the Lessee if any Guarantor fails or refuses, upon request to provide: (a) evidence of the execution of the guaranty, including the authority of the party signing on Guarantor's behalf to obligate Guarantor, and in the case of a corporate Guarantor, a certified copy of a resolution of its board of directors authorizing the making of such guaranty, (b) current financial statements, (c) an Estoppel Certificate, or (d) written confirmation that the guaranty is still in effect.

38. **Quiet Possession.** Subject to payment by Lessee of the Rent and performance of all of the covenants, conditions and provisions on Lessee's part to be observed and performed under this Lease, Lessee shall have quiet possession and quiet enjoyment of the Premises during the term hereof.

39. **Options.** If Lessee is granted any Option, as defined below, then the following provisions shall apply:

39.1 **Definition.** "Option" shall mean: (a) the right to extend or reduce the term of or renew this Lease or to extend or reduce the term of or renew any lease that Lessee has on other property of Lessor; (b) the right of first refusal or first offer to lease either the Premises or other property of Lessor; (c) the right to purchase, the right of first offer to purchase or the right of first refusal to purchase the Premises or other property of Lessor.

39.2 ~~**Options Personal To Original Lessee.** Any Option granted to Lessee in this Lease is personal to the original Lessee, and cannot be assigned or exercised by anyone other than said original Lessee and only while the original Lessee is in full possession of the Premises and, if requested by Lessor, with Lessee certifying that Lessee has no intention of thereafter assigning or subletting.~~

39.3 **Multiple Options.** In the event that Lessee has any multiple Options to extend or renew this Lease, a later Option cannot be exercised unless the prior Options have been validly exercised.

39.4 **Effect of Default on Options.**

(a) Lessee shall have no right to exercise an Option: (i) during the period commencing with the giving of any notice of Default and continuing until said Default is cured, (ii) during the period of time any Rent is unpaid (without regard to whether notice thereof is given Lessee), (iii) during the time Lessee is in Breach of this Lease, or (iv) in the event that Lessee has been given 3 or more notices of separate Default, whether or not the Defaults are cured, during the 12 month period immediately preceding the exercise of the Option.

(b) The period of time within which an Option may be exercised shall not be extended or enlarged by reason of Lessee's inability to exercise an Option because of the provisions of Paragraph 39.4(a).

(c) An Option shall terminate and be of no further force or effect, notwithstanding Lessee's due and timely exercise of the Option, if, after such exercise and prior to the commencement of the extended term or completion of the purchase, (i) Lessee fails to pay Rent for a period of 30 days after such Rent becomes due (without any necessity of Lessor to give notice thereof), or (ii) if Lessee commits a Breach of this Lease.

40. **Multiple Buildings.** If the Premises are a part of a group of buildings controlled by Lessor, Lessee agrees that it will abide by and conform to all reasonable rules and regulations which Lessor may make from time to time for the management, safety, and care of said properties, including the care and cleanliness of the grounds and including the parking, loading and unloading of vehicles, and to cause its employees, suppliers, shippers, customers, contractors and invitees to so abide and conform. Lessee also agrees to pay its fair share of common expenses incurred in connection with such rules and regulations.

41. **Security Measures.** Lessee hereby acknowledges that the Rent payable to Lessor hereunder does not include the cost of guard service or other security measures, and that Lessor shall have no obligation whatsoever to provide same. Lessee assumes all responsibility for the protection of the Premises, Lessee, its agents and invitees and their property from the acts of third parties.

42. **Reservations.** Lessor reserves to itself the right, from time to time, to grant, without the consent or joinder of Lessee, such easements, rights and dedications that Lessor deems necessary, and to cause the recordation of parcel maps and restrictions, so long as such easements, rights, dedications, maps and restrictions do not unreasonably interfere with the use of the Premises by Lessee. Lessee agrees to sign any documents reasonably requested by Lessor to effectuate any such easement rights, dedication, map or restrictions.

43. **Performance Under Protest.** If at any time a dispute shall arise as to any amount or sum of money to be paid by one Party to the other under the provisions hereof, the Party against whom the obligation to pay the money is asserted shall have the right to make payment "under protest" and such payment shall not be regarded as a voluntary payment and there shall survive the right on the part of said Party to institute suit for recovery of such sum. If it shall be adjudged that there was no legal obligation on the part of said Party to pay such sum or any part thereof, said Party shall be entitled to recover such sum or so much thereof as it was not legally required to pay. A Party who does not initiate suit for the recovery of sums paid "under protest" within 6 months shall be deemed to have waived its right to protest such payment.

44. **Authority; Multiple Parties; Execution.**

(a) If either Party hereto is a corporation, trust, limited liability company, partnership, or similar entity, each individual executing this Lease on behalf of such entity represents and warrants that he or she is duly authorized to execute and deliver this Lease on its behalf. Each Party shall, within 30 days after request, deliver to the other Party satisfactory evidence of such authority.

(b) If this Lease is executed by more than one person or entity as "Lessee", each such person or entity shall be jointly and severally liable hereunder. It is agreed that any one of the named Lessees shall be empowered to execute any amendment to this Lease, or other document ancillary thereto and bind all of the named Lessees, and Lessor may rely on the same as if all of the named Lessees had executed such document.

(c) This Lease may be executed by the Parties in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

45. **Conflict.** Any conflict between the printed provisions of this Lease and typewritten or handwritten provisions shall be controlled by the typewritten or handwritten provisions.

46. **Offer.** Preparation of this Lease by either Party or their agent and submission of same to the other Party shall not be deemed an offer to lease to the other Party. This Lease is not intended to be binding until executed and delivered by all Parties hereto.

47. **Amendments.** This Lease may be modified only in writing, signed by the Parties in interest at the time of the modification. As long as they do not materially change Lessee's obligations hereunder, Lessee agrees to make such reasonable non-monetary modifications to this Lease as may be reasonably required by a Lender in connection with the obtaining of normal financing or refinancing of the Premises.

48. **Waiver of Jury Trial.** **THE PARTIES HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING INVOLVING THE PROPERTY OR ARISING OUT OF THIS AGREEMENT.**

49. **Arbitration of Disputes.** An Addendum requiring the Arbitration of disputes between the Parties and/or Brokers arising out of this Lease ☐ Is ☑ Is not attached to this Lease.

50. **Accessibility; Americans with Disabilities Act.**

(a) The Premises: ☑ have not undergone an inspection by a Certified Access Specialist (CASp). ☐ have undergone an inspection by a Certified Access Specialist (CASp) and it was determined that the Premises met all applicable construction-related accessibility standards pursuant to California Civil Code §55.51 et seq. ☐ have undergone an inspection by a Certified Access Specialist (CASp) and it was determined that the Premises did not meet all applicable construction-related accessibility standards pursuant to California Civil Code §55.51 et seq.

(b) Since compliance with the Americans with Disabilities Act (ADA) is dependent upon Lessee's specific use of the Premises, Lessor makes no warranty or representation as to whether or not the Premises comply with ADA or any similar legislation. In the event that Lessee's use of the Premises requires modifications or additions to the Premises in order to be in ADA compliance, Lessee agrees to make any such necessary modifications and/or additions at Lessee's expense.

LESSOR AND LESSEE HAVE CAREFULLY READ AND REVIEWED THIS LEASE AND EACH TERM AND PROVISION CONTAINED HEREIN, AND BY THE EXECUTION OF THIS LEASE SHOW THEIR INFORMED AND VOLUNTARY CONSENT THERETO. THE PARTIES HEREBY AGREE THAT, AT THE TIME THIS LEASE IS EXECUTED, THE TERMS OF THIS LEASE ARE COMMERCIALLY REASONABLE AND EFFECTUATE THE INTENT AND PURPOSE OF LESSOR AND LESSEE WITH RESPECT TO THE PREMISES.

ATTENTION: NO REPRESENTATION OR RECOMMENDATION IS MADE BY THE AIR COMMERCIAL REAL ESTATE ASSOCIATION OR BY ANY BROKER AS TO THE LEGAL SUFFICIENCY, LEGAL EFFECT, OR TAX CONSEQUENCES OF THIS LEASE OR THE TRANSACTION TO WHICH IT RELATES. THE PARTIES ARE URGED TO:

1. SEEK ADVICE OF COUNSEL AS TO THE LEGAL AND TAX CONSEQUENCES OF THIS LEASE.

2. RETAIN APPROPRIATE CONSULTANTS TO REVIEW AND INVESTIGATE THE CONDITION OF THE PREMISES. SAID INVESTIGATION SHOULD INCLUDE BUT NOT BE LIMITED TO: THE POSSIBLE PRESENCE OF HAZARDOUS SUBSTANCES, THE ZONING OF THE PREMISES, THE STRUCTURAL INTEGRITY, THE CONDITION OF THE ROOF AND OPERATING SYSTEMS, AND THE SUITABILITY OF THE PREMISES FOR LESSEE'S INTENDED USE.

WARNING: IF THE PREMISES IS LOCATED IN A STATE OTHER THAN CALIFORNIA, CERTAIN PROVISIONS OF THE LEASE MAY NEED TO BE REVISED TO COMPLY WITH THE LAWS OF THE STATE IN WHICH THE PREMISES IS LOCATED.

The parties hereto have executed this Lease at the place and on the dates specified above their respective signatures.

Executed at: San Clemente, CA	Executed at: New Canaan, CT
On: 1-26-17	On: Jan 27, 2017
By LESSOR:	By LESSEE:
San Clemente Holdings, LLC.	ReShape Medical Inc.
By:	By:
Name Printed: Jonathan Parry	Name Printed: Mike Mangano
Title: Member	Title: CEO & President
By:	By:

JP INITIALS

MM INITIALS

Name Printed:	Name Printed:
Title:	Title:
Address: P.O. Box 74268, San Clemente, CA 92673	Address: 1001 Calle Amanecer, San Clemente, CA 92673
Telephone: (888) 557-7910	Telephone: (949)429-6680
Facsimile: (888) 557-7911	Facsimile: (949) 429-6684
Email: jon.parry@bemus.com	Email: mmangano@reshapemedical.com
Email:	Email:
Federal ID No. 35-2231634	Federal ID No. 20-3387499

BROKER: Johnston Pacific Commercial Real Estate, Inc	BROKER: CBRE Commercial Real Estate Services, Worldwide
Att: Rob Johnston	Att: Brian Cole - Jeff Carr
Title: President	Title: Agents
Address: 1305 Calle Avanzado, San Clemente, CA, 92673	Address: 3501 Jamboree Road, Suite 100, Newport Beach, CA 92660
Telephone:(949)366-2020	Telephone:(949)725-8500
Facsimile:(949)366-2088	Facsimile:(949)725-8545
Email: rob@johnston-pacific.com	Email: brian.cole@cbre.com
Federal ID No.	Federal ID No.
Broker/Agent BRE License #: 01121630	Broker/Agent BRE License #: 01770986 - 01009600

ADDENDUM

ADDENDUM TO THAT CERTAIN STANDARD SINGLE-TENANT LEASE-GROSS, DATED FOR REFERENCE PURPOSES ONLY, JANUARY 20, 2017, MADE BY AND BETWEEN SAN CLEMENTE HOLDINGS, LLC., AS LESSOR, AND RESHAPE MEDICAL INC. AS LESSEE, FOR THE PROPERTY LOCATED AT 1001 CALLE AMANECER, SAN CLEMENTE, CALIFORNIA

1. **LEASE PREPARATION:** This Lease, Addendum, and Exhibits have been prepared by Johnston Pacific Commercial Real Estate, Inc., at the request of Lessor and Lessee. The Lessor and Lessee agree to indemnify, defend, and hold harmless Johnston Pacific Commercial Real Estate, Inc., its respective agents and employees, from and against any claims, expenses, losses and liability, including without limitation, attorney fees and costs that may be occasioned as a result of completing this Standard Industrial/Commercial Lease Form, Addendum, and Exhibits. Lessor and Lessee acknowledge being advised by Johnston Pacific Commercial Real Estate, Inc., to have this Lease, Addendum and Exhibits reviewed by their respective attorneys.

2. **BASE MONTHLY RENT:**
   April 1, 2017 through March 31, 2018: $24,614.30 per month ($1.70 Gross per sq. ft. per month)
   April 1, 2018 through March 31, 2019: $25,250.75 per month ($1.75 Gross per sq. ft. per month)
   April 1, 2019 through March 31, 2020: $26,062.20 per month ($1.80 Gross per sq. ft. per month)
   April 1, 2020 through March 31, 2021: $26,786.15 per month ($1.85 Gross per sq. ft. per month)
   April 1, 2021 through June 30, 2022: $27,510.10 per month ($1.90 Gross per sq. ft. per month)

3. **BUILDING PREPARATION:** Lessor shall provide Lessee a Tenant Improvement allowance of $75,000.00 to be utilized for building improvements to be constructed per a mutually agreed upon plan. Lessor shall reimburse Lessee upon completion of their work as evidenced by paid invoices. Said improvements shall consist of additional private offices and other interior modifications. Lessor shall use its best efforts to negotiate with the existing tenant to have the tenant's furniture remain. Should Lessor be unsuccessful, Lessee has the Lessor's permission to negotiate directly with tenant.

4. **LESSEE'S EXISTING LEASE TERMINATION:** This lease for 1001 Calle Amanecer shall be null and void if Lessee has not received said mutually executed lease termination by February 1, 2017.

5. **RENTAL ABATEMENT:** Lessee shall be granted rental abatement of monthly base rent during the months of May 2017, June 2017, and July 2017 of the lease term.

6. **PARKING:** Lessee shall receive the reserved use of forty-nine (49) parking stalls for the lease term. All parking stalls shall be free for the lease term. Please see parking Exhibit C.

7. **BUILDING IDENTIFICATION:** Lessee shall have the right to install a sign on the exterior of the building pursuant to the building association sign criteria and the City of San Clemente's sign code at Lessee's sole cost and expense. Lessee shall remove said sign prior to vacating the premises and agrees to return the area around and underneath the sign to its original condition.

8. **INCONSISTENCIES:** Capitalized terms in this Addendum shall have the same meaning as those terms in the Lease. If there are any inconsistencies between the provisions of the Lease and this Addendum, the provisions of this Addendum shall control.

Lessor's Initials: _____

Lessee's Initials: _____

All other terms and conditions of the Lease shall remain the same.

The parties hereto have executed this Lease at the place and on the dates specified above their respective signatures.

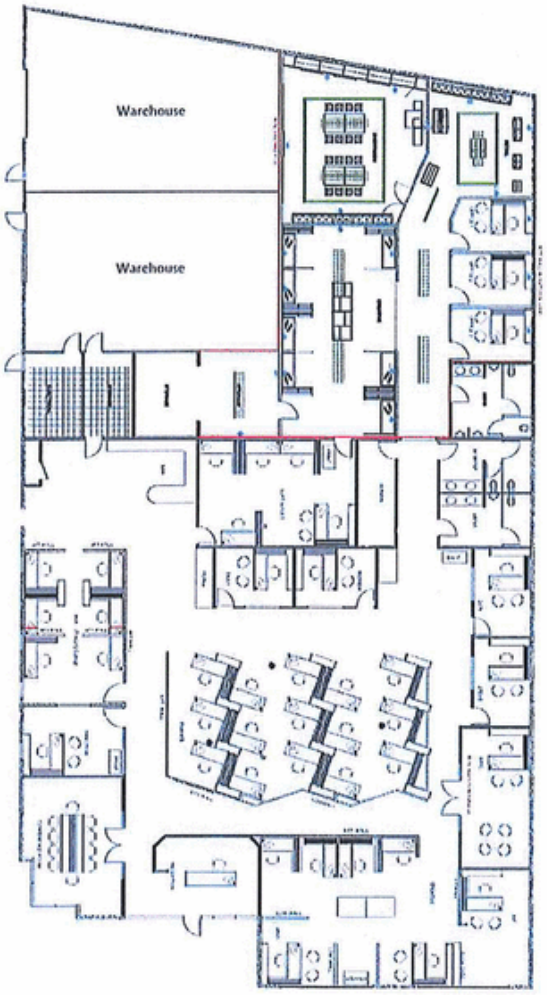
Executed at: San Clemente, CA
On: 1.26.17
By LESSOR: San Clemente Holdings, LLC
By:
Name Printed: Jonathan Parry
Title: Member
By: _____
Name Printed: _____
Title: _____
Address: P.O. Box 74268, San Clemente, CA 92673
_____
Telephone: (888) 557-7910
Facsimile: (888) 557-7911
Email: jon.parry@bemus.com

Executed at: SAN CLEMENTE CA
On: JAN 26, 2017
By LESSEE: ReShape Medical, Inc.
By:
Name Printed: Mike Mangano
Title: CEO & President
By: _____
Name Printed: _____
Title: _____
Address: 1001 Calle Amanecer,
San Clemente, CA 92673
Telephone: (949) 429-6680
Facsimile: (949) 429-6684
Email: mmangano@reshapemedical.com

Exhibit A

1001 Calle Amanecer, San Clemente

Existing Layout



Lessor's Initials: JP'

Lessee's Initials:

OPTION(S) TO EXTEND
STANDARD LEASE ADDENDUM

Dated January 20, 2017

By and Between (Lessor) San Clemente Holdings, LLC.

By and Between (Lessee) ReShape Medical, Inc.

Address of Premises: 1001 Calle Amanecer, San Clemente, CA 92673

Paragraph 51

A. OPTION(S) TO EXTEND:
Lessor hereby grants to Lessee the option to extend the term of this Lease for 1 additional 36 month period(s) commencing when the prior term expires upon each and all of the following terms and conditions:

(i) In order to exercise an option to extend, Lessee must give written notice of such election to Lessor and Lessor must receive the same at least 3 but not more than 6 months prior to the date that the option period would commence, time being of the essence. If proper notification of the exercise of an option is not given and/or received, such option shall automatically expire. Options (if there are more than one) may only be exercised consecutively.

(ii) The provisions of paragraph 39, including those relating to Lessee's Default set forth in paragraph 39.4 of this Lease, are conditions of this Option.

(iii) Except for the provisions of this Lease granting an option or options to extend the term, all of the terms and conditions of this Lease except where specifically modified by this option shall apply.

(iv) This Option is personal to the original Lessee, and cannot be assigned or exercised by anyone other than said original Lessee and only while the original Lessee is in full possession of the Premises and without the intention of thereafter assigning or subletting.

(v) The monthly rent for each month of the option period shall be calculated as follows, using the method(s) indicated below:
(Check Method(s) to be Used and Fill In Appropriately)

☐ I. **Cost of Living Adjustment(s) (COLA)**
a. On (Fill in COLA Dates): _____
the Base Rent shall be adjusted by the change, if any, from the Base Month specified below, in the Consumer Price Index of the Bureau of Labor Statistics of the U.S. Department of Labor for (select one): ☐ CPI W (Urban Wage Earners and Clerical Workers) or ☐ CPI U (All Urban Consumers), for (Fill in Urban Area): _____
All Items (1982-1984 = 100), herein referred to as "CPI".

b. The monthly Base Rent payable in accordance with paragraph A.I.a. of this Addendum shall be calculated as follows: the Base Rent set forth in paragraph 1.5 of the attached Lease, shall be multiplied by a fraction the numerator of which shall be the CPI of the calendar month 2 months prior to the month(s) specified in paragraph A.I.a. above during which the adjustment is to take effect, and the denominator of which shall be the CPI of the calendar month which is 2 months prior to (select one): ☐ the first month of the term of this Lease as set forth in paragraph 1.3 ("Base Month") or ☐ (Fill In Other "Base Month"): _____
The sum so calculated shall constitute the new monthly Base Rent hereunder, but in no event, shall any such new monthly Base Rent be less than the Base Rent payable for the month immediately preceding the rent adjustment.

c. In the event the compilation and/or publication of the CPI shall be transferred to any other governmental department or bureau or agency or shall be discontinued, then the index most nearly the same as the CPI shall be used to make such calculation. In the event that the Parties cannot agree on such alternative index, then the matter shall be submitted for decision to the American Arbitration Association in accordance with the then rules of said Association and the decision of the arbitrators shall be binding upon the parties. The cost of said Arbitration shall be paid equally by the Parties.

☑ II. **Market Rental Value Adjustment(s) (MRV)**
a. On (Fill In MRV Adjustment Date(s)) July 1, 2022
the Base Rent shall be adjusted to the "Market Rental Value" of the property as follows:
1) Four months prior to each Market Rental Value Adjustment Date described above, the Parties shall attempt to agree upon what the new MRV will be on the adjustment date. If agreement cannot be reached, within thirty days, then:

(a) Lessor and Lessee shall immediately appoint a mutually acceptable appraiser or broker to establish the new MRV within the next 30 days. Any associated costs will be split equally between the Parties, or

(b) Both Lessor and Lessee shall each immediately make a reasonable determination of the MRV and submit such determination, in

writing, to arbitration in accordance with the following provisions:

(i) Within 15 days thereafter, Lessor and Lessee shall each select an ☐ appraiser or ☑ broker ("Consultant" - check one) of their choice to act as an arbitrator. The two arbitrators so appointed shall immediately select a third mutually acceptable Consultant to act as a third arbitrator.

(ii) The 3 arbitrators shall within 30 days of the appointment of the third arbitrator reach a decision as to what the actual MRV for the Premises is, and whether Lessor's or Lessee's submitted MRV is the closest thereto. The decision of a majority of the arbitrators shall be binding on the Parties. The submitted MRV which is determined to be the closest to the actual MRV shall thereafter be used by the Parties.

(iii) If either of the Parties fails to appoint an arbitrator within the specified 15 days, the arbitrator timely appointed by one of them shall reach a decision on his or her own, and said decision shall be binding on the Parties.

(iv) The entire cost of such arbitration shall be paid by the party whose submitted MRV is not selected, ie. the one that is NOT the closest to the actual MRV.

2) When determining MRV, the Lessor, Lessee and Consultants shall consider the terms of comparable market transactions which shall include, but not limited to, rent, rental adjustments, abated rent, lease term and financial condition of tenants.

3) Notwithstanding the foregoing, the new Base Rent shall not be less than the rent payable for the month immediately preceding the rent adjustment.

b. Upon the establishment of each New Market Rental Value:

1) the new MRV will become the new "Base Rent" for the purpose of calculating any further Adjustments, and
2) the first month of each Market Rental Value term shall become the new "Base Month" for the purpose of calculating any further Adjustments.

☐ III. Fixed Rental Adjustment(s) (FRA)
The Base Rent shall be increased to the following amounts on the dates set forth below:

On (Fill in FRA Adjustment Date(s)):	The New Base Rent shall be:

☐ IV. Initial Term Adjustments.
The formula used to calculate adjustments to the Base Rate during the original Term of the Lease shall continue to be used during the extended term.

B. NOTICE:
Unless specified otherwise herein, notice of any rental adjustments, other than Fixed Rental Adjustments, shall be made as specified in paragraph 23 of the Lease.

C. BROKER'S FEE:
The Brokers shall be paid a Brokerage Fee for each adjustment specified above in accordance with paragraph 15 of the Lease or if applicable, paragraph 9 of the Sublease.

NOTICE: These forms are often modified to meet changing requirements of law and industry needs. Always write or call to make sure you are utilizing the most current form: AIR Commercial Real Estate Association, 500 N Brand Blvd, Suite 900, Glendale, CA 91203. Telephone No. (213) 687-8777. Fax No.: (213) 687-8616.

EXHIBIT B
DISCLOSURE FOR LEASE

For AIR Lease Form Prepared by Johnston Pacific Commercial Real Estate, Inc.

PREMISES: 1001 Calle Amanecer, San Clemente, California, 92673 (the "Premises")

1. **LEGAL EFFECT.** Upon acceptance of a binding Lease ("Lease"), Lessor and Lessee both intend to have a binding legal agreement for the leasing of the Premises on the terms and conditions set forth therein. Lessor and Lessee acknowledge that Broker (as defined in the Lease) is not qualified to practice law or authorized to give legal advice or counsel as to any legal matters affecting the Lease. Broker hereby advises Lessor and Lessee to consult with their respective attorneys in connection with any questions each may have as to legal ramifications of the Lease prior to the execution thereof.

2. **FORM OF LEASE.** The Lease is a standard form document. Broker has, at the direction of Lessor and/or Lessee, merely "filled in the blanks" based on prior discussions and/or correspondence of the parties. Lessor and Lessee each acknowledge that the Lease is delivered subject to the express condition that Broker has merely followed the instructions of the parties in preparing this document and does not assume any responsibility for its accuracy, completeness or form. Lessor and Lessee acknowledge and understand that in providing the Lease, Broker has acted to expedite this transaction on behalf of Lessor and/or Lessee and has functioned within the scope of professional ethics by doing so.

3. **CONCURRENT OFFERS.** Lessor and Lessee acknowledge and consent that Broker may represent concurrent and/or competing offers with regard to the purchase or lease of the Premises from one or more prospective Buyers or Lessees without further notice.

4. **NO INDEPENDENT INVESTIGATION.** Lessor and Lessee acknowledge and understand that any financial statements, information, reports or written materials of any nature whatsoever, as provided by the parties to Broker and thereafter submitted by Broker to either Lessor and/or Lessee, are so provided without any independent investigation by Broker, and as such, Broker assumes no responsibility or liability for the accuracy or validity of the same. Any verification of such submitted documents is solely and completely the responsibility of the party to whom such documents have been submitted.

5. **NO WARRANTY.** Lessor and Lessee acknowledge and agree that no warranties, recommendations or representations are or will be made by Broker as to the accuracy, legal sufficiency, legal effect or tax consequences of any of the documents submitted by Broker to Lessor and/or Lessee or of the legal sufficiency, legal effect or tax consequences of the transactions contemplated thereby. Furthermore, Lessor and Lessee acknowledge and agree that Broker has not made and will not make any representations or warranties concerning the ability of Lessee to use the Premises for its intended use nor any other matter regarding the Premises, and the parties are relying solely on their own investigation in executing the Lease.

6. **NOTICE REGARDING HAZARDOUS WASTES OR SUBSTANCES AND UNDERGROUND STORAGE TANKS.** Although Broker will disclose any actual knowledge it possesses with respect to the existence of any hazardous wastes, substances or underground storage tanks at the Premises, Broker has not made (and will not make) any independent investigations or obtained reports with respect thereto, except as may be described in a separate written document signed by Broker. All parties hereto acknowledge and understand that, except as set forth in the preceding sentence, Broker makes no representations or warranties regarding the existence or nonexistence of hazardous wastes, substances or underground storage tanks at the Premises. Lessor and Lessee acknowledge that Broker has recommended that they should each contact one or more professionals, such as a civil engineer, geologist, industrial hygienist or other environmental consultants, for advice concerning the existence of hazardous wastes, substances or underground storage tanks.

7. **DISCLOSURE RESPECTING AMERICANS WITH DISABILITIES ACT.** The Americans with Disabilities Act, as well as certain state and local laws, is intended to make many business establishments equally accessible to persons with a variety of disabilities; modifications to real property may be required by such laws. Broker is not qualified to advise you as to what, if any, changes may be required now or in the future. The undersigned acknowledge that Broker has recommended that they consult attorneys and qualified professionals for information regarding whether the Premises is in compliance with applicable law and/or whether modifications and changes are required.

8. **CORPORATE SIGNATURES.** Although there is a presumption under California law that the signature of a corporate president is adequate to bind the corporation, a California Court of Appeals in a 1998 case allowed a party to rebut the normal presumption. Therefore, if either of the parties to the Lease is a corporation, it is advisable: (i) that the Lease be signed by two officers of the corporation. e.g. the president or vice president and the secretary or chief financial officer (note: one individual signing in both the capacity of president and secretary may not be sufficient and/or (ii) that the corporation provides a duly executed resolution authorizing the transaction.

9. **USE AND OCCUPANCY DISCLOSURE.** Broker recommends that Lessee hire qualified contractor(s), consultant(s) or other professional(s) to confirm and verify that the physical characteristics of the Property (including, but not limited to, building, office and land sizes, fire sprinkler capacity, electrical power and all utilities, ceiling clear height, loading door sizes and quantity, railroad service, parking spaces, heating/cooling systems, type of construction, restroom(s) number and size, year built, improvements are to Lessee's satisfaction and that they are adequate to accommodate Lessee's intended use. Broker also recommends that Lessee hire qualified professionals to confirm with applicable governmental agencies that the use and zoning of the Property are acceptable for Lessee's intended use and that Lessee will be able to obtain all permits, licenses and other approvals necessary for the intended use.

10. **SEISMIC REINFORCEMENT DISCLOSURE.** Some cities and counties have established or may be establishing minimum standards for structural seismic resistance for certain buildings constructed prior to 1933, 1976, and, possibly other dates. Some structures will be required to comply with various standards set forth by the appropriate governmental agencies. Broker is not qualified to advise you as to what, if any changes may be required now or in the future. The undersigned acknowledge that Broker has recommended that they consult a qualified architect, attorney or other consultant for information regarding this matter.

11. **MOLD DISCLOSURE.** Toxic or other molds may be present within a property on concentrations that may pose a threat to the health of humans. Toxic or other dangerous molds may or may not be visible to a potential user of the Property. In order to ascertain the nature and extent of toxic or other molds present in the property, it is necessary to conduct testing using a qualified environmental expert specializing in mold inspection and analysis. Broker advises Lessee to retain the services of an environmental testing expert for this purpose.

12. **DISCLOSURE REGARDING CITY ORDINANCES.** Some cities have enacted ordinances which provide, among other matters, for car and truck parking restrictions and regulations, truck loading and requirements, and maximum building sizes that can be utilized for a particular use. Additionally, some cities have imposed special taxes, such as the City of Vernon, for warehouse or partial warehouse uses. All of these restrictions and/or regulations vary from city to city, and they are constantly changing. Broker is not qualified to advise you whether the Premises (and/or any related property) might, in the future, violate these or any other ordinances, nor is Broker qualified to advise you as to the impact thereof. Broker recommends that each party carefully review all applicable codes, regulations, and ordinances affecting the Premises and consult with their attorneys, consultants, engineers, and contractors to determine whether the Premises (and/or any related property) and the proposed use is and in the future will be in compliance with same.

The undersigned acknowledge that they have received and read the above Disclosure.

Dated: 1-26-17	Dated: JAN 27, 2017
LESSOR: San Clemente Holdings, LLC.	LESSEE: ReShape Medical Inc.
BY:	BY:
NAME PRINTED: Jonathan Barry	NAME PRINTED: Mike Mangano

DISCLOSURE REGARDING
REAL ESTATE AGENCY RELATIONSHIP

(As required by the Civil Code)

When you enter into a discussion with a real estate agent regarding a real estate transaction, you should from the outset understand what type of agency relationship or representation you wish to have with the agent in the transaction.

SELLER'S AGENT ("Seller" includes both a vendor and a lessor)

A Seller's agent under a listing agreement with the Seller acts as the agent for the Seller only. A Seller's agent or a subagent of that agent has the following affirmative obligations:

To the Seller: A fiduciary duty of utmost care, integrity, honesty and loyalty in dealings with the Seller. To the Buyer and the Seller:

(a) Diligent exercise of reasonable skill and care in performance of the agent's duties.

(b) A duty of honest and fair dealing and good faith.

(c) A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the parties. An agent is not obligated to reveal to either party any confidential information obtained from the other party that does not involve the affirmative duties set forth above.

BUYER'S AGENT ("Buyer" includes both a purchaser and a lessee).

A selling agent can, with a Buyer's consent, agree to act as agent for the Buyer only. In these situations, the agent is not the Seller's agent, even if by agreement the agent may receive compensation for services rendered, either in full or in part from the Seller. An agent acting only for a Buyer has the following affirmative obligations:

To the Buyer: A fiduciary duty of utmost care, integrity, honesty and loyalty in dealings with the Buyer. To the Buyer and the Seller:

(a) Diligent exercise of reasonable skill and care in performance of the agent's duties.

(b) A duty of honest and fair dealing and good faith.

(c) A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the parties.

An agent is not obligated to reveal to either party any confidential information obtained from the other party that does not involve the affirmative duties set forth above.

AGENT REPRESENTING BOTH SELLER AND BUYER

A real estate agent, either acting directly or through one or more associate licensees, can legally be the agent of both the Seller and the Buyer in a transaction, but only with the knowledge and consent of both the Seller and the Buyer.

In a dual agency situation, the agent has the following affirmative obligations to both the Seller and the Buyer:

(a) A fiduciary duty of utmost care, integrity, honesty and loyalty in the dealings with either the Seller or the Buyer.

(b) Other duties to the Seller and the Buyer as stated above in their respective sections.

In representing both Seller and Buyer, the agent may not, without the express permission of the respective party, disclose to the other party that the Seller will accept a price less than the listing price or that the Buyer will pay a price greater than the price offered.

The above duties of the agent in a real estate transaction do not relieve a Seller or Buyer from the responsibility to protect his or her own interests. You should carefully read all agreements to assure that they adequately express your understanding of the transaction. A real estate agent is a person qualified to advise about real estate. If legal or tax advice is desired, consult a competent professional.

Throughout your real property transaction you may receive more than one disclosure form, depending upon the number of agents assisting in the transaction. The law requires each agent with whom you have more than a casual relationship to present you with this disclosure form. You should read its contents each time it is presented to you, considering the relationship between you and the real estate agent in your specific transaction. **This disclosure form includes the provisions of Sections 2079.13 to 2079.24, inclusive, of the Civil Code set forth on page 2. Read it carefully. I/WE ACKNOWLEDGE RECEIPT OF A COPY OF THIS DISCLOSURE AND THE PORTIONS OF THE CIVIL CODE PRINTED ON THE BACK (OR A SEPARATE PAGE).**

☐ Buyer ☐ Seller ☑ Lessor ☐ Lessee San Clemente Holdings, LLC Date: 1.26.17

☐ Buyer ☐ Seller ☐ Lessor ☐ Lessee _____ Date: _____

Agent Johnston Pacific Commercial Real Estate, Inc. BRE Lic. # 01121630
Real Estate Broker (Firm)

By: Rob Johnston BRE Lic. # 01121630 Date: _____
(Salesperson or Broker-Associate)

NOTE:

- When the listing brokerage company also represents Buyer/Lessee: The Listing Agent shall have one Agency Disclosure form signed by Seller/Lessor and a second Agency Disclosure form signed by Buyer/Lessee.
- When Seller/Lessor and Buyer/Lessee are represented by different brokerage companies: (i) the Listing Agent shall have one Agency Disclosure form signed by Seller/Lessor and (ii) the Buyer's/Lessee's Agent shall have one Agency Disclosure form signed by Buyer/Lessee and either that same or a different Agency Disclosure form presented to Seller/Lessor for signature prior to presentation of the offer. If the same form is used, Seller/Lessor may sign here:

_____ Date: _____
Seller/Lessor

THIS FORM HAS BEEN PREPARED BY THE AIR COMMERCIAL REAL ESTATE ASSOCIATION. NO REPRESENTATION IS MADE AS TO THE LEGAL VALIDITY OR ADEQUACY OF THIS FORM FOR ANY SPECIFIC TRANSACTION. PLEASE SEEK LEGAL COUNSEL AS TO THE APPROPRIATENESS OF THIS FORM.

DISCLOSURE REGARDING REAL ESTATE AGENCY RELATIONSHIP

CIVIL CODE SECTIONS 2079.13 THROUGH 2079.24 (2079.16 APPEARS ON THE FRONT)

2079.13 As used in Sections 2079.14 to 2079.24, inclusive, the following terms have the following meanings:

(a) "Agent" means a person acting under provisions of Title 9 (commencing with Section 2295) in a real property transaction, and includes a person who is licensed as a real estate broker under Chapter 3 (commencing with Section 10130) of Part 1 of Division 4 of the Business and Professions Code, and under whose license a listing is executed or an offer to purchase is obtained. (b) "Associate licensee" means a person who is licensed as a real estate broker or salesperson under Chapter 3 (commencing with Section 10130) of Part 1 of Division 4 of the Business and Professions Code and who is either licensed under a broker or has entered into a written contract with a broker to act as the broker's agent in connection with acts requiring a real estate license and to function under the broker's supervision in the capacity of an associate licensee. The agent in the real property transaction bears responsibility for his or her associate licensees who perform as agents of the agent. When an associate licensee owes a duty to any principal, or to any buyer or seller who is not a principal, in a real property transaction, that duty is equivalent to the duty owed to that party by the broker for whom the associate licensee functions. (c) "Buyer" means a transferee in a real property transaction, and includes a person who executes an offer to purchase real property from a seller through an agent, or who seeks the services of an agent in more than a casual, transitory, or preliminary manner, with the object of entering into a real property transaction. "Buyer" includes vendee or lessee. (d) "Commercial real property" means all real property in the state, except single-family residential real property, dwelling units made subject to Chapter 2 (commencing with Section 1940) of Title 5, mobilehomes, as defined in Section 798.3, or recreational vehicles, as defined in Section 799.29. (e) "Dual agent" means an agent acting, either directly or through an associate licensee, as agent for both the seller and the buyer in a real property transaction. (f) "Listing agreement" means a contract between an owner of real property and an agent, by which the agent has been authorized to sell the real property or to find or obtain a buyer. (g) "Listing agent" means a person who has obtained a listing of real property to act as an agent for compensation. (h) "Listing price" is the amount expressed in dollars specified in the listing for which the seller is willing to sell the real property through the listing agent. (i) "Offering price" is the amount expressed in dollars specified in an offer to purchase for which the buyer is willing to buy the real property. (j) "Offer to purchase" means a written contract executed by a buyer acting through a selling agent that becomes the contract for the sale of the real property upon acceptance by the seller. (k) "Real property" means any estate specified by subdivision (1) or (2) of Section 761 in property that constitutes or is improved with one to four dwelling units, any commercial real property, any leasehold in these types of property exceeding one year's duration, and mobilehomes, when offered for sale or sold through an agent pursuant to the authority contained in Section 10131.6 of the Business and Professions Code. (l) "Real property transaction" means a transaction for the sale of real property in which an agent is employed by one or more of the principals to act in that transaction, and includes a listing or an offer to purchase. (m) "Sell," "sale," or "sold" refers to a transaction for the transfer of real property from the seller to the buyer, and includes exchanges of real property between the seller and buyer, transactions for the creation of a real property sales contract within the meaning of Section 2985, and transactions for the creation of a leasehold exceeding one year's duration. (n) "Seller" means the transferor in a real property transaction, and includes an owner who lists real property with an agent, whether or not a transfer results, or who receives an offer to purchase real property of which he or she is the owner from an agent on behalf of another. "Seller" includes both a vendor and a lessor. (o) "Selling agent" means a listing agent who acts alone, or an agent who acts in cooperation with a listing agent, and who sells or finds and obtains a buyer for the real property, or an agent who locates property for a buyer or who finds a buyer for a property for which no listing exists and presents an offer to purchase to the seller. (p) "Subagent" means a person to whom an agent delegates agency powers as provided in Article 5 (commencing with Section 2349) of Chapter 1 of Title 9. However, "subagent" does not include an associate licensee who is acting under the supervision of an agent in a real property transaction.

2079.14 Listing agents and selling agents shall provide the seller and buyer in a real property transaction with a copy of the disclosure form specified in Section 2079.16, and, except as provided in subdivision (c), shall obtain a signed acknowledgement of receipt from that seller or buyer, except as provided in this section or Section 2079.15, as follows: (a) The listing agent, if any, shall provide the disclosure form to the seller prior to entering into the listing agreement. (b) The selling agent shall provide the disclosure form to the seller as soon as practicable prior to presenting the seller with an offer to purchase, unless the selling agent previously provided the seller with a copy of the disclosure form pursuant to subdivision (a). (c) Where the selling agent does not deal on a face-to-face basis with the seller, the disclosure form prepared by the selling agent may be furnished to the seller (and acknowledgement of receipt obtained for the selling agent from the seller) by the listing agent, or the selling agent may deliver the disclosure form by certified mail addressed to the seller at his or her last known address, in which case no signed acknowledgement of receipt is required. (d) The selling agent shall provide the disclosure form to the buyer as soon as practicable prior to execution of the buyer's offer to purchase, except that if the offer to purchase is not prepared by the selling agent, the selling agent shall present the disclosure form to the buyer not later than the next business day after the selling agent receives the offer to purchase from the buyer.

2079.15 In any circumstance in which the seller or buyer refuses to sign an acknowledgement of receipt pursuant to Section 2079.14, the agent, or an associate licensee acting for an agent, shall set forth, sign, and date a written declaration of the facts of the refusal.

2079.16 Reproduced on Page 1 of this form.

2079.17 (a) As soon as practicable, the selling agent shall disclose to the buyer and seller whether the selling agent is acting in the real property transaction exclusively as the buyer's agent, exclusively as the seller's agent, or as a dual agent representing both the buyer and the seller. This relationship shall be confirmed in the contract to purchase and sell real property or in a separate writing executed or acknowledged by the seller, the buyer, and the selling agent prior to or coincident with execution of that contract by the buyer and the seller, respectively. (b) As soon as practicable, the listing agent shall disclose to the seller whether the listing agent is acting in the real property transaction exclusively as the seller's agent, or as a dual agent representing both the buyer and seller. This relationship shall be confirmed in the contract to purchase and sell real property or in a separate writing executed or acknowledged by the seller and the listing agent prior to or coincident with the execution of that contract by the seller. (c) The confirmation required by subdivisions (a) and (b) shall be in the following form.

(DO NOT COMPLETE, SAMPLE ONLY)	is the agent of (check one)	☐ the seller exclusively, or ☐ both the buyer and seller.
(Name of Listing Agent)		
(DO NOT COMPLETE, SAMPLE ONLY)	is the agent of (check one)	☐ the buyer exclusively, or ☐ the seller exclusively, or ☐ both the buyer and seller.
(Name of Selling Agent if not the same as the Listing Agent)		

(d) The disclosures and confirmation required by this section shall be in addition to the disclosure required by Section 2079.14.

2079.18 No selling agent in a real property transaction may act as an agent for the buyer only, when the selling agent is also acting as the listing agent in the transaction.

2079.19 The payment of compensation or the obligation to pay compensation to an agent by the seller or buyer is not necessarily determinative of a particular agency relationship between an agent and the seller or buyer. A listing agent and a selling agent may agree to share any compensation or commission paid, or any right to any compensation or commission for which an obligation arises as the result of a real estate transaction, and the terms of any such agreement shall not necessarily be determinative of a particular relationship.

2079.20 Nothing in this article prevents an agent from selecting, as a condition of the agent's employment, a specific form of agency relationship not specifically prohibited by this article if the requirements of Section 2079.14 and Section 2079.17 are complied with.

2079.21 A dual agent shall not disclose to the buyer that the seller is willing to sell the property at a price less than the listing price, without the express written consent of the seller. A dual agent shall not disclose to the seller that the buyer is willing to pay a price greater than the offering price, without the express written consent of the buyer. This section does not alter in any way the duty or responsibility of a dual agent to any principal with respect to confidential information other than price.

2079.22 Nothing in this article precludes a listing agent from also being a selling agent, and the combination of these functions in one agent does not, of itself, make that agent a dual agent.

2079.23 (a) A contract between the principal and agent may be modified or altered to change the agency relationship at any time before the performance of the act which is the object of the agency with the written consent of the parties to the agency relationship.

(b) A lender or an auction company retained by a lender to control aspects of a transaction of real property subject to this part, including validating the sales price, shall not require, as a condition of receiving the lender's approval of the transaction, the homeowner or listing agent to defend or indemnify the lender or auction company from any liability alleged to result from the actions of the lender or auction company. Any clause, provision, covenant, or agreement purporting to impose an obligation to defend or indemnify a lender or an auction company in violation of this subdivision is against public policy, void, and unenforceable.

2079.24 Nothing in this article shall be construed to either diminish the duty of disclosure owed buyers and sellers by agents and their associate licensees, subagents, and employees or to relieve agents and their associate licensees, subagents, and employees from liability for their conduct in connection with acts governed by this article or for any breach of a fiduciary duty or a duty of disclosure.

NOTICE: These forms are often modified to meet changing requirements of law and industry needs. Always write or call to make sure you are utilizing the most current form: AIR Commercial Real Estate Association, 500 N Brand Blvd, Suite 900, Glendale, CA 91203. Telephone No. (213) 687-8777. Fax No.: (213) 687-8616.

DISCLOSURE REGARDING
REAL ESTATE AGENCY RELATIONSHIP
(As required by the Civil Code)

When you enter into a discussion with a real estate agent regarding a real estate transaction, you should from the outset understand what type of agency relationship or representation you wish to have with the agent in the transaction.

SELLER'S AGENT ("Seller" includes both a vendor and a lessor)

A Seller's agent under a listing agreement with the Seller acts as the agent for the Seller only. A Seller's agent or a subagent of that agent has the following affirmative obligations:

To the Seller: A fiduciary duty of utmost care, integrity, honesty and loyalty in dealings with the Seller. To the Buyer and the Seller:

(a) Diligent exercise of reasonable skill and care in performance of the agent's duties.

(b) A duty of honest and fair dealing and good faith.

(c) A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the parties. An agent is not obligated to reveal to either party any confidential information obtained from the other party that does not involve the affirmative duties set forth above.

BUYER'S AGENT ("Buyer" includes both a purchaser and a lessee).

A selling agent can, with a Buyer's consent, agree to act as agent for the Buyer only. In these situations, the agent is not the Seller's agent, even if by agreement the agent may receive compensation for services rendered, either in full or in part from the Seller. An agent acting only for a Buyer has the following affirmative obligations:

To the Buyer: A fiduciary duty of utmost care, integrity, honesty and loyalty in dealings with the Buyer. To the Buyer and the Seller:

(a) Diligent exercise of reasonable skill and care in performance of the agent's duties.

(b) A duty of honest and fair dealing and good faith.

(c) A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the parties.

An agent is not obligated to reveal to either party any confidential information obtained from the other party that does not involve the affirmative duties set forth above.

AGENT REPRESENTING BOTH SELLER AND BUYER

A real estate agent, either acting directly or through one or more associate licensees, can legally be the agent of both the Seller and the Buyer in a transaction, but only with the knowledge and consent of both the Seller and the Buyer.

In a dual agency situation, the agent has the following affirmative obligations to both the Seller and the Buyer:

(a) A fiduciary duty of utmost care, integrity, honesty and loyalty in the dealings with either the Seller or the Buyer.

(b) Other duties to the Seller and the Buyer as stated above in their respective sections.

In representing both Seller and Buyer, the agent may not, without the express permission of the respective party, disclose to the other party that the Seller will accept a price less than the listing price or that the Buyer will pay a price greater than the price offered.

The above duties of the agent in a real estate transaction do not relieve a Seller or Buyer from the responsibility to protect his or her own interests. You should carefully read all agreements to assure that they adequately express your understanding of the transaction. A real estate agent is a person qualified to advise about real estate. If legal or tax advice is desired, consult a competent professional.

Throughout your real property transaction you may receive more than one disclosure form, depending upon the number of agents assisting in the transaction. The law requires each agent with whom you have more than a casual relationship to present you with this disclosure form. You should read its contents each time it is presented to you, considering the relationship between you and the real estate agent in your specific transaction. **This disclosure form includes the provisions of Sections 2079.13 to 2079.24, inclusive, of the Civil Code set forth on page 2. Read it carefully. I/WE ACKNOWLEDGE RECEIPT OF A COPY OF THIS DISCLOSURE AND THE PORTIONS OF THE CIVIL CODE PRINTED ON THE BACK (OR A SEPARATE PAGE).**

☐ Buyer ☐ Seller ☐ Lessor ☑ Lessee ReShape Medical Inc. Date: JAN 27 2017

☐ Buyer ☐ Seller ☐ Lessor ☐ Lessee _____ Date: _____

Agent CBRE Commercial Real Estate Services BRE Lic. # 01770986
Real Estate Broker (Firm)

By: Brian Cole BRE Lic. # 01770986 Date: _____
(Salesperson or Broker-Associate)

NOTE:

- When the listing brokerage company also represents Buyer/Lessee: The Listing Agent shall have one Agency Disclosure form signed by Seller/Lessor and a second Agency Disclosure form signed by Buyer/Lessee.
- When Seller/Lessor and Buyer/Lessee are represented by different brokerage companies: (i) the Listing Agent shall have one Agency Disclosure form signed by Seller/Lessor and (ii) the Buyer's/Lessee's Agent shall have one Agency Disclosure form signed by Buyer/Lessee and either that same or a different Agency Disclosure form presented to Seller/Lessor for signature prior to presentation of the offer. If the same form is used, Seller/Lessor may sign here:

_____ Date: _____
Seller/Lessor

THIS FORM HAS BEEN PREPARED BY THE AIR COMMERCIAL REAL ESTATE ASSOCIATION. NO REPRESENTATION IS MADE AS TO THE LEGAL VALIDITY OR ADEQUACY OF THIS FORM FOR ANY SPECIFIC TRANSACTION. PLEASE SEEK LEGAL COUNSEL AS TO THE APPROPRIATENESS OF THIS FORM.

DISCLOSURE REGARDING REAL ESTATE AGENCY RELATIONSHIP

CIVIL CODE SECTIONS 2079.13 THROUGH 2079.24 (2079.16 APPEARS ON THE FRONT)

2079.13 As used in Sections 2079.14 to 2079.24, inclusive, the following terms have the following meanings:

(a) "Agent" means a person acting under provisions of Title 9 (commencing with Section 2295) in a real property transaction, and includes a person who is licensed as a real estate broker under Chapter 3 (commencing with Section 10130) of Part 1 of Division 4 of the Business and Professions Code, and under whose license a listing is executed or an offer to purchase is obtained. (b) "Associate licensee" means a person who is licensed as a real estate broker or salesperson under Chapter 3 (commencing with Section 10130) of Part 1 of Division 4 of the Business and Professions Code and who is either licensed under a broker or has entered into a written contract with a broker to act as the broker's agent in connection with acts requiring a real estate license and to function under the broker's supervision in the capacity of an associate licensee. The agent in the real property transaction bears responsibility for his or her associate licensees who perform as agents of the agent. When an associate licensee owes a duty to any principal, or to any buyer or seller who is not a principal, in a real property transaction, that duty is equivalent to the duty owed to that party by the broker for whom the associate licensee functions. (c) "Buyer" means a transferee in a real property transaction, and includes a person who executes an offer to purchase real property from a seller through an agent, or who seeks the services of an agent in more than a casual, transitory, or preliminary manner, with the object of entering into a real property transaction. "Buyer" includes vendee or lessee. (d) "Commercial real property" means all real property in the state, except single-family residential real property, dwelling units made subject to Chapter 2 (commencing with Section 1940) of Title 5, mobilehomes, as defined in Section 798.3, or recreational vehicles, as defined in Section 799.29. (e) "Dual agent" means an agent acting, either directly or through an associate licensee, as agent for both the seller and the buyer in a real property transaction. (f) "Listing agreement" means a contract between an owner of real property and an agent, by which the agent has been authorized to sell the real property or to find or obtain a buyer. (g) "Listing agent" means a person who has obtained a listing of real property to act as an agent for compensation. (h) "Listing price" is the amount expressed in dollars specified in the listing for which the seller is willing to sell the real property through the listing agent. (i) "Offering price" is the amount expressed in dollars specified in an offer to purchase for which the buyer is willing to buy the real property. (j) "Offer to purchase" means a written contract executed by a buyer acting through a selling agent that becomes the contract for the sale of the real property upon acceptance by the seller. (k) "Real property" means any estate specified by subdivision (1) or (2) of Section 761 in property that constitutes or is improved with one to four dwelling units, any commercial real property, any leasehold in these types of property exceeding one year's duration, and mobilehomes, when offered for sale or sold through an agent pursuant to the authority contained in Section 10131.6 of the Business and Professions Code. (l) "Real property transaction" means a transaction for the sale of real property in which an agent is employed by one or more of the principals to act in that transaction, and includes a listing or an offer to purchase. (m) "Sell," "sale," or "sold" refers to a transaction for the transfer of real property from the seller to the buyer, and includes exchanges of real property between the seller and buyer, transactions for the creation of a real property sales contract within the meaning of Section 2985, and transactions for the creation of a lenehold exceeding one year's duration. (n) "Seller" means the transferor in a real property transaction, and includes an owner who lists real property with an agent, whether or not a transfer results, or who receives an offer to purchase real property of which he or she is the owner from an agent on behalf of another. "Seller" includes both a vendor and a lessor. (o) "Selling agent" means a listing agent who acts alone, or an agent who acts in cooperation with a listing agent, and who sells or finds and obtains a buyer for the real property, or an agent who locates property for a buyer or who finds a buyer for a property for which no listing exists and presents an offer to purchase to the seller. (p) "Subagent" means a person to whom an agent delegates agency powers as provided in Article 5 (commencing with Section 2349) of Chapter 1 of Title 9. However, "subagent" does not include an associate licensee who is acting under the supervision of an agent in a real property transaction.

2079.14 Listing agents and selling agents shall provide the seller and buyer in a real property transaction with a copy of the disclosure form specified in Section 2079.16, and, except as provided in subdivision (c), shall obtain a signed acknowledgement of receipt from that seller or buyer, except as provided in this section or Section 2079.15, as follows: (a) The listing agent, if any, shall provide the disclosure form to the seller prior to entering into the listing agreement. (b) The selling agent shall provide the disclosure form to the seller as soon as practicable prior to presenting the seller with an offer to purchase, unless the selling agent previously provided the seller with a copy of the disclosure form pursuant to subdivision (a). (c) Where the selling agent does not deal on a face-to-face basis with the seller, the disclosure form prepared by the selling agent may be furnished to the seller (and acknowledgement of receipt obtained for the selling agent from the seller) by the listing agent, or the selling agent may deliver the disclosure form by certified mail addressed to the seller at his or her last known address, in which case no signed acknowledgement of receipt is required. (d) The selling agent shall provide the disclosure form to the buyer as soon as practicable prior to execution of the buyer's offer to purchase, except that if the offer to purchase is not prepared by the selling agent, the selling agent shall present the disclosure form to the buyer not later than the next business day after the selling agent receives the offer to purchase from the buyer.

2079.15 In any circumstance in which the seller or buyer refuses to sign an acknowledgement of receipt pursuant to Section 2079.14, the agent, or an associate licensee acting for an agent, shall set forth, sign, and date a written declaration of the facts of the refusal.

2079.16 Reproduced on Page 1 of this form.

2079.17 (a) As soon as practicable, the selling agent shall disclose to the buyer and seller whether the selling agent is acting in the real property transaction exclusively as the buyer's agent, exclusively as the seller's agent, or as a dual agent representing both the buyer and the seller. This relationship shall be confirmed in the contract to purchase and sell real property or in a separate writing executed or acknowledged by the seller, the buyer, and the selling agent prior to or coincident with execution of that contract by the buyer and the seller, respectively. (b) As soon as practicable, the listing agent shall disclose to the seller whether the listing agent is acting in the real property transaction exclusively as the seller's agent, or as a dual agent representing both the buyer and seller. This relationship shall be confirmed in the contract to purchase and sell real property or in a separate writing executed or acknowledged by the seller and the listing agent prior to or coincident with the execution of that contract by the seller. (c) The confirmation required by subdivisions (a) and (b) shall be in the following form.

(DO NOT COMPLETE, SAMPLE ONLY)	is the agent of (check one):	☐ the seller exclusively, or ☐ both the buyer and seller.
(Name of Listing Agent)		
(DO NOT COMPLETE, SAMPLE ONLY)	is the agent of (check one):	☐ the buyer exclusively, or ☐ the seller exclusively, or ☐ both the buyer and seller.
(Name of Selling Agent if not the same as the Listing Agent)		

(d) The disclosures and confirmation required by this section shall be in addition to the disclosure required by Section 2079.14.

2079.18 No selling agent in a real property transaction may act as an agent for the buyer only, when the selling agent is also acting as the listing agent in the transaction.

2079.19 The payment of compensation or the obligation to pay compensation to an agent by the seller or buyer is not necessarily determinative of a particular agency relationship between an agent and the seller or buyer. A listing agent and a selling agent may agree to share any compensation or commission paid, or any right to any compensation or commission for which an obligation arises as the result of a real estate transaction, and the terms of any such agreement shall not necessarily be determinative of a particular relationship.

2079.20 Nothing in this article prevents an agent from selecting, as a condition of the agent's employment, a specific form of agency relationship not specifically prohibited by this article if the requirements of Section 2079.14 and Section 2079.17 are complied with.

2079.21 A dual agent shall not disclose to the buyer that the seller is willing to sell the property at a price less than the listing price, without the express written consent of the seller. A dual agent shall not disclose to the seller that the buyer is willing to pay a price greater than the offering price, without the express written consent of the buyer. This section does not alter in any way the duty or responsibility of a dual agent to any principal with respect to confidential information other than price.

2079.22 Nothing in this article precludes a listing agent from also being a selling agent, and the combination of these functions in one agent does not, of itself, make that agent a dual agent.

2079.23 (a) A contract between the principal and agent may be modified or altered to change the agency relationship at any time before the performance of the act which is the object of the agency with the written consent of the parties to the agency relationship.

(b) A lender or an auction company retained by a lender to control aspects of a transaction of real property subject to this part, including validating the sales price, shall not require, as a condition of receiving the lender's approval of the transaction, the homeowner or listing agent to defend or indemnify the lender or auction company from any liability alleged to result from the actions of the lender or auction company. Any clause, provision, covenant, or agreement purporting to impose an obligation to defend or indemnify a lender or an auction company in violation of this subdivision is against public policy, void, and unenforceable.

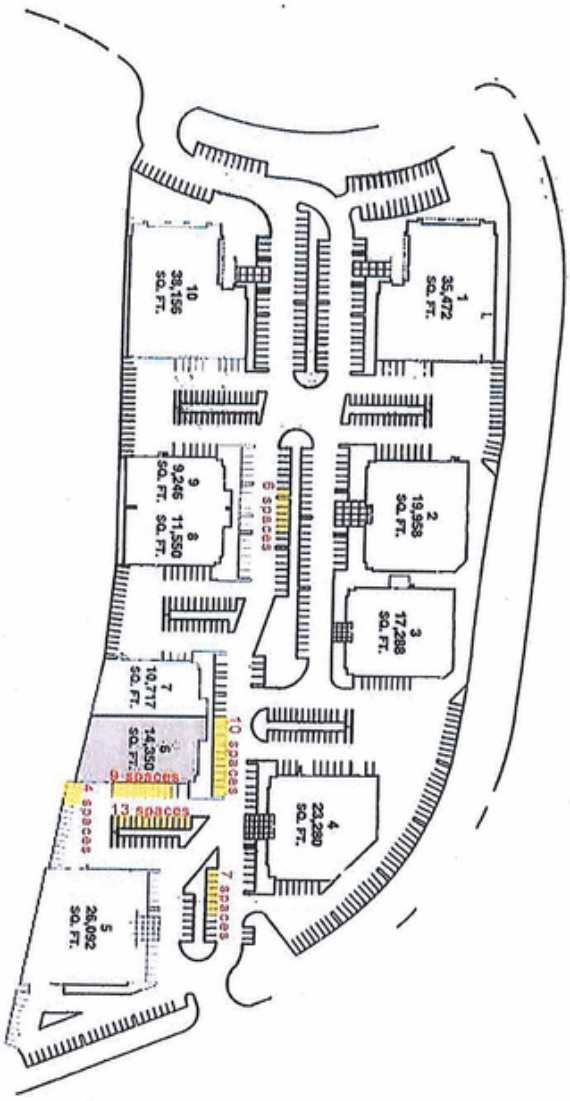
2070.24 Nothing in this article shall be construed to either diminish the duty of disclosure owed buyers and sellers by agents and their associate licensees, subagents, and employees or to relieve agents and their associate licensees, subagents, and employees from liability for their conduct in connection with acts governed by this article or for any breach of a fiduciary duty or a duty of disclosure.

NOTICE: These forms are often modified to meet changing requirements of law and industry needs. Always write or call to make sure you are utilizing the most current form: AIR Commercial Real Estate Association, 500 N Brand Blvd, Suite 900, Glendale, CA 91203. Telephone No. (213) 687-8777. Fax No.: (213) 687-8616.

Exhibit C

1001 Calle Amanecer, San Clemente

Parking



Lessor's Initials: _____

Lessee's Initials: _____

AIR COMMERCIAL REAL ESTATE ASSOCIATION
STANDARD INDUSTRIAL/COMMERCIAL SINGLE-TENANT LEASE -- GROSS
(DO NOT USE THIS FORM FOR MULTI-TENANT BUILDINGS)

1. Basic Provisions ("Basic Provisions").

1.1 **Parties:** This Lease (**"Lease"**), dated for reference purposes only March 28, 2008, is made by and between Richard G. Henderson (**"Lessor"**) and Reshape Medical, Inc., a Delaware Corporation (**"Lessee"**), (collectively the **"Parties,"** or individually a **"Party"**).

1.2 **Premises:** That certain real property, including all improvements therein or to be provided by Lessor under the terms of this Lease, and commonly known as 100 Calle Iglesia, San Clemente, located in the County of Orange, State of California, and generally described as (describe briefly the nature of the property and, if applicable, the **"Project"**, if the property is located within a Project) an approximate 7,500 SF portion of a 8,040 SF office and industrial building (**"Premises"**). (See also Paragraph 2)

1.3 **Term:** 3 years and 2 months (**"Original Term"**) commencing June 1, 2008 (**"Commencement Date"**) and ending July 31, 2011 (**"Expiration Date"**). (See also Paragraph 3)

1.4 **Early Possession:** upon a fully executed lease, payment of first month's rent and security deposit and evidence of insurance. Lessee shall not interfere with Lessor or Lessor's contractors during the Early Possession period (**"Early Possession Date"**). (See also Paragraphs 3.2 and 3.3)

1.5 **Base Rent:** $9,750.00 per month (**"Base Rent"**), payable on the first day of each month commencing June 1, 2008. (See also Paragraph 4)

☑ If this box is checked, there are provisions in this Lease for the Base Rent to be adjusted.

1.6 **Base Rent and Other Monies Paid Upon Execution:**

(a) **Base Rent:** $9,750.00 for the period of June 1 - June 30, 2008.

(b) **Security Deposit:** $31,500.00 (**"Security Deposit"**). (See also Paragraph 5)

~~(c) Association Fees: $ for the period~~

~~(d) Other: $ for~~

(e) **Total Due Upon Execution of this Lease:** $41,250.00.

1.7 **Agreed Use:** general office and uses consistent with a medical device company (See also Paragraph 6)

1.8 **Insuring Party:** Lessor is the **"Insuring Party"**. The annual **"Base Premium"** is $3,211.00 (See also Paragraph 8)

1.9 **Real Estate Brokers:** (See also Paragraph 15)

(a) **Representation:** The following real estate brokers (the **"Brokers"**) and brokerage relationships exist in this transaction (check applicable boxes):

☑ CB Richard Ellis - Steve Wagner represents Lessor exclusively (**"Lessor's Broker"**);

☑ Voit Commercial Brokerage - Hayden Socci/Robert Socci represents Lessee exclusively (**"Lessee's Broker"**); or

☐ _____ represents both Lessor and Lessee (**"Dual Agency"**).

(b) **Payment to Brokers:** Upon execution and delivery of this Lease by both Parties, Lessor shall pay to the Broker the fee agreed to in their separate written agreement (or if there is no such agreement, the sum of _____ or 6 % of the total Base Rent) for the brokerage services rendered by the Brokers.

1.10 **Guarantor.** The obligations of the Lessee under this Lease are to be guaranteed by N/A (**"Guarantor"**). (See also Paragraph 37)

1.11 **Attachments.** Attached hereto are the following, all of which constitute a part of this Lease:

☑ an Addendum consisting of Paragraphs 51 through 53;

☑ a plot plan depicting the Premises;

☐ a current set of the Rules and Regulations;

☐ a Work Letter;

☑ other (specify): AIR Option to Extend

2. **Premises.**

2.1 **Letting.** Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, the Premises, for the term, at the rental, and upon all of the terms, covenants and conditions set forth in this Lease. Unless otherwise provided herein, any statement of size set forth in this Lease, or that may have been used in calculating Rent, is an approximation which the Parties agree is reasonable and any payments based thereon are not subject to revision whether or not the actual size is more or less. **Note: Lessee is advised to verify the actual size prior to executing this Lease.**

2.2 **Condition.** Lessor shall deliver the Premises to Lessee broom clean and free of debris on the Commencement Date or the Early Possession Date, whichever first occurs (**"Start Date"**), and, so long as the required service contracts described in Paragraph 7.1(b) below are obtained by Lessee and in effect within thirty days following the Start Date, warrants that the existing electrical, plumbing, fire sprinkler, lighting, heating, ventilating and air conditioning systems (**"HVAC"**), loading doors, sump pumps, if any, and all other such elements in the Premises, other than those constructed by Lessee, shall be in good operating condition on said date and that the surface and structural elements of the roof, bearing walls and foundation of any buildings on the Premises (the **"Building"**) shall be free of material defects, and that the Unit does not contain hazardous levels of any mold or fungi defined as toxic under applicable state or federal law. If a non-compliance with said warranty exists as of the Start Date, or if one of such systems or elements should malfunction or fail within the appropriate warranty period, Lessor shall, as Lessor's sole obligation with respect to such matter, except as otherwise provided in this Lease, promptly after receipt of written notice from Lessee setting forth with specificity the nature and extent of such non-compliance, malfunction or failure, rectify same at Lessor's expense. The warranty periods shall be as follows: (i) 6 months as to the HVAC systems, and (ii) 30 days as to the remaining systems and other elements of the Building. If Lessee does not give Lessor the required notice within the appropriate warranty period, correction of any such non-compliance, malfunction or failure shall be the obligation of Lessee at Lessee's sole cost and expense, except for the roof, foundations, and bearing walls which are handled as provided in paragraph 7.

2.3 **Compliance.** Lessor warrants that to the best of its knowledge the improvements on the Premises comply with the building codes, applicable laws, covenants or restrictions of record, regulations, and ordinances (**"Applicable Requirements"**) that were in effect at the time that each improvement, or portion thereof, was constructed. Said warranty does not apply to the use to which Lessee will put the Premises, modifications which may be required by the Americans with Disabilities Act or any similar laws as a result of Lessee's use (see Paragraph 50), or to any Alterations or Utility Installations (as defined in Paragraph 7.3(a)) made or to be made by Lessee. **N OTE: Lessee is responsible for determining whether or not the Applicable Requirements, and especially the zoning, are appropriate for Lessee's intended use, and acknowledges that past uses of the Premises may no longer be allowed.** If the Premises do not comply with said warranty, Lessor shall, except as otherwise provided, promptly after receipt of written notice from Lessee setting forth with specificity the nature and extent of such non-compliance, rectify the same at Lessor's expense. If Lessee does not give Lessor written notice of a non-compliance with this warranty within 6 months following the Start Date, correction of that non-compliance shall be the obligation of Lessee at Lessee's sole cost and expense. If the Applicable Requirements are hereafter changed so as to require during the term of this Lease the construction of an addition to or an alteration of the Premises and/or Building, the remediation of any Hazardous Substance, or the reinforcement or other physical modification of the Unit, Premises and/or Building (**"Capital Expenditure"**), Lessor and Lessee shall allocate the cost of such work as follows:

(a) Subject to Paragraph 2.3(c) below, if such Capital Expenditures are required as a result of the specific andunique use of the Premises by Lessee as compared with uses by tenants in general, Lessee shall be fully responsible for the cost thereof, provided, however that if such Capital Expenditure is required during the last 2 years of this Lease and the cost thereof exceeds 6 months' Base Rent, Lessee may instead terminate this Lease unless Lessor notifies Lessee, in writing, within 10 days after receipt of Lessee's termination notice that Lessor has elected to pay the difference between the actual cost thereof and an amount equal to 6 months' Base Rent. If Lessee elects termination, Lessee shall immediately cease the use of the Premises which requires such Capital Expenditure and deliver to Lessor written notice specifying a termination date at least 90 days thereafter. Such termination date shall, however, in no event be earlier than the last day that Lessee could legally utilize the Premises without commencing such Capital Expenditure.

(b) If such Capital Expenditure is not the result of the specific and unique use of the Premises by Lessee (such as, governmentally mandated seismic modifications), then Lessor shall pay for such Capital Expenditure and Lessee shall only be obligated to pay, each month during the remainder of the term of this Lease, on the date that on which the Base Rent is due, an amount equal to 144th of the portion of such costs reasonably attributable to the Premises. Lessee shall pay Interest on the balance but may prepay its obligation at any time. If, however, such Capital Expenditure is required during the last 2 years of this Lease or if Lessor reasonably determines that it is not economically feasible to pay its share thereof, Lessor shall have the option to terminate this Lease upon 90 days prior written notice to Lessee unless Lessee notifies Lessor, in writing, within 10 days after receipt of Lessor's termination notice that Lessee will pay for such Capital Expenditure. If Lessor does not elect to terminate, and fails to tender its share of any such Capital Expenditure, Lessee may advance such funds and deduct same, with Interest, from Rent until Lessor's share of such costs have been fully paid. If Lessee is unable to finance Lessor's share, or if the balance of the Rent due and payable for the remainder of this Lease is not sufficient to fully reimburse Lessee on an offset basis, Lessee shall have the right to terminate this Lease upon 30 days written notice to Lessor.

(c) Notwithstanding the above, the provisions concerning Capital Expenditures are intended to apply only to non-voluntary, unexpected, and new Applicable Requirements. If the Capital Expenditures are instead triggered by Lessee as a result of an actual or proposed change in use, change in intensity of use, or modification to the Premises then, and in that event, Lessee shall either: (i) immediately cease such changed use or intensity of use and/or take such other steps as may be necessary to eliminate the requirement for such Capital Expenditure, or (ii) complete such Capital Expenditure at its own expense. Lessee shall not, however, have any right to terminate this Lease.

2.4 **Acknowledgements.** Lessee acknowledges that: (a) it has been advised by Lessor and/or Brokers to satisfy itself with respect to the condition of the Premises (including but not limited to the electrical, HVAC and fire sprinkler systems, security, environmental aspects, and compliance with Applicable Requirements and the Americans with Disabilities Act), and their suitability for Lessee's intended use, (b) Lessee has made such investigation as it deems necessary with reference to such matters and assumes all responsibility therefor as the same relate to its occupancy of the Premises, and (c) neither Lessor, Lessor's agents, nor Brokers have made any oral or written representations or warranties with respect to said matters other than as set forth in this Lease. In addition, Lessor acknowledges that: (i) Brokers have made no representations, promises or warranties concerning Lessee's ability to honor the Lease or suitability to occupy the Premises, and (ii) it is Lessor's sole responsibility to investigate the financial capability and/or suitability of all proposed tenants.

2.5 **Lessee as Prior Owner/Occupant.** The warranties made by Lessor in Paragraph 2 shall be of no force or effect if immediately prior to the Start Date Lessee was the owner or occupant of the Premises. In such event, Lessee shall be responsible for any necessary corrective work.

3. **Term.**

3.1 **Term.** The Commencement Date, Expiration Date and Original Term of this Lease are as specified in Paragraph 1.3.

3.2 **Early Possession.** If Lessee totally or partially occupies the Premises prior to the Commencement Date, the obligation to pay Base Rent shall be abated for the period of such early possession. All other terms of this Lease (including but not limited to the obligations to pay Real Property Taxes and insurance premiums and to maintain the Premises) shall be in effect during such period. Any such early possession shall not affect the Expiration Date.

3.3 **Delay In Possession.** Lessor agrees to use its best commercially reasonable efforts to deliver possession of the Premises to Lessee by the Commencement Date. If, despite said efforts, Lessor is unable to deliver possession by such date, Lessor shall not be subject to any liability therefor, nor shall such failure affect the validity of this Lease. Lessee shall not, however, be obligated to pay Rent or perform its other obligations until Lessor delivers possession of the Premises and any period of rent abatement that Lessee would otherwise have enjoyed shall run from the date of delivery of possession and continue for a period equal to what Lessee would otherwise have enjoyed under the terms hereof, but minus any days of delay caused by the acts or omissions of Lessee. If possession is not delivered within 60 days after the Commencement Date, Lessee may, at its option, by notice in writing within 10 days after the end of such 60 day period, cancel this Lease, in which event the Parties shall be discharged from all obligations hereunder. If such written notice is not received by Lessor within said 10 day period, Lessee's right to cancel shall terminate. If possession of the Premises is not delivered within 120 days after the Commencement Date, this Lease shall terminate unless other agreements are reached between Lessor and Lessee, in writing.

3.4 **Lessee Compliance.** Lessor shall not be required to deliver possession of the Premises to Lessee until Lessee complies with its obligation to provide evidence of insurance (Paragraph 8.5). Pending delivery of such evidence, Lessee shall be required to perform all of its obligations under this Lease from and after the Start Date, including the payment of Rent, notwithstanding Lessor's election to withhold possession pending receipt of such evidence of insurance. Further, if Lessee is required to perform any other conditions prior to or concurrent with the Start Date, the Start Date shall occur but Lessor may elect to withhold possession until such conditions are satisfied.

4. **Rent.**

4.1. **Rent Defined.** All monetary obligations of Lessee to Lessor under the terms of this Lease (except for the Security Deposit) are deemed to be rent (**"Rent"**).

4.2 **Payment.** . Lessee shall cause payment of Rent to be received by Lessor in lawful money of the United States, without offset or deduction (except as specifically permitted in this Lease), on or before the day on which it is due. All monetary amounts shall be rounded to the nearest whole dollar. In the event that any invoice prepared by Lessor is inaccurate such inaccuracy shall not constitute a waiver and Lessee shall be obligated to pay the amount set forth in this Lease. Rent for any period during the term hereof which is for less than one full calendar month shall be prorated based upon the actual number of days of said month. Payment of Rent shall be made to Lessor at its address stated herein or to such other persons or

INITIALS INITIALS

place as Lessor may from time to time designate in writing. Acceptance of a payment which is less than the amount then due shall not be a waiver of Lessor's rights to the balance of such Rent, regardless of Lessor's endorsement of any check so stating. In the event that any check, draft, or other instrument of payment given by Lessee to Lessor is dishonored for any reason, Lessee agrees to pay to Lessor the sum of $25 in addition to any Late Charge and Lessor, at its option, may require all future payments to be made by Lessee to be by cashier's check. Payments will be applied first to accrued late charges and attorney's fees, second to accrued interest, then to Base Rent and Operating Expense Increase, and any remaining amount to any other outstanding charges or costs.

4.3 **Association Fees.** In addition to the Base Rent, Lessee shall pay to Lessor each month an amount equal to any owner's association or condominium fees levied or assessed against the Premises. Said monies shall be paid at the same time and in the same manner as the Base Rent.

5. **Security Deposit**. Lessee shall deposit with Lessor upon execution hereof the Security Deposit as security for Lessee's faithful performance of its obligations under this Lease. If Lessee fails to pay Rent, or otherwise Defaults under this Lease, Lessor may use, apply or retain all or any portion of said Security Deposit for the payment of any amount due already due Lessor, for Rents which will be due in the future, and/ or to reimburse or compensate Lessor for any liability, expense, loss or damage which Lessor may suffer or incur by reason thereof. If Lessor uses or applies all or any portion of the Security Deposit, Lessee shall within 10 days after written request therefor deposit monies with Lessor sufficient to restore said Security Deposit to the full amount required by this Lease. If the Base Rent increases during the term of this Lease, Lessee shall, upon written request from Lessor, deposit additional monies with Lessor so that the total amount of the Security Deposit shall at all times bear the same proportion to the increased Base Rent as the initial Security Deposit bore to the initial Base Rent. Should the Agreed Use be amended to accommodate a material change in the business of Lessee or to accommodate a sublessee or assignee, Lessor shall have the right to increase the Security Deposit to the extent necessary, in Lessor's reasonable judgment, to account for any increased wear and tear that the Premises may suffer as a result thereof. If a change in control of Lessee occurs during this Lease and following such change the financial condition of Lessee is, in Lessor's reasonable judgment, significantly reduced, Lessee shall deposit such additional monies with Lessor as shall be sufficient to cause the Security Deposit to be at a commercially reasonable level based on such change in financial condition. Lessor shall not be required to keep the Security Deposit separate from its general accounts. Within 90 days after the expiration or termination of this Lease, Lessor shall return that portion of the Security Deposit not used or applied by Lessor. No part of the Security Deposit shall be considered to be held in trust, to bear interest or to be prepayment for any monies to be paid by Lessee under this Lease.

6. **Use.**

6.1 **Use.** Lessee shall use and occupy the Premises only for the Agreed Use, or any other legal use which is reasonably comparable thereto, and for no other purpose. Lessee shall not use or permit the use of the Premises in a manner that is unlawful, creates damage, waste or a nuisance, or that disturbs occupants of or causes damage to neighboring premises or properties. Other than guide, signal and seeing eye dogs, Lessee shall not keep or allow in the Premises any pets, animals, birds, fish, or reptiles. Lessor shall not unreasonably withhold or delay its consent to any written request for a modification of the Agreed Use, so long as the same will not impair the structural integrity of the improvements on the Premises or the mechanical or electrical systems therein, and/or is not significantly more burdensome to the Premises. If Lessor elects to withhold consent, Lessor shall within 7 days after such request give written notification of same, which notice shall include an explanation of Lessor's objections to the change in the Agreed Use.

6.2 **Hazardous Substances.**

(a) **Reportable Uses Require Consent.** The term **"Hazardous Substance"** as used in this Lease shall mean any product, substance, or waste whose presence, use, manufacture, disposal, transportation, or release, either by itself or in combination with other materials expected to be on the Premises, is either: (i) potentially injurious to the public health, safety or welfare, the environment or the Premises, (ii) regulated or monitored by any governmental authority, or (iii) a basis for potential liability of Lessor to any governmental agency or third party under any applicable statute or common law theory. Hazardous Substances shall include, but not be limited to, hydrocarbons, petroleum, gasoline, and/or crude oil or any products, by-products or fractions thereof. Lessee shall not engage in any activity in or on the Premises which constitutes a Reportable Use of Hazardous Substances without the express prior written consent of Lessor and timely compliance (at Lessee's expense) with all Applicable Requirements. **"Reportable Use"** shall mean (i) the installation or use of any above or below ground storage tank, (ii) the generation, possession, storage, use, transportation, or disposal of a Hazardous Substance that requires a permit from, or with respect to which a report, notice, registration or business plan is required to be filed with, any governmental authority, and/or (iii) the presence at the Premises of a Hazardous Substance with respect to which any Applicable Requirements requires that a notice be given to persons entering or occupying the Premises or neighboring properties. Notwithstanding the foregoing, Lessee may use any ordinary and customary materials reasonably required to be used in the normal course of the Agreed Use, ordinary office supplies (copier toner, liquid paper, glue, etc.) and common household cleaning materials, so long as such use is in compliance with all Applicable Requirements, is not a Reportable Use, and does not expose the Premises or neighboring property to any meaningful risk of contamination or damage or expose Lessor to any liability therefor. In addition, Lessor may condition its consent to any Reportable Use upon receiving such additional assurances as Lessor reasonably deems necessary to protect itself, the public, the Premises and/or the environment against damage, contamination, injury and/or liability, including, but not limited to, the installation (and removal on or before Lease expiration or termination) of protective modifications (such as concrete encasements) and/or increasing the Security Deposit.

(b) **Duty to Inform Lessor.** If Lessee knows, or has reasonable cause to believe, that a Hazardous Substance has come to be located in, on, under or about the Premises, other than as previously consented to by Lessor, Lessee shall immediately give written notice of such fact to Lessor, and provide Lessor with a copy of any report, notice, claim or other documentation which it has concerning the presence of such Hazardous Substance.

(c) **Lessee Remediation.** Lessee shall not cause or permit any Hazardous Substance to be spilled or released in, on, under, or about the Premises (including through the plumbing or sanitary sewer system) and shall promptly, at Lessee's expense, comply with all Applicable Requirements and take all investigatory and/or remedial action reasonably recommended, whether or not formally ordered or required, for the cleanup of any contamination of, and for the maintenance, security and/or monitoring of the Premises or neighboring properties, that was caused or materially contributed to by Lessee, or pertaining to or involving any Hazardous Substance brought onto the Premises during the term of this Lease, by or for Lessee, or any third party.

(d) **Lessee Indemnification.** Lessee shall indemnify, defend and hold Lessor, its agents, employees, lenders and ground lessor, if any, harmless from and against any and all loss of rents and/or damages, liabilities, judgments, claims, expenses, penalties, and attorneys' and consultants' fees arising out of or involving any Hazardous Substance brought onto the Premises by or for Lessee, or any third party (provided, however, that Lessee shall have no liability under this Lease with respect to underground migration of any Hazardous Substance under the Premises from adjacent properties not caused or contributed to by Lessee). Lessee's obligations shall include, but not be limited to, the effects of any contamination or injury to person, property or the environment created or suffered by Lessee, and the cost of investigation, removal, remediation, restoration and/or abatement, and shall survive the expiration or termination of this Lease. **No termination, cancellation or release agreement entered into by Lessor and Lessee shall release Lessee from its obligations under this Lease with respect to Hazardous Substances, unless specifically so agreed by Lessor in writing at the time of such agreement.**

(e) **Lessor Indemnification.** Lessor and its successors and assigns shall indemnify, defend, reimburse and hold Lessee, its employees and lenders, harmless from and against any and all environmental damages, including the cost of remediation, which result from Hazardous Substances which existed on the Premises prior to Lessee's occupancy or which are caused by the gross negligence or willful misconduct of Lessor, its agents or employees. Lessor's obligations, as and when required by the Applicable Requirements, shall include, but not be limited to, the cost of investigation, removal, remediation, restoration and/or abatement, and shall survive the expiration or termination of this Lease.

(f) **Investigations and Remediations.** Lessor shall retain the responsibility and pay for any investigations or remediation measures required by governmental entities having jurisdiction with respect to the existence of Hazardous Substances on the Premises prior to Lessee's occupancy, unless such remediation measure is required as a result of Lessee's use (including "Alterations", as defined in paragraph 7.3(a) below) of the Premises, in which event Lessee shall be responsible for such payment. Lessee shall cooperate fully in any such activities at the request of Lessor, including allowing Lessor and Lessor's agents to have reasonable access to the Premises at reasonable times in order to carry out Lessor's investigative and remedial responsibilities.

(g) **Lessor Termination Option.** If a Hazardous Substance Condition (see Paragraph 9.1(e)) occurs during the term of this Lease, unless Lessee is legally responsible therefor (in which case Lessee shall make the investigation and remediation thereof required by the Applicable Requirements and this Lease shall continue in full force and effect, but subject to Lessor's rights under Paragraph 6.2(d) and Paragraph 13), Lessor may, at Lessor's option, either (i) investigate and remediate such Hazardous Substance Condition, if required, as soon as reasonably possible at Lessor's expense, in which event this Lease shall continue in full force and effect, or (ii) if the estimated cost to remediate such condition exceeds 12 times the then monthly Base Rent or $100,000, whichever is greater, give written notice to Lessee, within 30 days after receipt by Lessor of knowledge of the occurrence of such Hazardous Substance Condition, of Lessor's desire to terminate this Lease as of the date 60 days following the date of such notice. In the event Lessor elects to give a termination notice, Lessee may, within 10 days thereafter, give written notice to Lessor of Lessee's commitment to pay the amount by which the cost of the remediation of such Hazardous Substance Condition exceeds an amount equal to 12 times the then monthly Base Rent or $100,000, whichever is greater. Lessee shall provide Lessor with said funds or satisfactory assurance thereof within 30 days following such commitment. In such event, this Lease shall continue in full force and effect, and Lessor shall proceed to make such remediation

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as soon as reasonably possible after the required funds are available. If Lessee does not give such notice and provide the required funds or assurance thereof within the time provided, this Lease shall terminate as of the date specified in Lessor's notice of termination.

6.3 **Lessee's Compliance with Applicable Requirements.** Except as otherwise provided in this Lease, Lessee shall, at Lessee's sole expense, fully, diligently and in a timely manner, materially comply with all Applicable Requirements, the requirements of any applicable fire insurance underwriter or rating bureau, and the recommendations of Lessor's engineers and/or consultants which relate in any manner to the such Requirements, without regard to whether such Requirements are now in effect or become effective after the Start Date. Lessee shall, within 10 days after receipt of Lessor's written request, provide Lessor with copies of all permits and other documents, and other information evidencing Lessee's compliance with any Applicable Requirements specified by Lessor, and shall immediately upon receipt, notify Lessor in writing (with copies of any documents involved) of any threatened or actual claim, notice, citation, warning, complaint or report pertaining to or involving the failure of Lessee or the Premises to comply with any Applicable Requirements. Likewise, Lessee shall immediately give written notice to Lessor of: (i) any water damage to the Premises and any suspected seepage, pooling, dampness or other condition conducive to the production of mold; or (ii) any mustiness or other odors that might indicate the presence of mold in the Premises.

6.4 **Inspection; Compliance.** Lessor and Lessor's **"Lender"** (as defined in Paragraph 30) and consultants shall have the right to enter into Premises at any time, in the case of an emergency, and otherwise at reasonable times after reasonable notice, for the purpose of inspecting the condition of the Premises and for verifying compliance by Lessee with this Lease. The cost of any such inspections shall be paid by Lessor, unless a violation of Applicable Requirements, or a Hazardous Substance Condition (see paragraph 9.1) is found to exist or be imminent, or the inspection is requested or ordered by a governmental authority. In such case, Lessee shall upon request reimburse Lessor for the cost of such inspection, so long as such inspection is reasonably related to the violation or contamination. In addition, Lessee shall provide copies of all relevant material safety data sheets (**MSDS**) to Lessor within 10 days of the receipt of a written request therefor.

7. **Maintenance; Repairs; Utility Installations; Trade Fixtures and Alterations.**

7.1 **Lessee's Obligations.**

(a) **In General.** Subject to the provisions of Paragraph 2.2 (Condition), 2.3 (Compliance), 6.3 (Lessee's Compliance with Applicable Requirements), 7.2 (Lessor's Obligations), 9 (Damage or Destruction), and 14 (Condemnation), Lessee shall, at Lessee's sole expense, keep the Premises, Utility Installations (intended for Lessee's exclusive use, no matter where located), and Alterations in good order, condition and repair (whether or not the portion of the Premises requiring repairs, or the means of repairing the same, are reasonably or readily accessible to Lessee, and whether or not the need for such repairs occurs as a result of Lessee's use, any prior use, the elements or the age of such portion of the Premises), including, but not limited to, all equipment or facilities, such as plumbing, HVAC equipment, electrical, lighting facilities, boilers, pressure vessels, fire protection system, fixtures, walls (interior and exterior), ceilings, floors, windows, doors, plate glass, skylights, landscaping, driveways, parking lots, fences, retaining walls, signs, sidewalks and parkways located in, on, or adjacent to the Premises. Lessee is also responsible for keeping the roof and roof drainage clean and free of debris. Lessor shall keep the surface and structural elements of the roof, foundations, and bearing walls in good repair (see paragraph 7.2). Lessee, in keeping the Premises in good order, condition and repair, shall exercise and perform good maintenance practices, specifically including the procurement and maintenance of the service contracts required by Paragraph 7.1(b) below. Lessee's obligations shall include restorations, replacements or renewals when necessary to keep the Premises and all improvements thereon or a part thereof in good order, condition and state of repair. Lessee shall, during the term of this Lease, keep the exterior appearance of the Building in a first-class condition (including, e.g. graffiti removal) consistent with the exterior appearance of other similar facilities of comparable age and size in the vicinity, including, when necessary, the exterior repainting of the Building.

(b) **Service Contracts.** Lessee shall, at Lessee's sole expense, procure and maintain contracts, with copies to Lessor, in customary form and substance for, and with contractors specializing and experienced in the maintenance of the following equipment and improvements, if any, if and when installed on the Premises: (i) HVAC equipment, (ii) boiler, and pressure vessels, (iii) fire extinguishing systems, including fire alarm and/or smoke detection, (iv) landscaping and irrigation systems, and (v) clarifiers. However, Lessor reserves the right, upon notice to Lessee, to procure and maintain any or all of such service contracts, and Lessee shall reimburse Lessor, upon demand, for the cost thereof.

(c) **Failure to Perform.** If Lessee fails to perform Lessee's obligations under this Paragraph 7.1, Lessor may enter upon the Premises after 10 days' prior written notice to Lessee (except in the case of an emergency, in which case no notice shall be required), perform such obligations on Lessee's behalf, and put the Premises in good order, condition and repair, and Lessee shall promptly pay to Lessor a sum equal to 115% of the cost thereof.

(d) **Replacement.** Subject to Lessee's indemnification of Lessor as set forth in Paragraph 8.7 below, and without relieving Lessee of liability resulting from Lessee's failure to exercise and perform good maintenance practices, if an item described in Paragraph 7.1(b) cannot be repaired other than at a cost which is in excess of 50% of the cost of replacing such item, then such item shall be replaced by Lessor, and the cost thereof shall be prorated between the Parties and Lessee shall only be obligated to pay, each month during the remainder of the term of this Lease, on the date on which Base Rent is due, an amount equal to the product of multiplying the cost of such replacement by a fraction, the numerator of which is one, and the denominator of which is 144 (ie. 1/144th of the cost per month). Lessee shall pay Interest on the unamortized balance but may prepay its obligation at any time.

7.2 **Lessor's Obligations.** Subject to the provisions of Paragraphs 2.2 (Condition), 2.3 (Compliance), 9 (Damage or Destruction) and 14 (Condemnation), it is intended by the Parties hereto that Lessor have no obligation, in any manner whatsoever, to repair and maintain the Premises, or the equipment therein, all of which obligations are intended to be that of the Lessee, except for the surface and structural elements of the roof, foundations and bearing walls, the repair of which shall be the responsibility of Lessor upon receipt of written notice that such a repair is necessary. It is the intention of the Parties that the terms of this Lease govern the respective obligations of the Parties as to maintenance and repair of the Premises, and they expressly waive the benefit of any statute now or hereafter in effect to the extent it is inconsistent with the terms of this Lease.

7.3 **Utility Installations; Trade Fixtures; Alterations.**

(a) **Definitions.** The term **"Utility Installations"** refers to all floor and window coverings, air and/or vacuum lines, power panels, electrical distribution, security and fire protection systems, communication cabling, lighting fixtures, HVAC equipment, plumbing, and fencing in or on the Premises. The term **"Trade Fixtures"** shall mean Lessee's machinery and equipment that can be removed without doing material damage to the Premises. The term **"Alterations"** shall mean any modification of the improvements, other than Utility Installations or Trade Fixtures, whether by addition or deletion. **"Lessee Owned Alterations and/or Utility Installations"** are defined as Alterations and/or Utility Installations made by Lessee that are not yet owned by Lessor pursuant to Paragraph 7.4(a).

(b) **Consent.** Lessee shall not make any Alterations or Utility Installations to the Premises without Lessor's prior written consent. Lessee may, however, make non-structural Utility Installations to the interior of the Premises (excluding the roof) without such consent but upon notice to Lessor, as long as they are not visible from the outside, do not involve puncturing, relocating or removing the roof or any existing walls, will not affect the electrical, plumbing, HVAC, and/or life safety systems, and the cumulative cost thereof during this Lease as extended does not exceed a sum equal to 3 month's Base Rent in the aggregate or a sum equal to one month's Base Rent in any one year. Notwithstanding the foregoing, Lessee shall not make or permit any roof penetrations and/or install anything on the roof without the prior written approval of Lessor. Lessor may, as a precondition to granting such approval, require Lessee to utilize a contractor chosen and/or approved by Lessor. Any Alterations or Utility Installations that Lessee shall desire to make and which require the consent of the Lessor shall be presented to Lessor in written form with detailed plans. Consent shall be deemed conditioned upon Lessee's: (i) acquiring all applicable governmental permits, (ii) furnishing Lessor with copies of both the permits and the plans and specifications prior to commencement of the work, and (iii) compliance with all conditions of said permits and other Applicable Requirements in a prompt and expeditious manner. Any Alterations or Utility Installations shall be performed in a workmanlike manner with good and sufficient materials. Lessee shall promptly upon completion furnish Lessor with as-built plans and specifications. For work which costs an amount in excess of one month's Base Rent, Lessor may condition its consent upon Lessee providing a lien and completion bond in an amount equal to 150% of the estimated cost of such Alteration or Utility Installation and/or upon Lessee's posting an additional Security Deposit with Lessor.

(c) **Liens; Bonds.** Lessee shall pay, when due, all claims for labor or materials furnished or alleged to have been furnished to or for Lessee at or for use on the Premises, which claims are or may be secured by any mechanic's or materialmen's lien against the Premises or any interest therein. Lessee shall give Lessor not less than 10 days notice prior to the commencement of any work in, on or about the Premises, and Lessor shall have the right to post notices of non-responsibility. If Lessee shall contest the validity of any such lien, claim or demand, then Lessee shall, at its sole expense defend and protect itself, Lessor and the Premises against the same and shall pay and satisfy any such adverse judgment that may be rendered thereon before the enforcement thereof. If Lessor shall require, Lessee shall furnish a surety bond in an amount equal to 150% of the amount of such contested lien, claim or demand, indemnifying Lessor against liability for the same. If Lessor elects to participate in any such action, Lessee shall pay Lessor's attorneys' fees and costs.

7.4 **Ownership; Removal; Surrender; and Restoration.**

(a) **Ownership.** Subject to Lessor's right to require removal or elect ownership as hereinafter provided, all Alterations and Utility Installations made by Lessee shall be the property of Lessee, but considered a part of the Premises. Lessor may, at any time, elect in writing to be the owner of all or any specified part of the Lessee Owned Alterations and Utility Installations. Unless otherwise instructed per paragraph 7.4(b) hereof, all Lessee Owned Alterations and Utility Installations shall, at the expiration or termination of this Lease, become the property of Lessor and be surrendered by Lessee with the Premises.

(b) **Removal.** By delivery to Lessee of written notice from Lessor not earlier than 90 and not later than 30 days prior to the end of

the term of this Lease, Lessor may require that any or all Lessee Owned Alterations or Utility Installations be removed by the expiration or termination of this Lease. Lessor may require the removal at any time of all or any part of any Lessee Owned Alterations or Utility Installations made without the required consent.

(c) **Surrender; Restoration.** Lessee shall surrender the Premises by the Expiration Date or any earlier termination date, with all of the improvements, parts and surfaces thereof broom clean and free of debris, and in good operating order, condition and state of repair, ordinary wear and tear excepted. "Ordinary wear and tear" shall not include any damage or deterioration that would have been prevented by good maintenance practice. Notwithstanding the foregoing, if this Lease is for 12 months or less, then Lessee shall surrender the Premises in the same condition as delivered to Lessee on the Start Date with NO allowance for ordinary wear and tear. Lessee shall repair any damage occasioned by the installation, maintenance or removal of Trade Fixtures, Lessee owned Alterations and/or Utility Installations, furnishings, and equipment as well as the removal of any storage tank installed by or for Lessee. Lessee shall completely remove from the Premises any and all Hazardous Substances brought onto the Premises by or for Lessee, or any third party (except Hazardous Substances which were deposited via underground migration from areas outside of the Premises, or if applicable, the Premises) even if such removal would require Lessee to perform or pay for work that exceeds statutory requirements. Trade Fixtures shall remain the property of Lessee and shall be removed by Lessee. Any personal property of Lessee not removed on or before the Expiration Date or any earlier termination date shall be deemed to have been abandoned by Lessee and may be disposed of or retained by Lessor as Lessor may desire. The failure by Lessee to timely vacate the Premises pursuant to this Paragraph 7.4(c) without the express written consent of Lessor shall constitute a holdover under the provisions of Paragraph 26 below.

8. **Insurance; Indemnity.**

8.1 **Payment of Premium Increases.**

(a) Lessee shall pay to Lessor any insurance cost increase (**"Insurance Cost Increase"**) occurring during the term of this Lease. Insurance Cost Increase is defined as any increase in the actual cost of the insurance required under Paragraph 8.2(b), 8.3(a) and 8.3(b) (**"Required Insurance"**), over and above the Base Premium as hereinafter defined calculated on an annual basis. Insurance Cost Increase shall include but not be limited to increases resulting from the nature of Lessee's occupancy, any act or omission of Lessee, requirements of the holder of mortgage or deed of trust covering the Premises, increased valuation of the Premises and/or a premium rate increase. The parties are encouraged to fill in the Base Premium in paragraph 1.8 with a reasonable premium for the Required Insurance based on the Agreed Use of the Premises. If the parties fail to insert a dollar amount in Paragraph 1.8, then the Base Premium shall be the lowest annual premium reasonably obtainable for the Required Insurance as of the commencement of the Original Term for the Agreed Use of the Premises. In no event, however, shall Lessee be responsible for any portion of the increase in the premium cost attributable to liability insurance carried by Lessor under Paragraph 8.2(b) in excess of $2,000,000 per occurrence.

(b) Lessee shall pay any such Insurance Cost Increase to Lessor within 30 days after receipt by Lessee of a copy of the premium statement or other reasonable evidence of the amount due. If the insurance policies maintained hereunder cover other property besides the Premises, Lessor shall also deliver to Lessee a statement of the amount of such Insurance Cost Increase attributable only to the Premises showing in reasonable detail the manner in which such amount was computed. Premiums for policy periods commencing prior to, or extending beyond the term of this Lease, shall be prorated to correspond to the term of this Lease.

8.2 **Liability Insurance.**

(a) **Carried by Lessee.** Lessee shall obtain and keep in force a Commercial General Liability policy of insurance protecting Lessee and Lessor as an additional insured against claims for bodily injury, personal injury and property damage based upon or arising out of the ownership, use, occupancy or maintenance of the Premises and all areas appurtenant thereto. Such insurance shall be on an occurrence basis providing single limit coverage in an amount not less than $1,000,000 per occurrence with an annual aggregate of not less than $2,000,000. Lessee shall add Lessor as an additional insured by means of an endorsement at least as broad as the Insurance Service Organization's "Additional Insured-Managers or Lessors of Premises" Endorsement. The policy shall not contain any intra-insured exclusions as between insured persons or organizations, but shall include coverage for liability assumed under this Lease as an **" insured contract"** for the performance of Lessee's indemnity obligations under this Lease. The limits of said insurance shall not, however, limit the liability of Lessee nor relieve Lessee of any obligation hereunder. Lessee shall provide an endorsement on its liability policy(ies) which provides that its insurance shall be primary to and not contributory with any similar insurance carried by Lessor, whose insurance shall be considered excess insurance only.

(b) **Carried by Lessor.** Lessor shall maintain liability insurance as described in Paragraph 8.2(a), in addition to, and not in lieu of, the insurance required to be maintained by Lessee. Lessee shall not be named as an additional insured therein.

8.3 **Property Insurance - Building, Improvements and Rental Value.**

(a) **Building and Improvements.** The Insuring Party shall obtain and keep in force a policy or policies in the name of Lessor, with loss payable to Lessor, any ground-lessor, and to any Lender insuring loss or damage to the Premises. The amount of such insurance shall be equal to the full insurable replacement cost of the Premises, as the same shall exist from time to time, or the amount required by any Lender, but in no event more than the commercially reasonable and available insurable value thereof. If Lessor is the Insuring Party, however, Lessee Owned Alterations and Utility Installations, Trade Fixtures, and Lessee's personal property shall be insured by Lessee under Paragraph 8.4 rather than by Lessor. If the coverage is available and commercially appropriate, such policy or policies shall insure against all risks of direct physical loss or damage (except the perils of flood and/or earthquake unless required by a Lender or included in the Base Premium), including coverage for debris removal and the enforcement of any Applicable Requirements requiring the upgrading, demolition, reconstruction or replacement of any portion of the Premises as the result of a covered loss. Said policy or policies shall also contain an agreed valuation provision in lieu of any coinsurance clause, waiver of subrogation, and inflation guard protection causing an increase in the annual property insurance coverage amount by a factor of not less than the adjusted U.S. Department of Labor Consumer Price Index for All Urban Consumers for the city nearest to where the Premises are located. If such insurance coverage has a deductible clause, the deductible amount shall not exceed $1,000 per occurrence, and Lessee shall be liable for such deductible amount in the event of an Insured Loss.

(b) **Rental Value.** The Insuring Party shall obtain and keep in force a policy or policies in the name of Lessor with loss payable to Lessor and any Lender, insuring the loss of the full Rent for one year with an extended period of indemnity for an additional 180 days (" Rental Value insurance"). Said insurance shall contain an agreed valuation provision in lieu of any coinsurance clause, and the amount of coverage shall be adjusted annually to reflect the projected Rent otherwise payable by Lessee, for the next 12 month period. Lessee shall be liable for any deductible amount in the event of such loss.

(c) **Adjacent Premises.** If the Premises are part of a larger building, or of a group of buildings owned by Lessor which are adjacent to the Premises, the Lessee shall pay for any increase in the premiums for the property insurance of such building or buildings if said increase is caused by Lessee's acts, omissions, use or occupancy of the Premises.

8.4 **Lessee's Property; Business Interruption Insurance.**

(a) **Property Damage.** Lessee shall obtain and maintain insurance coverage on all of Lessee's personal property, Trade Fixtures, and Lessee Owned Alterations and Utility Installations. Such insurance shall be full replacement cost coverage with a deductible of not to exceed $1,000 per occurrence. The proceeds from any such insurance shall be used by Lessee for the replacement of personal property, Trade Fixtures and Lessee Owned Alterations and Utility Installations. Lessee shall provide Lessor with written evidence that such insurance is in force.

(b) **Business Interruption.** Lessee shall obtain and maintain loss of income and extra expense insurance in amounts as will reimburse Lessee for direct or indirect loss of earnings attributable to all perils commonly insured against by prudent lessees in the business of Lessee or attributable to prevention of access to the Premises as a result of such perils.

(c) **No Representation of Adequate Coverage.** Lessor makes no representation that the limits or forms of coverage of insurance specified herein are adequate to cover Lessee's property, business operations or obligations under this Lease.

8.5 **Insurance Policies.** Insurance required herein shall be by companies duly licensed or admitted to transact business in the state where the Premises are located, and maintaining during the policy term a "General Policyholders Rating" of at least A-, VI, as set forth in the most current issue of "Best's Insurance Guide", or such other rating as may be required by a Lender. Lessee shall not do or permit to be done anything which invalidates the required insurance policies. Lessee shall, prior to the Start Date, deliver to Lessor certified copies of policies of such insurance or certificates evidencing the existence and amounts of the required insurance. No such policy shall be cancelable or subject to modification except after 30 days prior written notice to Lessor. Lessee shall, at least 10 days prior to the expiration of such policies, furnish Lessor with evidence of renewals or "insurance binders" evidencing renewal thereof, or Lessor may order such insurance and charge the cost thereof to Lessee, which amount shall be payable by Lessee to Lessor upon demand. Such policies shall be for a term of at least one year, or the length of the remaining term of this Lease, whichever is less. If either Party shall fail to procure and maintain the insurance required to be carried by it, the other Party may, but shall not be required to, procure and maintain the same.

8.6 **Waiver of Subrogation.** Without affecting any other rights or remedies, Lessee and Lessor each hereby release and relieve the other, and waive their entire right to recover damages against the other, for loss of or damage to its property arising out of or incident to the perils required to be insured against herein. The effect of such releases and waivers is not limited by the amount of insurance carried or required, or by any deductibles applicable hereto. The Parties agree to have their respective property damage insurance carriers waive any right to subrogation that such companies may have against Lessor or Lessee, as the case may be, so long as the insurance is not invalidated thereby.

8.7 **Indemnity.** Except for Lessor's gross negligence or willful misconduct, Lessee shall indemnify, protect, defend and hold harmless the Premises, Lessor and its agents, Lessor's master or ground lessor, partners and Lenders, from and against any and all claims, loss of rents and/or

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damages, liens, judgments, penalties, attorneys' and consultants' fees, expenses and/or liabilities arising out of, involving, or in connection with, the use and/or occupancy of the Premises by Lessee. If any action or proceeding is brought against Lessor by reason of any of the foregoing matters, Lessee shall upon notice defend the same at Lessee's expense by counsel reasonably satisfactory to Lessor and Lessor shall cooperate with Lessee in such defense. Lessor need not have first paid any such claim in order to be defended or indemnified.

8.8 **Exemption of Lessor and its Agents from Liability**. Notwithstanding the negligence or breach of this Lease by Lessor or its agents, neither Lessor nor its agents shall be liable under any circumstances for: (i) injury or damage to the person or goods, wares, merchandise or other property of Lessee, Lessee's employees, contractors, invitees, customers, or any other person in or about the Premises, whether such damage or injury is caused by or results from fire, steam, electricity, gas, water or rain, indoor air quality, the presence of mold or from the breakage, leakage, obstruction or other defects of pipes, fire sprinklers, wires, appliances, plumbing, HVAC or lighting fixtures, or from any other cause, whether the said injury or damage results from conditions arising upon the Premises or upon other portions of the building of which the Premises are a part, or from other sources or places, (ii) any damages arising from any act or neglect of any other tenant of Lessor or from the failure of Lessor or its agents to enforce the provisions of any other lease in the Project, or (iii) injury to Lessee's business or for any loss of income or profit therefrom. Instead, it is intended that Lessee's sole recourse in the event of such damages or injury be to file a claim on the insurance policy(ies) that Lessee is required to maintain pursuant to the provisions of paragraph 8.

8.9 **Failure to Provide Insurance.** Lessee acknowledges that any failure on its part to obtain or maintain the insurance required herein will expose Lessor to risks and potentially cause Lessor to incur costs not contemplated by this Lease, the extent of which will be extremely difficult to ascertain. Accordingly, for any month or portion thereof that Lessee does not maintain the required insurance and/or does not provide Lessor with the required binders or certificates evidencing the existance of the required insurance, the Base Rent shall be automatically increased, without any requirement for notice to Lessee, by an amount equal to 10% of the then existing Base Rent or $100, whichever is greater. The parties agree that such increase in Base Rent represents fair and reasonable compensation for the additional risk/ costs that Lessor will incur by reason of Lessee's failure to maintain the required insurance. Such increase in Base Rent shall in no event constitute a waiver of Lessee's Default or Breach with respect to the failure to maintain such insurance, prevent the exercise of any of the other rights and remedies granted hereunder, nor relieve Lessee of its obligation to maintain the insurance specified in this Lease.

9. **Damage or Destruction.**

9.1 **Definitions.**

(a) **"Premises Partial Damage"** shall mean damage or destruction to the improvements on the Premises, other than Lessee Owned Alterations and Utility Installations, which can reasonably be repaired in 6 months or less from the date of the damage or destruction. Lessor shall notify Lessee in writing within 30 days from the date of the damage or destruction as to whether or not the damage is Partial or Total. Notwithstanding the foregoing, Premises Partial Damage shall not include damage to windows, doors, and/or other similar items which Lessee has the responsibility to repair or replace pursuant to the provisions of Paragraph 7.1.

(b) **"Premises Total Destruction"** shall mean damage or destruction to the Premises, other than Lessee Owned Alterations and Utility Installations and Trade Fixtures, which cannot reasonably be repaired in 6 months or less from the date of the damage or destruction. Lessor shall notify Lessee in writing within 30 days from the date of the damage or destruction as to whether or not the damage is Partial or Total.

(c) **"Insured Loss"** shall mean damage or destruction to improvements on the Premises, other than Lessee Owned Alterations and Utility Installations and Trade Fixtures, which was caused by an event required to be covered by the insurance described in Paragraph 8.3(a), irrespective of any deductible amounts or coverage limits involved.

(d) **"Replacement Cost"** shall mean the cost to repair or rebuild the improvements owned by Lessor at the time of the occurrence to their condition existing immediately prior thereto, including demolition, debris removal and upgrading required by the operation of Applicable Requirements, and without deduction for depreciation.

(e) **"Hazardous Substance Condition"** shall mean the occurrence or discovery of a condition involving the presence of, or a contamination by, a Hazardous Substance as defined in Paragraph 6.2(a), in, on, or under the Premises which requires repair, remediation, or restoration.

9.2 **Partial Damage - Insured Loss.** If a Premises Partial Damage that is an Insured Loss occurs, then Lessor shall, at Lessor's expense, repair such damage (but not Lessee's Trade Fixtures or Lessee Owned Alterations and Utility Installations) as soon as reasonably possible and this Lease shall continue in full force and effect; provided, however, that Lessee shall, at Lessor's election, make the repair of any damage or destruction the total cost to repair of which is $10,000 or less, and, in such event, Lessor shall make any applicable insurance proceeds available to Lessee on a reasonable basis for that purpose. Notwithstanding the foregoing, if the required insurance was not in force or the insurance proceeds are not sufficient to effect such repair, the Insuring Party shall promptly contribute the shortage in proceeds (except as to the deductible which is Lessee's responsibility) as and when required to complete said repairs. In the event, however, such shortage was due to the fact that, by reason of the unique nature of the improvements, full replacement cost insurance coverage was not commercially reasonable and available, Lessor shall have no obligation to pay for the shortage in insurance proceeds or to fully restore the unique aspects of the Premises unless Lessee provides Lessor with the funds to cover same, or adequate assurance thereof, within 10 days following receipt of written notice of such shortage and request therefor. If Lessor receives said funds or adequate assurance thereof within said 10 day period, the party responsible for making the repairs shall complete them as soon as reasonably possible and this Lease shall remain in full force and effect. If such funds or assurance are not received, Lessor may nevertheless elect by written notice to Lessee within 10 days thereafter to: (i) make such restoration and repair as is commercially reasonable with Lessor paying any shortage in proceeds, in which case this Lease shall remain in full force and effect, or (ii) have this Lease terminate 30 days thereafter. Lessee shall not be entitled to reimbursement of any funds contributed by Lessee to repair any such damage or destruction. Premises Partial Damage due to flood or earthquake shall be subject to Paragraph 9.3, notwithstanding that there may be some insurance coverage, but the net proceeds of any such insurance shall be made available for the repairs if made by either Party.

9.3 **Partial Damage - Uninsured Loss.** If a Premises Partial Damage that is not an Insured Loss occurs, unless caused by a negligent or willful act of Lessee (in which event Lessee shall make the repairs at Lessee's expense), Lessor may either: (i) repair such damage as soon as reasonably possible at Lessor's expense, in which event this Lease shall continue in full force and effect, or (ii) terminate this Lease by giving written notice to Lessee within 30 days after receipt by Lessor of knowledge of the occurrence of such damage. Such termination shall be effective 60 days following the date of such notice. In the event Lessor elects to terminate this Lease, Lessee shall have the right within 10 days after receipt of the termination notice to give written notice to Lessor of Lessee's commitment to pay for the repair of such damage without reimbursement from Lessor. Lessee shall provide Lessor with said funds or satisfactory assurance thereof within 30 days after making such commitment. In such event this Lease shall continue in full force and effect, and Lessor shall proceed to make such repairs as soon as reasonably possible after the required funds are available. If Lessee does not make the required commitment, this Lease shall terminate as of the date specified in the termination notice.

9.4 **Total Destruction.** Notwithstanding any other provision hereof, if a Premises Total Destruction occurs, this Lease shall terminate 60 days following such Destruction. If the damage or destruction was caused by the gross negligence or willful misconduct of Lessee, Lessor shall have the right to recover Lessor's damages from Lessee, except as provided in Paragraph 8.6.

9.5 **Damage Near End of Term.** If at any time during the last 6 months of this Lease there is damage for which the cost to repair exceeds one month's Base Rent, whether or not an Insured Loss, Lessor may terminate this Lease effective 60 days following the date of occurrence of such damage by giving a written termination notice to Lessee within 30 days after the date of occurrence of such damage. Notwithstanding the foregoing, if Lessee at that time has an exercisable option to extend this Lease or to purchase the Premises, then Lessee may preserve this Lease by, (a) exercising such option and (b) providing Lessor with any shortage in insurance proceeds (or adequate assurance thereof) needed to make the repairs on or before the earlier of (i) the date which is 10 days after Lessee's receipt of Lessor's written notice purporting to terminate this Lease, or (ii) the day prior to the date upon which such option expires. If Lessee duly exercises such option during such period and provides Lessor with funds (or adequate assurance thereof) to cover any shortage in insurance proceeds, Lessor shall, at Lessor's commercially reasonable expense, repair such damage as soon as reasonably possible and this Lease shall continue in full force and effect. If Lessee fails to exercise such option and provide such funds or assurance during such period, then this Lease shall terminate on the date specified in the termination notice and Lessee's option shall be extinguished.

9.6 **Abatement of Rent; Lessee's Remedies.**

(a) **Abatement.** In the event of Premises Partial Damage or Premises Total Destruction or a Hazardous Substance Condition for which Lessee is not responsible under this Lease, the Rent payable by Lessee for the period required for the repair, remediation or restoration of such damage shall be abated in proportion to the degree to which Lessee's use of the Premises is impaired, but not to exceed the proceeds received from the Rental Value insurance. All other obligations of Lessee hereunder shall be performed by Lessee, and Lessor shall have no liability for any such damage, destruction, remediation, repair or restoration except as provided herein.

(b) **Remedies.** If Lessor is obligated to repair or restore the Premises and does not commence, in a substantial and meaningful way, such repair or restoration within 90 days after such obligation shall accrue, Lessee may, at any time prior to the commencement of such repair or restoration, give written notice to Lessor and to any Lenders of which Lessee has actual notice, of Lessee's election to terminate this Lease on a date not less than 60 days following the giving of such notice. If Lessee gives such notice and such repair or restoration is not commenced within 30 days thereafter, this Lease shall terminate as of the date specified in said notice. If the repair or restoration is commenced within such 30 days, this Lease

shall continue in full force and effect. **"Commence"** shall mean either the unconditional authorization of the preparation of the required plans, or the beginning of the actual work on the Premises, whichever first occurs.

9.7 **Termination; Advance Payments.** Upon termination of this Lease pursuant to Paragraph 6.2(g) or Paragraph 9, an equitable adjustment shall be made concerning advance Base Rent and any other advance payments made by Lessee to Lessor. Lessor shall, in addition, return to Lessee so much of Lessee's Security Deposit as has not been, or is not then required to be, used by Lessor.

10. **Real Property Taxes.**

10.1 **Definition.** As used herein, the term **"Real Property Taxes"** shall include any form of assessment; real estate, general, special, ordinary or extraordinary, or rental levy or tax (other than inheritance, personal income or estate taxes); improvement bond; and/or license fee imposed upon or levied against any legal or equitable interest of Lessor in the Premises or the Project, Lessor's right to other income therefrom, and/or Lessor's business of leasing, by any authority having the direct or indirect power to tax and where the funds are generated with reference to the Building address and where the proceeds so generated are to be applied by the city, county or other local taxing authority of a jurisdiction within which the Premises are located. Real Property Taxes shall also include any tax, fee, levy, assessment or charge, or any increase therein: (i) imposed by reason of events occurring during the term of this Lease, including but not limited to, a change in the ownership of the Premises, and (ii) levied or assessed on machinery or equipment provided by Lessor to Lessee pursuant to this Lease.

10.2

(a) **Payment of Taxes.** Lessor shall pay the Real Property Taxes applicable to the Premises provided, however, that Lessee shall pay to Lessor the amount, if any, by which Real Property Taxes applicable to the Premises increase over the fiscal tax year during which the Commencement Date Occurs ("Tax Increase"). Payment of any such Tax Increase shall be made by Lessee to Lessor within 30 days after receipt of Lessor's written statement setting forth the amount due and computation thereof. If any such taxes shall cover any period of time prior to or after the expiration or termination of this Lease, Lessee's share of such taxes shall be prorated to cover only that portion of the tax bill applicable to the period that this Lease is in effect. In the event lessee incurs a late charge on any Rent payment, Lessor may estimate the current Real Property Taxes, and require that the Tax Increase be paid in advance to Lessor by Lessee monthly in advance with the payment of the Base Rent. Such monthly payment shall be an amount equal to the amount of the estimated installment of the Tax Increase divided by the number of months remaining before the month in which said installment becomes delinquent. When the actual amount of the applicable Tax Increase is known, the amount of such equal monthly advance payments shall be adjusted as required to provide the funds needed to pay the applicable Tax Increase. If the amount collected by Lessor is insufficient to pay the Tax Increase when due, Lessee shall pay Lessor, upon demand, such additional sums as are necessary to pay such obligations. Advance payments may be intermingled with other moneys of Lessor and shall not bear interest. In the event of a Breach by Lessee in the performance of its obligations under this Lease, then any such advance payments may be treated by Lessor as an additional Security Deposit.

(b) **Additional Improvements.** Notwithstanding anything to the contrary in this Paragraph 10.2, Lessee shall pay to Lessor upon demand therefor the entirety of any increase in Real Property Taxes assessed by reason of Alterations or Utility Installations placed upon the Premises by Lessee or at Lessee's request or by reason of any alterations or improvements to the Premises made by Lessor subsequent to the execution of this Lease by the Parties.

10.3 **Joint Assessment.** If the Premises are not separately assessed, Lessee's liability shall be an equitable proportion of the Tax Increase for all of the land and improvements included within the tax parcel assessed, such proportion to be conclusively determined by Lessor from the respective valuations assigned in the assessor's work sheets or such other information as may be reasonably available.

10.4 **Personal Property Taxes.** Lessee shall pay, prior to delinquency, all taxes assessed against and levied upon Lessee Owned Alterations, Utility Installations, Trade Fixtures, furnishings, equipment and all personal property of Lessee. When possible, Lessee shall cause its Lessee Owned Alterations and Utility Installations, Trade Fixtures, furnishings, equipment and all other personal property to be assessed and billed separately from the real property of Lessor. If any of Lessee's said property shall be assessed with Lessor's real property, Lessee shall pay Lessor the taxes attributable to Lessee's property within 10 days after receipt of a written statement setting forth the taxes applicable to Lessee's property.

11. **Utilities and Services.** Lessee shall pay for all water, gas, heat, light, power, telephone, trash disposal and other utilities and services supplied to the Premises, together with any taxes thereon. If any such services are not separately metered or billed to Lessee, Lessee shall pay a reasonable proportion, to be determined by Lessor, of all charges jointly metered or billed. There shall be no abatement of rent and Lessor shall not be liable in any respect whatsoever for the inadequacy, stoppage, interruption or discontinuance of any utility or service due to riot, strike, labor dispute, breakdown, accident, repair or other cause beyond Lessor's reasonable control or in cooperation with governmental request or directions.

12. **Assignment and Subletting.**

12.1 **Lessor's Consent Required.**

(a) Lessee shall not voluntarily or by operation of law assign, transfer, mortgage or encumber (collectively, **"assign or assignment"**) or sublet all or any part of Lessee's interest in this Lease or in the Premises without Lessor's prior written consent.

(b) Unless Lessee is a corporation and its stock is publicly traded on a national stock exchange, a change in the control of Lessee shall constitute an assignment requiring consent. The transfer, on a cumulative basis, of 25% or more of the voting control of Lessee shall constitute a change in control for this purpose.

(c) The involvement of Lessee or its assets in any transaction, or series of transactions (by way of merger, sale, acquisition, financing, transfer, leveraged buy-out or otherwise), whether or not a formal assignment or hypothecation of this Lease or Lessee's assets occurs, which results or will result in a reduction of the Net Worth of Lessee by an amount greater than 25% of such Net Worth as it was represented at the time of the execution of this Lease or at the time of the most recent assignment to which Lessor has consented, or as it exists immediately prior to said transaction or transactions constituting such reduction, whichever was or is greater, shall be considered an assignment of this Lease to which Lessor may withhold its consent. **"Net Worth of Lessee"** shall mean the net worth of Lessee (excluding any guarantors) established under generally accepted accounting principles.

(d) An assignment or subletting without consent shall, at Lessor's option, be a Default curable after notice per Paragraph 13.1(c), or a noncurable Breach without the necessity of any notice and grace period. If Lessor elects to treat such unapproved assignment or subletting as a noncurable Breach, Lessor may either: (i) terminate this Lease, or (ii) upon 30 days written notice, increase the monthly Base Rent to 110% of the Base Rent then in effect. Further, in the event of such Breach and rental adjustment, (i) the purchase price of any option to purchase the Premises held by Lessee shall be subject to similar adjustment to 110% of the price previously in effect, and (ii) all fixed and non-fixed rental adjustments scheduled during the remainder of the Lease term shall be increased to 110% of the scheduled adjusted rent.

(e) Lessee's remedy for any breach of Paragraph 12.1 by Lessor shall be limited to compensatory damages and/or injunctive relief.

(f) Lessor may reasonably withhold consent to a proposed assignment or subletting if Lessee is in Default at the time consent is requested.

(g) Notwithstanding the foregoing, allowing a de minimis portion of the Premises, ie. 20 square feet or less, to be used by a third party vendor in connection with the installation of a vending machine or payphone shall not constitute a subletting.

12.2 **Terms and Conditions Applicable to Assignment and Subletting.**

(a) Regardless of Lessor's consent, no assignment or subletting shall: (i) be effective without the express written assumption by such assignee or sublessee of the obligations of Lessee under this Lease, (ii) release Lessee of any obligations hereunder, or (iii) alter the primary liability of Lessee for the payment of Rent or for the performance of any other obligations to be performed by Lessee.

(b) Lessor may accept Rent or performance of Lessee's obligations from any person other than Lessee pending approval or disapproval of an assignment. Neither a delay in the approval or disapproval of such assignment nor the acceptance of Rent or performance shall constitute a waiver or estoppel of Lessor's right to exercise its remedies for Lessee's Default or Breach.

(c) Lessor's consent to any assignment or subletting shall not constitute a consent to any subsequent assignment or subletting.

(d) In the event of any Default or Breach by Lessee, Lessor may proceed directly against Lessee, any Guarantors or anyone else responsible for the performance of Lessee's obligations under this Lease, including any assignee or sublessee, without first exhausting Lessor's remedies against any other person or entity responsible therefor to Lessor, or any security held by Lessor.

(e) Each request for consent to an assignment or subletting shall be in writing, accompanied by information relevant to Lessor's determination as to the financial and operational responsibility and appropriateness of the proposed assignee or sublessee, including but not limited to the intended use and/or required modification of the Premises, if any, together with a fee of $500 as consideration for Lessor's considering and processing said request. Lessee agrees to provide Lessor with such other or additional information and/or documentation as may be reasonably requested. (See also Paragraph 36)

(f) Any assignee of, or sublessee under, this Lease shall, by reason of accepting such assignment, entering into such sublease, or entering into possession of the Premises or any portion thereof, be deemed to have assumed and agreed to conform and comply with each and every term, covenant, condition and obligation herein to be observed or performed by Lessee during the term of said assignment or sublease, other than such obligations as are contrary to or inconsistent with provisions of an assignment or sublease to which Lessor has specifically consented to in writing.

(g) Lessor's consent to any assignment or subletting shall not transfer to the assignee or sublessee any Option granted to the original Lessee by this Lease unless such transfer is specifically consented to by Lessor in writing. (See Paragraph 39.2)

12.3 **Additional Terms and Conditions Applicable to Subletting.** The following terms and conditions shall apply to any subletting by Lessee of all or any part of the Premises and shall be deemed included in all subleases under this Lease whether or not expressly incorporated therein:

(a) Lessee hereby assigns and transfers to Lessor all of Lessee's interest in all Rent payable on any sublease, and Lessor may collect such Rent and apply same toward Lessee's obligations under this Lease; provided, however, that until a Breach shall occur in the performance of Lessee's obligations, Lessee may collect said Rent. In the event that the amount collected by Lessor exceeds Lessee's then outstanding obligations any such excess shall be refunded to Lessee. Lessor shall not, by reason of the foregoing or any assignment of such sublease, nor by reason of the collection of Rent, be deemed liable to the sublessee for any failure of Lessee to perform and comply with any of Lessee's obligations to such sublessee. Lessee hereby irrevocably authorizes and directs any such sublessee, upon receipt of a written notice from Lessor stating that a Breach exists in the performance of Lessee's obligations under this Lease, to pay to Lessor all Rent due and to become due under the sublease. Sublessee shall rely upon any such notice from Lessor and shall pay all Rents to Lessor without any obligation or right to inquire as to whether such Breach exists, notwithstanding any claim from Lessee to the contrary.

(b) In the event of a Breach by Lessee, Lessor may, at its option, require sublessee to attorn to Lessor, in which event Lessor shall undertake the obligations of the sublessor under such sublease from the time of the exercise of said option to the expiration of such sublease; provided, however, Lessor shall not be liable for any prepaid rents or security deposit paid by such sublessee to such sublessor or for any prior Defaults or Breaches of such sublessor.

(c) Any matter requiring the consent of the sublessor under a sublease shall also require the consent of Lessor.

(d) No sublessee shall further assign or sublet all or any part of the Premises without Lessor's prior written consent.

(e) Lessor shall deliver a copy of any notice of Default or Breach by Lessee to the sublessee, who shall have the right to cure the Default of Lessee within the grace period, if any, specified in such notice. The sublessee shall have a right of reimbursement and offset from and against Lessee for any such Defaults cured by the sublessee.

13. **Default; Breach; Remedies.**

13.1 **Default; Breach.** A **"Default"** is defined as a failure by the Lessee to comply with or perform any of the terms, covenants, conditions or Rules and Regulations under this Lease. A **"Breach"** is defined as the occurrence of one or more of the following Defaults, and the failure of Lessee to cure such Default within any applicable grace period:

(a) The abandonment of the Premises; or the vacating of the Premises without providing a commercially reasonable level of security, or where the coverage of the property insurance described in Paragraph 8.3 is jeopardized as a result thereof, or without providing reasonable assurances to minimize potential vandalism.

(b) The failure of Lessee to make any payment of Rent or any Security Deposit required to be made by Lessee hereunder, whether to Lessor or to a third party, when due, to provide reasonable evidence of insurance or surety bond, or to fulfill any obligation under this Lease which endangers or threatens life or property, where such failure continues for a period of 3 business days following written notice to Lessee. THE ACCEPTANCE BY LESSOR OF A PARTIAL PAYMENT OF RENT OR SECURITY DEPOSIT SHALL NOT CONSTITUTE A WAIVER OF ANY OF LESSOR'S RIGHTS, INCLUDING LESSOR'S RIGHT TO RECOVER POSSESSION OF THE PREMISES.

(c) The failure of Lessee to allow Lessor and/or its agents access to the Premises or the commission of waste, act or acts constituting public or private nuisance, and/or an illegal activity on the Premises by Lessee, where such actions continue for a period of 3 business days following written notice to Lessee.

(d) The failure by Lessee to provide (i) reasonable written evidence of compliance with Applicable Requirements, (ii) the service contracts, (iii) the rescission of an unauthorized assignment or subletting, (iv) an Estoppel Certificate or financial statements, (v) a requested subordination, (vi) evidence concerning any guaranty and/or Guarantor, (vii) any document requested under Paragraph 42, (viii) material safety data sheets (MSDS), or (ix) any other documentation or information which Lessor may reasonably require of Lessee under the terms of this Lease, where any such failure continues for a period of 10 days following written notice to Lessee.

(e) A Default by Lessee as to the terms, covenants, conditions or provisions of this Lease, or of the rules adopted under Paragraph 40 hereof, other than those described in subparagraphs 13.1(a), (b), (c) or (d), above, where such Default continues for a period of 30 days after written notice; provided, however, that if the nature of Lessee's Default is such that more than 30 days are reasonably required for its cure, then it shall not be deemed to be a Breach if Lessee commences such cure within said 30 day period and thereafter diligently prosecutes such cure to completion.

(f) The occurrence of any of the following events: (i) the making of any general arrangement or assignment for the benefit of creditors; (ii) becoming a **"debtor"** as defined in 11 U.S.C. §101 or any successor statute thereto (unless, in the case of a petition filed against Lessee, the same is dismissed within 60 days); (iii) the appointment of a trustee or receiver to take possession of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease, where possession is not restored to Lessee within 30 days; or (iv) the attachment, execution or other judicial seizure of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease, where such seizure is not discharged within 30 days; provided, however, in the event that any provision of this subparagraph (e) is contrary to any applicable law, such provision shall be of no force or effect, and not affect the validity of the remaining provisions.

(g) The discovery that any financial statement of Lessee or of any Guarantor given to Lessor was materially false.

(h) If the performance of Lessee's obligations under this Lease is guaranteed: (i) the death of a Guarantor, (ii) the termination of a Guarantor's liability with respect to this Lease other than in accordance with the terms of such guaranty, (iii) a Guarantor's becoming insolvent or the subject of a bankruptcy filing, (iv) a Guarantor's refusal to honor the guaranty, or (v) a Guarantor's breach of its guaranty obligation on an anticipatory basis, and Lessee's failure, within 60 days following written notice of any such event, to provide written alternative assurance or security, which, when coupled with the then existing resources of Lessee, equals or exceeds the combined financial resources of Lessee and the Guarantors that existed at the time of execution of this Lease.

13.2 **Remedies.** If Lessee fails to perform any of its affirmative duties or obligations, within 10 days after written notice (or in case of an emergency, without notice), Lessor may, at its option, perform such duty or obligation on Lessee's behalf, including but not limited to the obtaining of reasonably required bonds, insurance policies, or governmental licenses, permits or approvals. Lessee shall pay to Lessor an amount equal to 115% of the costs and expenses incurred by Lessor in such performance upon receipt of an invoice therefor. In the event of a Breach, Lessor may, with or without further notice or demand, and without limiting Lessor in the exercise of any right or remedy which Lessor may have by reason of such Breach:

(a) Terminate Lessee's right to possession of the Premises by any lawful means, in which case this Lease shall terminate and Lessee shall immediately surrender possession to Lessor. In such event Lessor shall be entitled to recover from Lessee: (i) the unpaid Rent which had been earned at the time of termination; (ii) the worth at the time of award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that the Lessee proves could have been reasonably avoided; (iii) the worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of such rental loss that the Lessee proves could be reasonably avoided; and (iv) any other amount necessary to compensate Lessor for all the detriment proximately caused by the Lessee's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, including but not limited to the cost of recovering possession of the Premises, expenses of reletting, including necessary renovation and alteration of the Premises, reasonable attorneys' fees, and that portion of any leasing commission paid by Lessor in connection with this Lease applicable to the unexpired term of this Lease. The worth at the time of award of the amount referred to in provision (iii) of the immediately preceding sentence shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of the District within which the Premises are located at the time of award plus one percent. Efforts by Lessor to mitigate damages caused by Lessee's Breach of this Lease shall not waive Lessor's right to recover damages under Paragraph 12. If termination of this Lease is obtained through the provisional remedy of unlawful detainer, Lessor shall have the right to recover in such proceeding any unpaid Rent and damages as are recoverable therein, or Lessor may reserve the right to recover all or any part thereof in a separate suit. If a notice and grace period required under Paragraph 13.1 was not previously given, a notice to pay rent or quit, or to perform or quit given to Lessee under the unlawful detainer statute shall also constitute the notice required by Paragraph 13.1. In such case, the applicable grace period required by Paragraph 13.1 and the unlawful detainer statute shall run concurrently, and the failure of Lessee to cure the Default within the greater of the two such grace periods shall constitute both an unlawful detainer and a Breach of this Lease entitling Lessor to the remedies provided for in this Lease and/or by said statute.

(b) Continue the Lease and Lessee's right to possession and recover the Rent as it becomes due, in which event Lessee may sublet or assign, subject only to reasonable limitations. Acts of maintenance, efforts to relet, and/or the appointment of a receiver to protect the Lessor's interests, shall not constitute a termination of the Lessee's right to possession.

(c) Pursue any other remedy now or hereafter available under the laws or judicial decisions of the state wherein the Premises are located. The expiration or termination of this Lease and/or the termination of Lessee's right to possession shall not relieve Lessee from liability under any indemnity provisions of this Lease as to matters occurring or accruing during the term hereof or by reason of Lessee's occupancy of the Premises.

13.3 **Inducement Recapture.** Any agreement for free or abated rent or other charges, or for the giving or paying by Lessor to or for Lessee of any cash or other bonus, inducement or consideration for Lessee's entering into this Lease, all of which concessions are hereinafter referred to as **"Inducement Provisions,"** shall be deemed conditioned upon Lessee's full and faithful performance of all of the terms, covenants and conditions of this Lease. Upon Breach of this Lease by Lessee, any such Inducement Provision shall automatically be deemed deleted from this Lease and of no further force or effect, and any rent, other charge, bonus, inducement or consideration theretofore abated, given or paid by Lessor under such an Inducement Provision shall be immediately due and payable by Lessee to Lessor, notwithstanding any subsequent cure of said Breach by Lessee. The acceptance by Lessor of rent or the cure of the Breach which initiated the operation of this paragraph shall not be deemed a waiver by Lessor of the provisions of this paragraph unless specifically so stated in writing by Lessor at the time of such acceptance.

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13.4 **Late Charges.** Lessee hereby acknowledges that late payment by Lessee of Rent will cause Lessor to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges, and late charges which may be imposed upon Lessor by any Lender. Accordingly, if any Rent shall not be received by Lessor within 5 days after such amount shall be due, then, without any requirement for notice to Lessee, Lessee shall immediately pay to Lessor a one-time late charge equal to 10% of each such overdue amount or $100, whichever is greater. The Parties hereby agree that such late charge represents a fair and reasonable estimate of the costs Lessor will incur by reason of such late payment. Acceptance of such late charge by Lessor shall in no event constitute a waiver of Lessee's Default or Breach with respect to such overdue amount, nor prevent the exercise of any of the other rights and remedies granted hereunder. In the event that a late charge is payable hereunder, whether or not collected, for 3 consecutive installments of Base Rent, then notwithstanding any provision of this Lease to the contrary, Base Rent shall, at Lessor's option, become due and payable quarterly in advance.

13.5 **Interest.** Any monetary payment due Lessor hereunder, other than late charges, not received by Lessor, when due as to scheduled payments (such as Base Rent) or within 30 days following the date on which it was due for non-scheduled payment, shall bear interest from the date when due, as to scheduled payments, or the 31st day after it was due as to non-scheduled payments. The interest (**"Interest"**) charged shall be computed at the rate of 10% per annum but shall not exceed the maximum rate allowed by law. Interest is payable in addition to the potential late charge provided for in Paragraph 13.4.

13.6 **Breach by Lessor.**

(a) **Notice of Breach.** Lessor shall not be deemed in breach of this Lease unless Lessor fails within a reasonable time to perform an obligation required to be performed by Lessor. For purposes of this Paragraph, a reasonable time shall in no event be less than 30 days after receipt by Lessor, and any Lender whose name and address shall have been furnished Lessee in writing for such purpose, of written notice specifying wherein such obligation of Lessor has not been performed; provided, however, that if the nature of Lessor's obligation is such that more than 30 days are reasonably required for its performance, then Lessor shall not be in breach if performance is commenced within such 30 day period and thereafter diligently pursued to completion.

(b) **Performance by Lessee on Behalf of Lessor.** In the event that neither Lessor nor Lender cures said breach within 30 days after receipt of said notice, or if having commenced said cure they do not diligently pursue it to completion, then Lessee may elect to cure said breach at Lessee's expense and offset from Rent the actual and reasonable cost to perform such cure, provided however, that such offset shall not exceed an amount equal to the greater of one month's Base Rent or the Security Deposit, reserving Lessee's right to seek reimbursement from Lessor for any such expense in excess of such offset. Lessee shall document the cost of said cure and supply said documentation to Lessor.

14. **Condemnation.** If the Premises or any portion thereof are taken under the power of eminent domain or sold under the threat of the exercise of said power (collectively **"Condemnation"**), this Lease shall terminate as to the part taken as of the date the condemning authority takes title or possession, whichever first occurs. If more than 10% of the Building, or more than 25% of that portion of the Premises not occupied by any building, is taken by Condemnation, Lessee may, at Lessee's option, to be exercised in writing within 10 days after Lessor shall have given Lessee written notice of such taking (or in the absence of such notice, within 10 days after the condemning authority shall have taken possession) terminate this Lease as of the date the condemning authority takes such possession. If Lessee does not terminate this Lease in accordance with the foregoing, this Lease shall remain in full force and effect as to the portion of the Premises remaining, except that the Base Rent shall be reduced in proportion to the reduction in utility of the Premises caused by such Condemnation. Condemnation awards and/or payments shall be the property of Lessor, whether such award shall be made as compensation for diminution in value of the leasehold, the value of the part taken, or for severance damages; provided, however, that Lessee shall be entitled to any compensation paid by the condemnor for Lessee's relocation expenses, loss of business goodwill and/or Trade Fixtures, without regard to whether or not this Lease is terminated pursuant to the provisions of this Paragraph. All Alterations and Utility Installations made to the Premises by Lessee, for purposes of Condemnation only, shall be considered the property of the Lessee and Lessee shall be entitled to any and all compensation which is payable therefor. In the event that this Lease is not terminated by reason of the Condemnation, Lessor shall repair any damage to the Premises caused by such Condemnation.

15. **Brokerage Fees.**

15.1 **Additional Commission.** In addition to the payments owed pursuant to Paragraph 1.9 above, and unless Lessor and the Brokers otherwise agree in writing, Lessor agrees that: (a) if Lessee exercises any Option, (b) if Lessee or anyone affiliated with Lessee acquires any rights to the Premises or other premises owned by Lessor and located within the same Project, if any, within which the Premises is located, (c) if Lessee remains in possession of the Premises, with the consent of Lessor, after the expiration of this Lease, or (d) if Base Rent is increased, whether by agreement or operation of an escalation clause herein, then, Lessor shall pay Brokers a fee in accordance with the schedule of the Brokers in effect at the time of the execution of this Lease.

15.2 **Assumption of Obligations.** Any buyer or transferee of Lessor's interest in this Lease shall be deemed to have assumed Lessor's obligation hereunder. Brokers shall be third party beneficiaries of the provisions of Paragraphs 1.9, 15, 22 and 31. If Lessor fails to pay to Brokers any amounts due as and for brokerage fees pertaining to this Lease when due, then such amounts shall accrue Interest. In addition, if Lessor fails to pay any amounts to Lessee's Broker when due, Lessee's Broker may send written notice to Lessor and Lessee of such failure and if Lessor fails to pay such amounts within 10 days after said notice, Lessee shall pay said monies to its Broker and offset such amounts against Rent. In addition, Lessee's Broker shall be deemed to be a third party beneficiary of any commission agreement entered into by and/or between Lessor and Lessor's Broker for the limited purpose of collecting any brokerage fee owed.

15.3 **Representations and Indemnities of Broker Relationships.** Lessee and Lessor each represent and warrant to the other that it has had no dealings with any person, firm, broker or finder (other than the Brokers, if any) in connection with this Lease, and that no one other than said named Brokers is entitled to any commission or finder's fee in connection herewith. Lessee and Lessor do each hereby agree to indemnify, protect, defend and hold the other harmless from and against liability for compensation or charges which may be claimed by any such unnamed broker, finder or other similar party by reason of any dealings or actions of the indemnifying Party, including any costs, expenses, attorneys' fees reasonably incurred with respect thereto.

16. **Estoppel Certificates.**

(a) Each Party (as **"Responding Party"**) shall within 10 days after written notice from the other Party (the **"Requesting Party"**) execute, acknowledge and deliver to the Requesting Party a statement in writing in form similar to the then most current **"Estoppel Certificate"** form published by the AIR Commercial Real Estate Association, plus such additional information, confirmation and/or statements as may be reasonably requested by the Requesting Party.

(b) If the Responding Party shall fail to execute or deliver the Estoppel Certificate within such 10 day period, the Requesting Party may execute an Estoppel Certificate stating that: (i) the Lease is in full force and effect without modification except as may be represented by the Requesting Party, (ii) there are no uncured defaults in the Requesting Party's performance, and (iii) if Lessor is the Requesting Party, not more than one month's rent has been paid in advance. Prospective purchasers and encumbrancers may rely upon the Requesting Party's Estoppel Certificate, and the Responding Party shall be estopped from denying the truth of the facts contained in said Certificate.

(c) If Lessor desires to finance, refinance, or sell the Premises, orany part thereof, Lessee and all Guarantors shall within 10 days after written notice from Lessor deliver to any potential lender or purchaser designated by Lessor such financial statements as may be reasonably required by such lender or purchaser, including but not limited to Lessee's financial statements for the past 3 years. All such financial statements shall be received by Lessor and such lender or purchaser in confidence and shall be used only for the purposes herein set forth.

17. **Definition of Lessor.** The term **"Lessor"** as used herein shall mean the owner or owners at the time in question of the fee title to the Premises, or, if this is a sublease, of the Lessee's interest in the prior lease. In the event of a transfer of Lessor's title or interest in the Premises or this Lease, Lessor shall deliver to the transferee or assignee (in cash or by credit) any unused Security Deposit held by Lessor. Upon such transfer or assignment and delivery of the Security Deposit, as aforesaid, the prior Lessor shall be relieved of all liability with respect to the obligations and/or covenants under this Lease thereafter to be performed by the Lessor. Subject to the foregoing, the obligations and/or covenants in this Lease to be performed by the Lessor shall be binding only upon the Lessor as hereinabove defined.

18. **Severability.** The invalidity of any provision of this Lease, as determined by a court of competent jurisdiction, shall in no way affect the validity of any other provision hereof.

19. **Days.** Unless otherwise specifically indicated to the contrary, the word "days" as used in this Lease shall mean and refer to calendar days.

20. **Limitation on Liability.** The obligations of Lessor under this Lease shall not constitute personal obligations of Lessor or its partners, members, directors, officers or shareholders, and Lessee shall look to the Premises, and to no other assets of Lessor, for the satisfaction of any liability of Lessor with respect to this Lease, and shall not seek recourse against Lessor's partners, members, directors, officers or shareholders, or any of their personal assets for such satisfaction.

21. **Time of Essence.** Time is of the essence with respect to the performance of all obligations to be performed or observed by the Parties under this Lease.

22. **No Prior or Other Agreements; Broker Disclaimer.** This Lease contains all agreements between the Parties with respect to any matter mentioned herein, and no other prior or contemporaneous agreement or understanding shall be effective. Lessor and Lessee each represents and warrants to the Brokers that it has made, and is relying solely upon, its own investigation as to the nature, quality, character and financial responsibility of the other Party to this Lease and as to the use, nature, quality and character of the Premises. Brokers have no responsibility with respect thereto or with respect to any default or breach hereof by either Party.

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23. **Notices.**

23.1 **Notice Requirements.** All notices required or permitted by this Lease or applicable law shall be in writing and may be delivered in person (by hand or by courier) or may be sent by regular, certified or registered mail or U.S. Postal Service Express Mail, with postage prepaid, or by facsimile transmission, and shall be deemed sufficiently given if served in a manner specified in this Paragraph 23. The addresses noted adjacent to a Party's signature on this Lease shall be that Party's address for delivery or mailing of notices. Either Party may by written notice to the other specify a different address for notice, except that upon Lessee's taking possession of the Premises, the Premises shall constitute Lessee's address for notice. A copy of all notices to Lessor shall be concurrently transmitted to such party or parties at such addresses as Lessor may from time to time hereafter designate in writing.

23.2 **Date of Notice.** Any notice sent by registered or certified mail, return receipt requested, shall be deemed given on the date of delivery shown on the receipt card, or if no delivery date is shown, the postmark thereon. If sent by regular mail the notice shall be deemed given 72 hours after the same is addressed as required herein and mailed with postage prepaid. Notices delivered by United States Express Mail or overnight courier that guarantee next day delivery shall be deemed given 24 hours after delivery of the same to the Postal Service or courier. Notices transmitted by facsimile transmission or similar means shall be deemed delivered upon telephone confirmation of receipt (confirmation report from fax machine is sufficient), provided a copy is also delivered via delivery or mail. If notice is received on a Saturday, Sunday or legal holiday, it shall be deemed received on the next business day.

24. **Waivers.**

(a) No waiver by Lessor of the Default or Breach of any term, covenant or condition hereof by Lessee, shall be deemed a waiver of any other term, covenant or condition hereof, or of any subsequent Default or Breach by Lessee of the same or of any other term, covenant or condition hereof. Lessor's consent to, or approval of, any act shall not be deemed to render unnecessary the obtaining of Lessor's consent to, or approval of, any subsequent or similar act by Lessee, or be construed as the basis of an estoppel to enforce the provision or provisions of this Lease requiring such consent.

(b) The acceptance of Rent by Lessor shall not be a waiver of any Default or Breach by Lessee. Any payment by Lessee may be accepted by Lessor on account of moneys or damages due Lessor, notwithstanding any qualifying statements or conditions made by Lessee in connection therewith, which such statements and/or conditions shall be of no force or effect whatsoever unless specifically agreed to in writing by Lessor at or before the time of deposit of such payment.

(c) THE PARTIES AGREE THAT THE TERMS OF THIS LEASE SHALL GOVERN WITH REGARD TO ALL MATTERS RELATED THERETO AND HEREBY WAIVE THE PROVISIONS OF ANY PRESENT OR FUTURE STATUTE TO THE EXTENT THAT SUCH STATUTE IS INCONSISTENT WITH THIS LEASE.

25. **Disclosures Regarding The Nature of a Real Estate Agency Relationship.**

(a) When entering into a discussion with a real estate agent regarding a real estate transaction, a Lessor or Lessee should from the outset understand what type of agency relationship or representation it has with the agent or agents in the transaction. Lessor and Lessee acknowledge being advised by the Brokers in this transaction, as follows:

(i) Lessor's Agent. A Lessor's agent under a listing agreement with the Lessor acts as the agent for the Lessor only. A Lessor's agent or subagent has the following affirmative obligations: To the Lessor: A fiduciary duty of utmost care, integrity, honesty, and loyalty in dealings with the Lessor. To the Lessee and the Lessor: a. Diligent exercise of reasonable skills and care in performance of the agent's duties. b. A duty of honest and fair dealing and good faith. c. A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the Parties. An agent is not obligated to reveal to either Party any confidential information obtained from the other Party which does not involve the affirmative duties set forth above.

(ii) Lessee's Agent. An agent can agree to act as agent for the Lessee only. In these situations, the agent is not the Lessor's agent, even if by agreement the agent may receive compensation for services rendered, either in full or in part from the Lessor. An agent acting only for a Lessee has the following affirmative obligations. To the Lessee: A fiduciary duty of utmost care, integrity, honesty, and loyalty in dealings with the Lessee. To the Lessee and the Lessor: a. Diligent exercise of reasonable skills and care in performance of the agent's duties. b. A duty of honest and fair dealing and good faith. c. A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the Parties. An agent is not obligated to reveal to either Party any confidential information obtained from the other Party which does not involve the affirmative duties set forth above.

(iii) Agent Representing Both Lessor and Lessee. A real estate agent, either acting directly or through one or more associate licenses, can legally be the agent of both the Lessor and the Lessee in a transaction, but only with the knowledge and consent of both the Lessor and the Lessee. In a dual agency situation, the agent has the following affirmative obligations to both the Lessor and the Lessee: a. A fiduciary duty of utmost care, integrity, honesty and loyalty in the dealings with either Lessor or the Lessee. b. Other duties to the Lessor and the Lessee as stated above in subparagraphs (i) or (ii). In representing both Lessor and Lessee, the agent may not without the express permission of the respective Party, disclose to the other Party that the Lessor will accept rent in an amount less than that indicated in the listing or that the Lessee is willing to pay a higher rent than that offered. The above duties of the agent in a real estate transaction do not relieve a Lessor or Lessee from the responsibility to protect their own interests. Lessor and Lessee should carefully read all agreements to assure that they adequately express their understanding of the transaction. A real estate agent is a person qualified to advise about real estate. If legal or tax advice is desired, consult a competent professional.

(b) Brokers have no responsibility with respect to any default or breach hereof by either Party. The Parties agree that no lawsuit or other legal proceeding involving any breach of duty, error or omission relating to this Lease may be brought against Broker more than one year after the Start Date and that the liability (including court costs and attorneys' fees), of any Broker with respect to any such lawsuit and/or legal proceeding shall not exceed the fee received by such Broker pursuant to this Lease; provided, however, that the foregoing limitation on each Broker's liability shall not be applicable to any gross negligence or willful misconduct of such Broker.

(c) Lessor and Lessee agree to identify to Brokers as "Confidential" any communication or information given Brokers that is considered by such Party to be confidential.

26. **No Right To Holdover.** Lessee has no right to retain possession of the Premises or any part thereof beyond the expiration or termination of this Lease. In the event that Lessee holds over, then the Base Rent shall be increased to 150% of the Base Rent applicable immediately preceding the expiration or termination. Nothing contained herein shall be construed as consent by Lessor to any holding over by Lessee.

27. **Cumulative Remedies.** No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

28. **Covenants and Conditions; Construction of Agreement.** All provisions of this Lease to be observed or performed by Lessee are both covenants and conditions. In construing this Lease, all headings and titles are for the convenience of the Parties only and shall not be considered a part of this Lease. Whenever required by the context, the singular shall include the plural and vice versa. This Lease shall not be construed as if prepared by one of the Parties, but rather according to its fair meaning as a whole, as if both Parties had prepared it.

29. **Binding Effect; Choice of Law.** This Lease shall be binding upon the Parties, their personal representatives, successors and assigns and be governed by the laws of the State in which the Premises are located. Any litigation between the Parties hereto concerning this Lease shall be initiated in the county in which the Premises are located.

30. **Subordination; Attornment; Non-Disturbance.**

30.1 **Subordination.** This Lease and any Option granted hereby shall be subject and subordinate to any ground lease, mortgage, deed of trust, or other hypothecation or security device (collectively, **"Security Device"**), now or hereafter placed upon the Premises, to any and all advances made on the security thereof, and to all renewals, modifications, and extensions thereof. Lessee agrees that the holders of any such Security Devices (in this Lease together referred to as **"Lender"**) shall have no liability or obligation to perform any of the obligations of Lessor under this Lease. Any Lender may elect to have this Lease and/or any Option granted hereby superior to the lien of its Security Device by giving written notice thereof to Lessee, whereupon this Lease and such Options shall be deemed prior to such Security Device, notwithstanding the relative dates of the documentation or recordation thereof.

30.2 **Attornment.** In the event that Lessor transfers title to the Premises, or the Premises are acquired by another upon the foreclosure or termination of a Security Devise to which this Lease is subordinated (i) Lessee shall, subject to the non-disturbance provisions of Paragraph 30.3, attorn to such new owner, and upon request, enter into a new lease, containing all of the terms and provisions of this Lease, with such new owner for the remainder of the term hereof, or, at the election of the new owner, this Lease will automatically become a new lease between Lessee and such new owner, and (ii) Lessor shall thereafter be relieved of any further obligations hereunder and such new owner shall assume all of Lessor's obligations, except that such new owner shall not: (a) be liable for any act or omission of any prior lessor or with respect to events occurring prior to acquisition of ownership; (b) be subject to any offsets or defenses which Lessee might have against any prior lessor, (c) be bound by prepayment of more than one month's rent, or (d) be liable for the return of any security deposit paid to any prior lessor which was not paid or credited to such new owner.

30.3 **Non-Disturbance.** With respect to Security Devices entered into by Lessor after the execution of this Lease, Lessee's subordination of this Lease shall be subject to receiving a commercially reasonable non-disturbance agreement (a **"Non-Disturbance Agreement"**) from the Lender which Non-Disturbance Agreement provides that Lessee's possession of the Premises, and this Lease, including any options to extend

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the term hereof, will not be disturbed so long as Lessee is not in Breach hereof and attorns to the record owner of the Premises. Further, within 60 days after the execution of this Lease, Lessor shall, if requested by Lessee, use its commercially reasonable efforts to obtain a Non-Disturbance Agreement from the holder of any pre-existing Security Device which is secured by the Premises. In the event that Lessor is unable to provide the Non-Disturbance Agreement within said 60 days, then Lessee may, at Lessee's option, directly contact Lender and attempt to negotiate for the execution and delivery of a Non-Disturbance Agreement.

30.4 **Self-Executing.** The agreements contained in this Paragraph 30 shall be effective without the execution of any further documents; provided, however, that, upon written request from Lessor or a Lender in connection with a sale, financing or refinancing of the Premises, Lessee and Lessor shall execute such further writings as may be reasonably required to separately document any subordination, attornment and/or Non-Disturbance Agreement provided for herein.

31. **Attorneys' Fees.** If any Party or Broker brings an action or proceeding involving the Premises whether founded in tort, contract or equity, or to declare rights hereunder, the Prevailing Party (as hereafter defined) in any such proceeding, action, or appeal thereon, shall be entitled to reasonable attorneys' fees. Such fees may be awarded in the same suit or recovered in a separate suit, whether or not such action or proceeding is pursued to decision or judgment. The term, **"Prevailing Party"** shall include, without limitation, a Party or Broker who substantially obtains or defeats the relief sought, as the case may be, whether by compromise, settlement, judgment, or the abandonment by the other Party or Broker of its claim or defense. The attorneys' fees award shall not be computed in accordance with any court fee schedule, but shall be such as to fully reimburse all attorneys' fees reasonably incurred. In addition, Lessor shall be entitled to attorneys' fees, costs and expenses incurred in the preparation and service of notices of Default and consultations in connection therewith, whether or not a legal action is subsequently commenced in connection with such Default or resulting Breach ($200 is a reasonable minimum per occurrence for such services and consultation).

32. **Lessor's Access; Showing Premises; Repairs.** Lessor and Lessor's agents shall have the right to enter the Premises at any time, in the case of an emergency, and otherwise at reasonable times after reasonable prior notice for the purpose of showing the same to prospective purchasers, lenders, or tenants, and making such alterations, repairs, improvements or additions to the Premises as Lessor may deem necessary or desirable and the erecting, using and maintaining of utilities, services, pipes and conduits through the Premises and/or other premises as long as there is no material adverse effect to Lessee's use of the Premises. All such activities shall be without abatement of rent or liability to Lessee.

33. **Auctions.** Lessee shall not conduct, nor permit to be conducted, any auction upon the Premises without Lessor's prior written consent. Lessor shall not be obligated to exercise any standard of reasonableness in determining whether to permit an auction.

34. **Signs.** Lessor may place on the Premises ordinary "For Sale" signs at any time and ordinary "For Lease" signs during the last 6 months of the term hereof. Except for ordinary "for sublease" signs, Lessee shall not place any sign upon the Premises without Lessor's prior written consent. All signs must comply with all Applicable Requirements.

35. **Termination; Merger.** Unless specifically stated otherwise in writing by Lessor, the voluntary or other surrender of this Lease by Lessee, the mutual termination or cancellation hereof, or a termination hereof by Lessor for Breach by Lessee, shall automatically terminate any sublease or lesser estate in the Premises; provided, however, that Lessor may elect to continue any one or all existing subtenancies. Lessor's failure within 10 days following any such event to elect to the contrary by written notice to the holder of any such lesser interest, shall constitute Lessor's election to have such event constitute the termination of such interest.

36. **Consents.** Except as otherwise provided herein, wherever in this Lease the consent of a Party is required to an act by or for the other Party, such consent shall not be unreasonably withheld or delayed. Lessor's actual reasonable costs and expenses (including but not limited to architects', attorneys', engineers' and other consultants' fees) incurred in the consideration of, or response to, a request by Lessee for any Lessor consent, including but not limited to consents to an assignment, a subletting or the presence or use of a Hazardous Substance, shall be paid by Lessee upon receipt of an invoice and supporting documentation therefor. Lessor's consent to any act, assignment or subletting shall not constitute an acknowledgment that no Default or Breach by Lessee of this Lease exists, nor shall such consent be deemed a waiver of any then existing Default or Breach, except as may be otherwise specifically stated in writing by Lessor at the time of such consent. The failure to specify herein any particular condition to Lessor's consent shall not preclude the imposition by Lessor at the time of consent of such further or other conditions as are then reasonable with reference to the particular matter for which consent is being given. In the event that either Party disagrees with any determination made by the other hereunder and reasonably requests the reasons for such determination, the determining party shall furnish its reasons in writing and in reasonable detail within 10 business days following such request.

37. **Guarantor.**

37.1 **Execution.** The Guarantors, if any, shall each execute a guaranty in the form most recently published by the AIR Commercial Real Estate Association.

37.2 **Default.** It shall constitute a Default of the Lessee if any Guarantor fails or refuses, upon request to provide: (a) evidence of the execution of the guaranty, including the authority of the party signing on Guarantor's behalf to obligate Guarantor, and in the case of a corporate Guarantor, a certified copy of a resolution of its board of directors authorizing the making of such guaranty, (b) current financial statements, (c) an Estoppel Certificate, or (d) written confirmation that the guaranty is still in effect.

38. **Quiet Possession.** Subject to payment by Lessee of the Rent and performance of all of the covenants, conditions and provisions on Lessee's part to be observed and performed under this Lease, Lessee shall have quiet possession and quiet enjoyment of the Premises during the term hereof.

39. **Options.** If Lessee is granted an Option, as defined below, then the following provisions shall apply:

39.1 **Definition. "Option"** shall mean: (a) the right to extend or reduce the term of or renew this Lease or to extend or reduce the term of or renew any lease that Lessee has on other property of Lessor; (b) the right of first refusal or first offer to lease either the Premises or other property of Lessor; (c) the right to purchase, the right of first offer to purchase or the right of first refusal to purchase the Premises or other property of Lessor.

39.2 **Options Personal To Original Lessee.** Any Option granted to Lessee in this Lease is personal to the original Lessee, and cannot be assigned or exercised by anyone other than said original Lessee and only while the original Lessee is in full possession of the Premises and, if requested by Lessor, with Lessee certifying that Lessee has no intention of thereafter assigning or subletting.

39.3 **Multiple Options.** In the event that Lessee has any multiple Options to extend or renew this Lease, a later Option cannot be exercised unless the prior Options have been validly exercised.

39.4 **Effect of Default on Options.**

(a) Lessee shallhave no right to exercise an Option: (i) during the period commencing withthe giving of any notice of Default and continuing until said Default is cured, (ii) during the period of time any Rent is unpaid (without regard to whether notice thereof is given Lessee), (iii) during the time Lessee is in Breach of this Lease, or (iv) in the event that Lessee has been given 3 or more notices of separate Default, whether or not the Defaults are cured, during the 12 month period immediately preceding the exercise of the Option.

(b) The period of time withinwhich an Option may be exercised shall not be extended or enlarged by reason of Lessee's inabilityto exercise an Option because of the provisions of Paragraph 39.4(a).

(c) An Option shall terminate and be of no further force or effect, notwithstandingLessee's due and timely exercise of the Option, if, after such exercise and prior to the commencement of the extended term or completion of the purchase, (i) Lessee fails to pay Rent for a period of 30 days after such Rent becomes due (without any necessity of Lessor to give notice thereof), or (ii) if Lessee commits a Breach of this Lease.

40. **Multiple Buildings.** If the Premises are a part of a group of buildings controlled by Lessor, Lessee agrees that it will abide by and conform to all reasonable rules and regulations which Lessor may make from time to time for the management, safety, and care of said properties, including the care and cleanliness of the grounds and including the parking, loading and unloading of vehicles, and to cause its employees, suppliers, shippers, customers, contractors and invitees to so abide and conform. Lessee also agrees to pay its fair share of common expenses incurred in connection with such rules and regulations.

41. **Security Measures.** Lessee hereby acknowledges that the Rent payable to Lessor hereunder does not include the cost of guard service or other security measures, and that Lessor shall have no obligation whatsoever to provide same. Lessee assumes all responsibility for the protection of the Premises, Lessee, its agents and invitees and their property from the acts of third parties.

42. **Reservations.** Lessor reserves to itself the right, from time to time, to grant, without the consent or joinder of Lessee, such easements, rights and dedications that Lessor deems necessary, and to cause the recordation of parcel maps and restrictions, so long as such easements, rights, dedications, maps and restrictions do not unreasonably interfere with the use of the Premises by Lessee. Lessee agrees to sign any documents reasonably requested by Lessor to effectuate any such easement rights, dedication, map or restrictions.

43. **Performance Under Protest.** If at any time a dispute shall arise as to any amount or sum of money to be paid by one Party to the other under the provisions hereof, the Party against whom the obligation to pay the money is asserted shall have the right to make payment "under protest" and such payment shall not be regarded as a voluntary payment and there shall survive the right on the part of said Party to institute suit for recovery of such sum. If it shall be adjudged that there was no legal obligation on the part of said Party to pay such sum or any part thereof, said Party shall be entitled to recover such sum or so much thereof as it was not legally required to pay. A Party who does not initiate suit for the recovery of sums paid "under protest" within 6 months shall be deemed to have waived its right to protest such payment.

44. **Authority; Multiple Parties; Execution.**

(a) If either Party hereto is a corporation, trust, limited liability company, partnership, or similar entity, each individual executing this Lease on behalf of such entity represents and warrants that he or she is duly authorized to execute and deliver this Lease on its behalf.

Each Party shall, within 30 days after request, deliver to the other Party satisfactory evidence of such authority.

(b) If this Lease is executed by more than one person or entity as "Lessee", each such person or entity shall be jointly and severally liable hereunder. It is agreed that any one of the named Lessees shall be empowered to execute any amendment to this Lease, or other document ancillary thereto and bind all of the named Lessees, and Lessor may rely on the same as if all of the named Lessees had executed such document.

(c) This Lease may be executed by the Parties in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

45. **Conflict.** Any conflict between the printed provisions of this Lease and typewritten or handwritten provisions shall be controlled by the typewritten or handwritten provisions.

46. **Offer.** Preparation of this Lease by either Party or their agent and submission of same to the other Party shall not be deemed an offer to lease to the other Party. This Lease is not intended to be binding until executed and delivered by all Parties hereto.

47. **Amendments.** This Lease may be modified only in writing, signed by the Parties in interest at the time of the modification. As long as they do not materially change Lessee's obligations hereunder, Lessee agrees to make such reasonable non-monetary modifications to this Lease as may be reasonably required by a Lender in connection with the obtaining of normal financing or refinancing of the Premises.

48. **Waiver of Jury Trial. THE PARTIES HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING INVOLVING THE PROPERTY OR ARISING OUT OF THIS AGREEMENT.**

49. **Mediation and Arbitration of Disputes.** An Addendum requiring the Mediation and/or the Arbitration of disputes between the Parties and/or Brokers arising out of this Lease ☐ **is** ☒ **is not** attached to this Lease.

50. **Americans with Disabilities Act.** Since compliance with the Americans with Disabilities Act (ADA) is dependent upon Lessee's specific use of the Premises, Lessor makes no warranty or representation as to whether or not the Premises comply with ADA or any similar legislation. In the event that Lessee's use of the Premises requires modifications or additions to the Premises in order to be in ADA compliance, Lessee agrees to make any such necessary modifications and/or additions at Lessee's expense.

LESSOR AND LESSEE HAVE CAREFULLY READ AND REVIEWED THIS LEASE AND EACH TERM AND PROVISION CONTAINED HEREIN, AND BY THE EXECUTION OF THIS LEASE SHOW THEIR INFORMED AND VOLUNTARY CONSENT THERETO. THE PARTIES HEREBY AGREE THAT, AT THE TIME THIS LEASE IS EXECUTED, THE TERMS OF THIS LEASE ARE COMMERCIALLY REASONABLE AND EFFECTUATE THE INTENT AND PURPOSE OF LESSOR AND LESSEE WITH RESPECT TO THE PREMISES.

ATTENTION: NO REPRESENTATION OR RECOMMENDATION IS MADE BY THE AIR COMMERCIAL REAL ESTATE ASSOCIATION OR BY ANY BROKER AS TO THE LEGAL SUFFICIENCY, LEGAL EFFECT, OR TAX CONSEQUENCES OF THIS LEASE OR THE TRANSACTION TO WHICH IT RELATES. THE PARTIES ARE URGED TO:

1. SEEK ADVICE OF COUNSEL AS TO THE LEGAL AND TAX CONSEQUENCES OF THIS LEASE.

2. RETAIN APPROPRIATE CONSULTANTS TO REVIEW AND INVESTIGATE THE CONDITION OF THE PREMISES. SAID INVESTIGATION SHOULD INCLUDE BUT NOT BE LIMITED TO: THE POSSIBLE PRESENCE OF HAZARDOUS SUBSTANCES, THE ZONING OF THE PREMISES, THE STRUCTURAL INTEGRITY, THE CONDITION OF THE ROOF AND OPERATING SYSTEMS, AND THE SUITABILITY OF THE PREMISES FOR LESSEE'S INTENDED USE.

WARNING: IF THE PREMISES IS LOCATED IN A STATE OTHER THAN CALIFORNIA, CERTAIN PROVISIONS OF THE LEASE MAY NEED TO BE REVISED TO COMPLY WITH THE LAWS OF THE STATE IN WHICH THE PREMISES IS LOCATED.

The parties hereto have executed this Lease at the place and on the dates specified above their respective signatures.

Executed at: Santa Monica	Executed at: San Clemente, CA
On: April 1st 08	On: April 1, 2008
By LESSOR:	**By LESSEE:**
Richard G. Henderson	Reshape Medical, Inc., a Delaware Corporation
By:	By:
Name Printed: Richard G. Henderson	Name Printed: William V. Murray
Title: Owner	Title:
By:	By:
Name Printed:	Name Printed:
Title:	Title:
Address:	Address:
Telephone: (___)	Telephone: (___)
Facsimile: (___)	Facsimile: (___)
Federal ID No.	Federal ID No.
BROKER:	**BROKER:**
CB Richard Ellis	Voit Commercial Brokerage
Att: Steve Wagner	Att: Hayden Socci / Robert Socci
Title: Senior Associate	Title:
Address: 3501 Jamboree Road, Suite 100 Newport Beach, CA 92660	Address: 3500 W. Orangewood Ave. Orange, CA 92686
Telephone:(949)725-8616	Telephone:(714)978-7880
Facsimile:(949)725-8545	Facsimile:(___)
Federal ID No.	Federal ID No.

NOTICE: These forms are often modified to meet changing requirements of law and industry needs. Always write or call to make sure you are utilizing the most current form: AIR Commercial Real Estate Association, 800 W 6th Street, Suite 800, Los Angeles, CA 90017. Telephone No. (213) 687-8777. Fax No.: (213) 687-8616.

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ADDENDUM TO THAT CERTAIN
STANDARD INDUSTRIAL/COMMERCIAL SINGLE-TENANT LEASE GROSS
DATED MARCH 28, 2008
BY AND BETWEEN
RICHARD G. HENDERSON ("LESSOR")
AND
RESHAPE MEDICAL, INC., A DELAWARE CORPORATION
("LESSEE")

51. Base Rent Schedule: The Monthly Base Rent for the Premises shall be as follows:

Months	Monthly Rent
June 1, 2008 – May 30, 2009	$9,750
June 1, 2009 – June 30, 2009	Free
July 1, 2009 – June 30, 2010	$10,125
July 1, 2010 – July 30, 2010	Free
August 1, 2010 – July 31, 2011	$10,500

52. Tenant Improvements: Lessor, at Lessor's sole cost and expense, shall

a) Install new carpet in the office areas (commercial grade)
b) Remove hanging lights in the back office
c) Clean and seal the pebble flooring in the office areas
d) Repair cabinet below sink
e) Remove storage container behind the building
f) ~~Construct three (3) walls for a conference room, using building standard materials. The location of the walls shall be mutually agreed upon by Lessee and Lessor~~
g) Install new base board in warehouse
h) Apply fresh paint to the warehouse walls. Lessor has already applied fresh paint to the office walls.
i) Extend wall per exhibit A

53. Signage: Lessee, at Lessee's sole cost and expense, shall be allowed to install building signage per the Rancho San Clemente Business Park and City of San Clemente Requirements.

Initials

Initials:

CBRE
CB RICHARD ELLIS

OPTION(S) TO EXTEND
STANDARD LEASE ADDENDUM

Dated March 28, 2008

By and Between (Lessor) Richard G. Henderson

By and Between (Lessee) Reshape Medical, Inc., a Delaware Corporation

Address of Premises: 100 Calle Iglesia
San Clemente, California

Paragraph 54

A. **OPTION(S) TO EXTEND:**
Lessor hereby grants to Lessee the option to extend the term of this Lease for one (1) additional thirty-six (36) month period(s) commencing when the prior term expires upon each and all of the following terms and conditions:

(i) In order to exercise an option to extend, Lessee must give written notice of such election to Lessor and Lessor must receive the same at least 6 but not more than 9 months prior to the date that the option period would commence, time being of the essence. If proper notification of the exercise of an option is not given and/or received, such option shall automatically expire. Options (if there are more than one) may only be exercised consecutively.

(ii) The provisions of paragraph 39, including those relating to Lessee's Default set forth in paragraph 39.4 of this Lease, are conditions of this Option.

(iii) Except for the provisions of this Lease granting an option or options to extend the term, all of the terms and conditions of this Lease except where specifically modified by this option shall apply.

(iv) This Option is personal to the original Lessee, and cannot be assigned or exercised by anyone other than said original Lessee and only while the original Lessee is in full possession of the Premises and without the intention of thereafter assigning or subletting.

(v) The monthly rent for each month of the option period shall be calculated as follows, using the method(s) indicated below:
(Check Method(s) to be Used and Fill in Appropriately)

☐ **I. Cost of Living Adjustment(s) (COLA)**
a. On (Fill in COLA Dates): _____

the Base Rent shall be adjusted by the change, if any, from the Base Month specified below, in the Consumer Price Index of the Bureau of Labor Statistics of the U.S. Department of Labor for (select one): ☐ CPI W (Urban Wage Earners and Clerical Workers) or ☐ CPI U (All Urban Consumers), for (Fill in Urban Area):

All Items (1982-1984 = 100), herein referred to as "CPI".

b. The monthly rent payable in accordance with paragraph A.I.a. of this Addendum shall be calculated as follows: the Base Rent set forth in paragraph 1.5 of the attached Lease, shall be multiplied by a fraction the numerator of which shall be the CPI of the calendar month 2 months prior to the month(s) specified in paragraph A.I.a. above during which the adjustment is to take effect, and the denominator of which shall be the CPI of the calendar month which is 2 months prior to (select one): ☐ the first month of the term of this Lease as set forth in paragraph 1.3 ("Base Month") or ☐ (Fill in Other "Base Month"):

The sum so calculated shall constitute the new monthly rent hereunder, but in no event, shall any such new monthly rent be less than the rent payable for the month immediately preceding the rent adjustment.

c. In the event the compilation and/or publication of the CPI shall be transferred to any other governmental department or bureau or agency or shall be discontinued, then the index most nearly the same as the CPI shall be used to make such calculation. In the event that the Parties cannot agree on such alternative index, then the matter shall be submitted for decision to the American Arbitration Association in accordance with the then rules of said Association and the decision of the arbitrators shall be binding upon the parties. The cost of said Arbitration shall be paid equally by the Parties.

☑ **II. Market Rental Value Adjustment(s) (MRV)**
a. On (Fill in MRV Adjustment Date(s)) _____

the Base Rent shall be adjusted to the "Market Rental Value" of the property as follows:
1) Four months prior to each Market Rental Value Adjustment Date described above, the Parties shall attempt to agree upon what the new MRV will be on the adjustment date. If agreement cannot be reached, within thirty days, then:

(a) Lessor and Lessee shall immediately appoint a mutually acceptable appraiser or broker to establish the new MRV within the next 30 days. Any associated costs will be split equally between the Parties, or

(b) Both Lessor and Lessee shall each immediately make a reasonable determination of the MRV and submit such determination, in

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writing, to arbitration in accordance with the following provisions:

(i) Within 15 days thereafter, Lessor and Lessee shall each select an ☐ appraiser or ☐ broker (**"Consultant"** - check one) of their choice to act as an arbitrator. The two arbitrators so appointed shall immediately select a third mutually acceptable Consultant to act as a third arbitrator.

(ii) The 3 arbitrators shall within 30 days of the appointment of the third arbitrator reach a decision as to what the actual MRV for the Premises is, and whether Lessor's or Lessee's submitted MRV is the closest thereto. The decision of a majority of the arbitrators shall be binding on the Parties. The submitted MRV which is determined to be the closest to the actual MRV shall thereafter be used by the Parties.

(iii) If either of the Parties fails to appoint an arbitrator within the specified 15 days, the arbitrator timely appointed by one of them shall reach a decision on his or her own, and said decision shall be binding on the Parties.

(iv) The entire cost of such arbitration shall be paid by the party whose submitted MRV is not selected, ie. the one that is NOT the closest to the actual MRV.

2) Notwithstanding the foregoing, the new MRV shall not be less than the rent payable for the month immediately preceding the rent adjustment.

b. Upon the establishment of each New Market Rental Value:

1) the new MRV will become the new "Base Rent" for the purpose of calculating any further Adjustments, and
2) the first month of each Market Rental Value term shall become the new "Base Month" for the purpose of calculating any further Adjustments.

☐ **III. Fixed Rental Adjustment(s) (FRA)**
The Base Rent shall be increased to the following amounts on the dates set forth below:

On (Fill in FRA Adjustment Date(s)):	The New Base Rent shall be:
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

B. NOTICE:
Unless specified otherwise herein, notice of any rental adjustments, other than Fixed Rental Adjustments, shall be made as specified in paragraph 23 of the Lease.

C. BROKER'S FEE:
The Brokers shall be paid a Brokerage Fee for each adjustment specified above in accordance with paragraph 15 of the Lease.

NOTICE: These forms are often modified to meet changing requirements of law and industry needs. Always write or call to make sure you are utilizing the most current form: AIR Commercial Real Estate Association, 800 W 6th Street, Suite 800, Los Angeles, CA 90017. Telephone No. (213) 687-8777. Fax No.: (213) 687-8616.

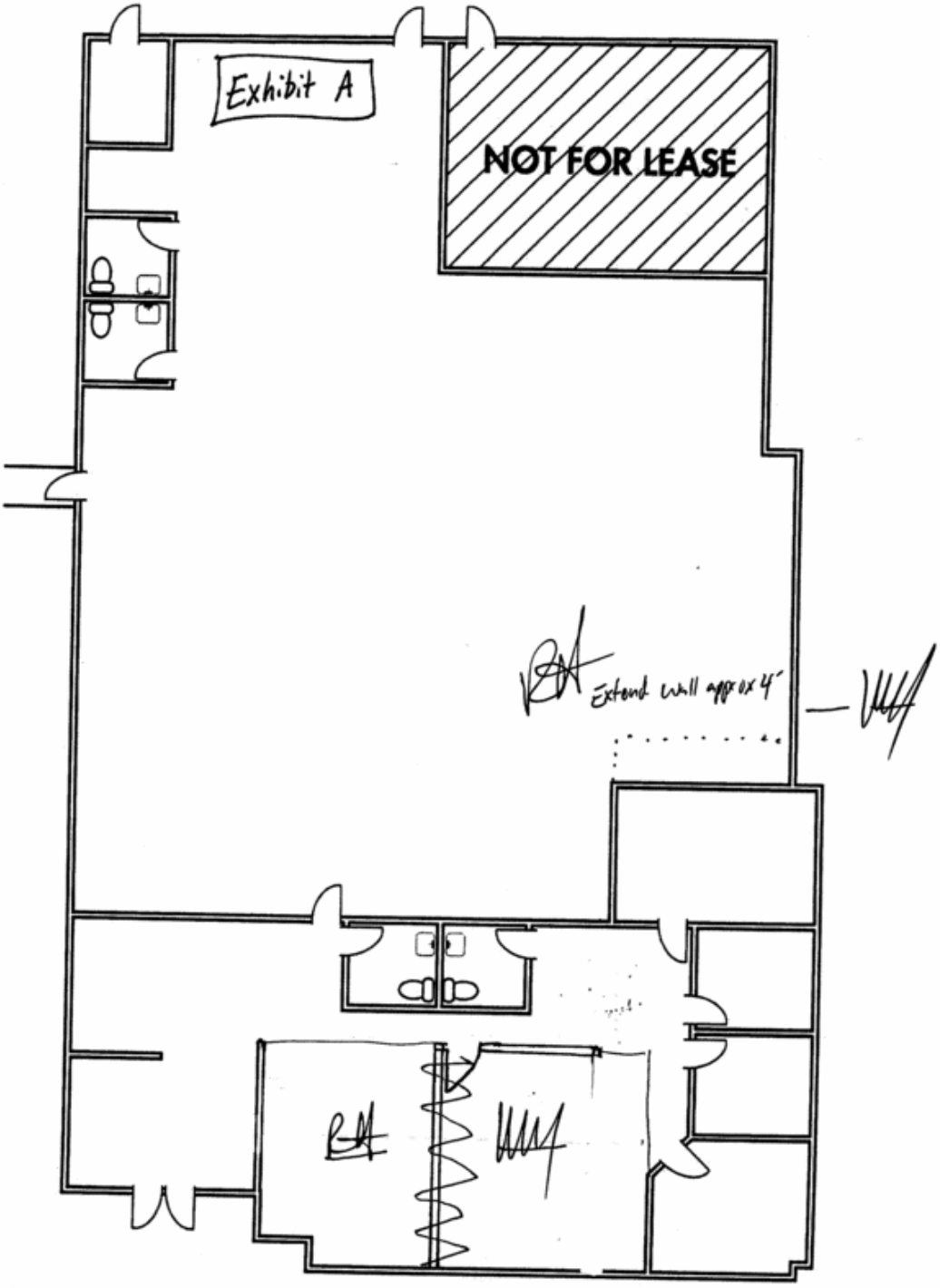


Exhibit A
NOT FOR LEASE
Extend wall approx 4'

AMENDMENT NO. 1 TO LEASE

I. PARTIES AND DATE

This Amendment No. 1 to Lease (this "Amendment") dated as of March 30, 2011 (the "Effective Date"), is entered into by and between Reshape Medical, Inc., a Delaware corporation ("Lessee"), and Richard G. Henderson ("Lessor").

II. RECITALS

A. Lessor and Lessee entered into that certain Standard Industrial/Commercial Single-Tenant Lease—Gross dated as of March 28, 2008 (the "Lease"), for certain premises defined in the Lease (the "Premises"), which consists of approximately 7,500 square feet of space as generally shown on the floor plans attached to the original Lease as Exhibit "A," located in the building whose address is 100 Calle Iglesia, San Clemente, California ("Building").

B. Lessee and Lessor desire to extend the term of Lease and make such other modifications to the Lease as are set forth in "III. MODIFICATIONS" next below.

III. MODIFICATIONS. Effective as of the Effective Date, the Lease is hereby amended as follows:

A. Expiration Date: The date on which the term of the Lease ("Term") shall end is hereby extended from July 31, 2011 to July 31, 2012.

B. Base Rent: The monthly Base Rent during the period beginning on August 1, 2011 and ending on July 31, 2012 will be as follows:

	Monthly Base Rent/Gross
August 1, 2011 – July 31, 2012	$8,250

C. Reduction of Security Deposit: A portion of Lessee's Security Deposit of $31,500 currently held by Lessor shall be applied by it to Base Rent as follows: (i) for monthly Base Rent for August 1, 2011 - August 31, 2011, $8,250 from the Security Deposit shall be applied for rent due; and (ii) for monthly Base Rent due for January 1, 2012-January 31, 2012, $8,250 from the Security Deposit shall be applied for rent due. As of February 1, 2012, (a) the Security Deposit held by Lessor shall be $15,000, and (b) Lessee shall not be obligated to maintain more than $15,000 as the Security Deposit.

D. Option to Extend: Provided Lessee is not in default beyond any applicable notice and cure period, Lessee shall have (2) two options to extend the lease for twelve (12) months each at the then fair market value ("FMV") for comparable properties in South Orange County. Lessee shall exercise each right to extend by giving Lessor written notice of such exercise at least thirty (30) days prior to the expiration of the then-existing Term. Other than the potential change in the Base Rent, all other terms of the Lease shall remain in effect during each extended term.

E. Commissions to Brokers: Lessor shall pay a leasing commission equal to $3,960 (4% of the total consideration of the extension term) split 50/50 between Lessor's broker, 360 Commercial Partners and Lessee's broker, Voit Real Estate Services. Said leasing commissions shall be payable upon mutual execution of this Amendment.

IV. GENERAL

A. Effect of Amendment: The Lease shall remain in full force and effect except to the extent modified or amended by this Amendment.

B. Entire Agreement: This Amendment and the Lease embody the entire understanding between Lessor and Lessee with respect to Lessee's lease of the Premises from Lessor and can be changed only by a writing signed by Lessor and Lessee.

C. Counterparts/Facsimile: This Amendment may be executed in counterparts, and it shall be binding upon the parties as if all of said parties executed the original hereof. It is agreed that a facsimile transmission of an executed copy of this Amendment may be relied upon as conclusive evidence of the execution of this Amendment by the party whose signature is show below on such facsimile transmission.

D. Defined Terms: All words commencing with initial capital letters in this Amendment and defined in the Lease shall have the same meaning in this Amendment as in the Lease, unless they are otherwise defined in this Amendment.

E. Corporate, Partnership, etc. Authority: If either party is a corporation, limited liability company, partnership or other entity, or is comprised of any or all of them, each individual executing this Amendment for the corporation, limited liability company, partnership or other entity represents that he or she is duly authorized to execute and deliver this Amendment on behalf of the respective corporation, limited liability company, partnership or other entity in accordance with its terms.

F. Attorney's Fees: The provisions of this Lease respecting payment of attorney's fees shall also apply to this amendment.

G. Time of the Essence: Time is of the essence of each and every provision of this Amendment.

V. EXECUTION

Landlord and Tenant have executed this Amendment as of the date set forth in "I. PARTIES AND DATE" above.

LESSEE: RESHAPE MEDICAL, INC.,	LESSOR: RICHARD G. HENDERSON
By: _____	By: _____
Name: KEN CHARLET	Name: RICHARD HENDERSON
Title: EVP & CEO	Title: OWNER
Date: 4/1/11	Date: APRIL 8-2011

AMENDMENT NO. 2 TO LEASE

I. PARTIES AND DATE

This Amendment No. 2 to Lease (the "Amendment No. 2") dated as of March 29, 2012 (the "Effective Date"), is by and between Reshape Medical, Inc., a Delaware Corporation ("Lessee"), and Richard G. Henderson ("Lessor").

II. RECITALS

A. Lessor and Lessee entered into that certain Lease on March 28, 2008, and amended by that certain Amendment No. 1 dated March 30, 2011, as for the Premises (the "Premises") which consists of approximately 7,500 square feet of space as generally shown on the floor plans attached to the original Lease as Exhibit "A," located in the building whose address is 100 Calle Iglesia, San Clemente, California ("Building").
B. Lessee and Lessor desire to extend the term of Lease and make such other modifications to the Lease as are set forth in "III. MODIFICATIONS" next below.

III. MODIFICATIONS. Effective as of the Effective Date, the Lease is hereby amended as follows:

A. Expiration Date: The date on which the term of the Lease ("Term") shall end is hereby extended from July 31, 2012 to July 31, 2014.
B. Premises: As of July 1, 2012, Lessee shall expand in the approximately 500 Square foot portion ("Expansion Space") of the property that Lessor currently occupies and any reference to Premises hereafter shall refer to the entire property, approximately 8,000 Square Feet. Prior to July 1, 2012, Lessor shall remove existing mezzanine in the Expansion Space and deliver the space broom clean, free of debris with no fixtures attached. Lessee shall have use of the Expansion Space free of Rent from July 1, 2012 through July 31, 2012.

C. Basic Rent: The monthly rent schedule shall be amended as follows:

	Monthly Rent/Gross
August 1, 2012 - July 31, 2013	$7,920
August 1, 2013-July 31, 2014	$8,160

D. Commissions to Brokers: Lessor shall pay a leasing commission equal to $7,718 (4% of the total consideration of the extension term) split 50/50 between Lessor's broker, 360 Commercial Partners and Lessee's broker, Voit Real Estate Services. Said leasing commissions shall be payable upon mutual execution of this Amendment.

IV. GENERAL

A. Effect of Amendment: This Lease shall remain in full force and effect except to the extent modified or amended by this Amendment.

B. Entire Agreement: This Amendment, Amendment No. 1, and the Lease embody the entire understanding between Lessor and Lessee with respect to Lessee's lease of the Premises from Lessor and can be changed only by a writing signed by Lessor and Lessee.

C. Counterparts/Facsimile: This Amendment may be executed in counterparts, and it shall be binding upon the parties as if all of said parties executed the original hereof. It is agreed that a facsimile transmission of an executed copy of this Amendment may be relied upon as conclusive evidence of the execution of this Amendment by the party whose signature is show below on such facsimile transmission.

D. Defined Terms: All words commencing with initial capital letters in this Amendment and defined in the Lease shall have the same meaning in this Amendment as in the Lease, unless they are otherwise defined in this Amendment.

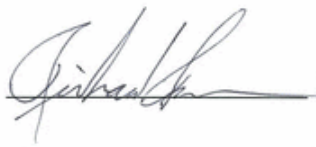
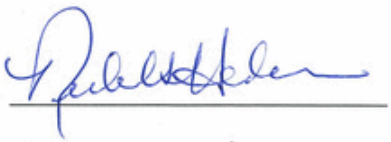
E. Corporate, Partnership, etc. Authority: If either party is a corporation, limited liability company, partnership or other entity, or is comprised of any or all of them, each individual executing this Amendment for the corporation, limited liability company, partnership or other entity represents that he or she is duly authorized to execute and deliver this Amendment on behalf of the respective corporation, limited liability company, partnership or other entity in accordance with its terms.

F. Attorney's Fees: The provisions of this Lease respecting payment of attorney's fees shall also apply to this amendment.

G. Time of the Essence: Time is of the essence of each and every provision of this Amendment.

V. EXECUTION

Landlord and Tenant have executed this Amendment as of the date set forth in "I. PARTIES AND DATE" above.

LESSEE:	RESHAPE MEDICAL, INC.	LESSOR:	RICHARD G. HENDERSON
By:		By:	
Name:	RICHARD THOMPSON	Name:	RICHARD G. HENDERSON
Title:	PRESIDENT & CEO	Title:	OWNER
Date:	APRIL 19, 2012	Date:	4-23-2012

AMENDMENT NO. 3 TO LEASE

I. PARTIES AND DATE

This Amendment No. 3 to Lease (the "Amendment No. 3") dated as of April 3, 2014 (the "Effective Date"), is by and between Reshape Medical, Inc., a Delaware Corporation ("Lessee"), and Richard G. Henderson ("Lessor").

II. RECITALS

A. Lessor and Lessee entered into that certain Lease on March 28, 2008, and amended by that certain Amendment No. 1 dated March 30, 2011, and Amendment No. 2 dated March 29, 2012, as for the Premises (the "Premises") which consists of approximately 8,000 square feet of space as generally shown on the floor plans attached to the original Lease as Exhibit "A," located in the building whose address is 100 Calle Iglesia, San Clemente, California ("Building").

B. Lessee and Lessor desire to extend the term of Lease and make such other modifications to the Lease as are set forth in "III. MODIFICATIONS" next below.

III. MODIFICATIONS. Effective as of the Effective Date, the Lease is hereby amended as follows:

A. Expiration Date: The date on which the term of the Lease ("Term") shall end is hereby extended from July 31, 2014 to October 31, 2014.

B. Basic Rent: The monthly rent schedule shall be amended as follows:

August 1, 2014 – October 31, 2014	$8,976.00/Gross

IV. GENERAL

A. Effect of Amendment: This Lease shall remain in full force and effect except to the extent modified or amended by this Amendment.

B. Entire Agreement: This Amendment, Amendment No. 1, Amendment No. 2, and the Lease embody the entire understanding between Lessor and Lessee with respect to Lessee's lease of the Premises from Lessor and can be changed only by a writing signed by Lessor and Lessee.

C. Counterparts/Facsimile: This Amendment may be executed in counterparts, and it shall be binding upon the parties as if all of said parties executed the original hereof. It is agreed that a facsimile transmission of an executed copy of this Amendment may be relied upon as conclusive evidence of the execution of this Amendment by the party whose signature is show below on such facsimile transmission.

D. Defined Terms: All words commencing with initial capital letters in this Amendment and defined in the Lease shall have the same meaning in this Amendment as in the Lease, unless they are otherwise defined in this Amendment.

E. Corporate, Partnership, etc. Authority: If either party is a corporation, limited liability company, partnership or other entity, or is comprised of any or all of them, each individual executing this Amendment for the corporation, limited liability company, partnership or other entity represents that he or she is duly authorized to execute and deliver this Amendment on behalf of the respective corporation, limited liability company, partnership or other entity in accordance with its terms.

F. Attorney's Fees: The provisions of this Lease respecting payment of attorney's fees shall also apply to this amendment.

G. Time of the Essence: Time is of the essence of each and every provision of this Amendment.

V. EXECUTION

Landlord and Tenant have executed this Amendment as of the date set forth in "I. PARTIES AND DATE" above.

LESSEE: RESHAPE MEDICAL, INC.

By: _____

Name: RICHARD THOMPSON

Title: PRESIDENT & CEO

Date: APRIL 3, 2014

LESSOR: RICHARD G. HENDERSON

By: _____

Name: RICHARD G HENDERSON

Title: OWNER

Date: APRIL 7-2014

AMENDMENT NO. 4 TO LEASE

I. PARTIES AND DATE

This Amendment No. 4 to Lease (the "Amendment No. 4") dated as of April 21, 2014 (the "Effective Date"), is by and between Reshape Medical, Inc., a Delaware Corporation ("Lessee"), and Richard G. Henderson ("Lessor").

II. RECITALS

A. Lessor and Lessee entered into that certain Lease on March 28, 2008, and amended by that certain Amendment No. 1 dated March 30, 2011, Amendment No. 2 dated March 29, 2012, and Amendment No. 3 dated April 3, 2014, as for the Premises (the "Premises") which consists of approximately 8,000 square feet of space as generally shown on the floor plans attached to the original Lease as Exhibit "A," located in the building whose address is 100 Calle Iglesia, San Clemente, California ("Building").

B. Lessee and Lessor desire to extend the term of Lease and make such other modifications to the Lease as are set forth in "III. MODIFICATIONS" next below.

III. MODIFICATIONS. Effective as of the Effective Date, the Lease is hereby amended as follows:

A. Expiration Date: The date on which the term of the Lease ("Term") shall end is hereby extended from October 31, 2014 to October 31, 2016.

B. Basic Rent: The monthly rent schedule shall be amended as follows:

November 1, 2014 – October 31, 2015	$10,000.00/Gross
November 1, 2015 – October 31, 2016	$10,288.00/Gross

C. Commission to Broker: Lessor shall pay a leasing commission equal to $9,738.00 (4% of the total lease consideration of the extension term) to be split equally between Lessor's Broker (Jones Lang LaSalle) and Lessee's Broker (Voit Real Estate Services). Said leasing commission shall be payable upon mutual execution of this Amendment.

IV. GENERAL

A. Effect of Amendment: This Lease shall remain in full force and effect except to the extent modified or amended by this Amendment.

B. Entire Agreement: This Amendment, Amendment No. 1, Amendment No. 2, Amendment No. 3, and the Lease embody the entire understanding between Lessor and Lessee with respect to Lessee's lease of the Premises from Lessor and can be changed only by a writing signed by Lessor and Lessee.

C. Counterparts/Facsimile: This Amendment may be executed in counterparts, and it shall be binding upon the parties as if all of said parties executed the original hereof. It is agreed that a facsimile transmission of an executed copy of this Amendment may be relied upon as conclusive evidence of the execution of this Amendment by the party whose signature is show below on such facsimile

transmission.

D. Defined Terms: All words commencing with initial capital letters in this Amendment and defined in the Lease shall have the same meaning in this Amendment as in the Lease, unless they are otherwise defined in this Amendment.

E. Corporate, Partnership, etc. Authority: If either party is a corporation, limited liability company, partnership or other entity, or is comprised of any or all of them, each individual executing this Amendment for the corporation, limited liability company, partnership or other entity represents that he or she is duly authorized to execute and deliver this Amendment on behalf of the respective corporation, limited liability company, partnership or other entity in accordance with its terms.

F. Attorney's Fees: The provisions of this Lease respecting payment of attorney's fees shall also apply to this amendment.

G. Time of the Essence: Time is of the essence of each and every provision of this Amendment.

V. EXECUTION

Landlord and Tenant have executed this Amendment as of the date set forth in "I. PARTIES AND DATE" above.

LESSEE: RESHAPE MEDICAL, INC.

By: _____

Name: RICHARD THOMPSON

Title: PRESIDENT & CEO

Date: 4-21-14

LESSOR: RICHARD G. HENDERSON

By: _____

Name: RICHARD G HENDERSON

Title: OWNER

Date: 4-23-2014

AMENDMENT NO. 5 TO LEASE

I. PARTIES AND DATE

This Amendment No. 5 to Lease (the "Amendment No. 5") dated as of October 12, 2015 (the "Effective Date"), is by and between Reshape Medical, Inc., a Delaware Corporation ("Lessee"), and Richard G. Henderson ("Lessor").

II. RECITALS

A. Lessor and Lessee entered into that certain Lease on March 28, 2006, and amended by that certain Amendment No. 1 dated March 30, 2011 Amendment No. 2 dated March 29, 2012, Amendment No. 3 dated April 3, 2014 and Amendment No. 4 dated April 24, 2014, as for the Premises (the "Premises") which consists of approximately 8,000 square feet of space as generally shown on the floor plans attached to the original Lease as Exhibit "A," located in the building whose address is 100 Calle Iglesia, San Clemente, California ("Building").

B. Lessee and Lessor desire to extend the term of Lease and make such other modifications to the Lease as are set forth in "III. MODIFICATIONS" next below.

III. **MODIFICATIONS. Effective as of the Effective Date, the Lease is hereby amended as follows:**

A. Expiration Date: The date on which the term of the Lease ("Term") shall end is hereby extended from October 31, 2016 to October 31, 2017.

B. Basic Rent: The monthly rent schedule shall be amended as follows:

November 1, 2016 – October 31, 2017 $10,700.00/Gross

C. Commission to Broker: Lessor shall pay a leasing commission equal to $4,938 (4% of the total lease consideration of the extension term) to be split equally between Lessor's Broker (Jones Lang LaSalle) and Lessee's Broker (Volt Real Estate Services). Said leasing commission shall be payable upon mutual execution of this Amendment.

IV. GENERAL

A. Effect of Amendment: This Lease shall remain in full force and effect except to the extent modified or amended by this Amendment.

B. Entire Agreement: This Amendment, Amendment No. 1, Amendment No. 2, Amendment No. 3, Amendment No. 4 and the Lease embody the entire understanding between Lessor and Lessee with respect to Lessee's lease of the Premises from Lessor and can be changed only by a writing signed by Lessor and Lessee.

C. Counterparts/Facsimile: This Amendment may be executed in counterparts, and it shall be binding upon the parties as if all of said parties executed the original hereof. It is agreed that a facsimile transmission of an executed copy of this Amendment may be relied upon as conclusive evidence of the execution of this Amendment by the party whose signature is show below on such facsimile

transmission.

D. Defined Terms: All words commencing with initial capital letters in this Amendment and defined in the Lease shall have the same meaning in this Amendment as in the Lease, unless they are otherwise defined in this Amendment.

E. Corporate, Partnership, etc. Authority: If either party is a corporation, limited liability company, partnership or other entity, or is comprised of any or all of them, each individual executing this Amendment for the corporation, limited liability company, partnership or other entity represents that he or she is duly authorized to execute and deliver this Amendment on behalf of the respective corporation, limited liability company, partnership or other entity in accordance with its terms.

F. Attorney's Fees: The provisions of this Lease respecting payment of attorney's fees shall also apply to this amendment.

G. Time of the Essence: Time is of the essence of each and every provision of this Amendment.

V. EXECUTION

Landlord and Tenant have executed this Amendment as of the date set forth in "I. PARTIES AND DATE" above.

LESSEE: RESHAPE MEDICAL, INC.	LESSOR: RICHARD G. HENDERSON
By:	By:
Name: RICHARD P. THOMPSON	Name: Richard G Henderson
Title: PRESIDENT & CEO	Title: OWNER
Date: 11-12-15	Date: 11-17-2015

AMENDMENT NO. 6 TO LEASE

I. PARTIES AND DATE

This Amendment No. 6 to Lease (the "Amendment No. 6") dated as of January 4, 2017 (the "Effective Date"), is by and between Reshape Medical, Inc., a Delaware Corporation ("Lessee"), and the Richard G. Henderson Trust, successor in interest to Richard G. Henderson, ("Lessor").

II. RECITALS

A. Lessor and Lessee entered into that certain Lease on March 28, 2008, and amended by that certain Amendment No. 1 dated March 30, 2011, Amendment No. 2 dated March 29, 2012, Amendment No. 3 dated April 3, 2014, Amendment No. 4 dated April 24, 2014, and Amendment No. 5 dated October 12, 2015 as for the Premises (the "Premises") which consists of approximately 8,000 square feet of space as generally shown on the floor plans attached to the original Lease as Exhibit "A," located in the building whose address is 100 Calle Iglesia, San Clemente, California ("Building").

B. Lessee and Lessor desire to extend the term of Lease and make such other modifications to the Lease as are set forth in "III. MODIFICATIONS" next below.

III. MODIFICATIONS. Effective as of the Effective Date, the Lease is hereby amended as follows:

A. Expiration Date: The date on which the term of the Lease ("Term") shall end is hereby extended from October 31, 2017 to October 31, 2019.

B. Basic Rent: The monthly rent schedule shall be amended as follows:

November 1, 2017 – October 31, 2019 $10,877.00/Gross

C. Option to Extend: Provided Lessee is not in default of the lease, Lessee shall have the option to extend the lease for one (1) additional twelve (12) month period. The lease rate for the extension term shall be at a mutually agreed upon rate but shall not be lower than the monthly rent for the proceeding period ($10,877.00) and shall not increase by more than five percent (5%) over the month rent for the proceeding period.

D. Commission to Broker: Lessor shall pay a leasing commission equal to $5,220.96 (2% of the total lease consideration of the extension term) to Lessor's Broker (Jones Lang LaSalle).Said leasing commission shall be payable upon mutual execution of this Amendment.

IV. GENERAL

A. Effect of Amendment: This Lease shall remain in full force and effect except to the

extent modified or amended by this Amendment.

B. Entire Agreement: This Amendment, Amendment No. 1, Amendment No. 2, Amendment No. 3, Amendment No. 4, Amendment No. 5 and the Lease embody the entire understanding between Lessor and Lessee with respect to Lessee's lease of the Premises from Lessor and can be changed only by a writing signed by Lessor and Lessee.

C. Counterparts/Facsimile: This Amendment may be executed in counterparts, and it shall be binding upon the parties as if all of said parties executed the original hereof. It is agreed that a facsimile transmission of an executed copy of this Amendment may be relied upon as conclusive evidence of the execution of this Amendment by the party whose signature is show below on such facsimile transmission.

D. Defined Terms: All words commencing with initial capital letters in this Amendment and defined in the Lease shall have the same meaning in this Amendment as in the Lease, unless they are otherwise defined in this Amendment.

E. Corporate, Partnership, etc. Authority: If either party is a corporation, limited liability company, partnership or other entity, or is comprised of any or all of them, each individual executing this Amendment for the corporation, limited liability company, partnership or other entity represents that he or she is duly authorized to execute and deliver this Amendment on behalf of the respective corporation, limited liability company, partnership or other entity in accordance with its terms.

F. Attorney's Fees: The provisions of this Lease respecting payment of attorney's fees shall also apply to this amendment.

G. Time of the Essence: Time is of the essence of each and every provision of this Amendment.

V. EXECUTION

Landlord and Tenant have executed this Amendment as of the date set forth in "I. PARTIES AND DATE" above.

LESSEE: RESHAPE MEDICAL, I NC.

By: MICHAEL MANGAN

Name: M.T.

Title: CEO

LESSOR: RICHARD G. HENDERSON TRUST

By: Richard G Henderson TRUST

Name: RICHARD G. HENDERSON

Title: OWNER TRUSTEE

CONSULTING AGREEMENT

EFFECTIVE DATE:

PARTIES:

ReShape MEDICAL, Inc.
236 Avenida Fabricante, Suite 201, San Clemente, CA 92672
USA

("The Company")

HUMAN CAPITAL SAL ("The Consultant")
Ashrafieh, Adlieh Square, Al Faras Street. Boustany Building 2nd Floor,
Beirut, Lebanon

RECITALS:

WHEREAS The Company is committed to providing the best possible technology for a significant weight loss without surgery through the "integrated dual balloon technology" which restricts food intake and slows gastric emptying with an exclusive intragastric dual balloon design that offers key patient benefits.

WHEREAS The Consultant has substantial expertise in the fields of Marketing/Sales support and business development of medical devices, equipment and supplies, in the Middle East and North Africa (the "Territory"); and

WHEREAS both parties desire to enter into a business consultancy arrangement (hereinafter referred to as "the Agreement") to serve their mutual interests and to specify the rights and obligations of each party in such an arrangement.

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is acknowledged by both parties, the parties agree as follows:

Article 1 – Preamble:

The above recitals shall be considered an integral part of this agreement.

Article 2 – Services of Consultant:

The Company appoints The Consultant as its exclusive consultant providing the Services (as defined below) in the Territory, and The Consultant accepts such appointment to provide the following services ("the Services"):

The Consultant agrees to use his reasonable best effort to assist The Company in the marketing and commercialization of its products as detailed in Annex 1 (hereinafter referred to as "The Products"), including but not limited to creating a commercialization plan, suggesting preferred partners and pricing, training, KOL development, marketing in key markets, and field based physician engagement.

It is clearly agreed and understood that any new, modified or different product not listed in Annex 1 shall not be included herein unless otherwise agreed in writing between the parties.

a. Consultant agrees to devote such time as is reasonably necessary to the fulfillment of his duties, to be agreed upon and reviewed quarterly by The Company and The Consultant.
b. The Consultant shall comply fully, at its expense, with any and all applicable laws and regulations, including without limitation, all applicable health and safety, medical device, fraud and abuse, anti-kickback and referral laws and regulations applicable in the Territory.

Article 3 – The Company's Obligations:

The Company engages itself to:

a. Provide The Consultant at The Company's own costs and expenses, all technical and commercial documentation, in addition to full assistance and cooperation, in connection with The Products, and

b. Provide a complete training program for The Consultant and technical expertise in connection with The Products at no charge, and

c. Pay The Consultant the consultancy fees as provided for herein below in a timely manner, and

d. Assist The Consultant in setting up marketing strategies and plans at The Company's own costs and expenses.

Any marketing material which is provided to The Consultant by The Company hereunder and which is not used shall remain the property of The Company, and shall be returned immediately upon The Company's request or upon termination or expiration of this Agreement.

Article 4 – Compensation and terms of payment:

The Company shall pay to The Consultant management consultancy fees amounting to $5,000 (USD) payable monthly, in addition to a performance sales commission fee 10% on net invoice sales to all chosen distributors in the region (see commission schedule) payable on a monthly basis for providing the Services, without any deduction or withholding tax. The Consultant agrees that it is solely responsible for the payment of all taxes and other related contributions, if any, due as a result of the amounts paid by The Company pursuant to this Agreement, and The Consultant agrees to defend, including payment of all related attorneys' fees and cost, indemnify and hold harmless The Company against any and all claims which may be asserted by any taxing or other government authority against The Company for taxes, withholding taxes, penalties, interest, and any other assessment that may be asserted or levied by any tax or other government authority arising from or relating to The Company's payment of the amounts set forth in this Agreement.

It is clearly understood and agreed between the parties that in the event The Company generates any income after the term of the Agreement in execution of an order placed during the term of this Agreement however not invoiced during said term, The Company undertakes to pay the commission fee to The Consultant according to the terms and conditions of this Agreement. In addition, any returns of product to The Company for any reasons other than company related issues will be deducted from future compensation. For up to 45 days post termination The Company may bill The Consultant to recoup paid commissions on returned or expired product.

All payments for undisputed amounts shall be due and payable within thirty (30) days after the date of The Consultant's invoice. Any and all costs and expenses related to the performance of the Services by The Consultant shall be invoiced to The Company with documentary evidence of such costs and expenses in form reasonably acceptable to The Company, and paid by The Company. Any delay in payment shall result in the payment by The Company to The Consultant of a late fee equal to the lesser of one percent (1.00%) or the maximum interest rate allowable under applicable law per month on the outstanding amount still owing, such interest to begin accruing on the first day after such late payment is due..

Article 5 – Confidential information:

The Consultant agrees to treat as confidential and hold in strict confidence all Confidential Information as defined here below and will not, without the prior written authorization of The Company, disclose or use any Confidential Information for the benefit of anyone other than The Company; provided, however, that such information may be disclosed as required by law or regulation, except that, insofar as permitted by law or regulation, prior to any such disclosure, The Consultant shall notify The Company of the obligation to disclose and, if requested by The Company, cooperate in The Company's efforts to prevent or limit such disclosure.

"Confidential Information" means any information, technical data or know-how, whether patentable or not, which is furnished to The Consultant by The Company in written, verbal or other form, including but not limited to that which relates to research, product plans, designs, drawings, engineering, hardware configuration information, clinical studies, regulatory matters, marketing, or finances of The Company. It is agreed that this Article 5 shall survive for a period of 2 years after the termination of this Agreement for any reason whatsoever.

Confidential Information does not include information, technical data or know-how that The Consultant can document which

(1) Was known to Consultant, free of any confidentiality obligation, prior to learning it from The Company; or

(2) Has become known to The Consultant, free of any confidentiality obligation, from an independent source without, to The Consultant's knowledge, any breach of a confidentiality obligation to The Company; or

(3) Has become part of the public knowledge or literature other than as a result of disclosure by The Consultant; or

(4) Is otherwise approved in writing by The Company for release.

Article 6 – Change of Control

No change of control shall preclude the Company from executing the provisions of this Agreement until its expiry.

For purposes of this Agreement, a "change of control" shall mean the consummation of a merger or consolidation of the Company with any other corporation that has been approved by the stockholders of the Company, other than a merger or consolidation which results in outstanding the Company voting securities immediately prior thereto continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity) more than fifty percent (50%) of the total voting power represented by the voting securities of the Company or such surviving entity outstanding immediately after such merger or consolidation.

Article 7 – Term; Termination:

This Agreement shall commence as of the Effective Date set forth on the first page of this Agreement and shall continue in effect for one year with automatic yearly renewals for up to 2 additional years upon written agreement each year,, at which time it will automatically terminate unless specifically extended by both parties in writing. Either party may also without prejudice to any of its other rights, terminate this Agreement at any time by giving the other party a 90 days prior notice in that respect.

In case of termination of this Agreement by The Company pursuant to the provision hereof, the latter agrees and undertakes to pay in full for all Services rendered by The Consultant prior to the termination date in addition to any financial commitments and expenses made by The Consultant within the carrying out of its duties hereunder. Any invoices during the 90 day "termination period" will be heavily scrutinized to ensure orders are of normal or historical trends. Any commission deemed beyond normal trends will not be paid.

The Company agrees to pay The Consultant, upon termination pursuant to this provision, a compensation as a result of the impact of such termination on the image and credibility of The Consultant towards third parties, and of the damage incurred, loss of profit or goodwill, amounting to two months' fees, not including commissions of for each year of the execution of the services.

Termination of this Agreement by any party shall not terminate the confidentiality obligations of Article 5, indemnification obligations pursuant to Article 11 or any of the general obligations or provisions pursuant to Article 12 of this Agreement.

In case the obligations under this contract become either impossible or very difficult to perform wholly or partly due to force majeure, this contract shall be automatically suspended for the length of the force majeure. Should, however, force majeure continue for a period exceeding three months then this contract will be considered as terminated without need to any notification. The parties will however endeavor to give notice to each other in this respect.

Any change in i) the control or ii) the reorganization or iii) the management of both companies shall not be considered a case of force majeure, and therefore both parties shall comply with their contractual obligations as provided for in this Agreement.

Article 8 – Breach:

Any breach of any provision of this Agreement shall entitle the non-breaching party to terminate this Agreement forthwith without the need to any other notice to the breaching party and shall be compensated by the latter to the amount of $5,000.

Article – 9 Non- Solicitation:

During the course of the Agreement and for a period of one year immediately following the expiration or termination of the Agreement for any reason, whether with or without good cause or for any or no cause, at the option of either party, with or without notice, Company will not, directly or indirectly through another person or entity induce or attempt to induce any employee of Consultant or any subsidiary to leave the employ of Consultant

or such Subsidiary or in any way interfere with the relationship between Consultant or any subsidiary and any employee thereof.

Article 10 – Independent Contractor:

The Consultant's engagement hereunder is as an independent contractor and shall at no time be considered an agent, representative, subcontractor or employee of The Company. The Consultant retains the sole and exclusive right to control or direct the manner and means by which the Services are to be performed under this Agreement.

Article 11 – Indemnification:

Each party hereby releases and agrees to hold the other party and its directors, officers, employees, affiliates and agents harmless from and against all actions, claims, liabilities, losses, damages, obligations, costs and expenses (including reasonable attorneys' fees and expenses) which may be incurred in connection with the execution or non-execution of any obligation by the releasing party pursuant to this Agreement including the adverse event.

Article 12 – General Provisions:

a. Entire Agreement.

This Agreement constitutes the entire agreement between the parties and supersedes any and all prior and contemporaneous oral or written understandings between the parties relating to the subject matter hereof.

a. Modification or Waiver.

No part of this Agreement may be waived, modified or supplemented in any manner except in writing signed by an authorized representative of each party.

a. Severability and Interpretation.

In the event that a provision of this Agreement is held by a court of competent jurisdiction to be invalid, the remaining provisions shall nonetheless be enforced in accordance with their terms. Further, in the event that any provision is held by a court of competent jurisdiction to be over broad as written, such provision shall be deemed amended to narrow its application to the extent necessary to make the provision enforceable according to applicable law and shall be enforced as amended.

a. Notices.

Any notices provided for in this Agreement shall be in writing and shall be deemed sufficiently given two days after being sent by registered mail or upon receipt at the parties' respective addresses as appearing herein above or the following day after being deposited with an overnight courier.

a. Governing Law.

This Agreement and the performance under this Agreement, and all suits and special proceedings under this Agreement, shall be construed in accordance with and governed by, to the exclusion of the law of any other forum, the laws of the State of California, without regard to the jurisdiction in which any action or special proceeding may be instituted.

a. No Assignment.

The Consultant may not, directly or indirectly, assign its rights or delegate its duties under this Agreement without the prior written consent of The Company. No permitted assignment of rights or delegation of duties under this Agreement shall relieve the assigning or delegating party of its liabilities hereunder. This Agreement is binding upon, and inures to the benefit of, the parties and their respective successors and permitted assigns.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed for them and in their names by their duly authorized representatives to be effective as of the day and year first above written.

THE COMPANY

Signature

Printed Name: Mike Mangano 3/1/2017

Title: CEO

THE CONSULTANT

Signature

Printed Name: Mosbah El Khatib

Title: Managing Director

INTERNATIONAL DISTRIBUTORSHIP AGREEMENT

THIS INTERNATIONAL DISTRIBUTORSHIP AGREEMENT ("Agreement") is entered into effective as of the Effective Date contained in Schedule A, between ReShape Medical Inc., having its principal place of business at 1001 Calle Amanacer, San Clemente, USA ("RSM") and the company identified in Schedule A ("DISTRIBUTOR").

WITNESSETH

WHEREAS, RSM is in the business of selling various medical devices primarily used to perform medical procedures; and

WHEREAS, DISTRIBUTOR desires to actively and diligently promote the sale, on its own behalf and for its own account, of certain of RSM's products; and

WHEREAS, RSM and DISTRIBUTOR desire to enter into an exclusive distributorship agreement covering certain ReShape Medical product lines under the terms and conditions set out below.

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

1. DISTRIBUTION

1.1 Products. The products that are subject to this Agreement (the "Products") shall be those products identified on Schedule B hereto, together with such other products as may from time to time be included thereon by mutual written agreement of the parties. DISTRIBUTOR acknowledges that Schedule B will not necessarily include all products sold by RSM, and that Products are subject to modification or discontinuance by RSM upon notice to DISTRIBUTOR, and, upon DISTRIBUTOR's receipt of such notice, Schedule B will be deemed amended accordingly.

1.2 Appointment.

1.2.1 Effective as of the Effective Date of this Agreement, RSM hereby appoints DISTRIBUTOR, and DISTRIBUTOR accepts such appointment, as an exclusive distributor of Products in the geographical area described on Schedule C hereto (the "Territory"), subject to the terms and conditions set forth in this Agreement.

1.2.2 DISTRIBUTOR shall not directly or indirectly deliver or promote the sale of the Products outside the Territory or locate or utilize an office, branch, or distribution depot for the sale or distribution of the Products outside the Territory. DISTRIBUTOR shall immediately notify RSM if it becomes aware that any DISTRIBUTOR customer exports or sells or plans to export or sell any of the Products outside the Territory.

1.3 Noncompetition. DISTRIBUTOR represents that as of the Effective Date there are no agreements in effect providing for the marketing, sale or distribution by

Michael J. Morgan

AL DANAH MEDICAL CO.

DISTRIBUTOR of products that compete with the Products covered hereby and that DISTRIBUTOR is not precluded by any contractual obligation or any other reason from entering into or performing under this Agreement. DISTRIBUTOR agrees that during the term of this Agreement DISTRIBUTOR will not, directly or indirectly, sell, promote or distribute any products that compete with the Products covered hereby.

1.4 Sub-Distributors. DISTRIBUTOR agrees that it will not establish any sub-distributors without the prior written consent of RSM. It is understood that such appointment shall be made only in the name and for the account of DISTRIBUTOR and shall be for a term no greater than the term of this Agreement. DISTRIBUTOR shall not grant to any sub-distributor any rights greater than those which are granted by RSM to DISTRIBUTOR under this Agreement. DISTRIBUTOR shall also impose on any sub-distributor the same obligations as RSM has imposed on DISTRIBUTOR under this Agreement for the purpose of protecting the goodwill of RSM and the Products. DISTRIBUTOR shall insure that all its sub-distributors comply with any regulatory requirements with respect to the Products. DISTRIBUTOR shall defend, indemnify, and hold RSM harmless against any claim, loss, liability, or expense (including attorney's fees and court costs) arising out of or based upon any claim made by any of DISTRIBUTOR's sub-distributors, sales representatives, or employees against RSM.

1.5 Manufacturer's Representative. RSM or its affiliated companies shall have the right, at their option and expense, to maintain representatives in or supporting the Territory from time to time to participate in the marketing, sale, and after-sale support of the Products. If RSM or its affiliated companies elect to maintain such representatives, DISTRIBUTOR shall share information and cooperate in good faith in connection with all material contacts and activities with customers and potential customers. DISTRIBUTOR agrees that during the term of this Agreement and for a period of one year thereafter it will not, without RSM's consent, induce or solicit any such ReShape Medical personnel to terminate their employment with ReShape Medical in order to become employed by, or otherwise affiliated with, DISTRIBUTOR.

1.6 Non-Agency. The parties acknowledge that DISTRIBUTOR is an independent contractor, and that neither the making of this Agreement nor the performance of any of the provisions hereof shall be construed to constitute DISTRIBUTOR or any of its agents acting hereunder an agent or legal representative of RSM for any purpose, nor shall this Agreement be deemed to establish a joint venture, partnership, franchise, agency, or employer-employee relationship. DISTRIBUTOR is not granted, and shall not exercise, the right or authority to assume or create any obligation or responsibility on behalf of or in the name of RSM or its affiliated companies.

1.7 Remuneration. Except as otherwise provided herein, DISTRIBUTOR shall not be entitled to any remuneration of any nature whatsoever other than the profit it makes on the delivery of Products to its customers in the Territory.

2. PURCHASE OF PRODUCTS AND TERMS OF SALE

2 Michael J. Morgan

AL-DANAH MEDICAL CO.
P.O. BOX: 14485
DOHA - QATAR

2.1 Quotas.

2.1.1 The parties agree to the quota levels set forth in Schedule D hereto (or as it may be amended from time to time by mutual agreement of the parties) as the minimum requirements for DISTRIBUTOR purchases of Products from RSM, and DISTRIBUTOR shall purchase Products in no less than such amounts in the applicable calendar quarters.

2.1.2 DISTRIBUTOR agrees that the minimum purchase requirements appearing on Schedule D hereto are reasonable in view of the market potential for Products in the Territory and acknowledges that all such requirements have been established as the result of a mutual examination of market potential and negotiations between the parties.

2.1.3 It is further agreed that in the event additional Products are added to Schedule B hereto, the minimum purchase requirements for such Products will be determined by RSM after consultation with DISTRIBUTOR, and such new minimum purchase requirements will be incorporated in and be made subject to the terms of this Agreement.

2.3 Orders.

2.3.1 DISTRIBUTOR shall purchase from RSM, and RSM shall sell to DISTRIBUTOR, such quantities of Products as DISTRIBUTOR may order from time to time pursuant to the terms of this Agreement. Orders shall be placed by written purchase order and submitted by e-mail or facsimile, or by other means agreed upon by the parties. No order shall be binding upon RSM until the same shall have been accepted in writing by RSM. In case of conflict between the standard printed terms of purchase/sale of DISTRIBUTOR and RSM, the terms of purchase/sale of RSM shall prevail, but in no event shall either party's standard terms override any provisions of this Agreement.

2.3.2 Notwithstanding any other provision hereof, it is agreed that the obligation of RSM to sell any Product to DISTRIBUTOR is subject to the availability of such Product. RSM shall make reasonable efforts to fill each order that is accepted, but RSM shall not be liable for damages caused by failure to ship or delay in shipment resulting from product shortage of any kind or conditions beyond the control of RSM, including, but not limited to, the unavailability of such Products because of the inability to obtain materials and supplies or to produce sufficient Products to meet sales demands. If RSM believes that it will not be able to satisfy DISTRIBUTOR's requirements for the Products, it shall promptly notify DISTRIBUTOR, specifying the reasons for the expected delay and its anticipated duration.

2.4. Prices.

AL-DANAH MEDICAL CO. P.O. BOX: 14485 DOHA - QATAR

2.4.1 Prices for the Products as of the Effective Date of this Agreement shall be as set forth on Schedule B hereto

2.5 Payments. All payments due to RSM pursuant to this Agreement shall be paid according to the payment terms set forth on Schedule E hereto. All payments to RSM pursuant to this Agreement shall be made in United States dollars, without set-off or counterclaim and without deduction for any other charges. RSM shall retain a security interest in the Products until full payment is made, and DISTRIBUTOR shall assist RSM in any local recording of such security interest. If DISTRIBUTOR fails to make any payment when due, RSM shall have the right to take whatever action it deems appropriate or necessary, including, but not limited to, requiring immediate return of unsold Products, refusal of further orders, requiring payment in full before shipment, or termination of this Agreement pursuant to Section 6.2 hereof.

2.6 Shipping. Except as set forth below, all fees for shipping to the DISTRIBUTOR will be paid by the DISTRIBUTOR. Products shall be shipped to DISTRIBUTOR at the address (es) specified by DISTRIBUTOR from time to time. Risk of loss and title to the Products will pass to DISTRIBUTOR at port of entry at the foreign airport destination in the Territory. DISTRIBUTOR shall bear the cost of any handling, shipping, and insurance, within the designated territory. DISTRIBUTOR shall be responsible for clearing the Products through customs unless RSM notifies DISTRIBUTOR otherwise. DISTRIBUTOR shall be responsible for paying any and all duties and taxes due in connection with the importation of the Products. DISTRIBUTOR will be responsible for inspecting Product upon receipt in the Territory. DISTRIBUTOR shall submit to RSM all claims for non-delivery, shortages in shipment or defects reasonably discoverable on careful inspection in writing within 10 days of receipt of such shipment by DISTRIBUTOR. If DISTRIBUTOR does not provide such written notice to RSM within the specified timeframe, RSM will be discharged from liability for any such non-delivery, short delivery or defect. RSM shall promptly file a notice of claim against the freight handler in the event that DISTRIBUTOR provides written notice to RSM that any of the Products arrive other than in external good order and condition.

3. OBLIGATIONS OF DISTRIBUTOR

3.1 Distribution of Products. DISTRIBUTOR agrees to devote DISTRIBUTOR's best efforts to (i) develop and promote the use and sale of the Products in the Territory, and (ii) furnish such service of accounts as will enable DISTRIBUTOR adequately to develop and maintain the goodwill of customers and prospective customers and their acceptance of the Products. DISTRIBUTOR also agrees to abide by RSM's recommendations regarding the use of the Products, and plan orders adequately to meet customer delivery requirements.

3.2 Legal Requirements. Except as otherwise set forth in Section 3.4, DISTRIBUTOR will obtain and maintain, at its expense, all licenses, approvals, consents, and permits necessary for DISTRIBUTOR to perform its obligations under this Agreement. DISTRIBUTOR agrees to comply with all laws, statutes,

Michael J. Morgan

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P.O. BOX: 14685
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regulations and other legal requirements and not to place RSM in jeopardy of not complying with any such requirements. DISTRIBUTOR understands that the ReShape Medical Code of Conduct requires that the Products be sold only on the basis of quality, service, price and other legitimate marketing attributes, and that the payment of bribes for any purpose has no place in DISTRIBUTOR'S performance under this Agreement and is absolutely prohibited. Furthermore, DISTRIBUTOR agrees to use good judgment, high ethical standards and honesty in DISTRIBUTOR's dealings with customers, end-users and employees, recognizing that even the appearance of unethical actions is not acceptable. DISTRIBUTOR acknowledges and expressly agrees that certain laws of the United States of America and other countries, including, without limitation, the United States Export Control Regulations, the United States Anti-Money Laundering laws, the United States Anti-Terrorism laws and the Foreign Corrupt Practices Act, may result in the imposition of sanctions on RSM or its affiliated companies in the event that, directly or indirectly, (i) Products are exported to various countries, including without limitation Cuba, Iran, North Korea, Syria, Sudan, or any country embargoed by Executive order or otherwise, or (ii) offers, promises, or payments are made to government officials or others for the purpose of influencing decisions favorable to RSM. DISTRIBUTOR expressly agrees, therefore, that in performing its obligations under this Agreement it shall comply at all times with such laws or regulations and refrain from making or promising to make payment or transfer of anything of value that would have the purpose or effect of public or commercial bribery, or acceptance of or acquiescence in extortion, kickbacks, or other unlawful or improper means of obtaining business. DISTRIBUTOR also agrees to furnish to RSM by affidavit or other reasonable means from time to time at RSM's request, and to RSM's reasonable satisfaction, assurances that the appointment of DISTRIBUTOR and DISTRIBUTOR's activities under this Agreement, and the payment to DISTRIBUTOR of any commissions, discounts, or any monies or consideration contemplated in this Agreement, are proper and lawful under said laws and regulations. DISTRIBUTOR further acknowledges that no person employed by it is an official of any government agency or a corporation owned by a governmental unit within the Territory and that no part of any monies or consideration paid pursuant to the terms and conditions of this Agreement or any proceeds from the sale of the Products in the Territory shall accrue for the benefit of any such official. Breach of this provision, or reasonable grounds for RSM to believe it has been breached (in RSM's sole discretion), will result in immediate termination of this Agreement. DISTRIBUTOR will not make any performance or safety claims with respect to Product not contained in the label or otherwise approved by RSM consistent with applicable laws.

3.3 Quality Requirements. RSM has, and requires of its distributors, a primary commitment to patient safety and product quality. To this end, DISTRIBUTOR agrees to comply with ReShape Medical's Quality requirements regarding the Products as specified in Annex A hereto or as they may be further communicated to DISTRIBUTOR from time to time. These include, without limitation, requirements regarding appropriate storage of the Products, maintaining traceability, prompt reporting and handling of complaints, and implementation of recalls and other field actions. These requirements shall survive the expiration or other termination of this Agreement.

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3.4 Product Registrations

3.4.1 Unless prohibited by applicable law, DISTRIBUTOR will assist RSM or its affiliates in securing all registrations and approvals pertaining to the Products and required for the sale or importation of the Products in the Territory, and all such approvals or registrations will be applied for and maintained in the name of RSM unless RSM agrees otherwise in writing.

3.4.2 RSM agrees to provide DISTRIBUTOR with all required documents in English upon request. DISTRIBUTOR will be responsible for all translation of necessary documents, and for answering any and all questions required by local government agencies ReShape Medical with the input and approval of RSM. RSM will assist in answering all questions.

3.4.4 In the event that any registrations are maintained in the name of DISTRIBUTOR, upon termination of this Agreement DISTRIBUTOR shall cooperate in any and all procedures (including, but not limited to, the completion of any documentation) required to transfer such registrations to RSM or its designee and shall not oppose any new registration for the Products by RSM or its designee. Copies of all regulatory permits shall be provided to RSM and copies of DISTRIBUTOR's files relating to such permits shall be provided to RSM on request.

3.4.5 DISTRIBUTOR shall not market or sell Product in the Territory prior to receipt of regulatory approval.

3.5 Reports and Other Information. DISTRIBUTOR agrees that during the term of this Agreement it will:

3.5.1 Respond in writing to any reasonable requests by RSM for market and inventory information, including information concerning competitive activity, pricing, distribution, and Territory surveys and forecasts and, as requested by RSM, meet with RSM representatives to review these matters.

3.5.2 Promptly forward to RSM any inquiry or other communication, including correspondence or notices from regulatory authorities in the Territory, received by DISTRIBUTOR concerning any of RSM's products that appropriately should be responded to by RSM, and all inquiries related to the sale or distribution of Products outside the Territory.

3.5.3 If so requested by RSM, provide RSM reasonable financial information on a confidential basis or provide credit references to assure RSM of DISTRIBUTOR's financial capability to conduct its ongoing business.

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3.6 Trademarks. RSM hereby grants to DISTRIBUTOR the right and license to use the trademarks, service marks, trade names, and trademark registrations of RSM and its affiliated companies for the Products in the Territory, but only in connection with sales in the Territory of the Products purchased from RSM during the term of this Agreement and solely in connection with trademark usage procedures provided by RSM. All right, title, and interest to the trademarks and other intellectual property rights of RSM and its affiliated companies shall remain with such companies, and no other license relating thereto is granted hereunder (except the right to use such trademarks as set forth herein). DISTRIBUTOR shall not market the Products under any tradename or trademark other than the trademarks and tradenames approved by RSM.

3.7 Expenses. Except as otherwise specifically provided herein, DISTRIBUTOR shall bear all costs and expenses associated with its performance of this Agreement, including (but not limited to) amounts due employees or agents of DISTRIBUTOR, advertising, bad debt expense, inventory losses, commissions, licensing fees, regulatory fees, and taxes. In no event shall RSM be liable for any expenses incurred by DISTRIBUTOR unless RSM has agreed in writing to pay such expense.

3.8 Proprietary Rights. DISTRIBUTOR shall report promptly to RSM: (i) any infringement of the patents, trademarks, or other intellectual property rights of RSM or its affiliated companies of which DISTRIBUTOR may learn, but DISTRIBUTOR shall not initiate any protective action with respect to such infringement without RSM's prior written authorization; and (ii) receipt of any notice or service of legal action against DISTRIBUTOR and/or RSM or its affiliated companies claiming any infringement, misappropriation or breach of any intellectual property right, including but not limited to patent, copyright, trademark, or trade name infringement, and RSM shall have full rights and responsibility to manage and control the defense of DISTRIBUTOR and RSM in any such action, including the right to settle on behalf of either or both, and DISTRIBUTOR agrees to cooperate to the fullest extent necessary to enable RSM to conduct such defense.

3.9 Business Review. DISTRIBUTOR hereby gives RSM the right, upon reasonable advance notice, to conduct business reviews involving an examination, either directly or through a designee, of DISTRIBUTOR'S inventory of Products, quality systems, copies of promotional materials, and business records, including financial and sales records relating to the business performed pursuant to this Agreement, in order to ensure DISTRIBUTOR's compliance with the terms of this Agreement.

3.10 Product Materials. DISTRIBUTOR shall sell Product in the same containers and with the same labeling and packaging as provided by RSM or otherwise approved by RSM, and in all other respects in the same condition as when delivered to DISTRIBUTOR by RSM. DISTRIBUTOR will not use any promotional materials with respect to Product other than those provided by RSM or approved by RSM under Section 4.4.

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4. RSM's OBLIGATIONS

4.1 Quality Control. RSM agrees to maintain ongoing quality assurance and testing procedures sufficient to satisfy applicable regulatory requirements.

4.2 Assistance. RSM shall provide DISTRIBUTOR with reasonable access to its technical and marketing personnel at no charge to DISTRIBUTOR, except as otherwise agreed.

4.3 Training. RSM will provide DISTRIBUTOR with technical training seminars as RSM and DISTRIBUTOR agree is needed in the English language for DISTRIBUTOR's employees directly engaged in distributing the Products. Travel and living expenses for DISTRIBUTOR's employees connected with attendance at such training seminars shall be paid by DISTRIBUTOR. DISTRIBUTOR agrees that each of DISTRIBUTOR's employees directly engaged in distributing the Products who has not previously attended a RSM technical training seminar will attend such a seminar or will be trained by DISTRIBUTOR in a program approved by RSM within a reasonable period of time after the commencement of their involvement in the sale of the Products.

4.4 Advertising. RSM will furnish at no cost to DISTRIBUTOR reasonable quantities of promotional materials in the English language where available, such as sales literature, technical data, instruction manuals, and technical journal reprints. At the request of RSM, DISTRIBUTOR shall return all such literature or data in DISTRIBUTOR's custody or control at the time of such request. DISTRIBUTOR may print literature or brochures in other languages at its own cost; however, prior to the printing or distribution of any such translated Product literature, DISTRIBUTOR agrees to submit the translation for RSM's review and written approval. The copyright rights to any such translations shall be deemed assigned to RSM or its affiliated companies, and all translations shall have adequate copyright notices evidencing such rights.

5. WARRANTIES AND INDEMNIFICATION

5.1 Product Warranty. The Products are warranted to be free of defects in workmanship and material according to the written warranty contained in the literature that accompanies the Products, which warranty may be changed from time to time by RSM upon written notice to DISTRIBUTOR. RSM's obligation under this warranty shall be limited to the repair or replacement of any Products that RSM determines were defective when delivered to DISTRIBUTOR. The foregoing is the only express warranty made by RSM related to Product delivered under this Agreement. RSM EXPRESSLY DISCLAIMS ALL OTHER EXPRESS WARRANTIES AND ANY AND ALL IMPLIED WARRANTIES, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. DISTRIBUTOR shall not add to or otherwise alter or modify any applicable warranty, nor make any false representation regarding RSM or the Products or any other representation that is not included in the Product labeling in promoting sales of the Products, including any misrepresentation regarding the permissible uses of the Products. DISTRIBUTOR will hold RSM, its officers, directors and

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employees harmless from and indemnify all of them against any liability that may arise out of or result from any such unauthorized warranty or representation.

5.2 Limitations. IN NO EVENT WILL RSM BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL OR SPECIAL DAMAGES ARISING OUT OF THIS AGREEMENT OR OTHERWISE RELATED TO PRODUCT, INCLUDING ANY LOSS OF PROFITS, EVEN IF RSM HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

IN NO EVENT SHALL RSM'S LIABILITY TO DISTRIBUTOR EXCEED AN AMOUNT EQUAL TO THE AGGREGATE PRICES PAID BY DISTRIBUTOR TO RSM FOR PRODUCTS DURING THE LAST CALENDAR QUARTER PRECEDING THE DATE IN WHICH THE CLAIM IS MADE, except that this liability limitation shall not apply to RSM's indemnity obligation under Sections 5.2 and 5.3.

5.2 Intellectual Property Infringement. Subject to the following sentence, RSM will defend DISTRIBUTOR against any action, proceeding, or claim by any third party for RSM's infringement of any intellectual property rights (including patent, copyright, trademark, and trade name rights) of any third party. RSM shall at all times during the term of this Agreement and thereafter indemnify, defend, and hold DISTRIBUTOR harmless against any and all costs (including but not limited to reasonable attorneys' fees), expenses, loss, damages, or liability to any third party as a result of any such action, proceeding, or claim referred to in the preceding sentence, provided that DISTRIBUTOR promptly notifies RSM in writing of such action, proceeding, or claim, allows RSM to control defense of such claim, cooperates at RSM's request and expense in such defense and does not settle any such claim without RSM's prior written approval.

5.3 Indemnification. DISTRIBUTOR and RSM shall each defend, indemnify, and hold harmless the other party, its officers, directors, agents, insurers, employees, shareholders, and affiliated companies from and against any claim, loss, suit, liability, or expense (including but not limited to attorneys' fees and other costs associated with the handling of or defense of any such action or claim) arising out of or based upon a breach by the indemnifying party of any of the warranties in this Section 5 or other failure by the indemnifying party to comply with any material provision of this Agreement, provided that the indemnified party provides prompt written notice to the indemnifying party of such action, proceeding, or claim, allows the indemnifying party to control defense of such claim, cooperates at the indemnifying party's request and expense in such defense and does not settle any such claim without the indemnifying party's prior written approval.

6. TERM AND TERMINATION

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6.1 Term. This Agreement shall commence on the Effective Date, and, unless otherwise terminated earlier as provided below, shall remain in effect until the Expiration Date listed on Schedule A, at which time it shall expire automatically. Notwithstanding the number of renewals, this Agreement shall always be construed as a fixed-term contract. This Agreement is subject to DISTRIBUTOR's cooperation with and satisfactory completion of a due diligence background check. If, within RSM's sole discretion, the results of the background check are unsatisfactory, RSM may suspend this Agreement upon immediate notice to DISTRIBUTOR.

6.2 Termination. Either party shall have the right to terminate this Agreement without liability therefore, after written notice to the other party, (i) effective immediately in the event of a breach by the other party of any of its obligations hereunder, which breach (if curable) is not cured within 10 days of written notice of such breach, or (ii) without cause upon 180 days' advance written notice to the other party.

6.3 Effect of Termination or Expiration. Upon termination or expiration of this Agreement, all amounts due by DISTRIBUTOR to RSM will become due and payable at the time of termination or expiration. The parties agree that neither party shall be liable to the other for damages or otherwise by reason of the nonrenewal of this Agreement or its termination as provided in this Section 6, provided that such nonrenewal or termination shall not operate to discharge or release either party of obligations assumed by it prior to such nonrenewal or termination and the foregoing is not intended to limit a party's liability for breach of this Agreement. Acceptance of orders from DISTRIBUTOR by RSM after termination will not constitute a renewal of this Agreement or a waiver of the right of RSM to treat this Agreement as terminated. The granting of any notice of nonrenewal or termination of this Agreement by RSM shall entitle RSM, before shipment of any pending or new orders, to require advance payment, or other security for payment, of all previously outstanding balances (whether or not otherwise due) plus the amount of the new order. Upon expiration or termination of this Agreement, DISTRIBUTOR shall return to RSM all technical and commercial materials, customer lists, price lists, and other materials that are RSM's property.

6.4 Inventory Repurchase. Upon termination of this Agreement for any reason, RSM may, at its sole option, elect to purchase back from DISTRIBUTOR, and by doing so require DISTRIBUTOR to sell to RSM, any unsold inventory of Products in DISTRIBUTOR's possession or control, provided that such Products are unopened and in saleable condition, the expiration date of sterility of such Products is at least 365 days beyond the effective date of repurchase, and such products are currently marketed by RSM and not obsolete. The price to be paid by RSM for the purchase of such inventory shall be the purchase price actually paid by DISTRIBUTOR for the Products, increased by transportation and customs duties, if any, paid by DISTRIBUTOR for the transportation of the Products into the Territory. Any Products designated for return by DISTRIBUTOR (and related storage and handling records) will be inspected by RSM or an authorized representative of RSM in order to determine if the Products to be purchased by RSM fulfill the conditions mentioned above. Upon

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issuance of a return authorization to DISTRIBUTOR by RSM, DISTRIBUTOR shall ship the Products to RSM or to any entity or individual designated by RSM, freight prepaid.

6.5 The Sections 3.4.4, 5, 6, and 7 and the last sentence of Sections 1.4 shall survive termination or expiration of this Agreement.

7. GENERAL TERMS

7.1 Confidential Information. DISTRIBUTOR agrees that it shall keep confidential and shall not publish or otherwise divulge or use for its own benefit or for the benefit of any third party any information of a proprietary nature furnished to it by or on behalf of RSM or its affiliated companies without the prior written approval of the communicating party, except (i) as required by court order, or (ii) as reasonably necessary to perform its sales-related obligations under this Agreement and in the case of any disclosure under clause (ii) subject to the obligations of confidentiality and restrictions on use at least as stringent as those set forth in this Agreement. Information of a proprietary nature shall include, but not be limited to, information concerning RSM's or its affiliated companies' products, proposed products, marketing plans, manufacturing processes, proprietary software, financial information, or any other marketing information or materials in whatever form not generally known to the public.

7.2 Force Majeure. In the event that a delay or failure of a party to comply with any obligation created by this Agreement is caused by a force majeure condition, that obligation shall be suspended during the continuance of the force majeure condition. For the purposes of this Agreement, the term "force majeure" shall mean any event beyond the control of the parties, including, without limitation, fire, flood, riots, strikes, epidemics, war (declared or undeclared and including the continuance, expansion or new outbreak of any war or conflict now in existence), embargoes, and governmental actions or decrees.

7.3 Assignment. This Agreement shall not be assignable by DISTRIBUTOR without the prior written consent of RSM, but this Agreement or any portion hereof is assignable by RSM without the consent of DISTRIBUTOR.

7.4 Non-Waiver. The waiver or failure of either party to exercise in any respect any right provided for herein shall not be deemed a waiver of any further right hereunder.

7.5 Notices. Any notice or request given under this Agreement shall be in writing and in the English language and may be delivered by hand or may be sent by telefax or certified or registered mail or commercial carrier (return receipt or confirmation of delivery requested) addressed to the other party at the address shown on the first page of this Agreement, or at such other address designated in writing to the other party. Any notices sent by telefax must be followed by a confirmation copy by airmail or other reliable means.

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7.6 Arbitration. Any and every dispute, controversy or claim between the parties and/or their valid and lawful assignees and successors, including, but not limited to (i) any and every dispute, controversy or claim arising out of or relating to this Agreement and/or its amendments, and (ii) any and every dispute, controversy or claim not arising out of or not relating to this Agreement and/or its amendments, shall be finally settled by arbitration in Orange County, U.S.A. in accordance with the International Arbitration Rules of the International Centre for Dispute Resolution ("ICDR"). Judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. A sole arbitrator shall be chosen at the mutual agreement of the parties from a list of ICDR proposed arbitrators under the ICDR's arbitration rules. If the parties fail to mutually agree on the choice of an arbitrator within 30 days of receipt of claimant's request for arbitration by the other party, the sole arbitrator shall be appointed by the ICDR in accordance with its International Arbitration Rules. The language of the arbitration proceedings shall be English and the law applied to the dispute shall be solely and exclusively the laws of the California. The award shall state with specificity the reasons upon which the Award is based, and shall contain the arbitrator's findings of fact. Except as required by law, neither party nor the arbitrator may disclose to a third party the existence, content, or results of any arbitration hereunder without the prior written consent of both parties. Notwithstanding the above, RSM shall, at its sole discretion, have the right to initiate in any court sitting in California, USA or in the Territory a non-jury collection lawsuit against DISTRIBUTOR in an effort to collect from DISTRIBUTOR any and all moneys charged by RSM to DISTRIBUTOR for the Products sold by RSM to DISTRIBUTOR or to obtain temporary injunctive relief. All other issues, without exception, must be arbitrated.

7.7 Entire Agreement. The terms and provisions contained in this Agreement and the attached Schedules constitute the entire Agreement between the parties and supersede all previous communications, representations, agreements, and understandings, whether oral or written, between the parties with respect to the subject matter hereof. Except as this Agreement specifically authorizes RSM to modify certain provisions of this Agreement or the attached Schedules upon written notice to DISTRIBUTOR, no agreement or understanding extending this Agreement or varying its terms (including any inconsistent terms in any purchase order, acknowledgment, or similar form) shall be binding upon either party unless it is in a writing specifically referring to this Agreement and signed by the duly authorized representatives of the respective parties.

7.8 Severability. Should any provision of this Agreement be determined to be unenforceable or prohibited by applicable law, such provision shall be ineffective only to the extent of such unenforceability or prohibition without invalidating the remainder of such provision or the remaining provisions of this Agreement.

7.9 Captions. The captions of provisions in this Agreement are for convenience only and shall not control or affect the meaning or construction of any of the provisions of this Agreement.

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7.10 Counterparts. This Agreement may be executed in any manner of counterparts, each of which shall be deemed to be an original as against any party whose signature appears thereon, and all of which shall together constitute one and the same instrument. This Agreement shall become binding when one or more counterparts hereof, individually or taken together, shall bear the signature of all of the parties reflected hereon as the signatories.

7.11 Governing Law. This Agreement shall be governed and construed in accordance with the laws of the California, United States of America, to the exclusion of both its rules or conflicts of laws and the provisions of the United Nations Convention on Contracts for the International Sale of Goods.

7.12 Release. In exchange for the agreement by RSM to enter into this Agreement with DISTRIBUTOR, DISTRIBUTOR hereby releases RSM and its affiliated companies from and waives any claims it may have had against RSM and its affiliated companies related to any previous distribution agreement or business dealings between DISTRIBUTOR and RSM or its affiliated companies.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the Effective Date.

ReShape Medical Inc.

By Michael J. Mangano 5/24/2017
Michael J. Mangano
President

By
Mr. Georges Annish
Managing Director

Schedule A

Distributor and Term

Distributor Information

Corporate Name: Al Danah Medical Company W.L.L. P.O.Box: 14485

Address: Salwa Road, Doha-Qatar ,Gate no. 4 Naser Bin Khaled Complex,
+974- 4469 1122 / 23
+974- 4469 1124

Schedule B

Products and Pricing

The following indicates the product line(s) to be included as Products under this Agreement as well as the pricing of such Products. Prices quoted do not include the cost of any handling, shipping, and insurance (to be borne by DISTRIBUTOR pursuant to Section 2.6).

QTY	CATALOG NUMBER	DESCRIPTION	UNIT PRICE USD
	RSM101	Integrated Dual Balloon Assembly, US	$1,500.00
	RSM900	Balloon Valve Sealant Assembly (one package included with each balloon order)	N/C
	RSM210	Removal Catheter Assembly	$200.00
	RSM300	Tech Device Guidewire (if desired)	$50.00
	KIP-II-RS	ReShape Infiltration Pump	$5,000.00
	ITS-10-RS	ReShape Pump Tubing (pack of 10)	$100.00

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Schedule C

Territory

The customers and or geographical area subject to this Agreement shall be specifically and exclusively limited to Qatar.

Schedule D

Minimum Purchase Quotas

Reshape Forecast (in Units)					
2017					
Country	Distributor	Q1	Q2	Q3	Q4
Qatar	Al Danah Medical Company	N.A.	20	0	10

2018					
Country	Distributor	Q1	Q2	Q3	Q4
Kuwait	Al Danah Medical Company	20	10	10	20

Schedule E

Payment Terms

The first two orders for the ReShape Dual Balloon will be cash pay up front. After successfully executing these orders, future orders may be extended via the credit terms below.

Payment for Products is due within 60 days after date of invoice on open account as long as DISTRIBUTOR's credit remains good, payments to RSM are made on time, and the total amount owed by DISTRIBUTOR to RSM is within the credit limits determined by RSM from time to time. DISTRIBUTOR's credit limit as of the effective date of this Agreement shall be U.S. currency although RSM reserves the right to require DISTRIBUTOR to provide adequate security for the amount of such credit limit as a condition to making sales on open account terms. RSM shall have the right to adjust DISTRIBUTOR's payment terms and credit limits from time to time.

OR

DISTRIBUTOR shall pay RSM for Products in advance of delivery by cash or irrevocable letter of credit with order.

Late Payments: DISTRIBUTOR will pay a late fee on all past due amounts at the rate of one percent per month or the highest rate permissible by law, whichever is lower, until paid in full.

Taxes. All amounts payable to RSM under this Agreement are exclusive of any income, sales, use, property, ad valorem, value added or other taxes, levies, imposts, duties, charges or withholdings of any nature (collectively, "Taxes"), arising out of any transaction contemplated by this Agreement and imposed against DISTRIBUTOR or the Products by any taxing authority in the Territory (excluding, however, any Taxes on, or measured solely by, the net income of RSM and Taxes imposed on RSM in the United States). DISTRIBUTOR shall pay all applicable Taxes or provide RSM with a certificate of exemption acceptable to the relevant taxing authority. In the event that any payments to RSM under this Agreement are subject to any withholding taxes, DISTRIBUTOR shall promptly provide all tax certificates, applications and related documents to RSM. If RSM is required to pay any Taxes in the Territory (excluding, however, any Taxes on, or measured solely by, the net income of RSM and Taxes imposed on RSM in the United States), DISTRIBUTOR shall promptly reimburse RSM upon written request therefor.

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ANNEX A– Quality Requirements

A) **Storage of Products:** If applicable Distributor is required to store products in accordance with product labeling statements and within an environment that prevents any of their characteristics from being altered until delivered to the customer. The minimum storage requirements for RSM products include the following:

- If applicable, Distributor must establish a secure storage location and limit access to this location to only those personnel authorized by Distributor. Products must be stored within this location to prevent Products from being contaminated or tampered with in any way. Additionally, Products must be kept in a clean area, free of insects, rodents and any pests.
- Distributor shall have a process to prevent expired, rejected and/or quarantined Products from being sent to final customers. ReShape Medical
- RSM reserves the right to provide other instructions to Distributor regarding such Product, and Distributor agrees to comply with such instructions.

B) **Traceability:** Distributor is required to maintain records to ensure the traceability of ReShape Medical products in accordance with applicable regulatory requirements, and to provide ReShape Medical or its authorized agents or representatives with reasonable access to such records. The minimum traceability requirements for ReShape Medical Products include the following:

- Distributor is required to maintain a complete and current list of all customers who have purchased ReShape Medical products from Distributor, the dates of such purchases, the quantity, and the lot numbers, UPNs, serial numbers and/or model numbers of the units purchased (as applicable) as identified on the product label.
- Distributor must ensure the traceability of all ReShape Medical products at UPN, lot level including the model and serial number where applicable. The final users for all products must be identified (units sold directly to hospitals, units sold directly to doctors, units sold directly to patients).
- If ReShape Medical products are consigned, the batches consumed at the account must be reconciled.
- The traceability of multi-pack boxes must be maintained and single units originally from multi-packs must never be re-boxed.

C) **Complaint Reporting and Handling:** Distributor is required to promptly forward all complaints concerning the products, cooperate fully with ReShape Medical in dealing with customer complaints, and take such action to resolve such complaints as may be reasonably requested by ReShape Medical. The complaint reporting requirements for ReShape Medical products include the following:

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- All customer complaints involving or contributing to serious adverse events (including patient death or serious injury) must be reported to ReShape Medical within 24 hours of Distributor's becoming aware. Complaints involving non-serious events including comments regarding product dissatisfaction, potential malfunctions, non-serious patient injury, or unanticipated medical or surgical intervention shall be reported to ReShape Medical within 48 hours.
- A Complaint Notification Form will be provided to Distributor by ReShape Medical and must be completed in full to document each complaint. Additionally, any ancillary documentation that may facilitate the complaint investigation process should also be attached, particularly if the product is not available for return. In cases where additional information is required from the customer, at least three (3) due diligent attempts must be performed by Distributor to try to collect this additional complaint information, if requested by ReShape Medical. Should requested information not be available, Distributor shall document the reason(s) it is not available and/or the 3 attempts.
- Products subject to complaints should be returned to ReShape Medical. Returned products must either, as directed by ReShape Medical, be
    - accompanied by a disinfection certificate, even if the products have not been used;
    - or be returned in biohazard controlled packaging and under safe handling controls.

  In cases where the customer has indicated that the complaint product is available to be returned but it has not been received, at least three (3) due diligent attempts must be made by Distributor to retrieve the product.

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D) **Recalls and Other Field Actions:** If ReShape Medical initiates a recall or other field action for any products, Distributor is required to implement such recall or other field action (including location and retrieval of the recalled product) with respect to Distributor's customers in accordance with the instructions provided by ReShape Medical. The minimum requirements for managing recalls and other field actions affecting ReShape Medical Products include the following:

- Recalls and other field actions must be acted upon immediately by Distributor after receiving the notification packet from ReShape Medical. An acknowledgement of the receipt of the field action notice must be promptly sent to ReShape Medical.
- Distributor must follow the instructions contained in the notification packet and ensure that actions are carried out in accordance with the timeframe specified.
- Where directed in the notice, Distributor must retrieve products from the following applicable locations:
    - Distributor warehouse(s) inventories
    - In-transit from ReShape Medical to Distributor
    - Customer locations: whether sold, consigned or samples
- At least three (3) due diligent attempts must be performed and documented to try to retrieve products from customers.
- Once all product retrieval actions have been completed, the recalled stock must be reported to ReShape Medical using the Verification Form contained in the notification packet. (Note: the quantities documented on the verification forms must match the units physically returned to ReShape Medical.)
- The units must be returned to ReShape Medical following the instructions contained in the notification packet.
- ReShape Medical agrees at its option either to refund the purchase price, or to replace recalled products within a reasonable time at its expense unless the recall is attributable to Distributor's actions.

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E) **Record Retention Time:** All product related records (e.g. Traceability records, Complaints records, Recalls data, etc.) must be retained by the Distributor in accordance with the following requirements:

	Type of Product	Record Retention Timeframe
1.	Implantable Device	Indefinitely
2.	Equipment	2 years beyond dated removal from distribution or as otherwise indicated by ReShape Medical
3.	All Other Products	At least Product lifetime/expiry + 2 years or as otherwise indicated by ReShape Medical.

At termination of this agreement, Distributor shall deliver all records required under this section to ReShape Medical and shall direct future inquiries from customers to ReShape Medical.

F) **Demonstration Units:** Demonstration Units (non-sterile, not for human use) are to be used by Distributor for demonstration purposes only and shall not be given to final customers. All provisions in this Annex are applicable to Demonstration Units.

G) **Literature and Label Control:** All Product literature, labeling and the use of ReShape Medical logos, templates or trademarks is subject to ReShape Medical review and approval. Any "Internal Use" training materials provided by ReShape Medical cannot be given to the customers.

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INTERNATIONAL DISTRIBUTORSHIP AGREEMENT

THIS INTERNATIONAL DISTRIBUTORSHIP AGREEMENT ("Agreement") is entered into effective as of the Effective Date contained in Schedule A, between ReShape Medical Inc., having its principal place of business at 1001 Calle Amanacer, San Clemente, USA ("RSM") and the company identified in Schedule A ("DISTRIBUTOR").

WITNESSETH

WHEREAS, RSM is in the business of selling various medical devices primarily used to perform medical procedures; and

WHEREAS, DISTRIBUTOR desires to actively and diligently promote the sale, on its own behalf and for its own account, of certain of RSM's products; and

WHEREAS, RSM and DISTRIBUTOR desire to enter into an exclusive distributorship agreement covering certain ReShape Medical product lines under the terms and conditions set out below.

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

1. DISTRIBUTION

1.1 Products. The products that are subject to this Agreement (the "Products") shall be those products identified on Schedule B hereto, together with such other products as may from time to time be included thereon by mutual written agreement of the parties. DISTRIBUTOR acknowledges that Schedule B will not necessarily include all products sold by RSM, and that Products are subject to modification or discontinuance by RSM upon notice to DISTRIBUTOR, and, upon DISTRIBUTOR's receipt of such notice, Schedule B will be deemed amended accordingly.

1.2 Appointment.

1.2.1 Effective as of the Effective Date of this Agreement, RSM hereby appoints DISTRIBUTOR, and DISTRIBUTOR accepts such appointment, as an exclusive distributor of Products in the geographical area described on Schedule C hereto (the "Territory"), subject to the terms and conditions set forth in this Agreement.

1.2.2 DISTRIBUTOR shall not directly or indirectly deliver or promote the sale of the Products outside the Territory or locate or utilize an office, branch, or distribution depot for the sale or distribution of the Products outside the Territory. DISTRIBUTOR shall immediately notify RSM if it becomes aware that any DISTRIBUTOR customer exports or sells or plans to export or sell any of the Products outside the Territory.

1.3 Noncompetition. DISTRIBUTOR represents that as of the Effective Date there are no agreements in effect providing for the marketing, sale or distribution by

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DISTRIBUTOR of products that compete with the Products covered hereby and that DISTRIBUTOR is not precluded by any contractual obligation or any other reason from entering into or performing under this Agreement. DISTRIBUTOR agrees that during the term of this Agreement DISTRIBUTOR will not, directly or indirectly, sell, promote or distribute any products that compete with the Products covered hereby.

1.4 Sub-Distributors. DISTRIBUTOR agrees that it will not establish any sub-distributors without the prior written consent of RSM. It is understood that such appointment shall be made only in the name and for the account of DISTRIBUTOR and shall be for a term no greater than the term of this Agreement. DISTRIBUTOR shall not grant to any sub-distributor any rights greater than those which are granted by RSM to DISTRIBUTOR under this Agreement. DISTRIBUTOR shall also impose on any sub-distributor the same obligations as RSM has imposed on DISTRIBUTOR under this Agreement for the purpose of protecting the goodwill of RSM and the Products. DISTRIBUTOR shall insure that all its sub-distributors comply with any regulatory requirements with respect to the Products. DISTRIBUTOR shall defend, indemnify, and hold RSM harmless against any claim, loss, liability, or expense (including attorney's fees and court costs) arising out of or based upon any claim made by any of DISTRIBUTOR's sub-distributors, sales representatives, or employees against RSM.

1.5 Manufacturer's Representative. RSM or its affiliated companies shall have the right, at their option and expense, to maintain representatives in or supporting the Territory from time to time to participate in the marketing, sale, and after-sale support of the Products. If RSM or its affiliated companies elect to maintain such representatives, DISTRIBUTOR shall share information and cooperate in good faith in connection with all material contacts and activities with customers and potential customers. DISTRIBUTOR agrees that during the term of this Agreement and for a period of one year thereafter it will not, without RSM's consent, induce or solicit any such ReShape Medical personnel to terminate their employment with ReShape Medical in order to become employed by, or otherwise affiliated with, DISTRIBUTOR.

1.6 Non-Agency. The parties acknowledge that DISTRIBUTOR is an independent contractor, and that neither the making of this Agreement nor the performance of any of the provisions hereof shall be construed to constitute DISTRIBUTOR or any of its agents acting hereunder an agent or legal representative of RSM for any purpose, nor shall this Agreement be deemed to establish a joint venture, partnership, franchise, agency, or employer-employee relationship. DISTRIBUTOR is not granted, and shall not exercise, the right or authority to assume or create any obligation or responsibility on behalf of or in the name of RSM or its affiliated companies.

1.7 Remuneration. Except as otherwise provided herein, DISTRIBUTOR shall not be entitled to any remuneration of any nature whatsoever other than the profit it makes on the delivery of Products to its customers in the Territory.

2. PURCHASE OF PRODUCTS AND TERMS OF SALE

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2.1 Quotas.

2.1.1 The parties agree to the quota levels set forth in Schedule D hereto (or as it may be amended from time to time by mutual agreement of the parties) as the minimum requirements for DISTRIBUTOR purchases of Products from RSM, and DISTRIBUTOR shall purchase Products in no less than such amounts in the applicable calendar quarters.

2.1.2 DISTRIBUTOR agrees that the minimum purchase requirements appearing on Schedule D hereto are reasonable in view of the market potential for Products in the Territory and acknowledges that all such requirements have been established as the result of a mutual examination of market potential and negotiations between the parties.

2.1.3 It is further agreed that in the event additional Products are added to Schedule B hereto, the minimum purchase requirements for such Products will be determined by RSM after consultation with DISTRIBUTOR, and such new minimum purchase requirements will be incorporated in and be made subject to the terms of this Agreement.

2.3 Orders.

2.3.1 DISTRIBUTOR shall purchase from RSM, and RSM shall sell to DISTRIBUTOR, such quantities of Products as DISTRIBUTOR may order from time to time pursuant to the terms of this Agreement. Orders shall be placed by written purchase order and submitted by e-mail or facsimile, or by other means agreed upon by the parties. No order shall be binding upon RSM until the same shall have been accepted in writing by RSM. In case of conflict between the standard printed terms of purchase/sale of DISTRIBUTOR and RSM, the terms of purchase/sale of RSM shall prevail, but in no event shall either party's standard terms override any provisions of this Agreement.

2.3.2 Notwithstanding any other provision hereof, it is agreed that the obligation of RSM to sell any Product to DISTRIBUTOR is subject to the availability of such Product. RSM shall make reasonable efforts to fill each order that is accepted, but RSM shall not be liable for damages caused by failure to ship or delay in shipment resulting from product shortage of any kind or conditions beyond the control of RSM, including, but not limited to, the unavailability of such Products because of the inability to obtain materials and supplies or to produce sufficient Products to meet sales demands. If RSM believes that it will not be able to satisfy DISTRIBUTOR's requirements for the Products, it shall promptly notify DISTRIBUTOR, specifying the reasons for the expected delay and its anticipated duration.

2.4. Prices.

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2.4.1 Prices for the Products as of the Effective Date of this Agreement shall be as set forth on Schedule B hereto

2.5 Payments. All payments due to RSM pursuant to this Agreement shall be paid according to the payment terms set forth on Schedule E hereto. All payments to RSM pursuant to this Agreement shall be made in United States dollars, without set-off or counterclaim and without deduction for any other charges. RSM shall retain a security interest in the Products until full payment is made, and DISTRIBUTOR shall assist RSM in any local recording of such security interest. If DISTRIBUTOR fails to make any payment when due, RSM shall have the right to take whatever action it deems appropriate or necessary, including, but not limited to, requiring immediate return of unsold Products, refusal of further orders, requiring payment in full before shipment, or termination of this Agreement pursuant to Section 6.2 hereof.

2.6 Shipping. Except as set forth below, all fees for shipping to the DISTRIBUTOR will be paid by the DISTRIBUTOR. Products shall be shipped to DISTRIBUTOR at the address (es) specified by DISTRIBUTOR from time to time. Risk of loss and title to the Products will pass to DISTRIBUTOR at port of entry at the foreign airport destination in the Territory. DISTRIBUTOR shall bear the cost of any handling, shipping, and insurance, within the designated territory. DISTRIBUTOR shall be responsible for clearing the Products through customs unless RSM notifies DISTRIBUTOR otherwise. DISTRIBUTOR shall be responsible for paying any and all duties and taxes due in connection with the importation of the Products. DISTRIBUTOR will be responsible for inspecting Product upon receipt in the Territory. DISTRIBUTOR shall submit to RSM all claims for non-delivery, shortages in shipment or defects reasonably discoverable on careful inspection in writing within 10 days of receipt of such shipment by DISTRIBUTOR. If DISTRIBUTOR does not provide such written notice to RSM within the specified timeframe, RSM will be discharged from liability for any such non-delivery, short delivery or defect. RSM shall promptly file a notice of claim against the freight handler in the event that DISTRIBUTOR provides written notice to RSM that any of the Products arrive other than in external good order and condition.

3. OBLIGATIONS OF DISTRIBUTOR

3.1 Distribution of Products. DISTRIBUTOR agrees to devote DISTRIBUTOR's best efforts to (i) develop and promote the use and sale of the Products in the Territory, and (ii) furnish such service of accounts as will enable DISTRIBUTOR adequately to develop and maintain the goodwill of customers and prospective customers and their acceptance of the Products. DISTRIBUTOR also agrees to abide by RSM's recommendations regarding the use of the Products, and plan orders adequately to meet customer delivery requirements.

3.2 Legal Requirements. Except as otherwise set forth in Section 3.4, DISTRIBUTOR will obtain and maintain, at its expense, all licenses, approvals, consents, and permits necessary for DISTRIBUTOR to perform its obligations under this Agreement. DISTRIBUTOR agrees to comply with all laws, statutes,

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regulations and other legal requirements and not to place RSM in jeopardy of not complying with any such requirements. DISTRIBUTOR understands that the ReShape Medical Code of Conduct requires that the Products be sold only on the basis of quality, service, price and other legitimate marketing attributes, and that the payment of bribes for any purpose has no place in DISTRIBUTOR'S performance under this Agreement and is absolutely prohibited. Furthermore, DISTRIBUTOR agrees to use good judgment, high ethical standards and honesty in DISTRIBUTOR's dealings with customers, end-users and employees, recognizing that even the appearance of unethical actions is not acceptable. DISTRIBUTOR acknowledges and expressly agrees that certain laws of the United States of America and other countries, including, without limitation, the United States Export Control Regulations, the United States Anti-Money Laundering laws, the United States Anti-Terrorism laws and the Foreign Corrupt Practices Act, may result in the imposition of sanctions on RSM or its affiliated companies in the event that, directly or indirectly, (i) Products are exported to various countries, including without limitation Cuba, Iran, North Korea, Syria, Sudan, or any country embargoed by Executive order or otherwise, or (ii) offers, promises, or payments are made to government officials or others for the purpose of influencing decisions favorable to RSM. DISTRIBUTOR expressly agrees, therefore, that in performing its obligations under this Agreement it shall comply at all times with such laws or regulations and refrain from making or promising to make payment or transfer of anything of value that would have the purpose or effect of public or commercial bribery, or acceptance of or acquiescence in extortion, kickbacks, or other unlawful or improper means of obtaining business. DISTRIBUTOR also agrees to furnish to RSM by affidavit or other reasonable means from time to time at RSM's request, and to RSM's reasonable satisfaction, assurances that the appointment of DISTRIBUTOR and DISTRIBUTOR's activities under this Agreement, and the payment to DISTRIBUTOR of any commissions, discounts, or any monies or consideration contemplated in this Agreement, are proper and lawful under said laws and regulations. DISTRIBUTOR further acknowledges that no person employed by it is an official of any government agency or a corporation owned by a governmental unit within the Territory and that no part of any monies or consideration paid pursuant to the terms and conditions of this Agreement or any proceeds from the sale of the Products in the Territory shall accrue for the benefit of any such official. Breach of this provision, or reasonable grounds for RSM to believe it has been breached (in RSM's sole discretion), will result in immediate termination of this Agreement. DISTRIBUTOR will not make any performance or safety claims with respect to Product not contained in the label or otherwise approved by RSM consistent with applicable laws.

3.3 Quality Requirements. RSM has, and requires of its distributors, a primary commitment to patient safety and product quality. To this end, DISTRIBUTOR agrees to comply with ReShape Medical's Quality requirements regarding the Products as specified in Annex A hereto or as they may be further communicated to DISTRIBUTOR from time to time. These include, without limitation, requirements regarding appropriate storage of the Products, maintaining traceability, prompt reporting and handling of complaints, and implementation of recalls and other field actions. These requirements shall survive the expiration or other termination of this Agreement.

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3.4 Product Registrations

3.4.1 Unless prohibited by applicable law, DISTRIBUTOR will assist RSM or its affiliates in securing all registrations and approvals pertaining to the Products and required for the sale or importation of the Products in the Territory, and all such approvals or registrations will be applied for and maintained in the name of RSM unless RSM agrees otherwise in writing.

3.4.2 RSM agrees to provide DISTRIBUTOR with all required documents in English upon request. DISTRIBUTOR will be responsible for all translation of necessary documents, and for answering any and all questions required by local government agencies ReShape Medical with the input and approval of RSM. RSM will assist in answering all questions.

3.4.4 In the event that any registrations are maintained in the name of DISTRIBUTOR, upon termination of this Agreement DISTRIBUTOR shall cooperate in any and all procedures (including, but not limited to, the completion of any documentation) required to transfer such registrations to RSM or its designee and shall not oppose any new registration for the Products by RSM or its designee. Copies of all regulatory permits shall be provided to RSM and copies of DISTRIBUTOR's files relating to such permits shall be provided to RSM on request.

3.4.5 DISTRIBUTOR shall not market or sell Product in the Territory prior to receipt of regulatory approval.

3.5 Reports and Other Information. DISTRIBUTOR agrees that during the term of this Agreement it will:

3.5.1 Respond in writing to any reasonable requests by RSM for market and inventory information, including information concerning competitive activity, pricing, distribution, and Territory surveys and forecasts and, as requested by RSM, meet with RSM representatives to review these matters.

3.5.2 Promptly forward to RSM any inquiry or other communication, including correspondence or notices from regulatory authorities in the Territory, received by DISTRIBUTOR concerning any of RSM's products that appropriately should be responded to by RSM, and all inquiries related to the sale or distribution of Products outside the Territory.

3.5.3 If so requested by RSM, provide RSM reasonable financial information on a confidential basis or provide credit references to assure RSM of DISTRIBUTOR's financial capability to conduct its ongoing business.

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3.6 Trademarks. RSM hereby grants to DISTRIBUTOR the right and license to use the trademarks, service marks, trade names, and trademark registrations of RSM and its affiliated companies for the Products in the Territory, but only in connection with sales in the Territory of the Products purchased from RSM during the term of this Agreement and solely in connection with trademark usage procedures provided by RSM. All right, title, and interest to the trademarks and other intellectual property rights of RSM and its affiliated companies shall remain with such companies, and no other license relating thereto is granted hereunder (except the right to use such trademarks as set forth herein). DISTRIBUTOR shall not market the Products under any tradename or trademark other than the trademarks and tradenames approved by RSM.

3.7 Expenses. Except as otherwise specifically provided herein, DISTRIBUTOR shall bear all costs and expenses associated with its performance of this Agreement, including (but not limited to) amounts due employees or agents of DISTRIBUTOR, advertising, bad debt expense, inventory losses, commissions, licensing fees, regulatory fees, and taxes. In no event shall RSM be liable for any expenses incurred by DISTRIBUTOR unless RSM has agreed in writing to pay such expense.

3.8 Proprietary Rights. DISTRIBUTOR shall report promptly to RSM: (i) any infringement of the patents, trademarks, or other intellectual property rights of RSM or its affiliated companies of which DISTRIBUTOR may learn, but DISTRIBUTOR shall not initiate any protective action with respect to such infringement without RSM's prior written authorization; and (ii) receipt of any notice or service of legal action against DISTRIBUTOR and/or RSM or its affiliated companies claiming any infringement, misappropriation or breach of any intellectual property right, including but not limited to patent, copyright, trademark, or trade name infringement, and RSM shall have full rights and responsibility to manage and control the defense of DISTRIBUTOR and RSM in any such action, including the right to settle on behalf of either or both, and DISTRIBUTOR agrees to cooperate to the fullest extent necessary to enable RSM to conduct such defense.

3.9 Business Review. DISTRIBUTOR hereby gives RSM the right, upon reasonable advance notice, to conduct business reviews involving an examination, either directly or through a designee, of DISTRIBUTOR'S inventory of Products, quality systems, copies of promotional materials, and business records, including financial and sales records relating to the business performed pursuant to this Agreement, in order to ensure DISTRIBUTOR's compliance with the terms of this Agreement.

3.10 Product Materials. DISTRIBUTOR shall sell Product in the same containers and with the same labeling and packaging as provided by RSM or otherwise approved by RSM, and in all other respects in the same condition as when delivered to DISTRIBUTOR by RSM. DISTRIBUTOR will not use any promotional materials with respect to Product other than those provided by RSM or approved by RSM under Section 4.4.

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4. RSM's OBLIGATIONS

4.1 Quality Control. RSM agrees to maintain ongoing quality assurance and testing procedures sufficient to satisfy applicable regulatory requirements.

4.2 Assistance. RSM shall provide DISTRIBUTOR with reasonable access to its technical and marketing personnel at no charge to DISTRIBUTOR, except as otherwise agreed.

4.3 Training. RSM will provide DISTRIBUTOR with technical training seminars as RSM and DISTRIBUTOR agree is needed in the English language for DISTRIBUTOR's employees directly engaged in distributing the Products. Travel and living expenses for DISTRIBUTOR's employees connected with attendance at such training seminars shall be paid by DISTRIBUTOR. DISTRIBUTOR agrees that each of DISTRIBUTOR's employees directly engaged in distributing the Products who has not previously attended a RSM technical training seminar will attend such a seminar or will be trained by DISTRIBUTOR in a program approved by RSM within a reasonable period of time after the commencement of their involvement in the sale of the Products.

4.4 Advertising. RSM will furnish at no cost to DISTRIBUTOR reasonable quantities of promotional materials in the English language where available, such as sales literature, technical data, instruction manuals, and technical journal reprints. At the request of RSM, DISTRIBUTOR shall return all such literature or data in DISTRIBUTOR's custody or control at the time of such request. DISTRIBUTOR may print literature or brochures in other languages at its own cost; however, prior to the printing or distribution of any such translated Product literature, DISTRIBUTOR agrees to submit the translation for RSM's review and written approval. The copyright rights to any such translations shall be deemed assigned to RSM or its affiliated companies, and all translations shall have adequate copyright notices evidencing such rights.

5. WARRANTIES AND INDEMNIFICATION

5.1 Product Warranty. The Products are warranted to be free of defects in workmanship and material according to the written warranty contained in the literature that accompanies the Products, which warranty may be changed from time to time by RSM upon written notice to DISTRIBUTOR. RSM's obligation under this warranty shall be limited to the repair or replacement of any Products that RSM determines were defective when delivered to DISTRIBUTOR. The foregoing is the only express warranty made by RSM related to Product delivered under this Agreement. RSM EXPRESSLY DISCLAIMS ALL OTHER EXPRESS WARRANTIES AND ANY AND ALL IMPLIED WARRANTIES, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. DISTRIBUTOR shall not add to or otherwise alter or modify any applicable warranty, nor make any false representation regarding RSM or the Products or any other representation that is not included in the Product labeling in promoting sales of the Products, including any misrepresentation regarding the permissible uses of the Products. DISTRIBUTOR will hold RSM, its officers, directors and

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employees harmless from and indemnify all of them against any liability that may arise out of or result from any such unauthorized warranty or representation.

5.2 Limitations. IN NO EVENT WILL RSM BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL OR SPECIAL DAMAGES ARISING OUT OF THIS AGREEMENT OR OTHERWISE RELATED TO PRODUCT, INCLUDING ANY LOSS OF PROFITS, EVEN IF RSM HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

IN NO EVENT SHALL RSM'S LIABILITY TO DISTRIBUTOR EXCEED AN AMOUNT EQUAL TO THE AGGREGATE PRICES PAID BY DISTRIBUTOR TO RSM FOR PRODUCTS DURING THE LAST CALENDAR QUARTER PRECEDING THE DATE IN WHICH THE CLAIM IS MADE, except that this liability limitation shall not apply to RSM's indemnity obligation under Sections 5.2 and 5.3.

5.2 Intellectual Property Infringement. Subject to the following sentence, RSM will defend DISTRIBUTOR against any action, proceeding, or claim by any third party for RSM's infringement of any intellectual property rights (including patent, copyright, trademark, and trade name rights) of any third party. RSM shall at all times during the term of this Agreement and thereafter indemnify, defend, and hold DISTRIBUTOR harmless against any and all costs (including but not limited to reasonable attorneys' fees), expenses, loss, damages, or liability to any third party as a result of any such action, proceeding, or claim referred to in the preceding sentence, provided that DISTRIBUTOR promptly notifies RSM in writing of such action, proceeding, or claim, allows RSM to control defense of such claim, cooperates at RSM's request and expense in such defense and does not settle any such claim without RSM's prior written approval.

5.3 Indemnification. DISTRIBUTOR and RSM shall each defend, indemnify, and hold harmless the other party, its officers, directors, agents, insurers, employees, shareholders, and affiliated companies from and against any claim, loss, suit, liability, or expense (including but not limited to attorneys' fees and other costs associated with the handling of or defense of any such action or claim) arising out of or based upon a breach by the indemnifying party of any of the warranties in this Section 5 or other failure by the indemnifying party to comply with any material provision of this Agreement, provided that the indemnified party provides prompt written notice to the indemnifying party of such action, proceeding, or claim, allows the indemnifying party to control defense of such claim, cooperates at the indemnifying party's request and expense in such defense and does not settle any such claim without the indemnifying party's prior written approval.

6. TERM AND TERMINATION

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6.1 Term. This Agreement shall commence on the Effective Date, and, unless otherwise terminated earlier as provided below, shall remain in effect until the Expiration Date listed on Schedule A, at which time it shall expire automatically. Notwithstanding the number of renewals, this Agreement shall always be construed as a fixed-term contract. This Agreement is subject to DISTRIBUTOR's cooperation with and satisfactory completion of a due diligence background check. If, within RSM's sole discretion, the results of the background check are unsatisfactory, RSM may suspend this Agreement upon immediate notice to DISTRIBUTOR.

6.2 Termination. Either party shall have the right to terminate this Agreement without liability therefore, after written notice to the other party, (i) effective immediately in the event of a breach by the other party of any of its obligations hereunder, which breach (if curable) is not cured within 10 days of written notice of such breach, or (ii) without cause upon 180 days' advance written notice to the other party.

6.3 Effect of Termination or Expiration. Upon termination or expiration of this Agreement, all amounts due by DISTRIBUTOR to RSM will become due and payable at the time of termination or expiration. The parties agree that neither party shall be liable to the other for damages or otherwise by reason of the nonrenewal of this Agreement or its termination as provided in this Section 6, provided that such nonrenewal or termination shall not operate to discharge or release either party of obligations assumed by it prior to such nonrenewal or termination and the foregoing is not intended to limit a party's liability for breach of this Agreement. Acceptance of orders from DISTRIBUTOR by RSM after termination will not constitute a renewal of this Agreement or a waiver of the right of RSM to treat this Agreement as terminated. The granting of any notice of nonrenewal or termination of this Agreement by RSM shall entitle RSM, before shipment of any pending or new orders, to require advance payment, or other security for payment, of all previously outstanding balances (whether or not otherwise due) plus the amount of the new order. Upon expiration or termination of this Agreement, DISTRIBUTOR shall return to RSM all technical and commercial materials, customer lists, price lists, and other materials that are RSM's property.

6.4 Inventory Repurchase. Upon termination of this Agreement for any reason, RSM may, at its sole option, elect to purchase back from DISTRIBUTOR, and by doing so require DISTRIBUTOR to sell to RSM, any unsold inventory of Products in DISTRIBUTOR's possession or control, provided that such Products are unopened and in saleable condition, the expiration date of sterility of such Products is at least 365 days beyond the effective date of repurchase, and such products are currently marketed by RSM and not obsolete. The price to be paid by RSM for the purchase of such inventory shall be the purchase price actually paid by DISTRIBUTOR for the Products, increased by transportation and customs duties, if any, paid by DISTRIBUTOR for the transportation of the Products into the Territory. Any Products designated for return by DISTRIBUTOR (and related storage and handling records) will be inspected by RSM or an authorized representative of RSM in order to determine if the Products to be purchased by RSM fulfill the conditions mentioned above. Upon

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issuance of a return authorization to DISTRIBUTOR by RSM, DISTRIBUTOR shall ship the Products to RSM or to any entity or individual designated by RSM, freight prepaid.

6.5 The Sections 3.4.4, 5, 6, and 7 and the last sentence of Sections 1.4 shall survive termination or expiration of this Agreement.

7. GENERAL TERMS

7.1 Confidential Information. DISTRIBUTOR agrees that it shall keep confidential and shall not publish or otherwise divulge or use for its own benefit or for the benefit of any third party any information of a proprietary nature furnished to it by or on behalf of RSM or its affiliated companies without the prior written approval of the communicating party, except (i) as required by court order, or (ii) as reasonably necessary to perform its sales-related obligations under this Agreement and in the case of any disclosure under clause (ii) subject to the obligations of confidentiality and restrictions on use at least as stringent as those set forth in this Agreement. Information of a proprietary nature shall include, but not be limited to, information concerning RSM's or its affiliated companies' products, proposed products, marketing plans, manufacturing processes, proprietary software, financial information, or any other marketing information or materials in whatever form not generally known to the public.

7.2 Force Majeure. In the event that a delay or failure of a party to comply with any obligation created by this Agreement is caused by a force majeure condition, that obligation shall be suspended during the continuance of the force majeure condition. For the purposes of this Agreement, the term "force majeure" shall mean any event beyond the control of the parties, including, without limitation, fire, flood, riots, strikes, epidemics, war (declared or undeclared and including the continuance, expansion or new outbreak of any war or conflict now in existence), embargoes, and governmental actions or decrees.

7.3 Assignment. This Agreement shall not be assignable by DISTRIBUTOR without the prior written consent of RSM, but this Agreement or any portion hereof is assignable by RSM without the consent of DISTRIBUTOR.

7.4 Non-Waiver. The waiver or failure of either party to exercise in any respect any right provided for herein shall not be deemed a waiver of any further right hereunder.

7.5 Notices. Any notice or request given under this Agreement shall be in writing and in the English language and may be delivered by hand or may be sent by telefax or certified or registered mail or commercial carrier (return receipt or confirmation of delivery requested) addressed to the other party at the address shown on the first page of this Agreement, or at such other address designated in writing to the other party. Any notices sent by telefax must be followed by a confirmation copy by airmail or other reliable means.

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7.6 Arbitration. Any and every dispute, controversy or claim between the parties and/or their valid and lawful assignees and successors, including, but not limited to (i) any and every dispute, controversy or claim arising out of or relating to this Agreement and/or its amendments, and (ii) any and every dispute, controversy or claim not arising out of or not relating to this Agreement and/or its amendments, shall be finally settled by arbitration in Orange County, U.S.A. in accordance with the International Arbitration Rules of the International Centre for Dispute Resolution ("ICDR"). Judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. A sole arbitrator shall be chosen at the mutual agreement of the parties from a list of ICDR proposed arbitrators under the ICDR's arbitration rules. If the parties fail to mutually agree on the choice of an arbitrator within 30 days of receipt of claimant's request for arbitration by the other party, the sole arbitrator shall be appointed by the ICDR in accordance with its International Arbitration Rules. The language of the arbitration proceedings shall be English and the law applied to the dispute shall be solely and exclusively the laws of the California. The award shall state with specificity the reasons upon which the Award is based, and shall contain the arbitrator's findings of fact. Except as required by law, neither party nor the arbitrator may disclose to a third party the existence, content, or results of any arbitration hereunder without the prior written consent of both parties. Notwithstanding the above, RSM shall, at its sole discretion, have the right to initiate in any court sitting in California, USA or in the Territory a non-jury collection lawsuit against DISTRIBUTOR in an effort to collect from DISTRIBUTOR any and all moneys charged by RSM to DISTRIBUTOR for the Products sold by RSM to DISTRIBUTOR or to obtain temporary injunctive relief. All other issues, without exception, must be arbitrated.

7.7 Entire Agreement. The terms and provisions contained in this Agreement and the attached Schedules constitute the entire Agreement between the parties and supersede all previous communications, representations, agreements, and understandings, whether oral or written, between the parties with respect to the subject matter hereof. Except as this Agreement specifically authorizes RSM to modify certain provisions of this Agreement or the attached Schedules upon written notice to DISTRIBUTOR, no agreement or understanding extending this Agreement or varying its terms (including any inconsistent terms in any purchase order, acknowledgment, or similar form) shall be binding upon either party unless it is in a writing specifically referring to this Agreement and signed by the duly authorized representatives of the respective parties.

7.8 Severability. Should any provision of this Agreement be determined to be unenforceable or prohibited by applicable law, such provision shall be ineffective only to the extent of such unenforceability or prohibition without invalidating the remainder of such provision or the remaining provisions of this Agreement.

7.9 Captions. The captions of provisions in this Agreement are for convenience only and shall not control or affect the meaning or construction of any of the provisions of this Agreement.

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7.10 Counterparts. This Agreement may be executed in any manner of counterparts, each of which shall be deemed to be an original as against any party whose signature appears thereon, and all of which shall together constitute one and the same instrument. This Agreement shall become binding when one or more counterparts hereof, individually or taken together, shall bear the signature of all of the parties reflected hereon as the signatories.

7.11 Governing Law. This Agreement shall be governed and construed in accordance with the laws of the California, United States of America, to the exclusion of both its rules or conflicts of laws and the provisions of the United Nations Convention on Contracts for the International Sale of Goods.

7.12 Release. In exchange for the agreement by RSM to enter into this Agreement with DISTRIBUTOR, DISTRIBUTOR hereby releases RSM and its affiliated companies from and waives any claims it may have had against RSM and its affiliated companies related to any previous distribution agreement or business dealings between DISTRIBUTOR and RSM or its affiliated companies.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the Effective Date.

ReShape Medical Inc.

By _____
Michael J. Mangano
President
5/26/2017

By _____
Abdulrahman Ramadan
Executive Director for and on behalf of
Al Zahrawi Medical

Al Zahrawi Medical Supplies (L.L.C)
P.O. Box 5973, Dubai - U.A.E.

Schedule A

Distributor and Term

Distributor Information

Corporate Name:

Al Zahrawi Medical a Company incorporated under the laws of United Arab Emirates ("UAE"), having its registered office at Caterpillar building, Salahudinne St, Diera, Dubai, hereinafter referred to as the "Distributor".

Schedule B

Products and Pricing

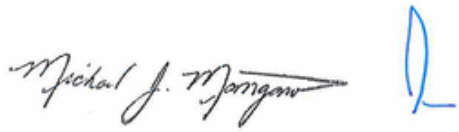
The following indicates the product line(s) to be included as Products under this Agreement as well as the pricing of such Products. Prices quoted do not include the cost of any handling, shipping, and insurance (to be borne by DISTRIBUTOR pursuant to Section 2.6).

QTY	CATALOG NUMBER	DESCRIPTION	UNIT PRICE USD
	RSM101	Integrated Dual Balloon Assembly, US	$1,500.00
	RSM900	Balloon Valve Sealant Assembly (one package included with each balloon order)	N/C
	RSM210	Removal Catheter Assembly	$200.00
	RSM300	Tech Device Guidewire (if desired)	$50.00
	KIP-II-RS	ReShape Infiltration Pump	$5,000.00
	ITS-10-RS	ReShape Pump Tubing (pack of 10)	$100.00

Schedule C

Territory

The customers and or geographical area subject to this Agreement shall be specifically and exclusively limited to the United Arab Emirates.



Schedule D

Minimum Purchase Quotas

Reshape Forecast					
2017					
Country	Distributor	**Q1**	**Q2**	**Q3**	**Q4**
UAE	Al Zahrawi Medical	0	20	0	30
2018					
Country	Distributor	**Q1**	**Q2**	**Q3**	**Q4**
UAE	Al Zahrawi Medical	30	25	25	30

Schedule E

Payment Terms

The first two orders for the ReShape Dual Balloon will be cash pay up front. After successfully executing these orders, future orders may be extended via the credit terms below.

Payment for Products is due within 60 days after date of invoice on open account as long as DISTRIBUTOR's credit remains good, payments to RSM are made on time, and the total amount owed by DISTRIBUTOR to RSM is within the credit limits determined by RSM from time to time. DISTRIBUTOR's credit limit as of the effective date of this Agreement shall be U.S. currency although RSM reserves the right to require DISTRIBUTOR to provide adequate security for the amount of such credit limit as a condition to making sales on open account terms. RSM shall have the right to adjust DISTRIBUTOR's payment terms and credit limits from time to time.

OR

DISTRIBUTOR shall pay RSM for Products in advance of delivery by cash or irrevocable letter of credit with order.

Late Payments: DISTRIBUTOR will pay a late fee on all past due amounts at the rate of one percent per month or the highest rate permissible by law, whichever is lower, until paid in full.

Taxes. All amounts payable to RSM under this Agreement are exclusive of any income, sales, use, property, ad valorem, value added or other taxes, levies, imposts, duties, charges or withholdings of any nature (collectively, "Taxes"), arising out of any transaction contemplated by this Agreement and imposed against DISTRIBUTOR or the Products by any taxing authority in the Territory (excluding, however, any Taxes on, or measured solely by, the net income of RSM and Taxes imposed on RSM in the United States). DISTRIBUTOR shall pay all applicable Taxes or provide RSM with a certificate of exemption acceptable to the relevant taxing authority. In the event that any payments to RSM under this Agreement are subject to any withholding taxes, DISTRIBUTOR shall promptly provide all tax certificates, applications and related documents to RSM. If RSM is required to pay any Taxes in the Territory (excluding, however, any Taxes on, or measured solely by, the net income of RSM and Taxes imposed on RSM in the United States), DISTRIBUTOR shall promptly reimburse RSM upon written request therefore.

ANNEX A– Quality Requirements

A) **Storage of Products:** If applicable Distributor is required to store products in accordance with product labeling statements and within an environment that prevents any of their characteristics from being altered until delivered to the customer. The minimum storage requirements for RSM products include the following:

- If applicable, Distributor must establish a secure storage location and limit access to this location to only those personnel authorized by Distributor. Products must be stored within this location to prevent Products from being contaminated or tampered with in any way. Additionally, Products must be kept in a clean area, free of insects, rodents and any pests.
- Distributor shall have a process to prevent expired, rejected and/or quarantined Products from being sent to final customers. ReShape Medical
- RSM reserves the right to provide other instructions to Distributor regarding such Product, and Distributor agrees to comply with such instructions.

B) **Traceability:** Distributor is required to maintain records to ensure the traceability of ReShape Medical products in accordance with applicable regulatory requirements, and to provide ReShape Medical or its authorized agents or representatives with reasonable access to such records. The minimum traceability requirements for ReShape Medical Products include the following:

- Distributor is required to maintain a complete and current list of all customers who have purchased ReShape Medical products from Distributor, the dates of such purchases, the quantity, and the lot numbers, UPNs, serial numbers and/or model numbers of the units purchased (as applicable) as identified on the product label.
- Distributor must ensure the traceability of all ReShape Medical products at UPN, lot level including the model and serial number where applicable. The final users for all products must be identified (units sold directly to hospitals, units sold directly to doctors, units sold directly to patients).
- If ReShape Medical products are consigned, the batches consumed at the account must be reconciled.
- The traceability of multi-pack boxes must be maintained and single units originally from multi-packs must never be re-boxed.

C) **Complaint Reporting and Handling:** Distributor is required to promptly forward all complaints concerning the products, cooperate fully with ReShape Medical in dealing with customer complaints, and take such action to resolve such complaints as may be reasonably requested by ReShape Medical. The complaint reporting requirements for ReShape Medical products include the following:

 Michael J. Morgan

- All customer complaints involving or contributing to serious adverse events (including patient death or serious injury) must be reported to ReShape Medical within 24 hours of Distributor's becoming aware. Complaints involving non-serious events including comments regarding product dissatisfaction, potential malfunctions, non-serious patient injury, or unanticipated medical or surgical intervention shall be reported to ReShape Medical within 48 hours.
- A Complaint Notification Form will be provided to Distributor by ReShape Medical and must be completed in full to document each complaint. Additionally, any ancillary documentation that may facilitate the complaint investigation process should also be attached, particularly if the product is not available for return. In cases where additional information is required from the customer, at least three (3) due diligent attempts must be performed by Distributor to try to collect this additional complaint information, if requested by ReShape Medical. Should requested information not be available, Distributor shall document the reason(s) it is not available and/or the 3 attempts.
- Products subject to complaints should be returned to ReShape Medical. Returned products must either, as directed by ReShape Medical, be
    - accompanied by a disinfection certificate, even if the products have not been used;
    - or be returned in biohazard controlled packaging and under safe handling controls.

  In cases where the customer has indicated that the complaint product is available to be returned but it has not been received, at least three (3) due diligent attempts must be made by Distributor to retrieve the product.

Michael J. Morgan

D) **Recalls and Other Field Actions:** If ReShape Medical initiates a recall or other field action for any products, Distributor is required to implement such recall or other field action (including location and retrieval of the recalled product) with respect to Distributor's customers in accordance with the instructions provided by ReShape Medical. The minimum requirements for managing recalls and other field actions affecting ReShape Medical Products include the following:

- Recalls and other field actions must be acted upon immediately by Distributor after receiving the notification packet from ReShape Medical. An acknowledgement of the receipt of the field action notice must be promptly sent to ReShape Medical.
- Distributor must follow the instructions contained in the notification packet and ensure that actions are carried out in accordance with the timeframe specified.
- Where directed in the notice, Distributor must retrieve products from the following applicable locations:
    - Distributor warehouse(s) inventories
    - In-transit from ReShape Medical to Distributor
    - Customer locations: whether sold, consigned or samples
- At least three (3) due diligent attempts must be performed and documented to try to retrieve products from customers.
- Once all product retrieval actions have been completed, the recalled stock must be reported to ReShape Medical using the Verification Form contained in the notification packet. (Note: the quantities documented on the verification forms must match the units physically returned to ReShape Medical.)
- The units must be returned to ReShape Medical following the instructions contained in the notification packet.
- ReShape Medical agrees at its option either to refund the purchase price, or to replace recalled products within a reasonable time at its expense unless the recall is attributable to Distributor's actions.

Michael J. Morgan

E) **Record Retention Time:** All product related records (e.g. Traceability records, Complaints records, Recalls data, etc.) must be retained by the Distributor in accordance with the following requirements:

	Type of Product	Record Retention Timeframe
1.	Implantable Device	Indefinitely
2.	Equipment	2 years beyond dated removal from distribution or as otherwise indicated by ReShape Medical
3.	All Other Products	At least Product lifetime/expiry + 2 years or as otherwise indicated by ReShape Medical.

At termination of this agreement, Distributor shall deliver all records required under this section to ReShape Medical and shall direct future inquiries from customers to ReShape Medical.

F) **Demonstration Units:** Demonstration Units (non-sterile, not for human use) are to be used by Distributor for demonstration purposes only and shall not be given to final customers. All provisions in this Annex are applicable to Demonstration Units.

G) **Literature and Label Control:** All Product literature, labeling and the use of ReShape Medical logos, templates or trademarks is subject to ReShape Medical review and approval. Any "Internal Use" training materials provided by ReShape Medical cannot be given to the customers.

ZAHRAWI

Date: 23/05/2017

Michael J. Mangano
President
ReShape Medical Inc.
1001 Calle Amanecer
San Clemente, CA 92672
Tel.: 949-429-6680, ext. 102
Mob.: 617-538-8788
Email: mmangano@reshapemedical.com
Website: www.ReShapeReady.com

Sub: International Distributorship Agreement

Dear Ayman,

Please find the enclosed two original copies of International Distributorship Agreement between Al Zahrawi Medical Supplies and ReShape Medical Inc., for initializing, signature and stamping from your side.

Kindly arrange to send us back one duly signed and stamped copy on the below address:

Al Zahrawi Medical Supplies LLC.
P.O. Box: 5973, Dubai, UAE
Tel: +971 262 2728
Fax: +971 262 5506

Thanking you and looking forward to continue our successful business cooperation.

Best Regards,

Huda Waleed
Senior Supervisor
Administration

Al Zahrawi Medical Supplies (L.L.C.)
P.O. Box 5973, Dubai - U.A.E.

INTERNATIONAL DISTRIBUTORSHIP AGREEMENT

THIS INTERNATIONAL DISTRIBUTORSHIP AGREEMENT ("Agreement") is entered into effective as of the Effective Date contained in Schedule A, between ReShape Medical Inc., having its principal place of business at 1001 Calle Amanacer, San Clemente, USA ("RSM") and the company identified in Schedule A ("DISTRIBUTOR").

WITNESSETH

WHEREAS, RSM is in the business of selling various medical devices primarily used to perform medical procedures; and

WHEREAS, DISTRIBUTOR desires to actively and diligently promote the sale, on its own behalf and for its own account, of certain of RSM's products; and

WHEREAS, RSM and DISTRIBUTOR desire to enter into a non-exclusive distributorship agreement covering certain ReShape Medical product lines under the terms and conditions set out below.

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

1. DISTRIBUTION

1.1 Products. The products that are subject to this Agreement (the "Products") shall be those products identified on Schedule B hereto, together with such other products as may from time to time be included thereon by mutual written agreement of the parties. DISTRIBUTOR acknowledges that Schedule B will not necessarily include all products sold by RSM, and that Products are subject to modification or discontinuance by RSM upon notice to DISTRIBUTOR, and, upon DISTRIBUTOR's receipt of such notice, Schedule B will be deemed amended accordingly.

1.2 Appointment.

1.2.1 Effective as of the Effective Date of this Agreement, RSM hereby appoints DISTRIBUTOR, and DISTRIBUTOR accepts such appointment, as a nonexclusive distributor of Products in the geographical area described on Schedule C hereto (the "Territory"), subject to the terms and conditions set forth in this Agreement.

1.2.2 DISTRIBUTOR shall not directly or indirectly deliver or promote the sale of the Products outside the Territory or locate or utilize an office, branch, or distribution depot for the sale or distribution of the Products outside the Territory. DISTRIBUTOR shall immediately notify RSM if it becomes aware that any DISTRIBUTOR customer exports or sells or plans to export or sell any of the Products outside the Territory.

1.3 Noncompetition. DISTRIBUTOR represents that as of the Effective Date there are no agreements in effect providing for the marketing, sale or distribution by

DISTRIBUTOR of products that compete with the Products covered hereby and that DISTRIBUTOR is not precluded by any contractual obligation or any other reason from entering into or performing under this Agreement. DISTRIBUTOR agrees that during the term of this Agreement DISTRIBUTOR will not, directly or indirectly, sell, promote or distribute any products that compete with the Products covered hereby.

1.4 Sub-Distributors. DISTRIBUTOR agrees that it will not establish any sub-distributors without the prior written consent of RSM. It is understood that such appointment shall be made only in the name and for the account of DISTRIBUTOR and shall be for a term no greater than the term of this Agreement. DISTRIBUTOR shall not grant to any sub-distributor any rights greater than those which are granted by RSM to DISTRIBUTOR under this Agreement. DISTRIBUTOR shall also impose on any sub-distributor the same obligations as RSM has imposed on DISTRIBUTOR under this Agreement for the purpose of protecting the goodwill of RSM and the Products. DISTRIBUTOR shall insure that all its sub-distributors comply with any regulatory requirements with respect to the Products. DISTRIBUTOR shall defend, indemnify, and hold RSM harmless against any claim, loss, liability, or expense (including attorney's fees and court costs) arising out of or based upon any claim made by any of DISTRIBUTOR's sub-distributors, sales representatives, or employees against RSM.

1.5 Manufacturer's Representative. RSM or its affiliated companies shall have the right, at their option and expense, to maintain representatives in or supporting the Territory from time to time to participate in the marketing, sale, and after-sale support of the Products. If RSM or its affiliated companies elect to maintain such representatives, DISTRIBUTOR shall share information and cooperate in good faith in connection with all material contacts and activities with customers and potential customers. DISTRIBUTOR agrees that during the term of this Agreement and for a period of one year thereafter it will not, without RSM's consent, induce or solicit any such ReShape Medical personnel to terminate their employment with ReShape Medical in order to become employed by, or otherwise affiliated with, DISTRIBUTOR.

1.6 Non-Agency. The parties acknowledge that DISTRIBUTOR is an independent contractor, and that neither the making of this Agreement nor the performance of any of the provisions hereof shall be construed to constitute DISTRIBUTOR or any of its agents acting hereunder an agent or legal representative of RSM for any purpose, nor shall this Agreement be deemed to establish a joint venture, partnership, franchise, agency, or employer-employee relationship. DISTRIBUTOR is not granted, and shall not exercise, the right or authority to assume or create any obligation or responsibility on behalf of or in the name of RSM or its affiliated companies.

1.7 Remuneration. Except as otherwise provided herein, DISTRIBUTOR shall not be entitled to any remuneration of any nature whatsoever other than the profit it makes on the delivery of Products to its customers in the Territory.

2. PURCHASE OF PRODUCTS AND TERMS OF SALE

2.1 Quotas.

2.1.1 The parties agree to the quota levels set forth in Schedule D hereto (or as it may be amended from time to time by mutual agreement of the parties) as the minimum requirements for DISTRIBUTOR purchases of Products from RSM, and DISTRIBUTOR shall purchase Products in no less than such amounts in the applicable calendar quarters.

2.1.2 DISTRIBUTOR agrees that the minimum purchase requirements appearing on Schedule D hereto are reasonable in view of the market potential for Products in the Territory and acknowledges that all such requirements have been established as the result of a mutual examination of market potential and negotiations between the parties.

2.1.3 It is further agreed that in the event additional Products are added to Schedule B hereto, the minimum purchase requirements for such Products will be determined by RSM after consultation with DISTRIBUTOR, and such new minimum purchase requirements will be incorporated in and be made subject to the terms of this Agreement.

2.3 Orders.

2.3.1 DISTRIBUTOR shall purchase from RSM, and RSM shall sell to DISTRIBUTOR, such quantities of Products as DISTRIBUTOR may order from time to time pursuant to the terms of this Agreement. Orders shall be placed by written purchase order and submitted by e-mail or facsimile, or by other means agreed upon by the parties. No order shall be binding upon RSM until the same shall have been accepted in writing by RSM. In case of conflict between the standard printed terms of purchase/sale of DISTRIBUTOR and RSM, the terms of purchase/sale of RSM shall prevail, but in no event shall either party's standard terms override any provisions of this Agreement.

2.3.2 Notwithstanding any other provision hereof, it is agreed that the obligation of RSM to sell any Product to DISTRIBUTOR is subject to the availability of such Product. RSM shall make reasonable efforts to fill each order that is accepted, but RSM shall not be liable for damages caused by failure to ship or delay in shipment resulting from product shortage of any kind or conditions beyond the control of RSM, including, but not limited to, the unavailability of such Products because of the inability to obtain materials and supplies or to produce sufficient Products to meet sales demands. If RSM believes that it will not be able to satisfy DISTRIBUTOR's requirements for the Products, it shall promptly notify DISTRIBUTOR, specifying the reasons for the expected delay and its anticipated duration.

2.4. Prices.

2.4.1 Prices for the Products as of the Effective Date of this Agreement shall be as set forth on Schedule B hereto

2.5 Payments. All payments due to RSM pursuant to this Agreement shall be paid according to the payment terms set forth on Schedule E hereto. All payments to RSM pursuant to this Agreement shall be made in United States dollars, without set-off or counterclaim and without deduction for any other charges. RSM shall retain a security interest in the Products until full payment is made, and DISTRIBUTOR shall assist RSM in any local recording of such security interest. If DISTRIBUTOR fails to make any payment when due, RSM shall have the right to take whatever action it deems appropriate or necessary, including, but not limited to, requiring immediate return of unsold Products, refusal of further orders, requiring payment in full before shipment, or termination of this Agreement pursuant to Section 6.2 hereof.

2.6 Shipping. Except as set forth below, all fees for shipping to the DISTRIBUTOR will be paid by the DISTRIBUTOR. Products shall be shipped to DISTRIBUTOR at the address (es) specified by DISTRIBUTOR from time to time. Risk of loss and title to the Products will pass to DISTRIBUTOR at port of entry at the foreign airport destination in the Territory. DISTRIBUTOR shall bear the cost of any handling, shipping, and insurance, within the designated territory. DISTRIBUTOR shall be responsible for clearing the Products through customs unless RSM notifies DISTRIBUTOR otherwise. DISTRIBUTOR shall be responsible for paying any and all duties and taxes due in connection with the importation of the Products. DISTRIBUTOR will be responsible for inspecting Product upon receipt in the Territory. DISTRIBUTOR shall submit to RSM all claims for non-delivery, shortages in shipment or defects reasonably discoverable on careful inspection in writing within 10 days of receipt of such shipment by DISTRIBUTOR. If DISTRIBUTOR does not provide such written notice to RSM within the specified timeframe, RSM will be discharged from liability for any such non-delivery, short delivery or defect. RSM shall promptly file a notice of claim against the freight handler in the event that DISTRIBUTOR provides written notice to RSM that any of the Products arrive other than in external good order and condition.

3. OBLIGATIONS OF DISTRIBUTOR

3.1 Distribution of Products. DISTRIBUTOR agrees to devote DISTRIBUTOR's best efforts to (i) develop and promote the use and sale of the Products in the Territory, and (ii) furnish such service of accounts as will enable DISTRIBUTOR adequately to develop and maintain the goodwill of customers and prospective customers and their acceptance of the Products. DISTRIBUTOR also agrees to abide by RSM's recommendations regarding the use of the Products, and plan orders adequately to meet customer delivery requirements.

3.2 Legal Requirements. Except as otherwise set forth in Section 3.4, DISTRIBUTOR will obtain and maintain, at its expense, all licenses, approvals, consents, and permits necessary for DISTRIBUTOR to perform its obligations under this Agreement. DISTRIBUTOR agrees to comply with all laws, statutes,

regulations and other legal requirements and not to place RSM in jeopardy of not complying with any such requirements. DISTRIBUTOR understands that the ReShape Medical Code of Conduct requires that the Products be sold only on the basis of quality, service, price and other legitimate marketing attributes, and that the payment of bribes for any purpose has no place in DISTRIBUTOR'S performance under this Agreement and is absolutely prohibited. Furthermore, DISTRIBUTOR agrees to use good judgment, high ethical standards and honesty in DISTRIBUTOR's dealings with customers, end-users and employees, recognizing that even the appearance of unethical actions is not acceptable. DISTRIBUTOR acknowledges and expressly agrees that certain laws of the United States of America and other countries, including, without limitation, the United States Export Control Regulations, the United States Anti-Money Laundering laws, the United States Anti-Terrorism laws and the Foreign Corrupt Practices Act, may result in the imposition of sanctions on RSM or its affiliated companies in the event that, directly or indirectly, (i) Products are exported to various countries, including without limitation Cuba, Iran, North Korea, Syria, Sudan, or any country embargoed by Executive order or otherwise, or (ii) offers, promises, or payments are made to government officials or others for the purpose of influencing decisions favorable to RSM. DISTRIBUTOR expressly agrees, therefore, that in performing its obligations under this Agreement it shall comply at all times with such laws or regulations and refrain from making or promising to make payment or transfer of anything of value that would have the purpose or effect of public or commercial bribery, or acceptance of or acquiescence in extortion, kickbacks, or other unlawful or improper means of obtaining business. DISTRIBUTOR also agrees to furnish to RSM by affidavit or other reasonable means from time to time at RSM's request, and to RSM's reasonable satisfaction, assurances that the appointment of DISTRIBUTOR and DISTRIBUTOR's activities under this Agreement, and the payment to DISTRIBUTOR of any commissions, discounts, or any monies or consideration contemplated in this Agreement, are proper and lawful under said laws and regulations. DISTRIBUTOR further acknowledges that no person employed by it is an official of any government agency or a corporation owned by a governmental unit within the Territory and that no part of any monies or consideration paid pursuant to the terms and conditions of this Agreement or any proceeds from the sale of the Products in the Territory shall accrue for the benefit of any such official. Breach of this provision, or reasonable grounds for RSM to believe it has been breached (in RSM's sole discretion), will result in immediate termination of this Agreement. DISTRIBUTOR will not make any performance or safety claims with respect to Product not contained in the label or otherwise approved by RSM consistent with applicable laws.

3.3 Quality Requirements. RSM has, and requires of its distributors, a primary commitment to patient safety and product quality. To this end, DISTRIBUTOR agrees to comply with ReShape Medical's Quality requirements regarding the Products as specified in Annex A hereto or as they may be further communicated to DISTRIBUTOR from time to time. These include, without limitation, requirements regarding appropriate storage of the Products, maintaining traceability, prompt reporting and handling of complaints, and implementation of recalls and other field actions. These requirements shall survive the expiration or other termination of this Agreement.

3.4 Product Registrations

3.4.1 Unless prohibited by applicable law, DISTRIBUTOR will assist RSM or its affiliates in securing all registrations and approvals pertaining to the Products and required for the sale or importation of the Products in the Territory, and all such approvals or registrations will be applied for and maintained in the name of RSM unless RSM agrees otherwise in writing.

3.4.2 RSM agrees to provide DISTRIBUTOR with all required documents in English upon request. DISTRIBUTOR will be responsible for all translation of necessary documents, and for answering any and all questions required by local government agencies ReShape Medical with the input and approval of RSM. RSM will assist in answering all questions.

3.4.4 In the event that any registrations are maintained in the name of DISTRIBUTOR, upon termination of this Agreement DISTRIBUTOR shall cooperate in any and all procedures (including, but not limited to, the completion of any documentation) required to transfer such registrations to RSM or its designee and shall not oppose any new registration for the Products by RSM or its designee. Copies of all regulatory permits shall be provided to RSM and copies of DISTRIBUTOR's files relating to such permits shall be provided to RSM on request.

3.4.5 DISTRIBUTOR shall not market or sell Product in the Territory prior to receipt of regulatory approval.

3.5 Reports and Other Information. DISTRIBUTOR agrees that during the term of this Agreement it will:

3.5.1 Respond in writing to any reasonable requests by RSM for market and inventory information, including information concerning competitive activity, pricing, distribution, and Territory surveys and forecasts and, as requested by RSM, meet with RSM representatives to review these matters.

3.5.2 Promptly forward to RSM any inquiry or other communication, including correspondence or notices from regulatory authorities in the Territory, received by DISTRIBUTOR concerning any of RSM's products that appropriately should be responded to by RSM, and all inquiries related to the sale or distribution of Products outside the Territory.

3.5.3 If so requested by RSM, provide RSM reasonable financial information on a confidential basis or provide credit references to assure RSM of DISTRIBUTOR's financial capability to conduct its ongoing business.

3.6 Trademarks. RSM hereby grants to DISTRIBUTOR the right and license to use the trademarks, service marks, trade names, and trademark registrations of RSM and its affiliated companies for the Products in the Territory, but only in connection with sales in the Territory of the Products purchased from RSM during the term of this Agreement and solely in connection with trademark usage procedures provided by RSM. All right, title, and interest to the trademarks and other intellectual property rights of RSM and its affiliated companies shall remain with such companies, and no other license relating thereto is granted hereunder (except the right to use such trademarks as set forth herein). DISTRIBUTOR shall not market the Products under any tradename or trademark other than the trademarks and tradenames approved by RSM.

3.7 Expenses. Except as otherwise specifically provided herein, DISTRIBUTOR shall bear all costs and expenses associated with its performance of this Agreement, including (but not limited to) amounts due employees or agents of DISTRIBUTOR, advertising, bad debt expense, inventory losses, commissions, licensing fees, regulatory fees, and taxes. In no event shall RSM be liable for any expenses incurred by DISTRIBUTOR unless RSM has agreed in writing to pay such expense.

3.8 Proprietary Rights. DISTRIBUTOR shall report promptly to RSM: (i) any infringement of the patents, trademarks, or other intellectual property rights of RSM or its affiliated companies of which DISTRIBUTOR may learn, but DISTRIBUTOR shall not initiate any protective action with respect to such infringement without RSM's prior written authorization; and (ii) receipt of any notice or service of legal action against DISTRIBUTOR and/or RSM or its affiliated companies claiming any infringement, misappropriation or breach of any intellectual property right, including but not limited to patent, copyright, trademark, or trade name infringement, and RSM shall have full rights and responsibility to manage and control the defense of DISTRIBUTOR and RSM in any such action, including the right to settle on behalf of either or both, and DISTRIBUTOR agrees to cooperate to the fullest extent necessary to enable RSM to conduct such defense.

3.9 Business Review. DISTRIBUTOR hereby gives RSM the right, upon reasonable advance notice, to conduct business reviews involving an examination, either directly or through a designee, of DISTRIBUTOR'S inventory of Products, quality systems, copies of promotional materials, and business records, including financial and sales records relating to the business performed pursuant to this Agreement, in order to ensure DISTRIBUTOR's compliance with the terms of this Agreement.

3.10 Product Materials. DISTRIBUTOR shall sell Product in the same containers and with the same labeling and packaging as provided by RSM or otherwise approved by RSM, and in all other respects in the same condition as when delivered to DISTRIBUTOR by RSM. DISTRIBUTOR will not use any promotional materials with respect to Product other than those provided by RSM or approved by RSM under Section 4.4.

4. RSM's OBLIGATIONS

4.1 Quality Control. RSM agrees to maintain ongoing quality assurance and testing procedures sufficient to satisfy applicable regulatory requirements.

4.2 Assistance. RSM shall provide DISTRIBUTOR with reasonable access to its technical and marketing personnel at no charge to DISTRIBUTOR, except as otherwise agreed.

4.3 Training. RSM will provide DISTRIBUTOR with technical training seminars as RSM and DISTRIBUTOR agree is needed in the English language for DISTRIBUTOR's employees directly engaged in distributing the Products. Travel and living expenses for DISTRIBUTOR's employees connected with attendance at such training seminars shall be paid by DISTRIBUTOR. DISTRIBUTOR agrees that each of DISTRIBUTOR's employees directly engaged in distributing the Products who has not previously attended a RSM technical training seminar will attend such a seminar or will be trained by DISTRIBUTOR in a program approved by RSM within a reasonable period of time after the commencement of their involvement in the sale of the Products.

4.4 Advertising. RSM will furnish at no cost to DISTRIBUTOR reasonable quantities of promotional materials in the English language where available, such as sales literature, technical data, instruction manuals, and technical journal reprints. At the request of RSM, DISTRIBUTOR shall return all such literature or data in DISTRIBUTOR's custody or control at the time of such request. DISTRIBUTOR may print literature or brochures in other languages at its own cost; however, prior to the printing or distribution of any such translated Product literature, DISTRIBUTOR agrees to submit the translation for RSM's review and written approval. The copyright rights to any such translations shall be deemed assigned to RSM or its affiliated companies, and all translations shall have adequate copyright notices evidencing such rights.

5. WARRANTIES AND INDEMNIFICATION

5.1 Product Warranty. The Products are warranted to be free of defects in workmanship and material according to the written warranty contained in the literature that accompanies the Products, which warranty may be changed from time to time by RSM upon written notice to DISTRIBUTOR. RSM's obligation under this warranty shall be limited to the repair or replacement of any Products that RSM determines were defective when delivered to DISTRIBUTOR. The foregoing is the only express warranty made by RSM related to Product delivered under this Agreement. RSM EXPRESSLY DISCLAIMS ALL OTHER EXPRESS WARRANTIES AND ANY AND ALL IMPLIED WARRANTIES, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. DISTRIBUTOR shall not add to or otherwise alter or modify any applicable warranty, nor make any false representation regarding RSM or the Products or any other representation that is not included in the Product labeling in promoting sales of the Products, including any misrepresentation regarding the permissible uses of the Products. DISTRIBUTOR will hold RSM, its officers, directors and

employees harmless from and indemnify all of them against any liability that may arise out of or result from any such unauthorized warranty or representation.

5.2 Limitations IN NO EVENT WILL RSM BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL OR SPECIAL DAMAGES ARISING OUT OF THIS AGREEMENT OR OTHERWISE RELATED TO PRODUCT, INCLUDING ANY LOSS OF PROFITS, EVEN IF RSM HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

IN NO EVENT SHALL RSM'S LIABILITY TO DISTRIBUTOR EXCEED AN AMOUNT EQUAL TO THE AGGREGATE PRICES PAID BY DISTRIBUTOR TO RSM FOR PRODUCTS DURING THE LAST CALENDAR QUARTER PRECEDING THE DATE IN WHICH THE CLAIM IS MADE, except that this liability limitation shall not apply to RSM's indemnity obligation under Sections 5.2 and 5.3.

5.2 Intellectual Property Infringement. Subject to the following sentence, RSM will defend DISTRIBUTOR against any action, proceeding, or claim by any third party for RSM's infringement of any intellectual property rights (including patent, copyright, trademark, and trade name rights) of any third party. RSM shall at all times during the term of this Agreement and thereafter indemnify, defend, and hold DISTRIBUTOR harmless against any and all costs (including but not limited to reasonable attorneys' fees), expenses, loss, damages, or liability to any third party as a result of any such action, proceeding, or claim referred to in the preceding sentence, provided that DISTRIBUTOR promptly notifies RSM in writing of such action, proceeding, or claim, allows RSM to control defense of such claim, cooperates at RSM's request and expense in such defense and does not settle any such claim without RSM's prior written approval.

5.3 Indemnification. DISTRIBUTOR and RSM shall each defend, indemnify, and hold harmless the other party, its officers, directors, agents, insurers, employees, shareholders, and affiliated companies from and against any claim, loss, suit, liability, or expense (including but not limited to attorneys' fees and other costs associated with the handling of or defense of any such action or claim) arising out of or based upon a breach by the indemnifying party of any of the warranties in this Section 5 or other failure by the indemnifying party to comply with any material provision of this Agreement, provided that the indemnified party provides prompt written notice to the indemnifying party of such action, proceeding, or claim, allows the indemnifying party to control defense of such claim, cooperates at the indemnifying party's request and expense in such defense and does not settle any such claim without the indemnifying party's prior written approval.

6. TERM AND TERMINATION

6.1 Term. This Agreement shall commence on the Effective Date, and, unless otherwise terminated earlier as provided below, shall remain in effect until the Expiration Date listed on Schedule A, at which time it shall expire automatically. Notwithstanding the number of renewals, this Agreement shall always be construed as a fixed-term contract. This Agreement is subject to DISTRIBUTOR's cooperation with and satisfactory completion of a due diligence background check. If, within RSM's sole discretion, the results of the background check are unsatisfactory, RSM may suspend this Agreement upon immediate notice to DISTRIBUTOR.

6.2 Termination. Either party shall have the right to terminate this Agreement without liability therefore, after written notice to the other party, (i) effective immediately in the event of a breach by the other party of any of its obligations hereunder, which breach (if curable) is not cured within 10 days of written notice of such breach, or (ii) without cause upon 180 days' advance written notice to the other party.

6.3 Effect of Termination or Expiration. Upon termination or expiration of this Agreement, all amounts due by DISTRIBUTOR to RSM will become due and payable at the time of termination or expiration. The parties agree that neither party shall be liable to the other for damages or otherwise by reason of the nonrenewal of this Agreement or its termination as provided in this Section 6, provided that such nonrenewal or termination shall not operate to discharge or release either party of obligations assumed by it prior to such nonrenewal or termination and the foregoing is not intended to limit a party's liability for breach of this Agreement. Acceptance of orders from DISTRIBUTOR by RSM after termination will not constitute a renewal of this Agreement or a waiver of the right of RSM to treat this Agreement as terminated. The granting of any notice of nonrenewal or termination of this Agreement by RSM shall entitle RSM, before shipment of any pending or new orders, to require advance payment, or other security for payment, of all previously outstanding balances (whether or not otherwise due) plus the amount of the new order. Upon expiration or termination of this Agreement, DISTRIBUTOR shall return to RSM all technical and commercial materials, customer lists, price lists, and other materials that are RSM's property.

6.4 Inventory Repurchase. Upon termination of this Agreement for any reason, RSM may, at its sole option, elect to purchase back from DISTRIBUTOR, and by doing so require DISTRIBUTOR to sell to RSM, any unsold inventory of Products in DISTRIBUTOR's possession or control, provided that such Products are unopened and in saleable condition, the expiration date of sterility of such Products is at least 365 days beyond the effective date of repurchase, and such products are currently marketed by RSM and not obsolete. The price to be paid by RSM for the purchase of such inventory shall be the purchase price actually paid by DISTRIBUTOR for the Products, increased by transportation and customs duties, if any, paid by DISTRIBUTOR for the transportation of the Products into the Territory. Any Products designated for return by DISTRIBUTOR (and related storage and handling records) will be inspected by RSM or an authorized representative of RSM in order to determine if the Products to be purchased by RSM fulfill the conditions mentioned above. Upon

issuance of a return authorization to DISTRIBUTOR by RSM, DISTRIBUTOR shall ship the Products to RSM or to any entity or individual designated by RSM, freight prepaid.

6.5 The Sections 3.4.4, 5, 6, and 7 and the last sentence of Sections 1.4 shall survive termination or expiration of this Agreement.

7. GENERAL TERMS

7.1 Confidential Information. DISTRIBUTOR agrees that it shall keep confidential and shall not publish or otherwise divulge or use for its own benefit or for the benefit of any third party any information of a proprietary nature furnished to it by or on behalf of RSM or its affiliated companies without the prior written approval of the communicating party, except (i) as required by court order, or (ii) as reasonably necessary to perform its sales-related obligations under this Agreement and in the case of any disclosure under clause (ii) subject to the obligations of confidentiality and restrictions on use at least as stringent as those set forth in this Agreement. Information of a proprietary nature shall include, but not be limited to, information concerning RSM's or its affiliated companies' products, proposed products, marketing plans, manufacturing processes, proprietary software, financial information, or any other marketing information or materials in whatever form not generally known to the public.

7.2 Force Majeure. In the event that a delay or failure of a party to comply with any obligation created by this Agreement is caused by a force majeure condition, that obligation shall be suspended during the continuance of the force majeure condition. For the purposes of this Agreement, the term "force majeure" shall mean any event beyond the control of the parties, including, without limitation, fire, flood, riots, strikes, epidemics, war (declared or undeclared and including the continuance, expansion or new outbreak of any war or conflict now in existence), embargoes, and governmental actions or decrees.

7.3 Assignment. This Agreement shall not be assignable by DISTRIBUTOR without the prior written consent of RSM, but this Agreement or any portion hereof is assignable by RSM without the consent of DISTRIBUTOR.

7.4 Non-Waiver. The waiver or failure of either party to exercise in any respect any right provided for herein shall not be deemed a waiver of any further right hereunder.

7.5 Notices. Any notice or request given under this Agreement shall be in writing and in the English language and may be delivered by hand or may be sent by telefax or certified or registered mail or commercial carrier (return receipt or confirmation of delivery requested) addressed to the other party at the address shown on the first page of this Agreement, or at such other address designated in writing to the other party. Any notices sent by telefax must be followed by a confirmation copy by airmail or other reliable means.

7.6 Arbitration. Any and every dispute, controversy or claim between the parties and/or their valid and lawful assignees and successors, including, but not limited to (i) any and every dispute, controversy or claim arising out of or relating to this Agreement and/or its amendments, and (ii) any and every dispute, controversy or claim not arising out of or not relating to this Agreement and/or its amendments, shall be finally settled by arbitration in Orange County, U.S.A. in accordance with the International Arbitration Rules of the International Centre for Dispute Resolution ("ICDR"). Judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. A sole arbitrator shall be chosen at the mutual agreement of the parties from a list of ICDR proposed arbitrators under the ICDR's arbitration rules. If the parties fail to mutually agree on the choice of an arbitrator within 30 days of receipt of claimant's request for arbitration by the other party, the sole arbitrator shall be appointed by the ICDR in accordance with its International Arbitration Rules. The language of the arbitration proceedings shall be English and the law applied to the dispute shall be solely and exclusively the laws of the California. The award shall state with specificity the reasons upon which the Award is based, and shall contain the arbitrator's findings of fact. Except as required by law, neither party nor the arbitrator may disclose to a third party the existence, content, or results of any arbitration hereunder without the prior written consent of both parties. Notwithstanding the above, RSM shall, at its sole discretion, have the right to initiate in any court sitting in California, USA or in the Territory a non-jury collection lawsuit against DISTRIBUTOR in an effort to collect from DISTRIBUTOR any and all moneys charged by RSM to DISTRIBUTOR for the Products sold by RSM to DISTRIBUTOR or to obtain temporary injunctive relief. All other issues, without exception, must be arbitrated.

7.7 Entire Agreement. The terms and provisions contained in this Agreement and the attached Schedules constitute the entire Agreement between the parties and supersede all previous communications, representations, agreements, and understandings, whether oral or written, between the parties with respect to the subject matter hereof. Except as this Agreement specifically authorizes RSM to modify certain provisions of this Agreement or the attached Schedules upon written notice to DISTRIBUTOR, no agreement or understanding extending this Agreement or varying its terms (including any inconsistent terms in any purchase order, acknowledgment, or similar form) shall be binding upon either party unless it is in a writing specifically referring to this Agreement and signed by the duly authorized representatives of the respective parties.

7.8 Severability. Should any provision of this Agreement be determined to be unenforceable or prohibited by applicable law, such provision shall be ineffective only to the extent of such unenforceability or prohibition without invalidating the remainder of such provision or the remaining provisions of this Agreement.

7.9 Captions. The captions of provisions in this Agreement are for convenience only and shall not control or affect the meaning or construction of any of the provisions of this Agreement.

7.10 Counterparts. This Agreement may be executed in any manner of counterparts, each of which shall be deemed to be an original as against any party whose signature appears thereon, and all of which shall together constitute one and the same instrument. This Agreement shall become binding when one or more counterparts hereof, individually or taken together, shall bear the signature of all of the parties reflected hereon as the signatories.

7.11 Governing Law. This Agreement shall be governed and construed in accordance with the laws of the California, United States of America, to the exclusion of both its rules or conflicts of laws and the provisions of the United Nations Convention on Contracts for the International Sale of Goods.

7.12 Release. In exchange for the agreement by RSM to enter into this Agreement with DISTRIBUTOR, DISTRIBUTOR hereby releases RSM and its affiliated companies from and waives any claims it may have had against RSM and its affiliated companies related to any previous distribution agreement or business dealings between DISTRIBUTOR and RSM or its affiliated companies.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the Effective Date.

ReShape Medical Inc.

By _____
Michael J. Mangano
President
5/11/2017

By _____
Dr. Bader Al Wiss
General Manager

Schedule A

Distributor and Term

Distributor Information

Corporate Name: SHIFLI GULF FOR TRADING IN DRUGS & EQUIPMENTs AND DEVICES COMPANY

Address: STATE OF KUWAIT, HAWALLY,BLOCK 166, TOWWAR ZENAH, STREET BIN KHALDOUN, 3RD FLOOR
P.O. BOX 543

Schedule B

Products and Pricing

The following indicates the product line(s) to be included as Products under this Agreement as well as the pricing of such Products. Prices quoted do not include the cost of any handling, shipping, and insurance (to be borne by DISTRIBUTOR pursuant to Section 2.6).

QTY	CATALOG NUMBER	DESCRIPTION	UNIT PRICE USD
	RSM101	Integrated Dual Balloon Assembly, US	$1,500.00
	RSM900	Balloon Valve Sealant Assembly (one package included with each balloon order)	N/C
	RSM210	Removal Catheter Assembly	$200.00
	RSM300	Tech Device Guidewire (if desired)	$50.00
	KIP-II-RS	ReShape Infiltration Pump	$5,000.00
	ITS-10-RS	ReShape Pump Tubing (pack of 10)	$100.00

Schedule C

Territory

The customers and or geographical area subject to this Agreement shall be specifically and exclusively limited to the State of Kuwait.

Schedule D

Minimum Purchase Quotas

Reshape Forecast (in Units)					
2017					
Country	Distributor	**Q1**	**Q2**	**Q3**	**Q4**
Kuwait	Al Shifli	N.A.	20	0	20

2018					
Country	Distributor	**Q1**	**Q2**	**Q3**	**Q4**
Kuwait	Al Shifli	20	30	10	30

Schedule E

Payment Terms

The first two orders for the ReShape Dual Balloon will be cash pay up front. After successfully executing these orders, future orders may be extended via the credit terms below.

Payment for Products is due within 60 days after date of invoice on open account as long as DISTRIBUTOR's credit remains good, payments to RSM are made on time, and the total amount owed by DISTRIBUTOR to RSM is within the credit limits determined by RSM from time to time. DISTRIBUTOR's credit limit as of the effective date of this Agreement shall be U.S. currency although RSM reserves the right to require DISTRIBUTOR to provide adequate security for the amount of such credit limit as a condition to making sales on open account terms. RSM shall have the right to adjust DISTRIBUTOR's payment terms and credit limits from time to time.

OR

DISTRIBUTOR shall pay RSM for Products in advance of delivery by cash or irrevocable letter of credit with order.

Late Payments: DISTRIBUTOR will pay a late fee on all past due amounts at the rate of one percent per month or the highest rate permissible by law, whichever is lower, until paid in full.

Taxes. All amounts payable to RSM under this Agreement are exclusive of any income, sales, use, property, ad valorem, value added or other taxes, levies, imposts, duties, charges or withholdings of any nature (collectively, "Taxes"), arising out of any transaction contemplated by this Agreement and imposed against DISTRIBUTOR or the Products by any taxing authority in the Territory (excluding, however, any Taxes on, or measured solely by, the net income of RSM and Taxes imposed on RSM in the United States). DISTRIBUTOR shall pay all applicable Taxes or provide RSM with a certificate of exemption acceptable to the relevant taxing authority. In the event that any payments to RSM under this Agreement are subject to any withholding taxes, DISTRIBUTOR shall promptly provide all tax certificates, applications and related documents to RSM. If RSM is required to pay any Taxes in the Territory (excluding, however, any Taxes on, or measured solely by, the net income of RSM and Taxes imposed on RSM in the United States), DISTRIBUTOR shall promptly reimburse RSM upon written request therefore.

ANNEX A– Quality Requirements

A) **Storage of Products:** If applicable Distributor is required to store products in accordance with product labeling statements and within an environment that prevents any of their characteristics from being altered until delivered to the customer. The minimum storage requirements for RSM products include the following:

- If applicable, Distributor must establish a secure storage location and limit access to this location to only those personnel authorized by Distributor. Products must be stored within this location to prevent Products from being contaminated or tampered with in any way. Additionally, Products must be kept in a clean area, free of insects, rodents and any pests.
- Distributor shall have a process to prevent expired, rejected and/or quarantined Products from being sent to final customers. ReShape Medical
- RSM reserves the right to provide other instructions to Distributor regarding such Product, and Distributor agrees to comply with such instructions.

B) **Traceability:** Distributor is required to maintain records to ensure the traceability of ReShape Medical products in accordance with applicable regulatory requirements, and to provide ReShape Medical or its authorized agents or representatives with reasonable access to such records. The minimum traceability requirements for ReShape Medical Products include the following:

- Distributor is required to maintain a complete and current list of all customers who have purchased ReShape Medical products from Distributor, the dates of such purchases, the quantity, and the lot numbers, UPNs, serial numbers and/or model numbers of the units purchased (as applicable) as identified on the product label.
- Distributor must ensure the traceability of all ReShape Medical products at UPN, lot level including the model and serial number where applicable. The final users for all products must be identified (units sold directly to hospitals, units sold directly to doctors, units sold directly to patients).
- If ReShape Medical products are consigned, the batches consumed at the account must be reconciled.
- The traceability of multi-pack boxes must be maintained and single units originally from multi-packs must never be re-boxed.

C) **Complaint Reporting and Handling:** Distributor is required to promptly forward all complaints concerning the products, cooperate fully with ReShape Medical in dealing with customer complaints, and take such action to resolve such complaints as may be reasonably requested by ReShape Medical. The complaint reporting requirements for ReShape Medical products include the following:

- All customer complaints involving or contributing to serious adverse events (including patient death or serious injury) must be reported to ReShape Medical within 24 hours of Distributor's becoming aware. Complaints involving non-serious events including comments regarding product dissatisfaction, potential malfunctions, non-serious patient injury, or unanticipated medical or surgical intervention shall be reported to ReShape Medical within 48 hours.
- A Complaint Notification Form will be provided to Distributor by ReShape Medical and must be completed in full to document each complaint. Additionally, any ancillary documentation that may facilitate the complaint investigation process should also be attached, particularly if the product is not available for return. In cases where additional information is required from the customer, at least three (3) due diligent attempts must be performed by Distributor to try to collect this additional complaint information, if requested by ReShape Medical. Should requested information not be available, Distributor shall document the reason(s) it is not available and/or the 3 attempts.
- Products subject to complaints should be returned to ReShape Medical. Returned products must either, as directed by ReShape Medical, be
    - accompanied by a disinfection certificate, even if the products have not been used;
    - or be returned in biohazard controlled packaging and under safe handling controls.

  In cases where the customer has indicated that the complaint product is available to be returned but it has not been received, at least three (3) due diligent attempts must be made by Distributor to retrieve the product.

D) **Recalls and Other Field Actions:** If ReShape Medical initiates a recall or other field action for any products, Distributor is required to implement such recall or other field action (including location and retrieval of the recalled product) with respect to Distributor's customers in accordance with the instructions provided by ReShape Medical. The minimum requirements for managing recalls and other field actions affecting ReShape Medical Products include the following:

- Recalls and other field actions must be acted upon immediately by Distributor after receiving the notification packet from ReShape Medical. An acknowledgement of the receipt of the field action notice must be promptly sent to ReShape Medical.
- Distributor must follow the instructions contained in the notification packet and ensure that actions are carried out in accordance with the timeframe specified.
- Where directed in the notice, Distributor must retrieve products from the following applicable locations:
    - Distributor warehouse(s) inventories
    - In-transit from ReShape Medical to Distributor
    - Customer locations: whether sold, consigned or samples
- At least three (3) due diligent attempts must be performed and documented to try to retrieve products from customers.
- Once all product retrieval actions have been completed, the recalled stock must be reported to ReShape Medical using the Verification Form contained in the notification packet. (Note: the quantities documented on the verification forms must match the units physically returned to ReShape Medical.)
- The units must be returned to ReShape Medical following the instructions contained in the notification packet.
- ReShape Medical agrees at its option either to refund the purchase price, or to replace recalled products within a reasonable time at its expense unless the recall is attributable to Distributor's actions.

E) **Record Retention Time:** All product related records (e.g. Traceability records, Complaints records, Recalls data, etc.) must be retained by the Distributor in accordance with the following requirements:

	Type of Product	Record Retention Timeframe
1.	Implantable Device	Indefinitely
2.	Equipment	2 years beyond dated removal from distribution or as otherwise indicated by ReShape Medical
3.	All Other Products	At least Product lifetime/expiry + 2 years or as otherwise indicated by ReShape Medical.

At termination of this agreement, Distributor shall deliver all records required under this section to ReShape Medical and shall direct future inquiries from customers to ReShape Medical.

F) **Demonstration Units:** Demonstration Units (non-sterile, not for human use) are to be used by Distributor for demonstration purposes only and shall not be given to final customers. All provisions in this Annex are applicable to Demonstration Units.

G) **Literature and Label Control:** All Product literature, labeling and the use of ReShape Medical logos, templates or trademarks is subject to ReShape Medical review and approval. Any "Internal Use" training materials provided by ReShape Medical cannot be given to the customers.

INTERNATIONAL DISTRIBUTORSHIP AGREEMENT

THIS INTERNATIONAL DISTRIBUTORSHIP AGREEMENT ("Agreement") is entered into effective as of the Effective Date contained in Schedule A, between ReShape Medical Inc., having its principal place of business at 1001 Calle Amanacer, San Clemente, USA ("RSM") and the company identified in Schedule A ("DISTRIBUTOR").

WITNESSETH

WHEREAS, RSM is in the business of selling various medical devices primarily used to perform medical procedures; and

WHEREAS, DISTRIBUTOR desires to actively and diligently promote the sale, on its own behalf and for its own account, of certain of RSM's products; and

WHEREAS, RSM and DISTRIBUTOR desire to enter into an exclusive distributorship agreement covering certain ReShape Medical product lines under the terms and conditions set out below.

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

1. DISTRIBUTION

1.1 Products. The products that are subject to this Agreement (the "Products") shall be those products identified on Schedule B hereto, together with such other products as may from time to time be included thereon by mutual written agreement of the parties. DISTRIBUTOR acknowledges that Schedule B will not necessarily include all products sold by RSM, and that Products are subject to modification or discontinuance by RSM upon notice to DISTRIBUTOR, and, upon DISTRIBUTOR's receipt of such notice, Schedule B will be deemed amended accordingly.

1.2 Appointment.

1.2.1 Effective as of the Effective Date of this Agreement, RSM hereby appoints DISTRIBUTOR, and DISTRIBUTOR accepts such appointment, as an exclusive distributor of Products in the geographical area described on Schedule C hereto (the "Territory"), subject to the terms and conditions set forth in this Agreement.

1.2.2 DISTRIBUTOR shall not directly or indirectly deliver or promote the sale of the Products outside the Territory or locate or utilize an office, branch, or distribution depot for the sale or distribution of the Products outside the Territory. DISTRIBUTOR shall immediately notify RSM if it becomes aware that any DISTRIBUTOR customer exports or sells or plans to export or sell any of the Products outside the Territory.

1.3 Noncompetition. DISTRIBUTOR represents that as of the Effective Date there are no agreements in effect providing for the marketing, sale or distribution by

DISTRIBUTOR of products that compete with the Products covered hereby and that DISTRIBUTOR is not precluded by any contractual obligation or any other reason from entering into or performing under this Agreement. DISTRIBUTOR agrees that during the term of this Agreement DISTRIBUTOR will not, directly or indirectly, sell, promote or distribute any products that compete with the Products covered hereby.

1.4 Sub-Distributors. DISTRIBUTOR agrees that it will not establish any sub-distributors without the prior written consent of RSM. It is understood that such appointment shall be made only in the name and for the account of DISTRIBUTOR and shall be for a term no greater than the term of this Agreement. DISTRIBUTOR shall not grant to any sub-distributor any rights greater than those which are granted by RSM to DISTRIBUTOR under this Agreement. DISTRIBUTOR shall also impose on any sub-distributor the same obligations as RSM has imposed on DISTRIBUTOR under this Agreement for the purpose of protecting the goodwill of RSM and the Products. DISTRIBUTOR shall insure that all its sub-distributors comply with any regulatory requirements with respect to the Products. DISTRIBUTOR shall defend, indemnify, and hold RSM harmless against any claim, loss, liability, or expense (including attorney's fees and court costs) arising out of or based upon any claim made by any of DISTRIBUTOR's sub-distributors, sales representatives, or employees against RSM.

1.5 Manufacturer's Representative. RSM or its affiliated companies shall have the right, at their option and expense, to maintain representatives in or supporting the Territory from time to time to participate in the marketing, sale, and after-sale support of the Products. If RSM or its affiliated companies elect to maintain such representatives, DISTRIBUTOR shall share information and cooperate in good faith in connection with all material contacts and activities with customers and potential customers. DISTRIBUTOR agrees that during the term of this Agreement and for a period of one year thereafter it will not, without RSM's consent, induce or solicit any such ReShape Medical personnel to terminate their employment with ReShape Medical in order to become employed by, or otherwise affiliated with, DISTRIBUTOR.

1.6 Non-Agency. The parties acknowledge that DISTRIBUTOR is an independent contractor, and that neither the making of this Agreement nor the performance of any of the provisions hereof shall be construed to constitute DISTRIBUTOR or any of its agents acting hereunder an agent or legal representative of RSM for any purpose, nor shall this Agreement be deemed to establish a joint venture, partnership, franchise, agency, or employer-employee relationship. DISTRIBUTOR is not granted, and shall not exercise, the right or authority to assume or create any obligation or responsibility on behalf of or in the name of RSM or its affiliated companies.

1.7 Remuneration. Except as otherwise provided herein, DISTRIBUTOR shall not be entitled to any remuneration of any nature whatsoever other than the profit it makes on the delivery of Products to its customers in the Territory.

2. PURCHASE OF PRODUCTS AND TERMS OF SALE

2.1 Quotas.

2.1.1 The parties agree to the quota levels set forth in Schedule D hereto (or as it may be amended from time to time by mutual agreement of the parties) as the minimum requirements for DISTRIBUTOR purchases of Products from RSM, and DISTRIBUTOR shall purchase Products in no less than such amounts in the applicable calendar quarters.

2.1.2 DISTRIBUTOR agrees that the minimum purchase requirements appearing on Schedule D hereto are reasonable in view of the market potential for Products in the Territory and acknowledges that all such requirements have been established as the result of a mutual examination of market potential and negotiations between the parties.

2.1.3 It is further agreed that in the event additional Products are added to Schedule B hereto, the minimum purchase requirements for such Products will be determined by RSM after consultation with DISTRIBUTOR, and such new minimum purchase requirements will be incorporated in and be made subject to the terms of this Agreement.

2.3 Orders.

2.3.1 DISTRIBUTOR shall purchase from RSM, and RSM shall sell to DISTRIBUTOR, such quantities of Products as DISTRIBUTOR may order from time to time pursuant to the terms of this Agreement. Orders shall be placed by written purchase order and submitted by e-mail or facsimile, or by other means agreed upon by the parties. No order shall be binding upon RSM until the same shall have been accepted in writing by RSM. In case of conflict between the standard printed terms of purchase/sale of DISTRIBUTOR and RSM, the terms of purchase/sale of RSM shall prevail, but in no event shall either party's standard terms override any provisions of this Agreement.

2.3.2 Notwithstanding any other provision hereof, it is agreed that the obligation of RSM to sell any Product to DISTRIBUTOR is subject to the availability of such Product. RSM shall make reasonable efforts to fill each order that is accepted, but RSM shall not be liable for damages caused by failure to ship or delay in shipment resulting from product shortage of any kind or conditions beyond the control of RSM, including, but not limited to, the unavailability of such Products because of the inability to obtain materials and supplies or to produce sufficient Products to meet sales demands. If RSM believes that it will not be able to satisfy DISTRIBUTOR's requirements for the Products, it shall promptly notify DISTRIBUTOR, specifying the reasons for the expected delay and its anticipated duration.

2.4. Prices.

2.4.1 Prices for the Products as of the Effective Date of this Agreement shall be as set forth on Schedule B hereto

2.5 Payments. All payments due to RSM pursuant to this Agreement shall be paid according to the payment terms set forth on Schedule E hereto. All payments to RSM pursuant to this Agreement shall be made in United States dollars, without set-off or counterclaim and without deduction for any other charges. RSM shall retain a security interest in the Products until full payment is made, and DISTRIBUTOR shall assist RSM in any local recording of such security interest. If DISTRIBUTOR fails to make any payment when due, RSM shall have the right to take whatever action it deems appropriate or necessary, including, but not limited to, requiring immediate return of unsold Products, refusal of further orders, requiring payment in full before shipment, or termination of this Agreement pursuant to Section 6.2 hereof.

2.6 Shipping. Except as set forth below, all fees for shipping to the DISTRIBUTOR will be paid by the DISTRIBUTOR. Products shall be shipped to DISTRIBUTOR at the address (es) specified by DISTRIBUTOR from time to time. Risk of loss and title to the Products will pass to DISTRIBUTOR at port of entry at the foreign airport destination in the Territory. DISTRIBUTOR shall bear the cost of any handling, shipping, and insurance, within the designated territory. DISTRIBUTOR shall be responsible for clearing the Products through customs unless RSM notifies DISTRIBUTOR otherwise. DISTRIBUTOR shall be responsible for paying any and all duties and taxes due in connection with the importation of the Products. DISTRIBUTOR will be responsible for inspecting Product upon receipt in the Territory. DISTRIBUTOR shall submit to RSM all claims for non-delivery, shortages in shipment or defects reasonably discoverable on careful inspection in writing within 10 days of receipt of such shipment by DISTRIBUTOR. If DISTRIBUTOR does not provide such written notice to RSM within the specified timeframe, RSM will be discharged from liability for any such non-delivery, short delivery or defect. RSM shall promptly file a notice of claim against the freight handler in the event that DISTRIBUTOR provides written notice to RSM that any of the Products arrive other than in external good order and condition.

3. OBLIGATIONS OF DISTRIBUTOR

3.1 Distribution of Products. DISTRIBUTOR agrees to devote DISTRIBUTOR's best efforts to (i) develop and promote the use and sale of the Products in the Territory, and (ii) furnish such service of accounts as will enable DISTRIBUTOR adequately to develop and maintain the goodwill of customers and prospective customers and their acceptance of the Products. DISTRIBUTOR also agrees to abide by RSM's recommendations regarding the use of the Products, and plan orders adequately to meet customer delivery requirements.

3.2 Legal Requirements. Except as otherwise set forth in Section 3.4, DISTRIBUTOR will obtain and maintain, at its expense, all licenses, approvals, consents, and permits necessary for DISTRIBUTOR to perform its obligations under this Agreement. DISTRIBUTOR agrees to comply with all laws, statutes,

regulations and other legal requirements and not to place RSM in jeopardy of not complying with any such requirements. DISTRIBUTOR understands that the ReShape Medical Code of Conduct requires that the Products be sold only on the basis of quality, service, price and other legitimate marketing attributes, and that the payment of bribes for any purpose has no place in DISTRIBUTOR'S performance under this Agreement and is absolutely prohibited. Furthermore, DISTRIBUTOR agrees to use good judgment, high ethical standards and honesty in DISTRIBUTOR's dealings with customers, end-users and employees, recognizing that even the appearance of unethical actions is not acceptable. DISTRIBUTOR acknowledges and expressly agrees that certain laws of the United States of America and other countries, including, without limitation, the United States Export Control Regulations, the United States Anti-Money Laundering laws, the United States Anti-Terrorism laws and the Foreign Corrupt Practices Act, may result in the imposition of sanctions on RSM or its affiliated companies in the event that, directly or indirectly, (i) Products are exported to various countries, including without limitation Cuba, Iran, North Korea, Syria, Sudan, or any country embargoed by Executive order or otherwise, or (ii) offers, promises, or payments are made to government officials or others for the purpose of influencing decisions favorable to RSM. DISTRIBUTOR expressly agrees, therefore, that in performing its obligations under this Agreement it shall comply at all times with such laws or regulations and refrain from making or promising to make payment or transfer of anything of value that would have the purpose or effect of public or commercial bribery, or acceptance of or acquiescence in extortion, kickbacks, or other unlawful or improper means of obtaining business. DISTRIBUTOR also agrees to furnish to RSM by affidavit or other reasonable means from time to time at RSM's request, and to RSM's reasonable satisfaction, assurances that the appointment of DISTRIBUTOR and DISTRIBUTOR's activities under this Agreement, and the payment to DISTRIBUTOR of any commissions, discounts, or any monies or consideration contemplated in this Agreement, are proper and lawful under said laws and regulations. DISTRIBUTOR further acknowledges that no person employed by it is an official of any government agency or a corporation owned by a governmental unit within the Territory and that no part of any monies or consideration paid pursuant to the terms and conditions of this Agreement or any proceeds from the sale of the Products in the Territory shall accrue for the benefit of any such official. Breach of this provision, or reasonable grounds for RSM to believe it has been breached (in RSM's sole discretion), will result in immediate termination of this Agreement. DISTRIBUTOR will not make any performance or safety claims with respect to Product not contained in the label or otherwise approved by RSM consistent with applicable laws.

3.3 Quality Requirements. RSM has, and requires of its distributors, a primary commitment to patient safety and product quality. To this end, DISTRIBUTOR agrees to comply with ReShape Medical's Quality requirements regarding the Products as specified in Annex A hereto or as they may be further communicated to DISTRIBUTOR from time to time. These include, without limitation, requirements regarding appropriate storage of the Products, maintaining traceability, prompt reporting and handling of complaints, and implementation of recalls and other field actions. These requirements shall survive the expiration or other termination of this Agreement.

3.4 Product Registrations

3.4.1 Unless prohibited by applicable law, DISTRIBUTOR will assist RSM or its affiliates in securing all registrations and approvals pertaining to the Products and required for the sale or importation of the Products in the Territory, and all such approvals or registrations will be applied for and maintained in the name of RSM unless RSM agrees otherwise in writing.

3.4.2 RSM agrees to provide DISTRIBUTOR with all required documents in English upon request. DISTRIBUTOR will be responsible for all translation of necessary documents, and for answering any and all questions required by local government agencies ReShape Medical with the input and approval of RSM. RSM will assist in answering all questions.

3.4.4 In the event that any registrations are maintained in the name of DISTRIBUTOR, upon termination of this Agreement DISTRIBUTOR shall cooperate in any and all procedures (including, but not limited to, the completion of any documentation) required to transfer such registrations to RSM or its designee and shall not oppose any new registration for the Products by RSM or its designee. Copies of all regulatory permits shall be provided to RSM and copies of DISTRIBUTOR's files relating to such permits shall be provided to RSM on request.

3.4.5 DISTRIBUTOR shall not market or sell Product in the Territory prior to receipt of regulatory approval.

3.5 Reports and Other Information. DISTRIBUTOR agrees that during the term of this Agreement it will:

3.5.1 Respond in writing to any reasonable requests by RSM for market and inventory information, including information concerning competitive activity, pricing, distribution, and Territory surveys and forecasts and, as requested by RSM, meet with RSM representatives to review these matters.

3.5.2 Promptly forward to RSM any inquiry or other communication, including correspondence or notices from regulatory authorities in the Territory, received by DISTRIBUTOR concerning any of RSM's products that appropriately should be responded to by RSM, and all inquiries related to the sale or distribution of Products outside the Territory.

3.5.3 If so requested by RSM, provide RSM reasonable financial information on a confidential basis or provide credit references to assure RSM of DISTRIBUTOR's financial capability to conduct its ongoing business.

3.6 Trademarks. RSM hereby grants to DISTRIBUTOR the right and license to use the trademarks, service marks, trade names, and trademark registrations of RSM and its affiliated companies for the Products in the Territory, but only in connection with sales in the Territory of the Products purchased from RSM during the term of this Agreement and solely in connection with trademark usage procedures provided by RSM. All right, title, and interest to the trademarks and other intellectual property rights of RSM and its affiliated companies shall remain with such companies, and no other license relating thereto is granted hereunder (except the right to use such trademarks as set forth herein). DISTRIBUTOR shall not market the Products under any tradename or trademark other than the trademarks and tradenames approved by RSM.

3.7 Expenses. Except as otherwise specifically provided herein, DISTRIBUTOR shall bear all costs and expenses associated with its performance of this Agreement, including (but not limited to) amounts due employees or agents of DISTRIBUTOR, advertising, bad debt expense, inventory losses, commissions, licensing fees, regulatory fees, and taxes. In no event shall RSM be liable for any expenses incurred by DISTRIBUTOR unless RSM has agreed in writing to pay such expense.

3.8 Proprietary Rights. DISTRIBUTOR shall report promptly to RSM: (i) any infringement of the patents, trademarks, or other intellectual property rights of RSM or its affiliated companies of which DISTRIBUTOR may learn, but DISTRIBUTOR shall not initiate any protective action with respect to such infringement without RSM's prior written authorization; and (ii) receipt of any notice or service of legal action against DISTRIBUTOR and/or RSM or its affiliated companies claiming any infringement, misappropriation or breach of any intellectual property right, including but not limited to patent, copyright, trademark, or trade name infringement, and RSM shall have full rights and responsibility to manage and control the defense of DISTRIBUTOR and RSM in any such action, including the right to settle on behalf of either or both, and DISTRIBUTOR agrees to cooperate to the fullest extent necessary to enable RSM to conduct such defense.

3.9 Business Review. DISTRIBUTOR hereby gives RSM the right, upon reasonable advance notice, to conduct business reviews involving an examination, either directly or through a designee, of DISTRIBUTOR'S inventory of Products, quality systems, copies of promotional materials, and business records, including financial and sales records relating to the business performed pursuant to this Agreement, in order to ensure DISTRIBUTOR's compliance with the terms of this Agreement.

3.10 Product Materials. DISTRIBUTOR shall sell Product in the same containers and with the same labeling and packaging as provided by RSM or otherwise approved by RSM, and in all other respects in the same condition as when delivered to DISTRIBUTOR by RSM. DISTRIBUTOR will not use any promotional materials with respect to Product other than those provided by RSM or approved by RSM under Section 4.4.

4. RSM's OBLIGATIONS

4.1 Quality Control. RSM agrees to maintain ongoing quality assurance and testing procedures sufficient to satisfy applicable regulatory requirements.

4.2 Assistance. RSM shall provide DISTRIBUTOR with reasonable access to its technical and marketing personnel at no charge to DISTRIBUTOR, except as otherwise agreed.

4.3 Training. RSM will provide DISTRIBUTOR with technical training seminars as RSM and DISTRIBUTOR agree is needed in the English language for DISTRIBUTOR's employees directly engaged in distributing the Products. Travel and living expenses for DISTRIBUTOR's employees connected with attendance at such training seminars shall be paid by DISTRIBUTOR. DISTRIBUTOR agrees that each of DISTRIBUTOR's employees directly engaged in distributing the Products who has not previously attended a RSM technical training seminar will attend such a seminar or will be trained by DISTRIBUTOR in a program approved by RSM within a reasonable period of time after the commencement of their involvement in the sale of the Products.

4.4 Advertising. RSM will furnish at no cost to DISTRIBUTOR reasonable quantities of promotional materials in the English language where available, such as sales literature, technical data, instruction manuals, and technical journal reprints. At the request of RSM, DISTRIBUTOR shall return all such literature or data in DISTRIBUTOR's custody or control at the time of such request. DISTRIBUTOR may print literature or brochures in other languages at its own cost; however, prior to the printing or distribution of any such translated Product literature, DISTRIBUTOR agrees to submit the translation for RSM's review and written approval. The copyright rights to any such translations shall be deemed assigned to RSM or its affiliated companies, and all translations shall have adequate copyright notices evidencing such rights.

5. WARRANTIES AND INDEMNIFICATION

5.1 Product Warranty. The Products are warranted to be free of defects in workmanship and material according to the written warranty contained in the literature that accompanies the Products, which warranty may be changed from time to time by RSM upon written notice to DISTRIBUTOR. RSM's obligation under this warranty shall be limited to the repair or replacement of any Products that RSM determines were defective when delivered to DISTRIBUTOR. The foregoing is the only express warranty made by RSM related to Product delivered under this Agreement. RSM EXPRESSLY DISCLAIMS ALL OTHER EXPRESS WARRANTIES AND ANY AND ALL IMPLIED WARRANTIES, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. DISTRIBUTOR shall not add to or otherwise alter or modify any applicable warranty, nor make any false representation regarding RSM or the Products or any other representation that is not included in the Product labeling in promoting sales of the Products, including any misrepresentation regarding the permissible uses of the Products. DISTRIBUTOR will hold RSM, its officers, directors and

employees harmless from and indemnify all of them against any liability that may arise out of or result from any such unauthorized warranty or representation.

5.2 Limitations. IN NO EVENT WILL RSM BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL OR SPECIAL DAMAGES ARISING OUT OF THIS AGREEMENT OR OTHERWISE RELATED TO PRODUCT, INCLUDING ANY LOSS OF PROFITS, EVEN IF RSM HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

IN NO EVENT SHALL RSM'S LIABILITY TO DISTRIBUTOR EXCEED AN AMOUNT EQUAL TO THE AGGREGATE PRICES PAID BY DISTRIBUTOR TO RSM FOR PRODUCTS DURING THE LAST CALENDAR QUARTER PRECEDING THE DATE IN WHICH THE CLAIM IS MADE, except that this liability limitation shall not apply to RSM's indemnity obligation under Sections 5.2 and 5.3.

5.2 Intellectual Property Infringement. Subject to the following sentence, RSM will defend DISTRIBUTOR against any action, proceeding, or claim by any third party for RSM's infringement of any intellectual property rights (including patent, copyright, trademark, and trade name rights) of any third party. RSM shall at all times during the term of this Agreement and thereafter indemnify, defend, and hold DISTRIBUTOR harmless against any and all costs (including but not limited to reasonable attorneys' fees), expenses, loss, damages, or liability to any third party as a result of any such action, proceeding, or claim referred to in the preceding sentence, provided that DISTRIBUTOR promptly notifies RSM in writing of such action, proceeding, or claim, allows RSM to control defense of such claim, cooperates at RSM's request and expense in such defense and does not settle any such claim without RSM's prior written approval.

5.3 Indemnification. DISTRIBUTOR and RSM shall each defend, indemnify, and hold harmless the other party, its officers, directors, agents, insurers, employees, shareholders, and affiliated companies from and against any claim, loss, suit, liability, or expense (including but not limited to attorneys' fees and other costs associated with the handling of or defense of any such action or claim) arising out of or based upon a breach by the indemnifying party of any of the warranties in this Section 5 or other failure by the indemnifying party to comply with any material provision of this Agreement, provided that the indemnified party provides prompt written notice to the indemnifying party of such action, proceeding, or claim, allows the indemnifying party to control defense of such claim, cooperates at the indemnifying party's request and expense in such defense and does not settle any such claim without the indemnifying party's prior written approval.

6. TERM AND TERMINATION

6.1 Term. This Agreement shall commence on the Effective Date, and, unless otherwise terminated earlier as provided below, shall remain in effect until the Expiration Date listed on Schedule A, at which time it shall expire automatically. Notwithstanding the number of renewals, this Agreement shall always be construed as a fixed-term contract. This Agreement is subject to DISTRIBUTOR's cooperation with and satisfactory completion of a due diligence background check. If, within RSM's sole discretion, the results of the background check are unsatisfactory, RSM may suspend this Agreement upon immediate notice to DISTRIBUTOR.

6.2 Termination. Either party shall have the right to terminate this Agreement without liability therefore, after written notice to the other party, (i) effective immediately in the event of a breach by the other party of any of its obligations hereunder, which breach (if curable) is not cured within 10 days of written notice of such breach, or (ii) without cause upon 180 days' advance written notice to the other party.

6.3 Effect of Termination or Expiration. Upon termination or expiration of this Agreement, all amounts due by DISTRIBUTOR to RSM will become due and payable at the time of termination or expiration. The parties agree that neither party shall be liable to the other for damages or otherwise by reason of the nonrenewal of this Agreement or its termination as provided in this Section 6, provided that such nonrenewal or termination shall not operate to discharge or release either party of obligations assumed by it prior to such nonrenewal or termination and the foregoing is not intended to limit a party's liability for breach of this Agreement. Acceptance of orders from DISTRIBUTOR by RSM after termination will not constitute a renewal of this Agreement or a waiver of the right of RSM to treat this Agreement as terminated. The granting of any notice of nonrenewal or termination of this Agreement by RSM shall entitle RSM, before shipment of any pending or new orders, to require advance payment, or other security for payment, of all previously outstanding balances (whether or not otherwise due) plus the amount of the new order. Upon expiration or termination of this Agreement, DISTRIBUTOR shall return to RSM all technical and commercial materials, customer lists, price lists, and other materials that are RSM's property.

6.4 Inventory Repurchase. Upon termination of this Agreement for any reason, RSM may, at its sole option, elect to purchase back from DISTRIBUTOR, and by doing so require DISTRIBUTOR to sell to RSM, any unsold inventory of Products in DISTRIBUTOR's possession or control, provided that such Products are unopened and in saleable condition, the expiration date of sterility of such Products is at least 365 days beyond the effective date of repurchase, and such products are currently marketed by RSM and not obsolete. The price to be paid by RSM for the purchase of such inventory shall be the purchase price actually paid by DISTRIBUTOR for the Products, increased by transportation and customs duties, if any, paid by DISTRIBUTOR for the transportation of the Products into the Territory. Any Products designated for return by DISTRIBUTOR (and related storage and handling records) will be inspected by RSM or an authorized representative of RSM in order to determine if the Products to be purchased by RSM fulfill the conditions mentioned above. Upon

issuance of a return authorization to DISTRIBUTOR by RSM, DISTRIBUTOR shall ship the Products to RSM or to any entity or individual designated by RSM, freight prepaid.

6.5 The Sections 3.4.4, 5, 6, and 7 and the last sentence of Sections 1.4 shall survive termination or expiration of this Agreement.

7. GENERAL TERMS

7.1 Confidential Information. DISTRIBUTOR agrees that it shall keep confidential and shall not publish or otherwise divulge or use for its own benefit or for the benefit of any third party any information of a proprietary nature furnished to it by or on behalf of RSM or its affiliated companies without the prior written approval of the communicating party, except (i) as required by court order, or (ii) as reasonably necessary to perform its sales-related obligations under this Agreement and in the case of any disclosure under clause (ii) subject to the obligations of confidentiality and restrictions on use at least as stringent as those set forth in this Agreement. Information of a proprietary nature shall include, but not be limited to, information concerning RSM's or its affiliated companies' products, proposed products, marketing plans, manufacturing processes, proprietary software, financial information, or any other marketing information or materials in whatever form not generally known to the public.

7.2 Force Majeure. In the event that a delay or failure of a party to comply with any obligation created by this Agreement is caused by a force majeure condition, that obligation shall be suspended during the continuance of the force majeure condition. For the purposes of this Agreement, the term "force majeure" shall mean any event beyond the control of the parties, including, without limitation, fire, flood, riots, strikes, epidemics, war (declared or undeclared and including the continuance, expansion or new outbreak of any war or conflict now in existence), embargoes, and governmental actions or decrees.

7.3 Assignment. This Agreement shall not be assignable by DISTRIBUTOR without the prior written consent of RSM, but this Agreement or any portion hereof is assignable by RSM without the consent of DISTRIBUTOR.

7.4 Non-Waiver. The waiver or failure of either party to exercise in any respect any right provided for herein shall not be deemed a waiver of any further right hereunder.

7.5 Notices. Any notice or request given under this Agreement shall be in writing and in the English language and may be delivered by hand or may be sent by telefax or certified or registered mail or commercial carrier (return receipt or confirmation of delivery requested) addressed to the other party at the address shown on the first page of this Agreement, or at such other address designated in writing to the other party. Any notices sent by telefax must be followed by a confirmation copy by airmail or other reliable means.

7.6 Arbitration. Any and every dispute, controversy or claim between the parties and/or their valid and lawful assignees and successors, including, but not limited to (i) any and every dispute, controversy or claim arising out of or relating to this Agreement and/or its amendments, and (ii) any and every dispute, controversy or claim not arising out of or not relating to this Agreement and/or its amendments, shall be finally settled by arbitration in Orange County, U.S.A. in accordance with the International Arbitration Rules of the International Centre for Dispute Resolution ("ICDR"). Judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. A sole arbitrator shall be chosen at the mutual agreement of the parties from a list of ICDR proposed arbitrators under the ICDR's arbitration rules. If the parties fail to mutually agree on the choice of an arbitrator within 30 days of receipt of claimant's request for arbitration by the other party, the sole arbitrator shall be appointed by the ICDR in accordance with its International Arbitration Rules. The language of the arbitration proceedings shall be English and the law applied to the dispute shall be solely and exclusively the laws of the California. The award shall state with specificity the reasons upon which the Award is based, and shall contain the arbitrator's findings of fact. Except as required by law, neither party nor the arbitrator may disclose to a third party the existence, content, or results of any arbitration hereunder without the prior written consent of both parties. Notwithstanding the above, RSM shall, at its sole discretion, have the right to initiate in any court sitting in California, USA or in the Territory a non-jury collection lawsuit against DISTRIBUTOR in an effort to collect from DISTRIBUTOR any and all moneys charged by RSM to DISTRIBUTOR for the Products sold by RSM to DISTRIBUTOR or to obtain temporary injunctive relief. All other issues, without exception, must be arbitrated.

7.7 Entire Agreement. The terms and provisions contained in this Agreement and the attached Schedules constitute the entire Agreement between the parties and supersede all previous communications, representations, agreements, and understandings, whether oral or written, between the parties with respect to the subject matter hereof. Except as this Agreement specifically authorizes RSM to modify certain provisions of this Agreement or the attached Schedules upon written notice to DISTRIBUTOR, no agreement or understanding extending this Agreement or varying its terms (including any inconsistent terms in any purchase order, acknowledgment, or similar form) shall be binding upon either party unless it is in a writing specifically referring to this Agreement and signed by the duly authorized representatives of the respective parties.

7.8 Severability. Should any provision of this Agreement be determined to be unenforceable or prohibited by applicable law, such provision shall be ineffective only to the extent of such unenforceability or prohibition without invalidating the remainder of such provision or the remaining provisions of this Agreement.

7.9 Captions. The captions of provisions in this Agreement are for convenience only and shall not control or affect the meaning or construction of any of the provisions of this Agreement.

7.10 Counterparts. This Agreement may be executed in any manner of counterparts, each of which shall be deemed to be an original as against any party whose signature appears thereon, and all of which shall together constitute one and the same instrument. This Agreement shall become binding when one or more counterparts hereof, individually or taken together, shall bear the signature of all of the parties reflected hereon as the signatories.

7.11 Governing Law. This Agreement shall be governed and construed in accordance with the laws of the California, United States of America, to the exclusion of both its rules or conflicts of laws and the provisions of the United Nations Convention on Contracts for the International Sale of Goods.

7.12 Release. In exchange for the agreement by RSM to enter into this Agreement with DISTRIBUTOR, DISTRIBUTOR hereby releases RSM and its affiliated companies from and waives any claims it may have had against RSM and its affiliated companies related to any previous distribution agreement or business dealings between DISTRIBUTOR and RSM or its affiliated companies.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the Effective Date.

ReShape Medical Inc.

By Michael J. Mangano 7/31/2017
Michael J. Mangano
President

By 18.7.2017
Omar Al Hajjaj
Executive Director for and on behalf of
Al Zahrawi Medical

Dar Al Zahrawi Medical (L.L.C)

Schedule A

Distributor and Term

Distributor Information

Corporate Name:

Dar Al Zahrawi Medical LLC a Company incorporated under the laws of The Kingdom Of Saudi Arabia ("KSA"), having its registered office at "Al Rawdah – Riyadh", hereinafter referred to as the "Distributor".

Office Address:

DAR AL ZAHRAWI MEDICAL LLC
Al – Rawdah ,
Khurais Road Exit 26,
Opposite Al – Sadhan Market,
Behind Al Jazira Bank
P.O. Box: 26669
Riyadh 11496
Kingdome of Saudi Arabia
Tel: +966 11 2305533

Warehouse Address:

Dar Al Zahrawi Medical LLC
Warehouse # 130
Al hair Road
Dar Al Baida Area
P.O. Box: 26669
Riyadh 11496
Kingdome of Saudi Arabia
Tel: +966 1 12133930

Schedule B

Products and Pricing

The following indicates the product line(s) to be included as Products under this Agreement as well as the pricing of such Products. Prices quoted do not include the cost of any handling, shipping, and insurance (to be borne by DISTRIBUTOR pursuant to Section 2.6).

QTY	CATALOG NUMBER	DESCRIPTION	UNIT PRICE USD
	RSM101	Integrated Dual Balloon Assembly, US	$1,500.00
	RSM900	Balloon Valve Sealant Assembly (one package included with each balloon order)	N/C
	RSM210	Removal Catheter Assembly	$200.00
	RSM300	Tech Device Guidewire (if desired)	$50.00
	KIP-II-RS	ReShape Infiltration Pump	$5,000.00
	ITS-10-RS	ReShape Pump Tubing (pack of 10)	$100.00

Schedule C

Territory

The customers and or geographical area subject to this Agreement shall be specifically and exclusively limited to the Kingdom Of Saudi Arabia .

Schedule D

Minimum Purchase Quotas

Reshape Forecast						
2017						
Country	Distributor	Q1	Q2	Q3	Q4	Total
KSA	Dar Al Zahrawi Medical	-	-	50	50	100

2018						
Country	Distributor	Q1	Q2	Q3	Q4	Total
KSA	Dar Al Zahrawi Medical	50	60	50	60	220

Schedule E

Payment Terms

The first two orders for the ReShape Dual Balloon will be cash pay up front. After successfully executing these orders, future orders may be extended via the credit terms below.

Payment for Products is due within 60 days after date of invoice on open account as long as DISTRIBUTOR's credit remains good, payments to RSM are made on time, and the total amount owed by DISTRIBUTOR to RSM is within the credit limits determined by RSM from time to time. DISTRIBUTOR's credit limit as of the effective date of this Agreement shall be U.S. currency although RSM reserves the right to require DISTRIBUTOR to provide adequate security for the amount of such credit limit as a condition to making sales on open account terms. RSM shall have the right to adjust DISTRIBUTOR's payment terms and credit limits from time to time.

OR

DISTRIBUTOR shall pay RSM for Products in advance of delivery by cash or irrevocable letter of credit with order.

Late Payments: DISTRIBUTOR will pay a late fee on all past due amounts at the rate of one percent per month or the highest rate permissible by law, whichever is lower, until paid in full.

Taxes. All amounts payable to RSM under this Agreement are exclusive of any income, sales, use, property, ad valorem, value added or other taxes, levies, imposts, duties, charges or withholdings of any nature (collectively, "Taxes"), arising out of any transaction contemplated by this Agreement and imposed against DISTRIBUTOR or the Products by any taxing authority in the Territory (excluding, however, any Taxes on, or measured solely by, the net income of RSM and Taxes imposed on RSM in the United States). DISTRIBUTOR shall pay all applicable Taxes or provide RSM with a certificate of exemption acceptable to the relevant taxing authority. In the event that any payments to RSM under this Agreement are subject to any withholding taxes, DISTRIBUTOR shall promptly provide all tax certificates, applications and related documents to RSM. If RSM is required to pay any Taxes in the Territory (excluding, however, any Taxes on, or measured solely by, the net income of RSM and Taxes imposed on RSM in the United States), DISTRIBUTOR shall promptly reimburse RSM upon written request therefor.

ANNEX A– Quality Requirements

A) **Storage of Products:** If applicable Distributor is required to store products in accordance with product labeling statements and within an environment that prevents any of their characteristics from being altered until delivered to the customer. The minimum storage requirements for RSM products include the following:

- If applicable, Distributor must establish a secure storage location and limit access to this location to only those personnel authorized by Distributor. Products must be stored within this location to prevent Products from being contaminated or tampered with in any way. Additionally, Products must be kept in a clean area, free of insects, rodents and any pests.
- Distributor shall have a process to prevent expired, rejected and/or quarantined Products from being sent to final customers. ReShape Medical
- RSM reserves the right to provide other instructions to Distributor regarding such Product, and Distributor agrees to comply with such instructions.

B) **Traceability:** Distributor is required to maintain records to ensure the traceability of ReShape Medical products in accordance with applicable regulatory requirements, and to provide ReShape Medical or its authorized agents or representatives with reasonable access to such records. The minimum traceability requirements for ReShape Medical Products include the following:

- Distributor is required to maintain a complete and current list of all customers who have purchased ReShape Medical products from Distributor, the dates of such purchases, the quantity, and the lot numbers, UPNs, serial numbers and/or model numbers of the units purchased (as applicable) as identified on the product label.
- Distributor must ensure the traceability of all ReShape Medical products at UPN, lot level including the model and serial number where applicable. The final users for all products must be identified (units sold directly to hospitals, units sold directly to doctors, units sold directly to patients).
- If ReShape Medical products are consigned, the batches consumed at the account must be reconciled.
- The traceability of multi-pack boxes must be maintained and single units originally from multi-packs must never be re-boxed.

C) **Complaint Reporting and Handling:** Distributor is required to promptly forward all complaints concerning the products, cooperate fully with ReShape Medical in dealing with customer complaints, and take such action to resolve such complaints as may be reasonably requested by ReShape Medical. The complaint reporting requirements for ReShape Medical products include the following:

- All customer complaints involving or contributing to serious adverse events (including patient death or serious injury) must be reported to ReShape Medical within 24 hours of Distributor's becoming aware. Complaints involving non-serious events including comments regarding product dissatisfaction, potential malfunctions, non-serious patient injury, or unanticipated medical or surgical intervention shall be reported to ReShape Medical within 48 hours.
- A Complaint Notification Form will be provided to Distributor by ReShape Medical and must be completed in full to document each complaint. Additionally, any ancillary documentation that may facilitate the complaint investigation process should also be attached, particularly if the product is not available for return. In cases where additional information is required from the customer, at least three (3) due diligent attempts must be performed by Distributor to try to collect this additional complaint information, if requested by ReShape Medical. Should requested information not be available, Distributor shall document the reason(s) it is not available and/or the 3 attempts.
- Products subject to complaints should be returned to ReShape Medical. Returned products must either, as directed by ReShape Medical, be
    - accompanied by a disinfection certificate, even if the products have not been used;
    - or be returned in biohazard controlled packaging and under safe handling controls.

  In cases where the customer has indicated that the complaint product is available to be returned but it has not been received, at least three (3) due diligent attempts must be made by Distributor to retrieve the product.

D) **Recalls and Other Field Actions:** If ReShape Medical initiates a recall or other field action for any products, Distributor is required to implement such recall or other field action (including location and retrieval of the recalled product) with respect to Distributor's customers in accordance with the instructions provided by ReShape Medical. The minimum requirements for managing recalls and other field actions affecting ReShape Medical Products include the following:

- Recalls and other field actions must be acted upon immediately by Distributor after receiving the notification packet from ReShape Medical. An acknowledgement of the receipt of the field action notice must be promptly sent to ReShape Medical.
- Distributor must follow the instructions contained in the notification packet and ensure that actions are carried out in accordance with the timeframe specified.
- Where directed in the notice, Distributor must retrieve products from the following applicable locations:
    - Distributor warehouse(s) inventories
    - In-transit from ReShape Medical to Distributor
    - Customer locations: whether sold, consigned or samples
- At least three (3) due diligent attempts must be performed and documented to try to retrieve products from customers.
- Once all product retrieval actions have been completed, the recalled stock must be reported to ReShape Medical using the Verification Form contained in the notification packet. (Note: the quantities documented on the verification forms must match the units physically returned to ReShape Medical.)
- The units must be returned to ReShape Medical following the instructions contained in the notification packet.
- ReShape Medical agrees at its option either to refund the purchase price, or to replace recalled products within a reasonable time at its expense unless the recall is attributable to Distributor's actions.

E) **Record Retention Time:** All product related records (e.g. Traceability records, Complaints records, Recalls data, etc.) must be retained by the Distributor in accordance with the following requirements:

	Type of Product	Record Retention Timeframe
1.	Implantable Device	Indefinitely
2.	Equipment	2 years beyond dated removal from distribution or as otherwise indicated by ReShape Medical
3.	All Other Products	At least Product lifetime/expiry + 2 years or as otherwise indicated by ReShape Medical.

At termination of this agreement, Distributor shall deliver all records required under this section to ReShape Medical and shall direct future inquiries from customers to ReShape Medical.

F) **Demonstration Units:** Demonstration Units (non-sterile, not for human use) are to be used by Distributor for demonstration purposes only and shall not be given to final customers. All provisions in this Annex are applicable to Demonstration Units.

G) **Literature and Label Control:** All Product literature, labeling and the use of ReShape Medical logos, templates or trademarks is subject to ReShape Medical review and approval. Any "Internal Use" training materials provided by ReShape Medical cannot be given to the customers.

ROYALTY AGREEMENT

This Agreement (this "Agreement") is made as of December 18, 2006, by and between Intersect Partners, LLC, a California limited liability ("Intersect"), and Abdominis, Inc., a Delaware corporation ("Abdominis"), (hereinafter referred to collectively as the "Parties" and individually as a "Party").

RECITALS

A. Intersect, pursuant to that certain Intellectual Property Assignment Agreement, by and between Intersect and Abdominis dated September 16, 2005 (the "Assignment"), has previously assigned its interests in the Products and the Patent Rights to Abdominis.

B. The Parties now wish to specify in certain detail the consideration that is to be paid to Intersect by Abdominis for the Assignment.

NOW THEREFORE, in consideration of the mutual obligations set forth in this Agreement, Intersect and Abdominis hereby agree as follows:

ARTICLE I
DEFINITIONS

1.1 Affiliate. "Affiliate" shall mean any entity which controls, is controlled by or is under common control with another entity.

1.2 Net Proceeds. "Net Proceeds" shall mean the total proceeds received from the sale of either the Patent Rights, or the sale of Products by Abdominis, to a Third Party, less all reasonable costs incurred by Abdominis in completing such sale, including but not limited to, attorneys' fees, accountants' fees, appraisers' fees and any commissions.

1.3 Net Sales. "Net Sales" shall mean the total amount invoiced to Third Parties by Abdominis or its Affiliates in connection with the sale, lease or use of a Product, less, to the extent actually incurred:

(a) allowances and adjustments credited or payable, including credit for damaged, outdated and returned products;

(b) trade, cost or quantity discounts earned or granted;

(c) transportation charges (including insurance costs), sales taxes, excise taxes and duties, and other similar charges;

(d) wholesaler chargebacks; and

(e) taxes on sale, transportation or use paid by Abdominis.

Net Sales shall be calculated in accordance with Abdominis' standard internal policies and procedures. Net Sales shall not include sales by Abdominis to its Affiliates for resale, provided that if Abdominis sells Product to an Affiliate for resale, Net Sales shall include the amounts invoiced by

such Affiliate to Third Parties on the resale of such Product. A "sale" shall also include a transfer or other disposition for consideration other than cash, in which case such consideration shall be valued at the fair market value thereof.

1.4 **Patent Rights.** "Patent Rights" shall mean any of the patent applications listed in Exhibit A attached to this Agreement; any continuing applications thereof including divisions; but excluding continuations-in-part except to the extent of claims entitled to the priority date of the parent case; any patents issuing on these applications including reissues and reexaminations; and any corresponding foreign patents or patent applications; all of which will be automatically incorporated in and added to Exhibit A and made a part of this Agreement

1.5 **Product.** "Product" shall mean any article, composition, apparatus, substance, or any other material whose manufacture, use or sale would constitute an infringement of any claim within Patent Rights, or any service, article, composition, apparatus, substance, or any other material made, used, or sold by or utilizing or practicing a method which would infringe a claim within the Patent Rights.

1.6 **Third Party.** "Third Party" shall mean any individual, corporation, partnership, trust or other business organization or entity, and any other recognized organization other than the parties hereto and their Affiliates.

ARTICLE II
DISCLAIMER OF OWNERSHIP

Disclaimer of Ownership. Intersect irrevocably disclaims any ownership or other interest in or to the Products and the Patent Rights and acknowledges that its sole rights with respect to the Products and the Patent Rights is the right to receive the payments set forth in Article III below.

ARTICLE III
CONSIDERATION TO BE RECEIVED BY INTERSECT

3.1 **Royalties.** On all sales of Products by Abdominis in territories where the Patent Rights exist, Abdominis shall pay Intersect a royalty of two and one-half percent (2 1/2%) of Net Sales. If any Product is manufactured and sold to a Third Party under license from Abdominis, Abdominis shall pay Intersect two and one-half percent (2 1/2%) of Net Sales of Products by such licensee, but not more than twenty-five percent (25%) of the amount actually received by Abdominis from such licensee. If any Product is sold in a series of transactions covered by more than one license or sublicense hereunder, only one royalty shall be payable, based upon the Net Sales for the first transaction in such series of transactions.

3.2 **Reports and Payment.** Abdominis shall, and shall cause its Affiliates and sublicensees, to keep complete and accurate records of Net Sales of all sales of Products with respect to which royalties are payable pursuant to this Agreement for a period of three (3) years following the year in which the sales were made. Forty five (45) days following the close of each fiscal quarter, Abdominis shall submit to Intersect a written report setting forth its sales of Products, the Net Sales of such Products and the calculation of the amount of royalties due and payable to Intersect for the fiscal quarter just ended. Each report shall be accompanied by payment of the amount of royalty shown by the report to be due in accordance with the provisions of Article III hereof; provided, however, Abdominis shall accrue such payment of royalties until such time as one

of the patent applications set forth on Exhibit A has had a patent issued by the U.S. Patent and Trademark Office containing a claim covering a Product at which time such accrued royalties shall be paid to Intersect.

In the event Abdominis has not collected on an account after 180 days following delivery of an invoice therefor, Abdominis shall include in its next sales report to Intersect a statement of such failure to collect from such account and shall reduce the amount of royalties otherwise payable under such report by (i) the amount of royalties, if any, paid on account of such customer sales which have yet to be paid by such customer and (ii) on account of any sales to such customer since the most recent sales report. Abdominis shall pay all royalties due on such customer's account once such customer has paid Abdominis.

3.3 Diligence. Abdominis shall have control over the development, manufacture and sale of the Product and Intersect shall have no claim against Abdominis for any failure of Abdominis to achieve any Net Sales or Net Proceeds.

3.4 Sale of the Rights to the Patents. If at any time during the term of this Agreement Abdominis sells its rights in one or more of the Patents to a Third Party, Abdominis, shall have the Third Party assume Abdominis's obligations hereunder, and such Third Party shall continue paying royalties to Intersect in accordance with Section 3.1 of this Agreement

3.5 Sale of Abdominis. If at any time during the term of this Agreement Abdominis shall be acquired by a Third Party (whether by purchase of stock, purchase of substantially all assets, merger or consolidation), Abdominis shall have the surviving entity assume Abdominis's obligations hereunder, and such entity shall continue to pay royalties to Intersect in accordance with Section 3.1 of this Agreement.

3.6 Taxes. Any and all taxes levied by a proper taxing authority and paid by Abdominis, or its Affiliates or sublicensees, on account of royalties accruing to Intersect under this Agreement, remittable from a country in which provision is made in the law or by regulation for withholding of taxes, will be deducted from royalties paid by Abdominis, provided that proof of payment is secured and promptly sent to Intersect as evidence of such payment.

3.7 Governmental Royalty Limitations. If the royalty rate specified herein should exceed the permissible rate established in any country which requires government approval for royalty remittance, the royalty rate for sales in such country shall be adjusted to the highest legally permissible or governmentally approved rate.

3.8 Payable in United States Funds. All royalty payments shall be made in United States funds. When Products are sold for currency other than United States dollars, the royalties will first be determined in the foreign currency of the country in which those Products were sold and converted into equivalent United States funds. Abdominis shall use the exchange rate set out in the Wall Street Journal or similar publication on the last day of the calendar quarter.

ARTICLE IV
RECORDS AND REPORTS

4.1 Records. Abdominis shall keep complete and accurate records with respect to which the royalties are determined pursuant to this Agreement for a period of three (3) years following the year in which such payments were made.

4.2 Accountants Review. Intersect shall have the right to nominate an independent accountant reasonably acceptable to Abdominis, to have access to the records of Abdominis during reasonable business hours, not more than one time per year for the purpose of verifying, at Intersect's expense (unless Abdominis' payment accountings are more than five percent (5%) at variance with Abdominis' records then Abdominis shall pay), the payments due to Intersect. Abdominis may request that such accountant hold all information received in confidence except as provided in the following sentence, including requiring the execution of a Confidentiality Agreement. Such accountant shall disclose to Intersect only information relating to the accuracy of the payment reports and payments made according to this Agreement.

ARTICLE V
DURATION AND TERMINATION

5.1 Duration of Agreement. Unless otherwise terminated by operation of law or by acts of the Parties in accordance with the terms of this Agreement, this Agreement is in force from the date first mentioned above and remains in effect for the life of the last-to-expire patent in the Patent Rights.

ARTICLE VI
CONFIDENTIALITY

6.1 Confidential Information. Confidential information shall consist of any information designated as confidential and relating to the Patent Rights and the Products, including the Reports and the payments made hereunder. Intersect shall not use any such confidential information other than to exercise its rights hereunder, or disclose confidential information to any third party without the prior written consent of Abdominis.

6.2 Exceptions. The restrictions set forth in Section 6.1 shall not apply to confidential information that (i) becomes generally known to the public subsequent to the date hereof through no wrongful act or omission of Intersect, (ii) is disclosed by Intersect pursuant to the order or requirement of a court, administrative agency or governmental body, provided, however, that Intersect shall provide prompt notice thereof to Abdominis to enable Abdominis to seek a protective order or otherwise prevent such disclosure, or (iii) has been approved for release in writing by Abdominis.

6.3 Remedies. Any breach of the restrictions contained in this Article VI is a breach of this Agreement which may cause irreparable harm to Abdominis entitling Abdominis to injunctive relief in addition to all legal remedies.

ARTICLE VII
MISCELLANEOUS

7.1 **Entire Agreement.** This Agreement sets forth the entire agreement and understanding of the Parties relating to the subject matter contained herein and merges all prior discussions between them. No claimed oral agreement in respect hereto shall be considered as any part thereof. No modification or claimed waiver of any of the provision hereof shall be valid unless in writing and signed by authorized representatives of the Party against whom such modification or waiver is sought to be enforced.

7.2 **Severability.** Should any part or provision of this Agreement be held unenforceable or in conflict with the law of any jurisdiction, the validity of the remaining parts or provisions shall not be affected by such holding.

7.3 **Assignability.** Intersect shall not assign this Agreement or its rights hereunder without the prior written consent of Abdominis. Abdominis shall have the right to assign this Agreement subject to the terms of Section 3.4 and 3.5 herein.

7.4 **Governing Law.** This Agreement shall be interpreted and construed and the legal relations created herein shall be determined in accordance with the laws of the State of California, without reference to choice of laws principles, but the scope and validity of any patent or patent application will be governed by the applicable laws of the country of the patent or patent application.

7.5 **General Assurances.** The Parties agree to execute, acknowledge, and deliver all such further instruments, and do all such other acts, as may be necessary or appropriate from time to time in order to carry out the intent and purpose of this Agreement.

7.6 **Disputes.** If Intersect objects to Abdominis' determinations relating to payments, Intersect shall cause to be delivered to Abdominis, within thirty (30) days of Abdominis' determination, written notice of such objection and its intent to submit the matter to an independent accountant as otherwise provided in Section 4.2 herein. Intersect shall select an independent accountant with at least 10 years experience within thirty (30) days of receipt of delivery of the quarterly statements provided in Section 3.2 herein by Abdominis. The accountant shall undertake its review of all such records within sixty (60) days of commencement of such accountant's review. The accountant shall deliver its decision to Intersect and Abdominis. The decision rendered by the accountant as to the determination in question shall be binding on the Parties. Intersect shall bear all costs associated with the accounting, unless the accountant determines that Abdominis underpaid the payment in question by more than five percent (5%), in which case Abdominis shall bear the expenses of the accountant.

7.7 **Arbitration.** Any controversy, dispute or claim arising out of or in connection with or relating to this Agreement (other than payment determinations covered in Section 7.6 above) will be submitted by the Parties to arbitration by the American Arbitration Association in Orange County, California in accordance with the commercial rules then in effect for that Association before a single arbitrator. The award rendered by the arbitrator shall include costs of arbitration, reasonable attorneys' fees and reasonable costs for expert and other witnesses, and judgment upon such award may be entered in any court having jurisdiction thereof.

7.8 Notices and Statements. Any notice, statement, or report permitted or required to be given under the provision of this Agreement shall be in writing signed by the Party giving such notice, statement or report and shall be sent to the appropriate address given below:

If to Intersect:	Intersect Partners 26429 Rancho Parkway South, Unit 140 Lake Forest, California 91730 Attention: Manager
With a copy to:	Stradling Yocca Carlson & Rauth. 660 Newport Center Drive Newport Beach, California 92660. Attention: Bruce Feuchter Fax: (949) 823-5123
If to Abdominis:	Abdominis, Inc. 26429 Rancho Parkway South, Unit 140 Lake Forest, California 91730 Attention: Chief Executive Officer

Any of the above addresses can be changed upon ten (10) days written notice to the other parties. Any such notice, statement or report that is dispatched by prepaid registered or certified mail shall be deemed to have been duly given upon mailing thereof.

7.9 Waiver of Default. No waiver by a party of any provision of this Agreement shall be deemed a waiver of any other provision hereof or of any subsequent breach by a party of the same or any other provision. A Party's consent to, or approval of, any act shall not be deemed to render unnecessary the obtaining of a Party's consent to, or approval of, any subsequent act by the other Party. No remedy or election as provided for in this Agreement shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

7.10 Binding Effect. This Agreement shall be binding on and inure to the benefit of the Parties hereto and their respective heirs, successors and permitted the assignees.

7.11 Counterparts. This Agreement may be executed in several counterparts and such counterparts together shall constitute but one and the same instrument.

7.12 Headings. The headings of the several sections are inserted for convenience of reference only and are not intended to be a part of, or to affect the meaning or interpretation of, this Agreement.

7.13 No Agency. Intersect's and Abdominis' activities hereunder shall be conducted as independent contractors and no agency relationship shall exist between the Parties.

7.14 Modification. This Agreement shall not be modified except by a writing signed on behalf of each of the parties hereto.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties have executed this Royalty Agreement as of the day and year first above written.

INTERSECT PARTNERS, LLC

By: _____
George Wallace, Manager

ABDOMINIS, INC.

By: _____
David Milne, Director

EXHIBIT A

Patent Rights

Issued United States Patent Applications

SERIAL NUMBER	TITLE	FILE DATE
11/263,302	Intragastric Space Filler	10/31/05
11/262,614	Intragastric Space Filler	10/31/05
11/315,925	Intragastric Space Filler	12/22/05
11/452,670	Intragastric Space Filler	6/14/06
PCT for Europe (waiting for confirmation of serial number)	For all of the above	10/3/06 filed per patent attorney

END EXHIBIT A

AMENDMENT NO. 1
to
ROYALTY AGREEMENT

This Amendment No. 1, dated as of April 16, 2013 (the "Effective Date"), is made and entered into by and between ReShape Medical, Inc. (formerly known as Abdominis, Inc.), a Delaware corporation ("ReShape") and Intersect Partners, LLC, a California limited liability company ("Intersect").

RECITALS

A. ReShape and Intersect (individually, a "Party"; collectively, the "Parties") previously entered into a Royalty Agreement, effective as of December 18, 2006 (the "Original Royalty Agreement").

B. The Parties desire to amend the Original Royalty Agreement as set forth in this Amendment No. 1. Capitalized term(s) used but not defined in this Amendment No. 1 have the meanings assigned to such term(s) in the Original Royalty Agreement.

AGREEMENT

The Parties therefore agree as follows:

1. Patent Rights. Section 1.4 of the Original Royalty Agreement is hereby amended to read in its entirety as follows:

> "1.4 Patent Rights. "Patent Rights" shall mean any United States and foreign patents and applications listed in Amended Exhibit A, including continuations, continuations-in-part, divisions, re-examinations, patents by addition, patent term extensions, renewals, reissues, and extensions thereof."

2. Reports and Payments. Section 3.2 of the Original Royalty Agreement is hereby amended to read in its entirety as follows:

> "3.2 Reports and Payments. Abdominis shall, and shall cause its Affiliates and sublicensees, to keep complete and accurate records of Net Sales of all sales of Products with respect to which royalties are payable pursuant to this Agreement for a period of three (3) years following the year in which the sales were made. Forty five (45) days following the close of each fiscal quarter, Abdominis shall submit to Intersect a written report setting forth its sales of Products, the Net Sales of such Products and the calculation of the amount of royalties due and payable to Intersect for the fiscal quarter just ended. Each report shall be accompanied by payment of the amount of royalty shown by the report to be due in accordance with the provisions of Article III hereof; provided, however, Abdominis shall accrue such payment of royalties until such time as one of the U.S. or foreign patent applications set forth in Amended Exhibit A or Patents Rights as defined herein in Paragraph 1.4 is issued by the respective Patent Office and contains a claim covering a Product, at which time such accrued royalties shall be paid to Intersect."

3. Exhibit A. Exhibit A of the Original Royalty Agreement is hereby amended and replaced in its entirety with the Amended Exhibit A attached to this Amendment No. 1

4. Effective Dates. The amendments set forth in Paragraphs 1-3 of this Amendment No. 1 shall be effective as of December 18, 2006, the effective date of the Original Royalty Agreement. All other amendments set forth in this Amendment No. 1 will be effective as of the Effective Date set forth above.

5. Full Force and Effect. The Original Royalty Agreement, as amended by this Amendment No. 1, remains in full force and effect. This Amendment No. 1 sets forth the entire agreement, and supersedes any prior agreements, arrangements, or understandings relating to the subject matter hereof. In the event of any inconsistency between any provision of this Amendment No. 1 and any provision of the Original Royalty Agreement, the provision of this Amendment No. 1 shall govern.

6. Acknowledgement. For the avoidance of doubt, the Parties acknowledge that the only Parties to the Original Royalty Agreement are ReShape (formerly known as Abdominis, Inc.) and Intersect.

7. Counterparts. This Amendment No. 1 may be executed in counterparts, each of which shall be deemed to be an original, and all of which taken together shall constitute one and the same instrument.

IN WITNESS WHEREOF, each of the Parties has caused this Amendment No. 1 to be made and executed by its duly authorized officer as of the Effective Date.

ReShape Medical, Inc.

By: _____

Richard Thompson
Chief Executive Officer

Intersect Partners, LLC

By: _____

George Wallace
Manager

AMENDED EXHIBIT A

SERIAL NUMBER	TITLE	FILING DATE
US 11/263,302	Intragastric Space Filler	10/31/05
PCT/US2006/042336	Intragastric Space Filler	10/31/06
CA 2,640,554	Intragastric Space Filler	10/31/06
EP 06827093.3	Intragastric Space Filler	10/31/06
JP 2008-538947	Intragastric Space Filler	10/31/08
JP 2009-14605	Intragastric Space Filler	10/31/08
US 11/262,614	Intragastric Space Filler	10/31/05
PCT/US2006/042711	Intragastric Space Filler	10/31/06
CA 2,638,989	Intragastric Space Filler	10/31/06
EP 06827314.3	Intragastric Space Filler	10/31/06
US 11/315,925	Intragastric Space Filler	12/22/05
PCT/US2006/042710	Intragastric Space Filler	10/31/06
CA 2,638,988	Intragastric Space Filler	10/31/06
EP 06827313.5	Intragastric Space Filler	10/31/06
US 11/452,670	Intragastric Space Filler	6/14/06
PCT/US2006/048647	Intragastric Space Filler	12/20/06
CA 2,638,163	Intragastric Space Filler	12/20/06
EP 06847847.8	Intragastric Space Filler	12/20/06
JP Patent No. 4900978 (JP 2008-547504)	Intragastric Space Filler	12/20/06
JP 2009-14632	Intragastric Space Filler	12/20/06
U.S. Patent No. 8,142,469 (US 11/768,152)	Gastric Space Filler Device, Delivery System and Related Methods	6/25/07

SERIAL NUMBER	TITLE	FILING DATE
US 13/074,956	Gastric Space Filler Device, Delivery System and Related Methods	3/29/11
PCT/US2008/068058	Gastric Space Filler Device, Delivery System and Related Methods	6/24/08
CA 2,691,530	Gastric Space Filler Device, Delivery System and Related Methods	6/24/08
EP 08771842.5	Gastric Space Filler Device, Delivery System and Related Methods	6/24/08
JP 2010-515040	Gastric Space Filler Device, Delivery System and Related Methods	6/24/08
U.S. Patent No. 8,226,602 (US 11/694,536)	Intragastric Balloon System and Therapeutic Processes and Products	3/30/07
US 13/556,032	Intragastric Balloon System and Therapeutic Processes and Products	7/23/12
PCT/US2008/058677	Intragastric Balloon System and Therapeutic Processes and Products	3/28/08
CA 2,680,124	Intragastric Balloon System and Therapeutic Processes and Products	3/28/08
EP 08732989.2	Intragastric Balloon System and Therapeutic Processes and Products	3/28/08
JP 2010-501261	Intragastric Balloon System and Therapeutic Processes and Products	3/28/08
JP 2013-43712	Intragastric Balloon System and Therapeutic Processes and Products	3/6/13

ROYALTY AGREEMENT

This Agreement (this "Agreement") is made as of December 18, 2006, by and between Abdominis, Inc., a Delaware corporation ("Abdominis"), and John Alverdy, M.D., an individual ("Alverdy"), (hereinafter referred to collectively as the "Parties" and individually as a "Party").

RECITALS

A. Alverdy, pursuant to that certain Consulting Agreement dated May 1, 2006, by and between Abdominis and Alverdy (the "Consulting Agreement"), has previously assigned his interests in the Products and the Patent Rights to Abdominis and is in the process of completing such assignment of the patent application (the "Assignment").

B. The Parties now wish to specify in certain detail the consideration that is to be paid to Alverdy by Abdominis for the Assignment.

NOW THEREFORE, in consideration of the mutual obligations set forth in this Agreement, Abdominis and Alverdy hereby agree as follows:

ARTICLE I
DEFINITIONS

1.1 Affiliate. "Affiliate" shall mean any entity which controls, is controlled by or is under common control with another entity.

1.2 Net Proceeds. "Net Proceeds" shall mean the total proceeds received from the sale of either the Patent Rights, or the sale of Products by Abdominis, to a Third Party, less all reasonable costs incurred by Abdominis in completing such sale, including but not limited to, attorneys' fees, accountants' fees, appraisers' fees and any commissions.

1.3 Net Sales. "Net Sales" shall mean the total amount invoiced to Third Parties by Abdominis or its Affiliates in connection with the sale, lease or use of a Product, less, to the extent actually incurred:

(a) allowances and adjustments credited or payable, including credit for damaged, outdated and returned products;

(b) trade, cost or quantity discounts earned or granted;

(c) transportation charges (including insurance costs), sales taxes, excise taxes and duties, and other similar charges;

(d) wholesaler chargebacks; and

(e) taxes on sale, transportation or use paid by Abdominis.

Net Sales shall be calculated in accordance with Abdominis' standard internal policies and procedures. Net Sales shall not include sales by Abdominis to its Affiliates for resale, provided that if Abdominis sells Product to an Affiliate for resale, Net Sales shall include the amounts invoiced by

such Affiliate to Third Parties on the resale of such Product. A "sale" shall also include a transfer or other disposition for consideration other than cash, in which case such consideration shall be valued at the fair market value thereof.

1.4 **Patent Rights.** "Patent Rights" shall mean the patent application listed in Exhibit A attached to this Agreement; any continuing applications thereof including divisions; but excluding continuations-in-part except to the extent of claims entitled to the priority date of the parent case; any patents issuing on this application including reissues and reexaminations; and any corresponding foreign patents or patent applications; all of which will be automatically incorporated in and added to Exhibit A and made a part of this Agreement.

1.5 **Product.** "Product" shall mean any article, composition, apparatus, substance, or any other material whose manufacture, use or sale would constitute an infringement of any material claim within Patent Rights, or any service, article, composition, apparatus, substance, or any other material made, used, or sold by or utilizing or practicing a method which would infringe a claim within the Patent Rights.

1.6 **Third Party.** "Third Party" shall mean any individual, corporation, partnership, trust or other business organization or entity, and any other recognized organization other than the parties hereto and their Affiliates.

ARTICLE II
DISCLAIMER OF OWNERSHIP

Disclaimer of Ownership. Alverdy irrevocably disclaims any ownership or other interest in or to the Products and the Patent Rights and acknowledges that his sole rights with respect to the Products and the Patent Rights is the right to receive the payments set forth in Article III below.

ARTICLE III
CONSIDERATION TO BE RECEIVED BY ALVERDY

3.1 **Royalties.** On all sales of Products by Abdominis in territories where the Patent Rights exist. Abdominis shall pay Alverdy a royalty of one percent (1%) of Net Sales. If any Product is manufactured and sold to a Third Party under license from Abdominis, Abdominis shall pay Alverdy one percent (1%) of Net Sales of Products by such licensee, but not more than ten percent (10%) of the amount actually received by Abdominis from such licensee. If any Product is sold in a series of transactions covered by more than one license or sublicense hereunder, only one royalty shall be payable, based upon the Net Sales for the first transaction in such series of transactions.

3.2 **Reports and Payment.** Abdominis shall, and shall cause its Affiliates and sublicensees, to keep complete and accurate records of Net Sales of all sales of Products with respect to which royalties are payable pursuant to this Agreement for a period of three (3) years following the year in which the sales were made. Forty five (45) days following the close of each fiscal quarter, Abdominis shall submit to Alverdy a written report setting forth its sales of Products, the Net Sales of such Products and the calculation of the amount of royalties due and payable to Alverdy for the fiscal quarter just ended. Each report shall be accompanied by payment of the amount of royalty shown by the report to be due in accordance with the provisions of Article III hereof; provided, however, Abdominis shall accrue such payment of royalties until such time as the patent application

set forth on Exhibit A has had a patent issued by the U.S. Patent and Trademark Office containing a claim covering a Product at which time such accrued royalties shall be paid to Alverdy.

In the event Abdominis has not collected on an account after 180 days following delivery of an invoice therefor, Abdominis shall include in its next sales report to Intersect a statement of such failure to collect from such account and shall reduce the amount of royalties otherwise payable under such report by (i) the amount of royalties, if any, paid on account of such customer sales which have yet to be paid by such customer and (ii) on account of any sales to such customer since the most recent sales report. Abdominis shall pay all royalties due on such customer's account once such customer has paid Abdominis.

3.3 Diligence. Abdominis shall have control over the development, manufacture and sale of the Product and Alverdy shall have no claim against Abdominis for any failure of Abdominis to achieve any Net Sales or Net Proceeds.

3.4 Sale of the Rights to the Patents. If at any time during the term of this Agreement Abdominis sells its rights in one or more of the Patents to a Third Party, Abdominis, shall have the Third Party assume Abdominis' obligations hereunder, and such Third Party shall continue paying royalties to Alverdy in accordance with Section 3.1 of this Agreement

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3.6 Taxes. Any and all taxes levied by a proper taxing authority and paid by Abdominis, or its Affiliates or sublicensees, on account of royalties accruing to Alverdy under this Agreement, remittable from a country in which provision is made in the law or by regulation for withholding of taxes, will be deducted from royalties paid by Abdominis, provided that proof of payment is secured and promptly sent to Alverdy as evidence of such payment.

3.7 Governmental Royalty Limitations. If the royalty rate specified herein should exceed the permissible rate established in any country which requires government approval for royalty remittance, the royalty rate for sales in such country shall be adjusted to the highest legally permissible or governmentally approved rate.

3.8 Payable in United States Funds. All royalty payments shall be made in United States funds. When Products are sold for currency other than United States dollars, the royalties will first be determined in the foreign currency of the country in which those Products were sold and converted into equivalent United States funds. Abdominis shall use the exchange rate set out in the Wall Street Journal or similar publication on the last day of the calendar quarter.

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DURATION AND TERMINATION

5.1 Duration of Agreement. Unless otherwise terminated by operation of law or by acts of the Parties in accordance with the terms of this Agreement, this Agreement is in force from the date first mentioned above and remains in effect for the life of the last-to-expire patent in the Patent Rights.

ARTICLE VI
CONFIDENTIALITY

6.1 Confidential Information. Confidential information shall consist of any information designated as confidential and relating to the Patent Rights and the Products, including the Reports and the payments made hereunder. Alverdy shall not use any such confidential information other than to exercise his rights hereunder, or disclose confidential information to any third party without the prior written consent of Abdominis.

6.2 Exceptions. The restrictions set forth in Section 6.1 shall not apply to confidential information that (i) becomes generally known to the public subsequent to the date hereof through no wrongful act or omission of Alverdy, (ii) is disclosed by Alverdy pursuant to the order or requirement of a court, administrative agency or governmental body, provided, however, that Alverdy shall provide prompt notice thereof to Abdominis to enable Abdominis to seek a protective order or otherwise prevent such disclosure, or (iii) has been approved for release in writing by Abdominis.

6.3 Remedies. Any breach of the restrictions contained in this Article VI is a breach of this Agreement which may cause irreparable harm to Abdominis entitling Abdominis to injunctive relief in addition to all legal remedies.

ARTICLE VII
MISCELLANEOUS

7.1 Entire Agreement. This Agreement sets forth the entire agreement and understanding of the Parties relating to the subject matter contained herein and merges all prior discussions between them. No claimed oral agreement in respect hereto shall be considered as any part thereof. No modification or claimed waiver of any of the provision hereof shall be valid unless in writing and signed by authorized representatives of the Party against whom such modification or waiver is sought to be enforced.

7.2 **Severability.** Should any part or provision of this Agreement be held unenforceable or in conflict with the law of any jurisdiction, the validity of the remaining parts or provisions shall not be affected by such holding.

7.3 **Assignability.** Alverdy shall not assign this Agreement or his rights hereunder without the prior written consent of Abdominis. Abdominis shall have the right to assign this Agreement subject to the terms of Section 3.4 and 3.5 herein.

7.4 **Governing Law.** This Agreement shall be interpreted and construed and the legal relations created herein shall be determined in accordance with the laws of the State of California, without reference to choice of laws principles, but the scope and validity of any patent or patent application will be governed by the applicable laws of the country of the patent or patent application.

7.5 **General Assurances.** The Parties agree to execute, acknowledge, and deliver all such further instruments, and do all such other acts, as may be necessary or appropriate from time to time in order to carry out the intent and purpose of this Agreement.

7.6 **Disputes**. If Alverdy objects to Abdominis' determinations relating to payments, Alverdy shall cause to be delivered to Abdominis, within thirty (30) days of Abdominis' determination, written notice of such objection and his intent to submit the matter to an independent accountant as otherwise provided in Section 4.2 herein. Alverdy shall select an independent accountant with at least 10 years experience within thirty (30) days of receipt of delivery of the quarterly statements provided in Section 3.2 herein by Abdominis. The accountant shall undertake its review of all such records within sixty (60) days of commencement of such accountant's review. The accountant shall deliver its decision to Intersect and Abdominis. The decision rendered by the accountant as to the determination in question shall be binding on the Parties. Alverdy shall bear all costs associated with the accounting, unless the accountant determines that Abdominis underpaid the payment in question by more than five percent (5%), in which case Abdominis shall bear the expenses of the accountant.

7.7 **Arbitration.** Any controversy, dispute or claim arising out of or in connection with or relating to this Agreement (other than payment determinations covered in Section 7.6 above) will be submitted by the Parties to arbitration by the American Arbitration Association in Orange County, California in accordance with the commercial rules then in effect for that Association before a single arbitrator. The award rendered by the arbitrator shall include costs of arbitration, reasonable attorneys' fees and reasonable costs for expert and other witnesses, and judgment upon such award may be entered in any court having jurisdiction thereof.

7.8 **Notices and Statements.** Any notice, statement, or report permitted or required to be given under the provision of this Agreement shall be in writing signed by the Party giving such notice, statement or report and shall be sent to the appropriate address given below:

If to Abdominis: Abdominis, Inc.
26429 Rancho Parkway South, Unit 140
Lake Forest, CA 91730
Attention: Chief Executive Officer

With a copy to: Stradling Yocca Carlson & Rauth
660 Newport Center Drive, Suite 1600
Newport Beach, CA 92660
Attention: Bruce Feuchter
Fax: (949) 823-5123

If to Alverdy: John Alverdy, M.D.
921 Club Circle
Glenview, IL 60025

Any of the above addresses can be changed upon ten (10) days written notice to the other parties. Any such notice, statement or report that is dispatched by prepaid registered or certified mail shall be deemed to have been duly given upon mailing thereof.

7.9 Waiver of Default. No waiver by a party of any provision of this Agreement shall be deemed a waiver of any other provision hereof or of any subsequent breach by a party of the same or any other provision. A Party's consent to, or approval of, any act shall not be deemed to render unnecessary the obtaining of a Party's consent to, or approval of, any subsequent act by the other Party. No remedy or election as provided for in this Agreement shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

7.10 Binding Effect. This Agreement shall be binding on and inure to the benefit of the Parties hereto and their respective heirs, successors and permitted the assignees.

7.11 Counterparts. This Agreement may be executed in several counterparts and such counterparts together shall constitute but one and the same instrument.

7.12 Headings. The headings of the several sections are inserted for convenience of reference only and are not intended to be a part of, or to affect the meaning or interpretation of, this Agreement.

7.13 No Agency. Abdominis' and Alverdy's activities hereunder shall be conducted as independent contractors and no agency relationship shall exist between the Parties.

7.14 Modification. This Agreement shall not be modified except by a writing signed on behalf of each of the parties hereto.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties have executed this Royalty Agreement as of the day and year first above written.

ABDOMINIS, INC.

By:_____
David Milne, Director

_____
John Alverdy, M.D.

EXHIBIT A

Patent Rights

US. Patent Application

Patent Application #10513583
Patent Publication #20050159769

END EXHIBIT A

Exhibit 23.1

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We consent to the incorporation by reference in Registration Statement Nos. 333-211940, 333-196646, 333-184181, 333-176174, 333-171244, 333-159592, and 333-149662 on Form S-8, Registration Statement Nos.333-205353, 333-195855, 333-183313, 333-171944, 333-170503, 333-171052, 333-166011, 333-158516 and 333-216600 on Form S-3, and Registration Statement Nos. 333-215590 and 333-123704 on Form S-1 of our report dated April 2, 2018, relating to the consolidated financial statements of ReShape Lifesciences Inc. and subsidiaries, appearing in this Annual Report on Form 10-K of the Company for the year ended December 31, 2017.

/s/ DELOITTE & TOUCHE LLP

Minneapolis, MN
April 2, 2018

EXHIBIT 31.1

CERTIFICATIONS

I, Dan W. Gladney, certify that:

1. I have reviewed this Annual Report on Form 10-K of ReShape Lifesciences Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the consolidated financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

/s/ DAN W. GLADNEY
Dan W. Gladney
Chairman, President and Chief Executive Officer

Date: April 2, 2018

EXHIBIT 31.2

CERTIFICATIONS

I, Scott P. Youngstrom, certify that:

1. I have reviewed this Annual Report on Form 10-K of ReShape Lifesciences Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the consolidated financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

/S/ SCOTT P. YOUNGSTROM

Scott P. Youngstrom
Chief Financial Officer
and Senior Vice President, Finance

Date: April 2, 2018

EXHIBIT 32.1

CERTIFICATION PURSUANT TO
18 U.S.C. §1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Annual Report of ReShape Lifesciences Inc. (the Company) on Form 10-K for the period ended December 31, 2017 as filed with the Securities and Exchange Commission on the date hereof (the Report), I, Dan W. Gladney, Chief Executive Officer of the Company, certify, pursuant to 18 U.S.C. §1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

1. The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

2. The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/S/ DAN W. GLADNEY
Dan W. Gladney
Chairman, President and Chief Executive Officer

April 2, 2018

EXHIBIT 32.2

CERTIFICATION PURSUANT TO
18 U.S.C. §1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Annual Report of ReShape Lifesciences (the Company) on Form 10-K for the period ended December 31, 2017 as filed with the Securities and Exchange Commission on the date hereof (the Report), I, Scott P. Youngstrom, Chief Financial Officer of the Company, certify, pursuant to 18 U.S.C. §1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

1. The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

2. The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/S/ SCOTT P. YOUNGSTROM
Scott P. Youngstrom
Chief Financial Officer
and Senior Vice President, Finance

April 2, 2018